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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
13 **IN AND FOR THE COUNTY OF PIMA**

14 ALLISON BRADFORD; MICHAEL  
15 CARLSON; and ADRIAN WURR,

16 Plaintiffs,

17 v.

18 CITY OF TUCSON, a body politic in the  
19 State of Arizona,

20 Defendant.

Case No.:

**VERIFIED COMPLAINT FOR  
PUBLIC NUISANCE, PRIVATE  
NUISANCE, AND FOR  
DECLARATORY, SPECIAL  
ACTION, AND INJUNCTIVE  
RELIEF**

Assigned to:

21 Plaintiffs Allison Bradford, Michael Carlson, and Adrian Wurr bring this action  
22 for declaratory, special-action, and injunctive relief and hereby allege as follows:

23 **INTRODUCTORY STATEMENT**

24 Plaintiffs are homeowners who live in the Hedrick Acres Neighborhood in the  
25 City of Tucson (“City”), abutting or near the Navajo Wash Park (“Navajo Wash” or  
26 “Wash”). In Navajo Wash, several unsheltered homeless individuals have made the  
27 Wash their home, setting up semi-permanent structures. Along with these structures and  
28 unsheltered persons have come trash, fires, odors, obstructions, and property and violent

1 crimes. The Plaintiffs and their neighbors for years enjoyed and maintained the Wash; for  
2 the last few years it has been unusable. Plaintiffs have also suffered crime and other harm  
3 at the hands of the unsheltered individuals who have made the Wash their home. The  
4 encampments violate the express terms of several public nuisance statutes as well as  
5 several City ordinances.

6 The Plaintiffs have sought in good faith to negotiate over the matter with the City,  
7 which owns and is responsible for the Wash, to no avail. The City has failed to enforce  
8 the laws against public camping and public nuisances and has allowed the creation of  
9 illegal public nuisances on its land. Upon information and belief, the City has misused  
10 precedents from the U.S. Court of Appeals for the Ninth Circuit since 2018 to abdicate  
11 its responsibility over unsheltered homelessness all over the City, including in Navajo  
12 Wash. The relevant decisions from the Ninth Circuit provide that a municipality may not  
13 enforce camping or sleeping bans *if there is no alternative space available* for those who  
14 are unsheltered. Yet in this year’s point-in-time count, there were over 1,000 unutilized  
15 shelter beds in the region—sufficient for over two-thirds of those who are presently  
16 unsheltered in all of Pima County. 2023 Point in Time Count Report of Persons  
17 Experiencing Homelessness and Shelter/Supportive Housing Utilization in Pima County,  
18 AZ (May 2023), at 8.<sup>1</sup> Not only that, but unsheltered homelessness increased in Tucson  
19 and Pima County by *three to four hundred percent (300-400%)* since 2018, while  
20 *sheltered* homelessness *decreased* by thirty percent (30%). *Id.* at 4-5, 10. The City’s  
21 permissive and illegal policies, in other words, have *encouraged* unsheltered  
22 homelessness.

23 Although this verified complaint challenges the legality of the City’s policy of  
24 permitting the public nuisance specifically in Navajo Wash, which the City controls, it is  
25 also a plea for sanity more generally. A Superior Court in Maricopa County has already  
26

27  
28 <sup>1</sup> <https://tpch.net/wp-content/uploads/TPCH-2023-Point-in-Time-Count-Housing-Utilization-Report-5.15.23.pdf>. (<https://perma.cc/2MT2-KLXX>).

1 held that similar conditions in Phoenix constitute an illegal public nuisance that the City  
2 of Phoenix must abate. Tucson must do the same.

3 **PARTIES, VENUE, AND JURISDICTION**

4 1. Plaintiff Allison Bradford lives at 3038 North Santa Rita Avenue in  
5 Tucson, Arizona, Pima County, in the Hedrick Acres Neighborhood, adjacent to Navajo  
6 Wash to the south.

7 2. Ms. Bradford is a resident of Pima County, Arizona.

8 3. Plaintiff Michael Carlson operates a business at 1010 East Fort Lowell  
9 Road in Tucson, Arizona, Pima County, in the Hedrick Acres Neighborhood, just down  
10 the street from Navajo Wash.

11 4. Mr. Carlson is a resident of Pima County, Arizona.

12 5. Plaintiff Adrian Wurr lives at 1228 East Hedrick Drive in Tucson, Arizona,  
13 Pima County, in the Hedrick Acres Neighborhood, adjacent to Navajo Wash to the south.

14 6. Mr. Wurr is a resident of Pima County, Arizona.

15 7. Plaintiffs are members of the Hedrick Acres Neighborhood Association  
16 (“HANA”).

17 8. Defendant City of Tucson is a municipal corporation in the State of  
18 Arizona.

19 9. All the acts, omissions, and allegations set forth in this verified complaint  
20 occurred in and were directed toward Pima County, Arizona.

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

25 11. The injunctive, mandamus, special-action, and other relief sought in this  
26 verified complaint is proper because the plaintiffs and others will suffer irreparable injury  
27 unless the requested relief is granted, and there exists no other equally plain, speedy, and  
28 adequate remedy.



