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

18 Fund for Empowerment, *et al.*,  
 19 Plaintiffs,  
 20 v.  
 21 City of Phoenix, *et al.*,  
 22 Defendants.

No. CV-22-02041-PHX-GMS

**PLAINTIFFS' MOTION TO SET  
 RULE 16 CASE MANAGEMENT  
 CONFERENCE**

25 Plaintiffs Fund for Empowerment, Faith Kearns, Frank Urban, and Ronnie  
 26 Massingille ("Plaintiffs") respectfully request that this Court schedule a Rule 16 Case  
 27 Management Conference so that they may proceed with discovery. In support of this  
 28 Motion, Plaintiffs state as follows:

1           1. Plaintiffs filed suit on November 30, 2022. ECF No. 1.

2           2. On December 15, 2022, this Court issued a preliminary injunction that enjoined  
3 the City from (1) enforcing its Camping and Sleeping Bans against individuals who  
4 practically cannot obtain shelter as long as there are more unsheltered individuals in  
5 Phoenix than shelter beds available, (2) seizing property of unsheltered individuals without  
6 providing proper notice absent certain circumstances, and (3) destroying seized property  
7 without first storing it for thirty (30) days. ECF No. 32 at 2.

8           3. On February 13, 2023, this Court entered an Order scheduling a Case  
9 Management Conference for April 11, 2023. ECF No. 51.

10           4. Plaintiffs and Defendants then filed a Joint Case Management Report on March  
11 22, 2023 setting forth their agreed-upon proposed discovery schedule, under which  
12 discovery would close within approximately two months from now (January 31, 2024).  
13 ECF No. 52.

14           5. On April 3, 2023, however, Plaintiffs and Defendants notified the Court that the  
15 case had settled in principle during mediation. ECF No. 53.

16           6. As a result, the April 11 Case Management Conference was vacated, and no  
17 discovery deadlines were set. ECF No. 54.

18           7. Settlement efforts ultimately failed; Plaintiffs and Defendants so notified the  
19 Court on May 15, 2023. ECF No. 58 at 2.

20           8. On May 16, 2023, Plaintiffs moved the Court to modify the Preliminary  
21 Injunction and order Defendants to show cause why they should not be held in contempt  
22 for violating the preliminary injunction previously entered by the Court during Defendants'  
23 May 10, 2023 sweep of 9th Avenue between Washington and Jefferson Streets. ECF No.  
24 59.

25           9. On May 16, 2023, Plaintiffs also moved the Court for an order allowing  
26 expedited discovery to prepare for the hearing they requested. ECF No. 60. Plaintiffs  
27 requested this discovery to further demonstrate that the Defendants violated the preliminary  
28 injunction, and to support their request to modify the preliminary injunction. The discovery

1 sought concerned the City’s actions during the May 10th sweep, including “whether  
2 defendants issued post-seizure notices, tagged and stored unattended property, and  
3 enforced prohibitions on sleeping and camping in public against individuals without  
4 ensuring adequate shelter was available.” ECF No. 60 at 2-3.

5 10. Although the Court denied without prejudice Plaintiffs’ motion for an order to  
6 show cause and to modify the preliminary injunction, it granted Plaintiffs’ request for  
7 expedited discovery and ordered Defendants to produce the requested material and  
8 information within two weeks—by June 9, 2023. ECF No. 87. Defendants produced  
9 documents in response to some of Plaintiffs’ requests, but refused to provide requested  
10 information about individuals displaced during the May 10 sweep, despite Plaintiffs’ offer  
11 to enter into a protective order to safeguard third party privacy interests.

12 11. Since receiving the City’s responses to Plaintiffs’ expedited discovery requests  
13 Plaintiffs have attempted to gather information relevant to their claims, including about  
14 Defendants’ compliance with the terms of the preliminary injunction during the City’s  
15 ongoing sweeps, on their own. These efforts have proven difficult for a number of reasons,  
16 including because the City has not permitted counsel for Plaintiffs to access areas being  
17 cleared during its sweeps in the Zone, because unhoused individuals displaced during  
18 sweeps are by definition transient and difficult to locate without information about the  
19 shelters or other areas to which the City is directing them, and because Plaintiffs have no  
20 access to information about the City’s seizure and storage of property.

21 12. Plaintiffs and Defendants initially agreed this summer to update the Rule 26  
22 Joint Case Management Report after this Court’s ruling on the Intervenor’s Motion to  
23 Dismiss, filed June 7, 2023. However, given the passage of time, the completion of the  
24 relief sought in the Intervenor’s state court action against the City, and other factors  
25 explained below, Plaintiffs believe that discovery should now proceed. On November 1,  
26 2023, Plaintiffs reached out to the City to schedule a Rule 26 conference, but, following a  
27 telephonic meet and confer, the City refused to voluntarily move forward with the  
28 scheduling of discovery. For the reasons that follow, Plaintiffs now ask the Court to

1 schedule a Case Management Conference so that discovery can proceed.

