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18 Austin Davis; Jane Parker; and Ron Tapscott,  
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20 Plaintiffs,  
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22 v.  
23 City of Tempe, Arizona; and Rosa Inchausti,  
24 in her official capacity as City Manager,  
25  
26 Defendants.

No. \_\_\_\_\_

**VERIFIED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1 1. Americans are a generous people who pride themselves on their charitable  
2 giving. From the Puritans in New England who took care of the needy, to the nation's  
3 earliest hospitals, which were largely funded by donations, to the modern non-profits that  
4

1 support kids who want to learn chess in inner-city Chicago or sue to defend people’s  
2 constitutional rights, the ability to engage in charity is deeply rooted in this nation’s history  
3 and tradition. And for many, charity is not only an expression of one’s desire to help, but  
4 also an expression of protest against government policy. But in the City of Tempe, the  
5 charitable act of sharing food with the hungry without an onerous “special events” permit  
6 is a crime.

7 2. Plaintiffs Austin Davis, Jane Parker, and Ron Tapscott, are Arizona residents  
8 who are passionate about advocating for the homeless. They are outraged that in a nation of  
9 abundance, there are still some with empty stomachs. They believe that the homeless are  
10 equal in dignity and that society and government have failed the most vulnerable. They feel  
11 called to share food with the homeless to make sure that no one in their community goes  
12 hungry. And doing so publicly is vital to their mission as it brings attention to their cause.  
13 But Tempe’s arbitrary and expensive permit requirement (which applies to musical festivals  
14 and other large public events) blocks them from sharing free food in public parks, on pain  
15 of criminal prosecution.

16 3. Because Tempe’s permit requirement unjustifiably burdens the right to speak  
17 freely and to engage in charity, it violates the Constitution. And because the City is applying  
18 the permit requirement inconsistently with the text, the City’s actions are not authorized by  
19 Arizona law. Plaintiffs have therefore brought this action to vindicate their First and  
20 Fourteenth Amendment rights and to stop the City’s illegal enforcement of the Special  
21 Events permit requirement against people engaged in sharing food with, and advocating for,  
22 the homeless.

### 23 **JURISDICTION AND VENUE**

24 4. This action arises under the Fourteenth Amendment to the United States  
25 Constitution and 42 U.S.C. § 1983. The Court has jurisdiction over these federal claims  
26 under 28 U.S.C. §§ 1331 (federal question) and 1343(a) (redress for deprivation of civil  
27 rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C.  
28 §§ 2201–2202.

1 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1)–(2). The  
2 Defendants reside within this district and a substantial part of the events giving rise to this  
3 claim have occurred or will occur in the District of Arizona. The City of Tempe is a part of  
4 Maricopa County, which is part of the Phoenix Division.

5 6. Supplemental jurisdiction over Plaintiffs’ state-law claim exists under 28 U.S.C.  
6 § 1367(a), because that claim is so related to the federal claims that they form part of the  
7 same case or controversy.

8 **PARTIES**

9 **Plaintiffs**

10 7. Plaintiff Austin Davis is a resident of Scottsdale, Arizona and the founder of the  
11 501(c)(3) nonprofit AZ HUGS. He has devoted his life to helping the homeless and has  
12 been punished for sharing free food with the homeless in Tempe parks.

13 8. Plaintiff Jane Parker is a 77-year-old resident of Tempe, Arizona and the founder  
14 of the 501(c)(3) nonprofit H.O.P.E. Arizona. After she saw people suffering in her  
15 community, she began offering food, blankets, and clothing to the homeless and wishes to  
16 do so free of criminal prosecution.

17 9. Plaintiff Ron Tapscott is a 78-year-old resident of Tempe, Arizona and is a  
18 member of the club New Deal Meal. He is a retired social worker who wishes to share food  
19 in Tempe parks. In 2025, he was cited for sharing food with the homeless in violation of  
20 the challenged permit requirement.

21 **Defendants**

22 10. Defendant City of Tempe is a municipality in the District of Arizona. The  
23 challenged laws and policies were passed and are enforced by the City.