1 in *Boise* but specifically held that a city “may still ‘ban the use of tents in public parks,’”  
2 for example, so long as there is alternative space available. 50 F.4th at 812 n. 34.

3 24. Notwithstanding that nothing in the Ninth Circuit opinions requires or  
4 permits the City of Tucson to maintain its designated public land in an unsanitary and  
5 unsafe condition, it has so maintained Navajo Wash.

6 25. Notwithstanding that nothing in the Ninth Circuit opinions requires or  
7 permits the City of Tucson to allow semi-permanent tent dwellings that obstruct public  
8 enjoyment of public lands, it has so allowed in Navajo Wash.

9 26. Notwithstanding that nothing in the Ninth Circuit opinions requires that all  
10 public lands be made available at all times to homeless individuals, the City has operated  
11 Navajo Wash in a way that constitutes a nuisance, in violation of state laws and local  
12 ordinances.

13 27. Notwithstanding that nothing in the Ninth Circuit opinions precludes the  
14 enforcement of laws and ordinances against public urination and defecation, drug use,  
15 and other disorderly conduct, the City of Tucson has ceased to enforce such laws and  
16 ordinances in and around Navajo Wash.

### 17 **The Effects of the City’s Actions**

18 28. As a result of the City’s maintenance of the illegal public nuisance in the  
19 Navajo Wash, Plaintiffs have suffered harm.

20 29. Plaintiffs have been negatively impacted by the masses of garbage and  
21 human waste in Navajo Wash.

22 30. Plaintiffs have been negatively impacted by the increase in illegal drug use  
23 and other criminal activity, not just in the Wash, but spilling into alleys and streets and  
24 on to private property.

25 31. Plaintiffs can no longer use the Wash for the activities they used to enjoy.

26 32. The presence of the homeless encampments has had a devastating impact  
27 on Hedrick Acres’ only park, and on Plaintiffs’ quality of life.

28 33. For example, fires have been set by the unsheltered living in the Wash and

1 have burned out of control at least twice in the recent past, requiring the assistance of the  
2 fire department.

3 34. One fire partially burned one of two park benches in the Wash; the other  
4 scorched a quarter-acre of grass and mesquite and left burnt out shopping carts, tents, and  
5 debris behind, which neighborhood volunteers cleaned up. The carbon scars on  
6 landscaping rocks that HANA and the City purchased will remain for many years.

7 35. Human waste, drug paraphernalia, and other trash dumped by unsheltered  
8 persons in the Wash leech into the soil and into the ground water with each rainstorm.

9 36. One resident who spent over a decade participating in park maintenance in  
10 the Wash but who no longer frequents the Wash because of the present conditions  
11 explains that in recent years the monthly maintenance pickups often included scraping  
12 vomit out of the dirt, picking up human excrement, picking up used condoms, and  
13 finding stolen mail.

14 37. Camping debris and trash has blocked storm drains at Mountain Avenue  
15 and Hedrick Drive and resulted in flooding throughout the neighborhood in at least two  
16 instances.

17 38. In recent storms, a tent from Navajo Wash landed in the backyard of  
18 HANA's president; his yard was also flooded as water backed up in the Wash.

19 39. People living in Navajo Wash have also been observed violating laws  
20 against public indecency and intoxication.

21 40. People living in Navajo Wash have been observed engaging in sex acts in  
22 public.

23 41. There has been an increase in criminal activity such as mail theft, smash  
24 and grab thefts on cars, homes, and businesses in the neighborhood.

25 42. At least three stolen vehicles have been dumped in the University of  
26 Arizona parking lot and several university students have had their cars broken into during  
27 daylight hours while attending classes.

28 43. Dozens of HANA neighbors, including Plaintiffs, have also reported mail

1 and package thefts, petty thefts of items in their yards, breaking and entering of homes  
2 and personal vehicles, and many more minor crimes that rise or fall with the number of  
3 unsheltered individuals living in Navajo Wash.

4 44. Several nearby businesses have sustained thousands of dollars in damages  
5 from stolen tools and equipment; broken doors, windows, locks and fences; polluted  
6 pools; and loss of business traffic.

7 45. The increase in violent crime in the area has been well documented by the  
8 Tucson Police Department. <https://nsn.soaz.info/incidents/zhedrick.html>.

9 46. Plaintiffs have observed several abandoned shopping carts being used by  
10 unsheltered individuals in Navajo Wash.

11 47. Several individuals living in the Wash have trespassed on Plaintiffs'  
12 properties.

13 48. In one instance, Plaintiff Michael Carlson told two unsheltered individuals  
14 that they that were trespassing on his property; they returned thirty minutes later with an  
15 ax. Mr. Carlson filed a 911 report but heard nothing back.

16 49. In another instance, an unsheltered individual entered Mr. Carlson's  
17 property asking for a roll of tin, and would not leave when asked, frightening two female  
18 employees of Mr. Carlson.