2 13. First, discovery should proceed so that the parties can expeditiously resolve this  
3 litigation. It has now been approximately one year since this case was filed and over six  
4 months since the parties' initial discovery schedule was paused due to settlement  
5 negotiations. While Plaintiffs have been conscious of this Court's desire not to interfere  
6 with the Intervenor's State Court action, there is no reason to further delay discovery given  
7 that *Brown v. City of Phoenix* has concluded, the state court has issued a permanent  
8 injunction which required the City to "abate the nuisance it presently maintains on the  
9 public property in the Zone, including the removal of all tents and other makeshift  
10 structures, by November 4, 2023," *Id.* at 26, and the City has completed what is required of  
11 it under the terms of the permanent injunction. No. CV2022-010439 (Ariz. Super. Ct. Sept.  
12 20, 2023). To the Plaintiffs' knowledge and belief, the Zone is cleared,<sup>1</sup> meaning all  
13 unhoused individuals and their personal belongings within the Zone have been displaced.  
14 Any discovery by Plaintiffs at this point could not, therefore, interfere with ongoing  
15 litigation in or compliance with the injunction in *Brown*, nor with the Intervenor's interests  
16 in this case.

17 14. Second, the clearing of the Zone further hampers Plaintiffs' ability to gather  
18 factual evidence to support their claims because unhoused individuals—one of the only  
19 sources of information about the facts alleged in Plaintiffs' complaint absent discovery from  
20 the City—who were previously living in the Zone are now even more difficult to locate.  
21 This makes discovery from the City, including about its practices towards unhoused  
22 individuals during its sweeps of the Zone and where unhoused individuals living in the Zone  
23 were displaced to, all the more important. The City's clearing of the Zone also makes  
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25 <sup>1</sup> See Helen Rummel, *Phoenix's Largest Homeless Encampment, 'The Zone,' Is Now*  
26 *Gone*, AZCentral (Nov. 2, 2023 6:02 am),  
27 [https://www.azcentral.com/story/news/local/phoenix/2023/11/02/phoenixs-largest-](https://www.azcentral.com/story/news/local/phoenix/2023/11/02/phoenixs-largest-homeless-encampment-the-zone-is-now-gone/71415236007/)  
28 [homeless-encampment-the-zone-is-now-gone/71415236007/](https://www.azcentral.com/story/news/local/phoenix/2023/11/02/phoenixs-largest-homeless-encampment-the-zone-is-now-gone/71415236007/) ("The Zone is now fully  
cleared, three days ahead of the deadline set by a judge who declared the encampment a  
public nuisance. The tents and people are gone, leaving behind bare and quiet streets.").

1 Plaintiffs’ need for discovery time sensitive. Plaintiffs are now under immense time  
2 pressure to locate existing and potential witnesses throughout Phoenix or beyond before  
3 potential witnesses are unable to be located, memories dissipate, or documents disappear  
4 through property seizures.

5 15. Third, Plaintiffs understand that the City has increased sweeps of local parks  
6 where unhoused individuals live, including people displaced from the Zone. Recent news  
7 articles report that, since it began clearing the Zone, the City has increased the presence of  
8 police and park rangers in parks where unhoused people displaced from the Zone are now  
9 living and that unhoused people are increasingly being threatened with arrest or citation in  
10 areas outside the Zone for camping, sleeping, or even simply lingering in public.<sup>2</sup> Plaintiffs  
11 have also learned that the City has conducted sweeps at Cortez Park on Dunlap Ave., as  
12 recently as November 14. This activity appears to demonstrate that there is no “other public  
13 area,” where people can legally sleep that would allow enforcement of the sleeping and  
14 camping bans under this Court’s modified preliminary injunction (ECF No. 119).<sup>3</sup> Plaintiffs  
15 have received credible information that, during this and other recent sweeps, the City has

