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**IN THE U.S. DISTRICT COURT
 DISTRICT OF ARIZONA**

FRANK KONARSKI AND GABRIELA
 KONARSKI, husband and wife;
 PATRICIA KONARSKI, a single woman;
 JOHN F. KONARSKI, a single man; and
 FRANK E. KONARSKI, a single man, dba
 FGPJ APARTMENTS,

Plaintiffs,

vs.

CITY OF TUCSON, a body politic;
 MICHAEL G. RANKIN AND
 CATALINA O. RANKIN, husband and
 wife; JULIANNE K. HUGHES AND
 GRAEME HUGHES, wife and husband;
 MARK R. CHRISTENSEN AND NANCY
 STANLEY, husband and wife; ALBERT
 ELIAS AND SARAH STARLING-ELIAS,
 husband and wife; SALLY STANG AND
 MICHAEL STANG, wife and husband;
 RICK SHEAR AND JEANETTE SHEAR,
 husband and wife; RONALD KOENIG
 AND ERIN KOENIG, husband and wife;
 LISA SWANSON (AKA, LISA HIGGINS)
 AND WILLIAM HIGGINS, wife and
 husband; VANESSA GONZALEZ AND
 JOHN DOE GONZALEZ, wife and
 husband; ARTURO ENCINAS AND
 JANE DOE ENCINAS, husband and wife;
 MARTIN PENA AND JANE DOE PENA,
 husband and wife; and DOES 1 – 10,

Defendants.

Case No.:

COMPLAINT

(1) COUNT ONE

15 U.S.C. § 1 VIOLATIONS
 (PER SE VIOLATIONS OF SHERMAN
 ANTITRUST ACT, SEC. 1: UNLAWFUL
 RESTRAINT OF COMMERCE BUSINESS:
 ANTI-COMPETITIVE ACTIONS)

(2) COUNT TWO

42 U.S.C. § 1983 VIOLATIONS
 (COMMERCE CLAUSE VIOLATIONS)

(3) COUNT THREE

42 U.S.C. § 1983 VIOLATIONS
 (14TH AMDT SUBSTANTIVE DUE
 PROCESS VIOLATIONS)

(4) COUNT FOUR

42 U.S.C. § 1983 VIOLATIONS
 (14TH AMDT PROCEDURAL DUE
 PROCESS VIOLATIONS)

(CONTEMPORANEOUSLY FILED WITH
 VERIFIED **EMERGENCY** MOTION FOR
 TEMPORARY INJUNCTION)

JURY TRIAL DEMANDED

COME NOW Plaintiffs, herein by their counsel undersigned, and, for their claim for relief, allege as follows:

PARTIES, VENUE AND JURISDICTION

1. Plaintiffs Frank Konarski, Gabriela Konarski, Patricia Konarski, John Konarski, and Frank E. Konarski are and were, at all times relevant hereto, residents of the City of Tucson, State of Arizona, where they also operate their interstate commerce housing rental business, dba FGPI Apartments (collectively, “Plaintiffs,” and, interchangeably, individually by their real individual names, as applicable).
2. Defendant City of Tucson (“Defendant City of Tucson”) is a body politic that is located and exists within the State of Arizona. Defendant City of Tucson also encompasses, as defendant departments thereof, the City Attorney’s Office, and the City Housing and Community Development Department.
3. Defendant Michael G. Rankin (“Defendant Rankin”) and Defendant Catalina O. Rankin are and were, at all times relevant hereto, residents of the State of Arizona. Defendant Rankin, at all times relevant hereto, was and is the City Attorney of Defendant City of Tucson, and was acting for and on behalf of Defendant City of Tucson, and performed all acts complained of herein on behalf of the marital community of himself and Catalina O. Rankin, husband and wife. Defendant Rankin, along with his wife, is being sued in his official and personal capacities.
4. Defendant Julianne K. Hughes (“Defendant Hughes”) and Defendant Graeme Hughes are and were, at all times relevant hereto, residents of the State of Arizona. Defendant Hughes, at all times relevant hereto, was and is an Assistant City Attorney of Defendant City of Tucson, and was

1 acting for and on behalf of Defendant City of Tucson, and performed all
2 acts complained of herein on behalf of the marital community of herself
3 and Graeme Hughes, wife and husband. Defendant Hughes, along with
4 her husband, is being sued in her official and personal capacities.

5 5. Defendant Mark Christensen (“Defendant Christensen”) and Defendant
6 Nancy Stanley are and were, at all times relevant hereto, residents of the
7 State of Arizona. Defendant Christensen, at all times relevant hereto,
8 was and is an Assistant City Attorney of Defendant City of Tucson, and
9 was acting for and on behalf of Defendant City of Tucson, and
10 performed all acts complained of herein on behalf of the marital
11 community of himself and Nancy Stanley, husband and wife. Defendant
12 Christensen, along with his wife, is being sued in his official and
13 personal capacities.