19 50. In bad weather, unsheltered individuals will often trespass on Mr. Carlson's  
20 business under the entryway; when they leave they leave behind garbage and drug  
21 paraphernalia.

22 51. An unsheltered person recently threatened Mr. Carlson's customers and  
23 employees with a machete.

24 52. Mr. Carlson's wall that lines the alley adjoining the Wash has been set on  
25 fire by unsheltered persons.

26 53. Mr. Carlson and his employees clean drug paraphernalia off of their three  
27 lots on a daily basis.

28 54. Mr. Carlson and his employees must constantly pick up burnt foil on their

1 property that has been discarded after unsheltered individuals have smoked fentanyl on  
2 the property.

3 55. Mr. Carlson and his employees clean dirty needles, liquor bottles, Circle K  
4 cups, and food boxes on a daily basis.

5 56. Mr. Carlson and his employees pick up human feces and tampons on a  
6 daily basis on his property.

7 57. Mr. Carlson has witnessed unsheltered individuals urinating on the walls of  
8 his building.

9 58. Mr. Carlson has observed offensive odors in his business as a result of the  
10 activity of unsheltered persons in the Wash and at his business.

11 59. Ms. Bradford's house is positioned in an "H" shaped alley with no direct  
12 street access; Ms. Bradford must drive through the alley to pull into her carport.

13 60. Ms. Bradford routinely observes clothing and personal items that have been  
14 dumped in the alley, along with stolen mail, used syringes, and condoms.

15 61. Ms. Bradford recently came home to find two homeless persons using  
16 drugs in her enclosed carport.

17 62. Twice Ms. Bradford has come home to find stolen backpacks and all of  
18 their contents strewn throughout her carport.

19 63. Once a presumably stolen bicycle was abandoned in her carport.

20 64. Earlier this year, late at night, three hooded men were loitering in the alley  
21 next to Ms. Bradford's house after having threatened a neighbor across the street for  
22 shining his flashlight in their direction.

23 65. Three months ago, in the afternoon, Ms. Bradford discovered a homeless  
24 woman in her fenced-in front yard.

25 66. Ms. Bradford has installed motion sensor lights facing the alley and in her  
26 carport; recently, someone had turned the carport motion light upward so as not to  
27 activate, and there were handprints on Ms. Bradford's truck's hood and side mirror.

28 67. Ms. Bradford bought her house 26 years ago; until the last few years, she



1 never felt unsafe. Now she regularly feels unsafe.

2 68. About five years ago a mentally ill unsheltered individual threw rocks and  
3 workers on Mr. Wurr's property and damaged their vehicle.

4 69. More recently, Mr. Wurr was assaulted and struck by an unsheltered  
5 individual when he investigated the Wash to determine if the neighbors could have a  
6 neighborhood association meeting in the Navajo Wash Park.

7 70. Mr. Wurr's wife has been verbally abused by an unsheltered individual  
8 when walking down Hedrick Drive.

9 71. Mr. Wurr has witnessed unsheltered individuals committing acts of  
10 violence against each other in the Wash.

11 72. Mr. Wurr has witnesses public sex acts in vehicles around the Wash.

12 73. Mr. Wurr routinely sees toilet paper, feces, and soiled clothing in the Wash  
13 when HANA engages in its monthly clean-ups.

14 74. Mr. Wurr and volunteers often observe several flies around feces and soiled  
15 clothing during the clean-ups.

16 75. Mr. Wurr routinely sees foil with fentanyl residue and needles in the Wash.

17 76. Once Mr. Wurr and HANA volunteers cleaned up a single tent that had  
18 been in the Wash for only a few days, and they found hundreds of needles inside.

19 77. The Navajo Wash has flooded Mr. Wurr's driveway when several storm  
20 drains have been blocked by debris.

21 78. Last Sunday Mr. Wurr and HANA volunteers were confronted by  
22 unsheltered individuals in the Wash then they came to engage in their monthly clean-ups  
23 and tree trimmings.

24 79. Another neighbor has reported having frequently to remove fecal matter  
25 from one of her property's wall.

26 80. The precise number of encampments and unsheltered persons in the Wash  
27 varies from day to day, but range from approximately one to fifteen encampments and up  
28 to thirty unsheltered persons.

1           81.    The following are photographs taken by the Plaintiffs that document the  
2 above harms and conditions:



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1 82. Plaintiffs are all especially affected by their proximity to the public  
2 nuisance, that is, they experience the effects of the nuisance above and beyond the effect  
3 the nuisance has on the general citizenry.

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

6 84. Plaintiffs have been harmed irreparably by being subject to unsanitary and  
7 unsafe conditions in their neighborhood.

8 85. Plaintiffs have been harmed irreparably by being subject to a high risk of  
9 crime in their neighborhood.

10 86. Absent an injunction, plaintiffs will suffer ongoing illegal harm.

11 **Plaintiffs' Outreach Efforts**

12 87. Plaintiffs, as part of the Hedrick Acres Neighborhood Association, have  
13 communicated with the City regarding the conditions in Navajo Wash on several  
14 occasions.