24 11. Defendant Rosa Inchausti is the City Manager of Tempe, Arizona. The City  
25 Manager manages the Special Events permit application process and is empowered to  
26 approve or deny applications and attach conditions to the permit.  
27  
28

**FACTUAL ALLEGATIONS**

**AUSTIN DAVIS WAS HONORED, AND THEN CITED, BY TEMPE FOR HIS  
CHARITY WORK WITH THE HOMELESS**

12. Austin Davis has devoted his life to helping those in need. In 2020, he started AZ HUGS, a 501(c)(3) nonprofit dedicated to “showing love and togetherness to those experiencing homelessness throughout the valley.” Austin’s first efforts were serving dinner to the homeless once a week on Sundays in Tempe’s public parks, free of charge.

13. Austin is partially motivated by his desire to help people in need. He is also motivated by a desire to protest against what he sees as society’s and government’s failure to help the homeless, and the stigma some people attach to them. He therefore shares food to publicly communicate that the poorest amongst us are deserving of dignity and are members of the community as much as the rest of the City’s residents.

14. Over time, Austin’s efforts expanded. Before he was cited for violating the permit requirement, Austin would wake up each morning, drive to a public park, and check in on Tempe’s homeless. He would make sure people were hydrated and he would give free car rides to a drug rehabilitation facility. And Austin would make sure that there was some person or group who could host a picnic and provide free food to whomever needed it.

15. In March 2022, Austin’s tireless efforts landed him Tempe’s Neighborhood Event of the Year award for organizing AZ HUGS’ Sunday picnics. At that time, no one had ever suggested that Austin was breaking any laws.

16. About five months later, Tempe changed its attitude towards the homeless and its interpretation of the City Code. The city began requiring individuals or nonprofits who feed the homeless to obtain a special-event permit, which requires paying a \$50 application fee, a \$100 special event fee, and an event space rental fee ranging between \$125–\$3000 for each event, and may require purchasing expensive liability insurance, renting porta potties, or hiring security.

17. Despite the fact that the city had never applied the permit requirement to his activities, and despite his belief that the requirement was never meant to apply to small

1 gatherings or food-sharing, Austin applied for a permit out of a fear of incarceration, but  
2 was denied in January of 2024.

3 18. The city stated that it rejected Austin’s application because he did not comply  
4 with its demand that he stop his picnics for 60 days while his application was pending.  
5 Austin believed that it made no sense to stop feeding hungry people for two months when  
6 he had been doing so without incident (and with the city’s express approval) for years.  
7 Instead, he had asked the city to expedite the review process, but the city refused.

8 19. The same day the City denied Austin’s application, it filed charges for a previous  
9 picnic. Tempe police then began to cite Austin every weekend for conducting a picnic in  
10 the park without a permit. Eventually the police barred him from the parks and began citing  
11 Austin for criminal trespass when he continued to show up.

12 20. On July 26, 2024, Tempe police arrested Austin while he was picking up dinner  
13 supplies. Austin was handcuffed and forced to stay overnight in the Tempe jail. He was  
14 unable to contact the homeless family he was meeting that night. The next morning, he was  
15 taken before a Tempe Municipal Court judge, who released Austin without bail on the  
16 condition that he not set foot in a public park.

17 21. On August 9, 2024, Austin was informed that he would no longer be allowed to  
18 conduct poetry workshops at the public library due to his “failure to comply with city rules  
19 and ordinances related to the use of other city facilities.”

20 22. On September 11, 2024, Austin accepted a plea deal from the city in which it  
21 agreed to drop 34 charges of trespassing and conducting picnics without a permit in  
22 exchange for pleading guilty to one count of the permit violation. Austin chose to accept a  
23 plea deal so he could avoid debt and possible jail time and return to his work assisting the  
24 homeless.

25 23. Today, Austin is banned from every park and preservation area in Tempe until  
26 May 2026. He continues to bring food and supplies to people in need, but because he cannot  
27 meet them in the parks, Austin meets people at bus stops and other locations. Austin  
28 continues to give free rides to individuals who need help getting to a rehabilitation facility

1 or other supportive services. He recently accepted a job with the Tempe Community Action  
2 Agency, Tempe's oldest nonprofit. He also volunteers at a homeless shelter Wednesday  
3 through Sunday.