14 6. Defendant Albert Elias (“Defendant Elias”) and Defendant Sarah
15 Starling-Elias are and were, at all times relevant hereto, residents of the
16 State of Arizona. Defendant Elias, at all times relevant hereto, was and
17 is an Assistant City Manager of Defendant City of Tucson, and was
18 acting for and on behalf of Defendant City of Tucson, and performed all
19 acts complained of herein on behalf of the marital community of himself
20 and Sarah Starling-Elias, husband and wife. Defendant Elias, along with
21 his wife, is being sued in his official and personal capacities.

22 7. Defendant Sally Stang (“Defendant Stang”) and Defendant Michael
23 Stang are and were, at all times relevant hereto, residents of the State of
24 Arizona. Defendant Stang, at all times relevant hereto, was and is the
25 Director of the City Housing and Community Development Department
26 of Defendant City of Tucson, and was acting for and on behalf of

1 Defendant City of Tucson, and performed all acts complained of herein
2 on behalf of the marital community of herself and Michael Stang, wife
3 and husband. Defendant Stang, along with her husband, is being sued in
4 her official and personal capacities.

5 8. Defendant Rick Shear (“Defendant Shear”) and Defendant Jeanette
6 Shear are and were, at all times relevant hereto, residents of the State of
7 Arizona. Defendant Shear, at all times relevant hereto, was and is the
8 Section 8 Housing Program Administrator of the City Housing and
9 Community Development Department of Defendant City of Tucson, and
10 was acting for and on behalf of Defendant City of Tucson, and
11 performed all acts complained of herein on behalf of the marital
12 community of himself and Jeanette Shear, husband and wife. Defendant
13 Shear, along with his wife, is being sued in his official and personal
14 capacities.

15 9. Defendant Ronald Koenig (“Defendant Koenig”) and Defendant Erin
16 Koenig are and were, at all times relevant hereto, residents of the State of
17 Arizona. Defendant Koenig, at all times relevant hereto, was and is the
18 Section 8 Housing Program Manager of the City Housing and
19 Community Development Department of Defendant City of Tucson, and
20 was acting for and on behalf of Defendant City of Tucson, and
21 performed all acts complained of herein on behalf of the marital
22 community of himself and Erin Koenig, husband and wife. Defendant
23 Koenig, along with his wife, is being sued in his official and personal
24 capacities.

25 10. Defendant Lisa Swanson (aka, “Lisa Higgins”) (“Defendant Higgins”)
26 and Defendant William Higgins are and were, at all times relevant

1 hereto, residents of the State of Arizona. Defendant Higgins, at all times
2 relevant hereto, was and is the Section 8 Housing Program Caseworker
3 Supervisor of the City Housing and Community Development
4 Department of Defendant City of Tucson, and was acting for and on
5 behalf of Defendant City of Tucson, and performed all acts complained
6 of herein on behalf of the marital community of herself and William
7 Higgins, wife and husband. Defendant Higgins, along with her husband,
8 is being sued in her official and personal capacities.

9 11. Defendant Vanessa Gonzalez (“Defendant Gonzalez”) and Defendant
10 John Doe Gonzalez are and were, at all times relevant hereto, residents
11 of the State of Arizona. Defendant Gonzalez, at all times relevant hereto,
12 was and is a Section 8 Housing Program Caseworker of the City Housing
13 and Community Development Department of Defendant City of Tucson,
14 and was acting for and on behalf of Defendant City of Tucson, and
15 performed all acts complained of herein on behalf of the marital
16 community of herself and John Doe Gonzalez, wife and husband.
17 Defendant Gonzalez, along with her husband, is being sued in her
18 official and personal capacities.

19 12. Defendant Arturo Encinas (“Defendant Encinas”) and Defendant Jane
20 Doe Encinas are and were, at all times relevant hereto, residents of the
21 State of Arizona. Defendant Encinas, at all times relevant hereto, was
22 and is the Section 8 Housing Program Supervisory Inspector of the City
23 Housing and Community Development Department of Defendant City of
24 Tucson, and was acting for and on behalf of Defendant City of Tucson,
25 and performed all acts complained of herein on behalf of the marital
26 community of himself and Jane Doe Encinas, husband and wife.