15 88. Plaintiffs and HANA have repeatedly contacted the Ward 3 offices of  
16 Kevin Dahl with their concerns over the growing public nuisance.

17 89. Plaintiffs and HANA have repeatedly contacted Mari Vasquez, the City's  
18 Multi-Agency Resources Coordinator, with their concerns over the growing public  
19 nuisance.

20 90. Plaintiffs and HANA have repeatedly contacted the Tucson Police  
21 Department's homeless outreach officers and their supervisors with their concerns over  
22 the growing public nuisance.

23 91. Plaintiffs and HANA have repeatedly contacted the Tucson Department of  
24 Transportation, which is responsible for clearing washes of debris to prevent flooding,  
25 with their concerns over the growing public nuisance.

26 92. Plaintiffs and HANA have repeatedly communicated their concerns over  
27 the growing public nuisance to Tucson Fire Department and EMT personnel responding  
28 to fires and overdoses Navajo Wash.



1 93. Plaintiffs and HANA have written several letters to various officials,  
2 outlining concerns and asking for assistance and relief from the problems the  
3 encampments create for the neighborhood.

4 94. No satisfactory action to address the nuisance was taken after these  
5 contacts and meetings.

6 95. Plaintiffs most recently contacted, through counsel, Mr. Dahl's office, as  
7 well as the office of City Manager Michael Ortega and the office of Mayor Regina  
8 Romero, with a letter dated August 29, 2023, expressing their concerns and their desire  
9 to have a meeting.

10 96. Mr. Dahl's and Mr. Ortega's offices acknowledged receipt of the letter;  
11 Mayor Romero's office did not.

12 97. None of the above officials, nor anyone else representing the City, agreed  
13 to a meeting with the Plaintiffs.

14 98. Plaintiffs had no choice but to file this lawsuit.

15 **The City's Policy of Allowing Illegal Public Nuisances**

16 99. Upon information and belief, the City has an intentional policy of allowing  
17 such illegal public encampments despite laws and ordinances that prohibit them.

18 100. Upon information and belief, the City is using the *Boise* and *Grants Pass*  
19 cases as an excuse to abdicate responsibility over unsheltered homelessness, even though  
20 there are several hundred unutilized beds available in Tucson and Pima County.

21 101. The 2023 point-in-time count reveals that there were 1,501 persons  
22 experiencing unsheltered homelessness on the morning of January 24, 2023, in Pima  
23 County.

24 102. The point-in-time count also revealed that there were 1,066 unutilized  
25 shelter and supportive housing beds that night.

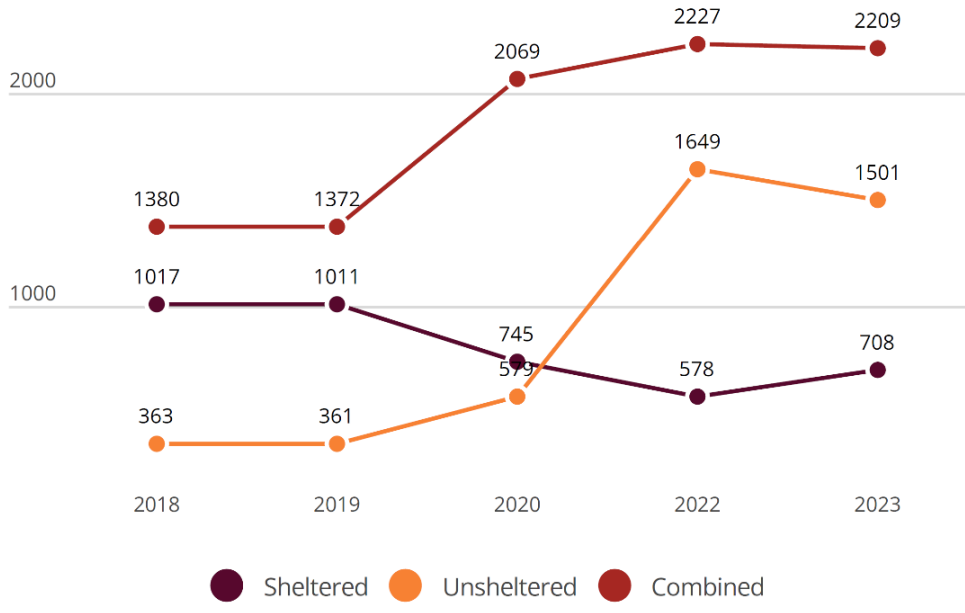
26 103. The point-in-time count shows that there was a *three hundred percent*  
27 (300%) increase in *unsheltered* homelessness in the City and region since 2018, but a  
28 thirty percent (30%) *decrease* in *sheltered* homelessness. (The absolute numbers suggest

1 an even bigger increase in unsheltered homelessness since 2018, namely four hundred  
2 and thirteen percent.)

3 104. The City’s policies, in other words, have encouraged homeless persons to  
4 live on the streets rather than to seek shelter.