4 **JANE PARKER IS FORCED TO END HER CALLING**

5 24. Jane Parker is a 77-year-old Tempe resident who runs a 501(c)(3) nonprofit  
6 organization called H.O.P.E. Arizona. Jane has lived in Tempe for 34 years. Her  
7 organization began serving the homeless in 2020 by providing food, hygiene kits, and  
8 sleeping bags.

9 25. Jane began helping the homeless for the simple reason that she did not want to  
10 see people go hungry. She believes that because there is an abundance of food and plenty  
11 of people who want to share it, letting people go hungry is inhumane. By sharing food in  
12 public, rather than in private or at a shelter, she communicates that we can make sure people  
13 don't go hungry if we simply engage with our community, including the homeless.

14 26. At the Tempe City Council's August 26, 2024, meeting, Jane was one of several  
15 people who spoke up in defense of Austin and criticized Tempe's policies. Jane asked how  
16 Tempe could go from giving Austin an award for feeding the homeless to prosecuting him  
17 for the same activities. Jane asked the city government to drop the charges against Austin  
18 and to contract with him instead, saying that sharing food is not a crime.

19 27. Jane also testified that she and H.O.P.E. Arizona cannot afford the required  
20 permit. She estimates that continuing to feed the homeless once or twice a month would  
21 cost her organization \$5,000 a year in fees, which is money they do not have.

22 28. Jane would like to continue sharing food with the homeless in public, as she has  
23 been doing peacefully, respectfully, and with tacit City-approval for years. But Jane fears  
24 that Tempe will treat her the way it has treated others, like her co-plaintiffs. With her  
25 caretaking responsibilities to her disabled son and sick husband, Jane cannot afford to go to  
26 jail. But she cannot afford the permit either.

1 **RON TAPSCOTT COMPLIED WITH THE**  
2 **LETTER OF THE LAW, BUT THE CITY CITED HIM ANYWAY**

3 29. Ron Tapscott has long been a passionate advocate for the homeless. Ron, 78, is  
4 a retired social worker and has lived in Tempe for 20 years. Ron is a member of a club  
5 called New Deal Meal, which formed to advocate for food access for the homeless.

6 30. Mindful of Tempe’s crackdown on Austin Davis, Ron and New Deal Meal’s  
7 meal-sharing events are not “open to the public.” New Deal Meal is a private club, and only  
8 members may attend food-sharing events. Members sign in at each event.

9 31. When engaging in food-sharing, Ron and other members often bring signs to  
10 underscore the message behind their activity and to bring attention to Tempe’s treatment of  
11 the homeless. At one event, Ron and his fellow volunteers held a sign that said, “When City  
12 of Tempe fails, we feel it is our duty to care 4 our community.” Other signs have said,  
13 “Feeding people is not a crime,” “Fining compassion is where my tax dollars go?” “Feeding  
14 the hungry is not an event it’s for survival,” “Hey Corey!! I was hungry and you didn’t feed  
15 me,” and “Matthew 25:42.” Ron has said that he engages in his activities to “make a  
16 statement. There are people who need help out there. If the city isn’t willing to help, we  
17 are.”

18 32. Nevertheless, Tempe officials have decided to treat Ron the same way they  
19 treated Austin. On January 19, 2025, a police officer warned Ron that he would be ticketed  
20 if he continued to host meals in the park. When Ron continued to host food-sharing events,  
21 the police cited him on January 26, 2025.

22 **THE CHALLENGED ORDINANCE**

23 33. This lawsuit does not challenge or seek a remedy for any of the City’s past  
24 enforcement activities. Instead, it seeks wholly prospective relief to enjoin the City from  
25 enforcing the Special Events Permit requirement against charitable food-sharing in the  
26 future.

27 34. In purporting to require a permit before an individual can share food in public  
28 parks, Tempe officials cite Tempe City Code Sec. 5-2(a)(1)(f).