1 Defendant Encinas, along with his wife, is being sued in his official and
2 personal capacities.

3 13. Defendant Martin Pena (“Defendant Pena”) and Defendant Jane Doe
4 Pena are and were, at all times relevant hereto, residents of the State of
5 Arizona. Defendant Pena, at all times relevant hereto, was and is the
6 Section 8 Housing Program Supervisory Inspector of the City Housing
7 and Community Development Department of Defendant City of Tucson,
8 and was acting for and on behalf of Defendant City of Tucson, and
9 performed all acts complained of herein on behalf of the marital
10 community of himself and Jane Doe Pena, husband and wife. Defendant
11 Pena, along with his wife, is being sued in his official and personal
12 capacities.

13 14. DOES 1-10 are individuals or entities that participated with the named
14 Defendants in the actions that form the basis of Plaintiffs’ Complaint or
15 ratified said actions with full knowledge and consent of the actions taken
16 and the damages that would be caused. This Complaint will be amended
17 to reflect the true identities of these individuals or entities when they
18 become known.

19 15. By virtue of 15 U.S.C. § 12 (Clayton Act), original subject matter
20 jurisdiction for relief from the violations of 15 U.S.C. § 1 (Sherman Act)
21 is set forth in 15 U.S.C. §§ 15 and 26, of which available and sought
22 relief includes mandatory injunctive relief. This Court also has original
23 subject matter jurisdiction for this and the remaining federal claims
24 pursuant to 28 U.S.C. § 1331 and 28 U.S. Code §§ 2201-2202, of which
25 available and sought relief includes injunctive relief, declaratory relief,
26 other further relief as may deemed fair and just, and the recovery of

1 damages, including punitive damages, costs of suit and reasonable
2 attorneys' fees, per 42 U.S.C. § 1988.

3 16. Venue is proper in this District under 28 U.S.C. § 1391.

4 **NATURE OF ACTION**

5 17. Despite Plaintiffs' multiple attempts in earnest—having, *inter alia*, sent
6 eleven (11) cease-and-desist legal notices and demands to Defendants—
7 to avoid litigation with Defendants by seeking to have them cease and
8 desist from their anticompetitive and tortious policy, such attempts have
9 been done in vain: Defendants have pressed forward, undaunted by the
10 legal consequences, to restrain interstate commerce and, in the process,
11 cause multi-faceted harm to Plaintiffs and their housing rental business
12 entity.

13 18. Defendants, in the process of pursuing such a policy, have also willfully
14 disregarded Plaintiffs' liberty, property and commerce interests, interests
15 of which are established by state law, federal law and the 14th
16 Amendment to the U.S. Constitution.

17 **GENERAL ALLEGATIONS**

18 **(A) Defendants' Anticompetitive-Scheme and Tortious Policy: An Unlawful Restraint on**
19 **Interstate Commerce**

20 19. Plaintiffs' housing rental business, like other housing rental businesses,
21 is considered to be engaged in the federally protected domain of
22 interstate commerce, per Article I, Section 8, Clause 3 of the U.S.
23 Constitution.

24 20. Defendants' complained-of actions are those that affect interstate
25 commerce, including Plaintiffs' housing rental business that is
26 considered engaged in interstate commerce.

- 1 21. Defendants, through their collective actions, have conspired to engage in
2 the restraint of interstate commerce business. This conspired
3 engagement encompasses the pursuit of a policy of interfering with
4 secured private housing rental business transactions between landlords
5 and their customers/housing tenants by offering such customers/housing
6 tenants monetary incentives of the Section 8 Housing Program
7 (“monetary housing voucher(s)”) to knowingly breach and cause the
8 losses of such existent secured private housing rental business
9 transactions, and seek housing elsewhere that is preferred by Defendants.
- 10 22. By such a hybrid-restraint policy—anticompetitive scheme—Defendants
11 have cultivated an anticompetitive environment: With Defendants’
12 promulgated carrot-and-stick approach—i.e., offering a monetary
13 housing voucher to subsidize housing for the foreseeable life of an
14 individual and threatening the complete loss of such a financial incentive
15 if the individual does not breach his/her existing secured housing
16 arrangement and choose housing of Defendants’ preference—Defendants
17 enable select landlords, through no initial action of their own, to enjoy
18 the anticompetitive effect of an artificial influx of customers/housing
19 tenants who re-enter the rental market in seeking new housing and come
20 to apply their monetary housing vouchers with such select landlords.
21 This artificial influx of customers/housing tenants’ seeking housing is
22 created at the expense of the other landlords whose originally secured
23 private housing rental business transactions are instructed by Defendants
24 to be breached by such customers/housing tenants.
- 25 23. In addition to Defendants’ consciously providing the financial incentives
26 to leave their existing housing for new housing (i.e. to breach existing

secured private housing rental business transactions in favor of having subsidized housing at housing of Defendants' choosing), such a resulting artificial influx of customers/housing tenants is also provided with Defendants' facilitated move-in inspections of such new housing preferred by Defendants—again done all in spite of Defendants' knowing full well there exists previously secured private housing rental business transactions with other landlords.