5 105. The trend in unsheltered and sheltered homelessness is depicted in the 2023  
6 Point in Time Count Report, jointly published by the City’s Housing & Community  
7 Development Office, Pima County’s Community & Workforce Development Office, the  
8 University of Arizona’s Southwest Institute for Research on Women, and the Tucson  
9 Pima Collaboration to End Homelessness:

**Number of Persons Experiencing Sheltered and Unsheltered Homeless on the Night of the Point in Time Count (2018-2023)**



24 106. Shelter space is available because those who are currently unsheltered are  
25 *voluntarily* so, and do not fall within the scope of *Boise* and *Grants Pass*.

26 107. The vast majority of unsheltered individuals prefer certain freedoms over  
27 going into shelter.

28 108. For example, substance abuse is generally prohibited in shelters; but of

1 adults experiencing homelessness with a substance abuse issue, *eighty percent* (80%) of  
2 them were unsheltered, according to the point-in-time report.

3 109. Similarly, of adults experiencing homelessness with serious mental illness,  
4 sixty-eight percent (68%) of them were unsheltered, according to the point-in-time  
5 report.

6 110. Other persons choose to be unsheltered because a shelter cannot  
7 accommodate pets, partners, or property; because individuals prefer more space; or for  
8 other reasons that are not biologically compelled.

9 111. Regardless of the number of truly involuntarily homeless persons in the  
10 City of Tucson, the point-in-time data demonstrate that there are sufficient shelter beds to  
11 accommodate the unsheltered individuals in the Navajo Wash area.

12 112. Upon information and belief, the City of Tucson deploys a tiered system to  
13 clear only those encampments the City deems to be a health and safety risk.

14 113. The conditions in Navajo Wash are a health and safety risk, but the City  
15 has not cleared the encampments.

16 114. In any event, any encampment that meets the statutory definitions of public  
17 nuisance is illegal.

18 115. Therefore, the City has an illegal policy of allowing encampments that  
19 meet the conditions of a public nuisance.

20 **COUNT I – PUBLIC NUISANCE**

21 116. Plaintiffs restate the above allegations as though set forth fully here.

22 117. To bring a public nuisance claim in Arizona, a private plaintiff must  
23 demonstrate an unreasonable interference with a public right; that the defendant is legally  
24 responsible for the interference; and that the private plaintiff suffers damage special in  
25 nature and different in kind from that experienced by the residents of the city in general.  
26 *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs.*, 148 Ariz. 1 (1985).

27 118. In *Armory Park*, the Arizona Supreme Court affirmed a Superior Court's  
28 preliminary injunction against a church organization that fed the indigent once a day in a

1 neighborhood and which created a public nuisance.

2 119. In *City of Phoenix v. Johnson*, 51 Ariz. 115 (1938), the Arizona Supreme  
3 Court held that the City of Phoenix could be held liable for nuisances, in that case a  
4 malfunctioning sewer system. “No matter how great may be the necessity of providing a  
5 sewer system for the city, it may not rightfully be done in such a manner as to maintain a  
6 nuisance.” 51 Ariz. at 130. “We think it is a matter of which this court may take judicial  
7 notice that a sewer system for a city of the character of Phoenix can be maintained in  
8 such a manner that it will be neither a private nor a public nuisance,” the Court held.  
9 “The expense may be great, and the vigilance required in the operation and maintenance  
10 may be incessant, but modern science teaches us that human care and ingenuity is  
11 sufficient for the situation.” *Id.* at 126.

12 120. *City of Phoenix v. Johnson* and *Armory Park* together stand for the  
13 proposition that a City cannot maintain on its public lands homeless encampments to the  
14 extent that doing so would create a public nuisance.

15 121. The Restatement (Second) of Torts, relied upon by the Arizona Supreme  
16 Court in *Armory Park*, further provides that “(1) A public nuisance is an unreasonable  
17 interference with a right common to the general public,” and elaborates that “(2)  
18 Circumstances that may sustain a holding that an interference with a public right is  
19 unreasonable include . . . (a) Whether the conduct involves a significant interference with  
20 the public health, the public safety, the public peace, the public comfort or the public  
21 convenience, or (b) whether the conduct is proscribed by a statute, ordinance or  
22 administrative regulation[.]” Restatement (Second) of Torts § 821B.

23 122. Numerous Arizona statutes and City of Tucson ordinances “proscribe” the  
24 conduct and conditions in Navajo Wash.

25 123. Arizona statute declares “[a]ny place, condition or building that is  
26 controlled or operated by any governmental agency and that is not maintained in a  
27 sanitary condition” to be a “public nuisance[] dangerous to the public health.” A.R.S.  
28 § 36-601(A)(4).

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

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

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

13           127. Arizona law further declares “pollution or contamination of any domestic  
14 waters” to be a public nuisance dangerous to the public health. A.R.S. § 36-601(A)(9).  
15 And A.R.S. Section 49-201(32) prohibits the “discharge” of pollutants without a permit,  
16 and Section 49-201(12) defines “discharge” as “the direct or indirect addition of any  
17 pollutant to the waters of the state from a facility.” The word “pollutant” is defined to  
18 include “fluids” “solid waste,” “sewage, garbage, sewage sludge,” “or any other liquid,  
19 solid, gaseous or hazardous substances.” *Id.* § 49-201(35). The statute further defines  
20 “facility” as “any land, building, . . . area, source, activity or practice from which there is,  
21 or with reasonable probability may be, a discharge.” *Id.* § 49-201(19).