1           35. Sec. 5-2(a)(1), titled “Temporary special events or activities; permit,” requires a  
2 permit for:

3           (1) Any outdoor public gathering or celebration involving the use of  
4 City-owned properties that involve but are not limited to any of the  
5 following:

- 6           a. Entertainment, amusements, festivals, carnivals, parades,  
7 walks, runs or bicycle rides;
- 8           b. Amplified sound;
- 9           c. Activities that charge a fee for participation;
- 10           d. Sale of merchandise or food, including sidewalk sales;
- 11           e. Any temporary extension of premises of an existing use; or
- 12           f. Activities that are open to the public.
- 13           g. Sale of merchandise, food or alcohol, including sidewalk  
14 sales[.]

15           36. Tempe officials assert that this ordinance imposes a special events permit  
16 requirement on all “[a]ctivities that are open to the public,” that take place in a public park,  
17 without regard to the event’s size or nature.

18           37. In order to secure a permit, one must apply 60 days prior to the event or pay a  
19 late application fee. As a result, those who gather spontaneously or change parks because  
20 of unique circumstances are in violation of Tempe’s interpretation of the law. Accordingly,  
21 the those who feed the homeless must plan out any covered activities, including their free  
22 speech activities, 60 days in advance.

23           38. Applicants must pay a non-refundable \$50 application fee, as well as a \$100  
24 special event fee “for each day of operation,” as well as an “event space rental fee,” per day.  
25 Depending on the location, the event space rental fee can range from \$125 to \$1500 for  
26 non-commercial events and \$250 to \$3000 for commercial events. The City Manager may  
27 impose, at his or her discretion, a requirement that the applicant hire security personnel,  
28 erect security barriers, provide sanitary facilities, make alternative public parking  
arrangements, take “other measures to provide for fire protection or the health, safety and  
welfare of the public,” or post bond. T.C.C. § 5-2(d).

          39. The City Manager may deny the permit if he or she decides “the intended activity  
would be detrimental to the health, safety or welfare of either the general public or of nearby



1 residents or owners of nearby property.” T.C.C. § 5-2(f).

2 **CLAIMS FOR RELIEF**

3 **First Cause of Action**

4 **Violation of the Speech and Assembly Clauses of the First Amendment**

5 **(42 U.S.C. § 1983)**

6 40. The First Amendment to the United States Constitution, made applicable to the  
7 states through the Fourteenth Amendment, prohibits the government from “abridging the  
8 freedom of speech . . . or the right of the people peaceably to assemble.” U.S. Const. amend.

9 I.

10 41. As courts have widely recognized, sharing food can be expressive conduct  
11 protected by the First Amendment. By sharing food as they do, Plaintiffs here engage in  
12 protest against the City of Tempe’s policies towards the homeless. They are also expressing  
13 the message that the homeless are equal in dignity, that society and government has failed  
14 to help those in need, and that in a wealthy country full of abundance, no person should  
15 have to go hungry.

16 42. Tempe’s permit requirement prohibits Plaintiffs from engaging in peaceable  
17 assembly, protected speech, and expressive conduct without prior approval from a  
18 government official.

19 43. The permit requirement is a prior restraint on Plaintiffs’ speech and expression.

20 44. The permit requirement is unconstitutionally vague. It fails to provide clear and  
21 definite standards to guide city officials when determining whether the permit requirement  
22 applies, whether to grant a permit application, and whether to impose permit conditions.  
23 This lends itself to—and has resulted in—selective enforcement of the law against  
24 disfavored expressive activity or speakers.

25 45. The Special Events Permit scheme gives Tempe officials unfettered discretion  
26 over people’s right to speak in public parks.

27 46. The permit is not narrowly tailored; it does not leave open ample alternatives for  
28 expression. It also applies far more broadly than necessary, sweeping in protected speech

1 regardless of how many people are congregating together and regardless of whether they  
2 are creating any sort of externality to the public. It applies regardless of how much area of  
3 the park a speaker is taking up, whether the speaker leaves the park better than they found  
4 it, or whether the speaker uses a microphone or other amplification. It sweeps in small,  
5 peaceful protests—including Plaintiffs’ food sharing events—and large, public concerts all  
6 the same.

7 47. The permit requirement lacks a connection to any legitimate, let alone  
8 compelling, government interest. It does not cap the size of special events, and it does not  
9 require permit-holders to clean up any mess they make, limit their volume, comply with  
10 food safety standards, or share space with other speakers. Instead, it imposes a costly permit  
11 requirement that can be denied for effectively any reason.