(B) Anticompetitive-Scheme and Tortious Policy: An Unlawful Policy Applied in a Pattern and Practice of Defendants' Causing Customers/Housing Tenants to Boycott Plaintiffs' Interstate Commerce Business

24. Plaintiffs came to find out about Defendants' foregoing policy given its apparent application to Plaintiffs' interstate commerce housing rental business: Defendants have engaged in a pattern and practice of causing Plaintiffs' existing private-market housing tenants to prematurely move out of Plaintiffs' housing units and breach their secured private housing rental business transactions with Plaintiffs, transactions of which establish 1-year terms of tenancies (subject to automatic renewals) at Plaintiffs' housing units.

25. Specifically, stemming from the foregoing policy, such pattern and practice involves Defendants' bribing such tenants with the receipt of monetary housing vouchers attached with the specific instructions that such vouchers be used at housing rental businesses other than Plaintiffs'. If such tenants initially refuse to breach their secured private housing rental business transactions with Plaintiffs, they are threatened by Defendants that they will lose out on the financial incentive of subsidized housing.

1 26. Effectively, stemming from the foregoing policy, Defendants have been
2 engaged in a pattern and practice of causing Plaintiffs' private-market
3 housing tenants to boycott Plaintiffs' housing rental business by
4 influencing such tenants to refuse to continue their tenancies at
5 Plaintiffs' housing to full terms as set forth in secured private housing
6 rental business transactions.

7 27. Lost private tenancies: Plaintiffs have lost private tenancies because of
8 Defendants' pattern and practice of interference. Defendant City of
9 Tucson, through its officials, have, upon information and strong belief,
10 engaged—by employing the foregoing policy—in the boycotting of *at*
11 *least* (discovery will likely reveal more) the following private tenancies
12 of Plaintiffs, to wit:

13
14 2006 Private Tenancy of Stacy A. Soza
15 2010 Private Tenancy of Angela Sanzon, et al.
16 2013 Private Tenancy of Mariesella Jasso, et al.
17 2013 Private Tenancy of Marisol Alvarez, et al.
18 2013 Private Tenancy of Serina Castillo, et al.
19 2014 Private Tenancy of Jose Alfonso Miranda, et al.
20 2014 Private Tenancy of Biannika Miranda, et al.
21 2014 Private Tenancy of Lizette Monroy, et al.
22 2014 Private Tenancy of Becky D. Preciado, et al.

23 Upon information and strong belief, these are just *some* of the private
24 tenancies interfered with as part of Defendants' boycott pattern and
25 practice, which adheres to the foregoing policy. (Again, discovery will
26 likely reveal more private tenancy losses.)

27 28. The foregoing are lost tenancies, lost business transactions, lost
28 contracts—lost previously secured sources of revenue—of Plaintiffs all
29 as a result of Defendants' boycott pattern and practice that adheres to the

foregoing policy.

(C) Anticompetitive-Scheme and Tortious Policy: An Unlawful Policy Applied in Defendants' Latest and Ongoing Attempt to Cause Customers/Housing Tenants to Boycott Plaintiffs' Interstate Commerce Business

29. Plaintiffs secured a private housing rental business transaction with customers/housing tenants Haley Dye and Carlos Solis ("Tenants Dye and Solis"), resulting in an executed private lease-contract with Tenants Dye and Solis for their tenancy at Plaintiffs' housing unit located at 525 West Dakota Street, Tucson, Arizona 85706. This tenancy began on February 17, 2014, and is set to end on February 28, 2015, a one-year tenancy of which is subject to an automatic renewal.

30. Defendants' latest and ongoing application of the foregoing policy is to Plaintiffs' existing private tenancy of Tenants Dye and Solis. Via such a policy, Defendants have attempted to cause Tenants Dye and Solis to boycott Plaintiffs' housing rental business, and, in effect, breach their secured private housing rental business transaction with Plaintiffs.

31. In spite of the existence of the secured private housing rental business transaction Tenants Dye and Solis have with Plaintiffs, Defendants handed Tenants Dye and Solis with a monetary housing voucher packet—including a Request for Tenancy Approval form and Landlord Information form (collectively, "documentation") to be filled out by a landlord—on or about June 27, 2014, as part of the foregoing policy.

32. Seeking to continue their tenancy at Plaintiffs' housing unit, Tenants Dye and Solis presented Plaintiffs with the documentation that Plaintiffs needed to fill out and submit to Defendants in the fulfillment of Tenants Dye and Solis' choice to apply their monetary housing voucher towards

their continued tenancy at Plaintiffs' housing unit.