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16 <sup>2</sup> See, e.g., Phoenix Residents Worry Clean-Up Plan for 'The Zone' Will Create Unsafe  
17 Parks: [https://fronterasdesk.org/content/1845790/phoenix-residents-worry-clean-plan-](https://fronterasdesk.org/content/1845790/phoenix-residents-worry-clean-plan-zone-will-create-unsafe-parks)  
18 [zone-will-create-unsafe-parks](https://fronterasdesk.org/content/1845790/phoenix-residents-worry-clean-plan-zone-will-create-unsafe-parks); Hundreds Were Moved to Shelters from ‘The Zone.’ What  
19 [About Everyone Else?,  
20 \[https://www.azcentral.com/story/news/local/phoenix/2023/11/17/hundreds-were-moved-\]\(https://www.azcentral.com/story/news/local/phoenix/2023/11/17/hundreds-were-moved-to-shelters-from-the-zone-what-about-the-rest-phoenix-homelessness/71350541007/\)  
21 \[to-shelters-from-the-zone-what-about-the-rest-phoenix-\]\(https://www.azcentral.com/story/news/local/phoenix/2023/11/17/hundreds-were-moved-to-shelters-from-the-zone-what-about-the-rest-phoenix-homelessness/71350541007/\)  
22 \[homelessness/71350541007/\]\(https://www.azcentral.com/story/news/local/phoenix/2023/11/17/hundreds-were-moved-to-shelters-from-the-zone-what-about-the-rest-phoenix-homelessness/71350541007/\) 'Community Action Does Make a Difference': Neighbors in  
23 \[North Phoenix Work To Make Park Safer,  
24 \\[https://www.12news.com/article/news/local/valley/cave-creek-park-north-phoenix-work-\\]\\(https://www.12news.com/article/news/local/valley/cave-creek-park-north-phoenix-work-to-make-park-safer/75-2214a244-50f9-4f7d-800b-84a265cff7af\\)  
25 \\[to-make-park-safer/75-2214a244-50f9-4f7d-800b-84a265cff7af\\]\\(https://www.12news.com/article/news/local/valley/cave-creek-park-north-phoenix-work-to-make-park-safer/75-2214a244-50f9-4f7d-800b-84a265cff7af\\); Phoenix Encampment Is  
26 \\[Gone, but the City’s Homeless Crisis Persists,  
27 <https://www.nytimes.com/2023/11/04/us/phoenix-tent-camp-homelessness.html>\\]\\(https://www.12news.com/article/news/local/valley/cave-creek-park-north-phoenix-work-to-make-park-safer/75-2214a244-50f9-4f7d-800b-84a265cff7af\\)\]\(https://www.azcentral.com/story/news/local/phoenix/2023/11/17/hundreds-were-moved-to-shelters-from-the-zone-what-about-the-rest-phoenix-homelessness/71350541007/\)](https://www.azcentral.com/story/news/local/phoenix/2023/11/17/hundreds-were-moved-to-shelters-from-the-zone-what-about-the-rest-phoenix-homelessness/71350541007/)

28 <sup>3</sup> The Court partially modified the December 15, 2022 preliminary injunction on October 17, 2023 to account for the Ninth Circuit’s decision in *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023), which clarified the beds-versus population formula established in *Martin* on which the Court relied on in entering the preliminary injunction.” ECF No. 119 at 2. This Court amended the preliminary injunction to enjoin the City from enforcing the Camping and Sleeping Bans “if there are no other public areas or appropriate shelters where those individuals can sleep.” *Id.* at 3.

1 failed to provide adequate notice, has seized and destroyed unhoused people's property, and  
2 has threatened unhoused individuals with arrest or citation despite them having no access  
3 to shelter and nowhere in the City to go where they would be free from the threat of criminal  
4 enforcement. Plaintiffs require discovery from the Defendants to confirm this credible  
5 information and to determine how to proceed to best protect unhoused individuals' interests.

6 16. Fourth, Defendants' insufficient response to Plaintiffs' expedited discovery  
7 requests, including their refusal to enter into a protective order or produce discovery  
8 concerning individuals who were sent to shelters and the names of said shelters during the  
9 May 10 sweep, highlight the need to proceed with full and ongoing discovery. Although  
10 Plaintiffs were able to obtain an order permitting expedited discovery as to the May 10  
11 sweep, it would be unwieldy and inefficient for Plaintiffs to seek expedited discovery as to  
12 each sweep Defendants engage in, let alone to engage in protracted disputes when the  
13 Defendants refuse to fully comply with those requests.

14 WHEREFORE, Plaintiffs request that this Court schedule a Rule 16 Case  
15 Management Conference, which will trigger discovery to proceed. Plaintiffs request that  
16 the Conference be set for on or before December 29, 2023.

17 Respectfully submitted this 5th day of December 2023.

18 AMERICAN CIVIL LIBERTIES UNION  
19 FOUNDATION OF ARIZONA

20 By: /s/ Jared G. Keenan

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 5, 2023, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to all CM/ECF Registrants.

/s/ Jared G. Keenan  
Jared G. Keenan