12 48. Plaintiffs have no adequate remedy at law to compensate for the loss of their  
13 First Amendment rights and will suffer irreparable harm absent an injunction enjoining  
14 Defendants from enforcing the permit requirement.

15 49. Plaintiffs are therefore entitled to prospective declaratory and injunctive relief  
16 against continued enforcement of Tempe City Code Sec. 5-2(a)(1)(f) on its face and as  
17 applied to Plaintiffs.

## 18 **Second Cause of Action**

### 19 **Violation of the Due Process of Law and**

### 20 **Equal Protection Clauses of the Fourteenth Amendment**

#### 21 **(42 U.S.C. § 1983)**

22 50. The permit requirement also violates Plaintiffs’ fundamental right to engage in  
23 charity.

24 51. The Due Process of Law Clause of the Fourteenth Amendment protects the  
25 fundamental rights and other liberties of Americans against irrational, arbitrary, hostile, or  
26 otherwise undue government interference. The Equal Protection Clause ensures equal  
27 treatment before the law.

28 52. The right to charitable giving is deeply rooted in this nation’s history and

1 tradition. Americans have consistently engaged in charity since the Founding. For much of  
2 the nation’s history, charity powered basic services like colleges, hospitals, and helping the  
3 needy. Charity is a fundamental right protected by the Constitution.

4 53. Any restrictions on a fundamental right must be narrowly tailored to advance a  
5 compelling government interest.

6 54. The permit requirement cannot pass even rational basis scrutiny, let alone strict  
7 scrutiny. It does not advance any legitimate government interest, let alone a compelling one.  
8 It does not guarantee food safety, prevent littering, prohibit nuisances, or mitigate any other  
9 potential externalities on the public. The City has other ordinances that effectuate these  
10 goals. And the requirement has been selectively and arbitrarily enforced against disfavored  
11 groups.

12 55. As applied to Plaintiffs, the permit requirement merely serves to discourage them  
13 from serving the homeless in public and to move homelessness out of public view. A desire  
14 to remove a disfavored group from a certain area is not a legitimate government interest, let  
15 alone a compelling one.

16 56. Plaintiffs are suffering and will continue to suffer substantial and irreparable  
17 harm until the arbitrary, irrational, and fundamentally unfair permit requirement imposed  
18 under Tempe City Code Sec. 5-2(a)(1)(f) is declared unlawful and enjoined by this Court.

19 **Third Cause of Action**

20 **Tempe City Code § 5-2(a)(1)(f) Does Not Cover Food Sharing**

21 57. Chapter 5 of the Tempe City Code is titled “Amusements.”

22 58. “Amusements” are defined elsewhere in the code as businesses of “the following  
23 type or nature”:

24 Operating or conducting theaters, movies, operas, shows of any type or  
25 nature, exhibitions, concerts, carnivals, circuses, amusement parks,  
26 menageries, fairs, races, contests, games, billiard or pool parlors, bowling  
27 alleys, skating rinks, tennis courts, golf courses, video games, pinball  
28 machines, public dances, dance halls, sports events, jukeboxes, batting and  
driving ranges, animal rides, or any other business charging admission for  
exhibition, amusement, or entertainment.

T.C.C. § 16-410(a)(1). Food sharing is different in kind from the above activities.

1 59. Sec. 5-2(a)(1) imposes a permit requirement on

2 [a]ny outdoor public gathering or celebration involving the use of City-  
3 owned properties that involve but are not limited to: “[e]ntertainment,  
4 amusements, festivals, carnivals, parades, walks, runs or bicycle rides,”  
5 “[a]mplified sound,” “[a]ctivities that charge a fee for participation, “[s]ale  
6 of merchandise, food or alcohol, including sidewalk sales,” “[a]ny  
7 temporary extension of premises of an existing use, or “[a]ctivities that are  
8 open to the public.

9 60. Sharing food with the homeless does not fit into any of these categories, nor does  
10 it share any qualities normally associated with “amusements” or special events. Food  
11 sharing is not entertainment, and does not involve extensive set up, amplified sound, or  
12 commercial activity. Instead, it is more akin to a family or small-group picnic that the City  
13 regularly allows without a permit.