33. In an attempt to mitigate Defendants' interference with the existing secured private housing rental business transaction with Tenants Dye and Solis, Plaintiffs were willing to accept the continued tenancy of such tenants that would be subsidized via the application of the monetary housing voucher. Effectively, in their mitigation, Plaintiffs sought to have the existing private-market-based tenancy transition to a Section 8 Housing Program-based tenancy.

34. Correspondingly, Plaintiffs filled out the documentation and, along with the fulfillment of all other pre-requisites delineated within the documentation, electronically submitted such documentation to Defendant City of Tucson on June 30, 2014, so that Defendants could schedule and conduct an inspection of the housing unit currently occupied by Tenants Dye and Solis under the foregoing private lease-contract with Plaintiffs. (As a matter of a precaution, such documentation was again re-submitted to Defendant City of Tucson via facsimile on July 2, 2014.)

35. To date, Defendants have not acknowledged, to Plaintiffs, their receipt of Plaintiffs' documentation, let alone have Defendants scheduled a date and time for the inspection of Plaintiffs' housing unit that is occupied by Tenants Dye and Solis.

36. On their own initiative, in placing a phone call to Defendant City of Tucson on July 2, 2014, Plaintiffs were informed that Defendants would get back to Plaintiffs in "two to three weeks" about the scheduling of any inspection.

37. This two- to three-week wait, though, was an apparent delay tactic on the

1 part of Defendants: On the very afternoon of the same day (July 2nd) that
2 Plaintiffs had called Defendant City of Tucson and received the message
3 to wait for two to three weeks to hear back from Defendants, Plaintiffs
4 were informed by Tenants Dye and Solis that an official of Defendant
5 City of Tucson had called them and informed them that Plaintiffs were
6 not qualified landlords to rent to them, that no inspection would be
7 scheduled, and that—in spite of an existing lease-contract—they would
8 need to immediately get another (2nd) monetary housing voucher from
9 the office of Defendant City Housing and Community Development
10 Department of Defendant City of Tucson, and use the second monetary
11 housing voucher towards a housing rental business other than Plaintiffs’.

12 38. Tenants Dye and Solis repeated, as a matter of emphasis, that not only
13 did they desire to stay at Plaintiffs’ housing unit, they were contractually
14 obligated to do so under a one-year private lease-contract. To that,
15 however, the official of Defendant City of Tucson explained the
16 existence of the private lease-contract did not matter, and that they
17 needed to get the second monetary housing voucher for application
18 towards a housing rental business other than Plaintiffs’, or otherwise
19 they would lose out on the offered financial benefits.

20 39. The refusal to conduct an inspection of Plaintiffs’ housing unit that is
21 occupied by Tenants Dye and Solis, and, in effect, the refusal to permit
22 such tenants the ability to apply their monetary housing voucher at
23 Plaintiffs’ housing unit, is unreasonable because Plaintiffs have shown to
24 be qualified to rent to those with monetary housing voucher subsidies:
25 Plaintiffs currently rent to another housing tenant, Marina Duran, via the
26 application of the tenant’s housing monetary voucher towards her

1 tenancy at Plaintiffs' housing unit, a tenancy of which has been in
2 existence for about 20-plus consecutive years, having passed every
3 inspection in those years to maintain such a remarkably long and
4 successful Section 8 Housing Program-based tenancy.

5 40. Defendants are aware that Plaintiffs' private tenancy of Tenants Dye and
6 Solis, without a renewal, terminates at the end of February 28, 2015.

7 41. As with prior private tenancies, such as those listed above, Defendants
8 are now seeking to deny Plaintiffs from maintaining their tenancy of
9 Tenants Dye and Solis under *any* circumstance: under a new Section 8
10 Housing Program-based tenancy or even under Plaintiffs' existing
11 private one-year lease-contract (in effect past February 2015).
12 Defendants seek to accomplish this through the continued contract-
13 interfering inducement offering of yet a new (second) monetary housing
14 voucher effectively instructed by Defendants to be applied elsewhere
15 other than Plaintiffs' housing rental business.