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

27           129. City ordinances also prohibit the maintenance of homeless encampments in  
28 Navajo Wash.

1           130. The City Code provides that no person shall “[e]mit, eject or cause to be  
2 deposited any excreta of the human body, except in those places designated for such  
3 purposes.” Tucson Municipal Code § 21-3(7)(5)(a).

4           131. The City Code provides, “It is unlawful for any person to urinate or  
5 defecate in a public place, or in any place exposed to public view, except an established  
6 lavatory or toilet.” *Id.* § 11-54.

7           132. The City Code provides, “Anything that is injurious to health, or is  
8 indecent or offensive to the senses, or is an obstruction to the free use of property, so as  
9 to interfere with the comfortable enjoyment of life or property by an entire community or  
10 neighborhood, or by any considerable number of persons, is hereby declared to be a  
11 public nuisance.” *Id.* § 16-34.

12           133. The City Code provides, “The burning of garbage, rubbish, trash, grass  
13 clippings, tree prunings, waste trade materials, junk auto bodies or parts thereof, or tires,  
14 and any other articles in open fires, bonfires, incinerator or burning devices, or in other  
15 manner, outside of a regular building and within the city is hereby prohibited except as  
16 specifically permitted. Except as specifically provided, any such fire or burning is hereby  
17 declared to be a public nuisance and unlawful.” *Id.* § 11-5.

18           134. The City Code provides, “The presence of garbage, trash, refuse, grass  
19 clippings and other waste materials, or the accumulation and presence of weeds, brush  
20 and natural vegetation to the extent that it impedes, obstructs or hinders the easy natural  
21 flow of drainage or floodwaters in any arroyo [wash], water ditch, acequia or natural  
22 drainage channel is hereby declared a public nuisance; such nuisance may be abated by  
23 appropriate action in any court of competent jurisdiction by the city in addition to other  
24 remedies provided by law.” *Id.* § 11-62.

25           135. The City Code defines “[a]bandoned shopping cart” to mean “a shopping  
26 cart, whether marked or unmarked, located outside the premises or parking area of a  
27 retail establishment, which parking area shall include parking areas of common usage in  
28 multi-store complexes and shopping centers.” *Id.* § 16-39(a)(1). It further provides that

1 “[u]nmarked abandoned shopping carts are declared a nuisance.” *Id.* § 16-39(b).

2 136. The conditions in Navajo Wash constitute a public nuisance as defined by  
3 the above Arizona laws and City ordinances.

4 137. The City is responsible for the nuisance because the nuisance is on its land.

5 138. “A possessor of land” is liable for nuisances on his property if he “knows  
6 or should know of the condition and the nuisance” and fails “to take reasonable steps to  
7 abate the condition.” Restatement (Second) of Torts § 839.

8 139. The City knows of the nuisance—the Plaintiffs have repeatedly  
9 communicated with the City about it—and has failed to take reasonable steps to abate the  
10 nuisance.

11 140. “A possessor of land upon which a third person carries on an activity that  
12 causes a nuisance is subject to liability for the nuisance” if the possessor “knows or has  
13 reason to know” of the activity and “consents to the activity or fails to exercise  
14 reasonable care to prevent the nuisance.” *Id.* § 838.

15 141. The City knows of the activities of the unsheltered individuals in Navajo  
16 Wash and has consented to those activities, and otherwise has failed to exercise  
17 reasonable care to prevent the nuisance.

18 142. As noted, state law provides that any government-controlled place that is  
19 not “maintained in a sanitary condition” is a public nuisance. A.R.S. § 36-601(4).

20 143. The City of Tucson controls Navajo Wash and does not maintain it in a  
21 sanitary condition.

22 144. The Ninth Circuit decisions in *Martin v. City of Boise* and *Johnson v. City*  
23 *of Grants Pass* do not preempt Arizona’s statutory nuisance law, Arizona’s common law  
24 of nuisance, or the numerous city ordinances that Defendant is not currently enforcing.

25 145. The Ninth Circuit decisions do *not* require that the City maintain its public  
26 lands in a manner that creates a nuisance. *Boise*, 920 F.3d at 589 (Berzon, J., concurring  
27 in the denial of rehearing en banc); *see also id.* at 617 n.8 (majority opinion); *Grants*  
28 *Pass*, 50 F.4th at 812 nn. 33-34.

1 146. In the latest point-in-time count, there were over 1,000 unutilized beds in  
2 the region, suggesting that the City has the ability to abate the nuisance and that there is  
3 no constitutional impediment to doing so.

4 147. Plaintiffs all live in the vicinity of the homeless encampments in the  
5 Navajo Wash and are negatively affected thereby.

6 148. Plaintiffs, due to their vicinity to the Navajo Wash, are especially affected,  
7 harmed, and damaged by the City's actions above and beyond the harm to the general  
8 citizenry.