14 61. The ordinance’s catchall for any “outdoor public gathering” cannot be so broad  
15 as to encompass food-sharing, because such an interpretation would also create  
16 constitutional implications, since it would sweep in vast amount of protected First  
17 Amendment activity, including protests, debates, prayer circles, book clubs, or other small  
18 gatherings, and create equal protection concerns.

19 62. The City did not apply the special events permit requirement to food sharing for  
20 years, and even awarded Austin Davis for his food sharing activities. The permit  
21 requirement ought to be interpreted consistent with the City’s long-standing understanding  
22 and enforcement of it.

23 63. Because the ordinance imposes criminal penalties for its violation, (T.C.C. § 1-  
24 7), the ordinance ought to be interpreted narrowly in accordance with the rule of lenity.

25 64. Even if the ordinance applies to food sharing generally, it should not be read to  
26 apply to Ron Tapscott’s food-sharing events because they are not “open to the public.”  
27 Since Austin Davis was arrested, New Deal Meal has limited their food sharing to its  
28 members. The City does not require permits for other private food sharing events, like  
picnics or barbeques, and a permit is therefore not required for small, private, and charitable  
food-sharing events.

65. Because Tempe City Code § 5-2(a)(1)(f) does not cover Plaintiffs’ activities,

1 Tempe officials have no statutory authority to demand that Plaintiffs obtain a permit before  
2 engaging in food sharing and City officials must be enjoined from doing so.

3 **REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiffs respectfully request the following relief:

- 5 A. A declaration that Plaintiffs’ activities fall outside of Tempe City Code Sec. 5-  
6 2(a)(1).
- 7 B. A declaration that on its face and as applied to Plaintiffs, Tempe City Code Sec.  
8 5-2(a)(1) violates the First Amendment and Fourteenth Amendment;
- 9 C. An entry of a permanent injunction forbidding Defendants and Defendants’  
10 officers, agents, affiliates, servants, successors, employees, and all other persons  
11 in active concert or participation with Defendants from enforcing, or attempting  
12 to enforce, the permit requirement imposed by Tempe City Code Sec. 5-2(a)(1);
- 13 D. An award of attorney’s fees, costs, and expenses in this action pursuant to 42  
14 U.S.C. § 1988; and
- 15 E. Any other relief the Court deems just, necessary, or proper.

16 DATED: April 10, 2025.

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Telephone: (202) 888-6881

*Attorneys for Plaintiffs*

*\*Pro Hac Vice Applications Forthcoming*

1 I, Austin Davis, am a Plaintiff in the above-entitled proceeding. I have read the  
2 foregoing Verified Complaint for Declaratory and Injunctive Relief and know its  
3 contents. I am informed and believe and, on that ground, allege that the matters stated in  
4 the foregoing document are true. The matters stated in the foregoing document are true  
5 of my own knowledge, except as to those matters which are stated on information and  
6 belief, and as to those matters, I believe them to be true. I declare under penalty of  
7 perjury under the laws of the United States that the foregoing is true and correct.  
8  
9

10 DATED this 8th day of April, 2025, at Scottsdale, Ariz.

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14 [plaintiff]  
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I, Jane Parker, am a Plaintiff in the above-entitled proceeding. I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and know its contents. I am informed and believe and, on that ground, allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 8<sup>th</sup> day of April, 2025, at Tampa, Ariz.

Jane L. Parker  
[plaintiff]



1 I, Ron Tapscott, am a Plaintiff in the above-entitled proceeding. I have read the  
2 foregoing Verified Complaint for Declaratory and Injunctive Relief and know its  
3 contents. I am informed and believe and, on that ground, allege that the matters stated in  
4 the foregoing document are true. The matters stated in the foregoing document are true  
5 of my own knowledge, except as to those matters which are stated on information and  
6 belief, and as to those matters, I believe them to be true. I declare under penalty of  
7 perjury under the laws of the United States that the foregoing is true and correct.  
8  
9

10 DATED this 4/8/2025 day of Tuesday\_, 2025, at 12:23\_, Ariz.

11   
12 [plaintiff]