16 42. Each of the individual Defendants has played their respective roles under
17 the guise of Defendant City of Tucson in the boycott pattern and practice
18 premised on the foregoing policy, particularly as to the latest and
19 ongoing attempt to have Tenants Dye and Solis boycott Plaintiffs'
20 housing rental business: Defendant Rankin, Defendant Hughes and
21 Defendant Christensen have made themselves available to and engaged
22 each other and the other named individual Defendants, and otherwise
23 offered to the other named individual Defendants guidance on the
24 formulation of the foregoing policy and its particular application to
25 Plaintiffs' interstate commerce business; as policymakers, themselves,
26 Defendant Elias, Defendant Stang, Defendant Shear, and Defendant

1 Koenig, as with their applicable predecessors, have engaged with each
2 other and Defendant Rankin, Defendant Hughes and Defendant
3 Christensen, and otherwise received guidance from Defendant Rankin,
4 Defendant Hughes and Defendant Christensen when formulating the
5 foregoing policy and particularly applying it to Plaintiffs' interstate
6 commerce business, and, in doing so, instructing the subordinate
7 individual Defendants to conform in a manner consistent with the
8 foregoing policy; as the subordinates relative to the foregoing named
9 Defendants, Defendant Higgins, as the supervisory caseworker, has
10 made sure Tenants Dye and Solis' caseworker, Defendant Gonzalez, has
11 applied the foregoing policy communicated by the underlying chain of
12 command (the foregoing named Defendants)—i.e., (i.) provide Tenants
13 Dye and Solis with a second monetary housing voucher with instructions
14 that it not be used at Plaintiffs' housing rental business or otherwise risk
15 losing it within sixty days of issuance, (ii.) inform Tenants Dye and Solis
16 to breach the existing private lease-contract, and (iii.) process all
17 documentation necessary for any housing Defendants prefer to which
18 Tenants Dye and Solis may apply their second monetary housing
19 voucher—and Defendant Encinas and Defendant Pena, as supervisory
20 inspectors, have acted as the 'gatekeepers,' preventing the requested
21 inspection of Plaintiffs' housing unit, instructing or causing to be
22 instructed Tenants Dye and Solis to obtain the second monetary housing
23 voucher for use other than at Plaintiffs' housing rental business, and
24 awaiting to personally conduct or otherwise ordering a subordinate
25 inspector to conduct the inspection of a housing unit other than
26 Plaintiffs' that is preferred by Defendants, all absent court intervention in

1 this latest instance of unlawful interference with an interstate commerce
2 business based on the foregoing policy.

3 43. Defendant Rankin, Defendant Hughes, Defendant Christensen,
4 Defendant Elias, Defendant Stang, Defendant Shear, Defendant Koenig,
5 Defendant Higgins, Defendant Gonzalez, Defendant Encinas and
6 Defendant Pena all individually were issued legal notices and demands
7 on either July 3rd, 4th, 10th or 17th, 2014, from Plaintiffs for such
8 Defendants to cease and desist from pursuing their illegal conduct as
9 described above—going into great detail of the illegality of their
10 conduct, the law of complicit liability for aiding and abetting such illegal
11 conduct, possible legal consequences for such illegal conduct, and the
12 opportunity for each to disavow and disengage from such illegal
13 conduct.

14 44. Upon receipt of such legal notices and demands, instead of reversing the
15 course of their foregoing complained-of actions—policy—they have
16 gone forward with such actions, in fact advancing towards realizing the
17 policy of, yet again, interfering with a housing rental business
18 transaction done in the course of interstate commerce to the extent
19 Plaintiffs will suffer another housing rental business transaction without
20 court intervention.

21 45. The foregoing policy has been in effect for some time, and when given
22 an opportunity to disengage from the complained-of actions reflective of
23 the foregoing policy, Defendants have taken the opportunity not to do so,
24 effectively ratifying and maintaining as a Defendant City of Tucson
25 policy what Plaintiffs have laid out in their legal notices and demands as
26 illegal conduct.

1 46. In particular, as legal advisors put on notice via their receipt of the
2 foregoing legal notices and demands, Defendant Rankin, Defendant
3 Hughes and Defendant Christensen have not advised the other named
4 individual Defendants to disengage from taking the foregoing
5 complained-of actions that are reflective of the foregoing policy, and,
6 instead, have contributed to the harm.

7 47. None of the named individual Defendants has been reprimanded or
8 otherwise sanctioned by Defendant City of Tucson for the complained-of
9 actions of repeatedly interfering with Plaintiffs' private tenancies,
10 including the current private tenancy of Tenants Dye and Solis.

11 48. In fact, in accordance with the foregoing policy formulated and
12 otherwise implemented by all the other named individual Defendants,
13 Defendant Gonzalez recently rest assured Tenants Dye and Solis,
14 through her instruction to them, on or about July 24, 2014, that it would
15 be okay for such tenants to "break" the existing private lease-contract
16 with Plaintiffs—and, in effect, breach the existing secured private
17 housing rental business transaction between such tenants and Plaintiffs—
18 and to no longer pay rent owed to Plaintiffs under the existing private
19 lease-contract.