9 149. Plaintiffs, due to their vicinity to the Navajo Wash, have experienced  
10 damage and harm to their property and pecuniary interests above and beyond the harm  
11 experienced by the general public.

12 150. Plaintiffs have experienced harm to the use and enjoyment of their real  
13 property.

14 151. Accordingly, the conditions in Navajo Wash constitute a public nuisance  
15 and Plaintiffs have a legal right to seek abatement of the nuisance.

16 152. Plaintiffs have suffered, and will continue to suffer, physical harm and  
17 crime as a result of the public nuisance.

18 153. Plaintiffs have suffered, and will continue to suffer, economic losses as a  
19 result of the public nuisance.

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

22 **COUNT II – PRIVATE NUISANCE**

23 155. Plaintiffs restate the above allegations as though set forth fully here.

24 156. A private nuisance is a condition which represents an unreasonable  
25 interference with another person's use and enjoyment of his property and which causes  
26 damage. *Graber v. City of Peoria*, 156 Ariz. 553, 555 (Ct. App. 1988).

27 157. “[A] nuisance may be simultaneously public and private when a  
28 considerable number of people suffer an interference with their use and enjoyment of



1 land.” *Armory Park*, 148 Ariz. at 4.

2 158. In addition to constituting a public nuisance, the conditions in Navajo  
3 Wash interfere with the Plaintiffs’ use and enjoyment of their property and is therefore a  
4 private nuisance.

5 159. Plaintiffs have suffered, and will continue to suffer, physical harm and  
6 crime as a result of the private nuisance.

7 160. Plaintiffs have suffered, and will continue to suffer, economic losses as a  
8 result of the private nuisance.

9 161. Plaintiffs have suffered, and will continue to suffer, both trespassory and  
10 non-trespassory harms to their property interests as a result of the private nuisance.

11 **COUNT III – DECLARATORY ACTION**

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

13 163. This Court has authority, pursuant to A.R.S. section 12-1831, to declare the  
14 existence of a public or private nuisance.

15 164. Plaintiffs’ rights are affected by the existence of the public or private  
16 nuisance, as its existence is causing them, and will continue to cause them, substantial  
17 physical and economic harm.

18 165. There exists a live controversy regarding the existence of the public or  
19 private nuisance, and Plaintiffs’ rights, status, or legal relations relating to the City’s  
20 creation and/or maintenance of the nuisance.

21 166. This Court has the authority to, and should, enter judgment declaring that  
22 the Navajo Wash constitutes a public and/or private nuisance.

23 **COUNT IV - SPECIAL ACTION**

24 167. Plaintiffs restate the above allegations as though fully set forth here.

25 168. As set forth in count I above, the City’s actions in and relating to the  
26 Navajo Wash create a public nuisance.

27 169. Nevertheless, Defendant has proceeded with creating and/or maintaining a  
28 public nuisance on City land, in violation of Arizona statute and common law, and

1 violating Plaintiffs' rights.

2 170. Plaintiffs can bring a special action in this Court and obtain special-action  
3 relief and/or a writ of mandamus where "the defendant has failed to exercise discretion  
4 which [it] has a duty to exercise." *See* Ariz. R. of Proc. for Special Action 3(a).

5 171. Here, according to a long line of municipal corporations cases, the City has  
6 an obligation to abate public nuisances on public lands. *See, e.g.,* McQuillin Mun. Corp.  
7 § 51:24 (3d ed.).

8 172. Plaintiffs can bring a special action in this Court and obtain special-action  
9 relief and/or a writ of mandamus where "the defendant has proceeded or is threatening to  
10 proceed without or in excess of jurisdiction or legal authority." *See* Ariz. R. of Proc. for  
11 Special Action 3(b).

12 173. Here, Defendant has created and/or maintained a public nuisance in excess  
13 of its jurisdiction and legal authority.

14 174. Plaintiffs have suffered, and will continue to suffer, physical harm and  
15 economic losses as a result of Defendant's unlawful actions.

16 175. The City's continued maintenance of the nuisance has caused, and will  
17 continue to cause, Plaintiffs irreparable damages.

18 176. Plaintiffs have no equally plain, speedy, or adequate remedy for the  
19 physical harm and economic losses they have suffered, and will continue to suffer, based  
20 upon Defendant's unlawful creation and/or maintenance of a public nuisance.

21 177. Plaintiffs are entitled to judgment granting special-action relief and/or a  
22 writ of mandamus ordering Defendant to abate the nuisance.

23 **COUNT V - INJUNCTIVE RELIEF**

24 178. Plaintiffs restate the above allegations as though fully set forth here.

25 179. As set forth in counts I-IV above, the City's actions with respect to Navajo  
26 Wash create a public or private nuisance and deprive Plaintiffs of their rights.

27 180. Plaintiffs request in this verified complaint that the Court enter judgment  
28 determining and declaring that the City's actions constitute a public or private nuisance

1 and are unlawful.

2 181. If Defendant continues to maintain the nuisance in Navajo Wash, Plaintiffs  
3 will suffer unquantifiable and irreparable physical harm and economic losses.

4 182. An injunction enjoining Defendant to abate the nuisance would not  
5 prejudice Defendant.

6 183. Injunctions are also appropriate to compel government officials to comply  
7 with the law. *McCluskey v. Sparks*, 80 Ariz. 15, 20–21 (1955) (holding injunction was  
8 appropriate where plaintiffs sought to require “officials to comply with the statutes and  
9 constitutions of Arizona and of the United States”); *Boruch v. State ex rel. Halikowski*,  
10 242 Ariz. 611, 616, ¶ 16 (App. 2017) (injunctive relief is appropriate “when a public  
11 officer enforces a public statute in a manner that exceeds the officer’s power”).

12 184. Injunctions are also appropriate to prevent “continuing or repeated” harms  
13 to the “enjoyment and use of property for a long or continuous period of time” if “the  
14 deprivation would continue unless enjoined.” *Fin. Assocs., Inc. v. Hub Properties, Inc.*,  
15 143 Ariz. 543, 546 (Ct. App. 1984). An injunction is proper for intrusions that “threaten  
16 further *or* irreparable harm.” *Id.*

17 185. Plaintiffs are entitled to the relief sought in this verified complaint.

18 186. Accordingly, pursuant to A.R.S. section 12-1801, Plaintiffs respectfully  
19 request this Court issue preliminary and permanent injunctions directing Defendant  
20 immediately to abate the nuisance in Navajo Wash.

21 **RELIEF REQUESTED**

22 WHEREFORE, Plaintiffs respectfully request the following:

- 23 A. That judgment be rendered in favor of Plaintiffs and against Defendant on  
24 all counts alleged in this verified complaint.
- 25 B. That this Court enter judgment determining and declaring the Navajo Wash  
26 to be a public nuisance.
- 27 C. That this Court enter judgment determining and declaring the Navajo Wash  
28 to be a private nuisance.

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- D. That this Court enter judgment granting Plaintiffs special-action relief and/or a writ of mandamus ordering Defendant to abate the nuisance.
- E. That this Court enter preliminary and permanent injunctions enjoining the Defendant immediately to abate the nuisance.
- F. That this Court order Defendant to pay Plaintiffs’ attorneys’ fees incurred in this matter, pursuant to A.R.S. sections 12-348(A)(4), 12-348(A)(7), and 12-2030, the private-attorney-general doctrine, and any other applicable statute, rule, or authority.
- G. That this Court order Defendant to pay Plaintiffs’ costs incurred in this matter, pursuant to A.R.S. sections 12-341 and 12-1840, and any other applicable statute, rule, or authority.
- H. That this Court grant such other and further relief as it deems just and reasonable under the circumstances.

RESPECTFULLY SUBMITTED this 20th day of September, 2023.

**TULLY BAILEY LLP**

/s/ Ilan Wurman

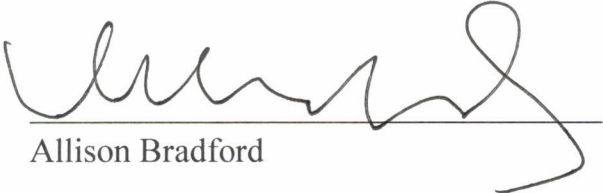
Ilan Wurman  
Stephen W. Tully  
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*Attorneys for the Plaintiffs*

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VERIFICATION

I, Allison Bradford, have read the foregoing complaint, am familiar with the facts and circumstances as alleged therein, and hereby state, under penalty of perjury pursuant to Rule 80(c) of the Arizona Rules of Civil Procedure, that the allegations contained therein are true and correct to the best of my knowledge, information, and belief.

DATED this 19<sup>th</sup> day of September, 2023.



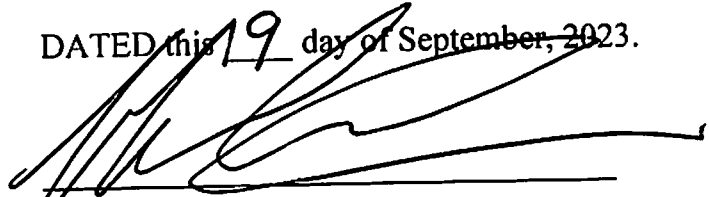
Allison Bradford

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VERIFICATION

I, Michael Carlson, have read the foregoing complaint, am familiar with the facts and circumstances as alleged therein, and hereby state, under penalty of perjury pursuant to Rule 80(c) of the Arizona Rules of Civil Procedure, that the allegations contained therein are true and correct to the best of my knowledge, information, and belief.

DATED this 19 day of September, 2023.



Michael Carlson

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VERIFICATION

I, Adrian Wurr, have read the foregoing complaint, am familiar with the facts and circumstances as alleged therein, and hereby state, under penalty of perjury pursuant to Rule 80(c) of the Arizona Rules of Civil Procedure, that the allegations contained therein are true and correct to the best of my knowledge, information, and belief.

DATED this 19<sup>th</sup> day of September, 2023.



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Adrian Wurr