20 49. Plaintiffs, as a result of the unlawful influence and interference by
21 Defendants, including by Defendant Gonzalez, have not been paid rent
22 for the month of July 2014 thus far. Notably, all prior monthly rent was
23 paid in full (i.e., up through June 2014) to Plaintiffs by Tenants Dye and
24 Solis, all before Defendants have aggressively sought to interfere with
25 Plaintiffs' tenancy of Tenants Dye and Solis.

26 50. Per the instructions of Defendants, including specifically Defendant

Gonzalez—and as knowingly tolerated by Defendant Higgins, Defendant Koenig, Defendant Shear, Defendant Stang, Defendant Elias, Defendant Christensen, Defendant Hughes, and Defendant Rankin—Tenants Dye and Solis have not only refused to pay their now overdue and very delinquent monthly rent, they are also lying in wait in Plaintiffs' housing unit merely until such tenants find a housing unit preferred by Defendants to which such tenants can apply their second monetary housing voucher and an inspection can be scheduled and conducted by Defendant Encinas, Defendant Pena or a subordinate inspector under their control. Afterwards, such tenants will move out of Plaintiffs' housing unit and into the then-inspected new housing unit, all irrespective of the existing secured private housing rental business transaction such tenants have with Plaintiffs.

FIRST CAUSE OF ACTION

15 U.S.C. § 1 SHERMAN ACT VIOLATIONS

51. Paragraphs 1-50 are hereby incorporated by this reference in support of this cause of action as though fully set forth herein.
52. Defendants' foregoing hybrid-restraint policy is a *per se* violation of the Sherman Act (15 U.S.C. § 1, *et seq.*) and is preempted by said Act.
53. 15 U.S.C. § 1 reads as follows, to wit:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the

court.

(A) Defendants' Policy is Per Se Violative of the Sherman Act

54. Through Defendants' combination or conspiracy, they have pursued the foregoing policy that mandates or authorizes unlawful interference with housing rental business transactions, transactions of which are considered *per se* interstate commerce activities.
55. Defendants' foregoing policy mandates or authorizes Defendants to knowingly interfere with secured private housing rental business transactions, and interfere and cause the subsequent breaches of contracts, by specifically (i) instructing customers/housing tenants of landlords to engage in boycotting such landlords with the financial incentive of being provided subsidized housing elsewhere that is provided by select landlords preferred by Defendants and (ii) threatening such customers/housing tenants with the loss of such financial benefits if such instructions are not followed—all interfering acts that restrain commerce.
56. Defendants' foregoing policy mandates or authorizes Defendants to also instruct such customers/housing tenants not to pay their rent owed under existing lease-contracts to their current landlords while awaiting new housing that is provided by other select landlords preferred by Defendants.
57. Effectively, Defendants' foregoing policy obviates the need for private parties—in this case, the select landlords—to act on their own to create an anticompetitive scheme: The select landlords enjoy the anticompetitive effect of an artificial influx of customers/housing tenants

who re-enter the rental market in seeking new housing and come to apply their monetary housing vouchers with such select landlords.

58. Defendants have no state immunity for the foregoing policy. In fact, state policy, as reflected in statutes such as A.R.S. § 41-621(L)(2), oppose a government actor's involvement in the interference or breach of any transaction or contract.

(B) Damages In General

59. In effect, Defendants have pursued an unlawful, multi-faceted policy that has restrained commerce and is in violation of the Sherman Act.

60. As a direct and proximate result of Defendants' foregoing policy, and the emanating acts therefrom, Plaintiffs and their interstate commerce business are injured victims of such a policy in consideration of defendant-caused losses of prior private tenancies and Defendants' continuing incremental efforts towards causing the full loss of the current private tenancy of Tenants Dye and Solis, all of which are acts by Defendants that have restrained the free flow of housing rental activities.

61. Plaintiffs are entitled to a mandatory temporary, preliminary and permanent injunction against Defendants, enjoining them from continuing the foregoing policy and the emanating acts therefrom.

(C) Prayer for Relief

Wherefore, for the **First Cause of Action**, Plaintiffs pray that a judgment be entered in their favor as follows:

A. For a temporary, preliminary and permanent mandatory injunction against all Defendants that enjoins them from engaging in the foregoing policy, including any act that is reflective of such a

1 policy, pursuant to 15 U.S.C. §§ 15 and 26;

2 B. For declaratory and further relief as necessary, per 28 U.S. Code
3 §§ 2201-2202; and any

4 C. Such other and further relief as the Court deems fair and just.

5
6 **SECOND CAUSE OF ACTION**

7 **42 U.S.C. § 1983 VIOLATIONS:**

8 **COMMERCE CLAUSE VIOLATIONS**

9 62. Paragraphs 1-61 are hereby incorporated by this reference in support of
10 this cause of action as though fully set forth herein.

11 63. Through their deliberate actions, Defendants have restrained the
12 interstate commerce business of Plaintiffs in violation of the Commerce
13 Clause found in Article I, Section 8, Clause 3 of the U.S. Constitution,
14 making such actionable under 42 U.S.C. § 1983.

15 **(A) Defendants' Policy Has Restrained Plaintiffs' Substantive Right to Be Free From**
16 **Interference**

17 64. As a result of Defendants' foregoing policy, and the harmful emanating
18 acts therefrom, Plaintiffs have been deprived of their substantive right to
19 engage in interstate commerce free from unlawful interference by
20 Defendants.

21 **(B) Damages In General**

22 65. In effect, Defendants have pursued an unlawful, multi-faceted policy that
23 has restrained commerce and is in violation of the Commerce Clause.

24 66. As a direct and proximate result of Defendants' foregoing policy, and the
25 emanating acts therefrom, Plaintiffs and their interstate commerce
26 business are injured victims and—as to their personal and professional

lives, including as business owners—have incurred multi-faceted, substantial, and ongoing damages and losses, including, but not limited to, the losses of prior private tenancies of Plaintiffs, and Defendants’ continuing incremental efforts towards causing the full loss of Plaintiffs’ current private tenancy of Tenants Dye and Solis, all of which are acts by Defendants that have restrained the free flow of Plaintiffs’ housing rental activities; the loss of Plaintiffs’ business in general; the loss of the ability to go forward with Plaintiffs’ real estate developments; the attack on Plaintiffs’ reputation in the housing rental community, destroying such a reputation in the process; the cause of Plaintiffs’ severe emotional distress; and the degradation of the quality of Plaintiffs’ lives in general. Plaintiffs are, thus, entitled to significant compensatory damages.

67. In addition to the entitlement of significant compensatory damages, Plaintiffs are each entitled to significant punitive damages from the individual Defendants, as they each have knowingly and willfully participated in the deprivation of Plaintiffs’ right, repugantly exhibiting a complete disregard for it.

68. Plaintiffs are entitled to a temporary, preliminary and permanent injunction against Defendants, enjoining them from continuing the foregoing policy and the emanating acts therefrom.

(C) Prayer for Relief

Wherefore, for the **Second Cause of Action**, Plaintiffs pray that a judgment be entered in their favor as follows:

A. For compensatory damages against all Defendants in an amount to be determined at a jury trial;

- 1 B. For punitive or exemplary damages against all individual Defendants in an
2 amount to be determined at a jury trial;
- 3 C. For a temporary, preliminary and permanent injunction against all
4 Defendants that enjoins them from engaging in the foregoing policy,
5 including any act that is reflective of such a policy, that threatens to violate
6 Plaintiffs' right;
- 7 D. For declaratory and further relief as necessary, per 28 U.S. Code §§ 2201-
8 2202;
- 9 E. Attorney's fees and costs incurred in defending Plaintiffs' right, per 42
10 U.S.C. § 1988;
- 11 F. Interest at the highest legal rate from the date first recoverable until paid in
12 full; and any
- 13 G. Such other and further relief as the Court deems fair and just.
- 14
- 15

16 **THIRD CAUSE OF ACTION**

17 **42 U.S.C. § 1983 CIVIL RIGHTS VIOLATIONS:**

18 **14th AMENDMENT SUBSTANTIVE VIOLATIONS, PATTERN AND PRACTICE**

- 19 69. Paragraphs 1-68 are hereby incorporated by this reference in support of
20 this cause of action as though fully set forth herein.
- 21 70. Through their deliberate actions, Defendants have restrained the
22 interstate commerce business of Plaintiffs, and, effectively, deprived
23 Plaintiffs of their right to pursue their profession as landlords, all in
24 violation of the Fourteenth Amendment to the U.S. Constitution, making
25 such actionable under 42 U.S.C. § 1983.
- 26

(A) Defendants' Policy Has Restrained Plaintiffs' Business and Deprived Plaintiffs'

Right to Freely Pursue Their Profession as Landlords

71. There are basically two types of clientele in the environment of Plaintiffs' housing rental business: private-market-based customers/housing tenants and Section 8 Housing Program-based customers/housing tenants.

72. Defendants have effectively deprived Plaintiffs from freely engaging in business with either types of clientele, all without Plaintiffs' due process consideration.

73. As a result of Defendants' foregoing policy, and the harmful emanating acts therefrom, Plaintiffs have been deprived of the liberty to pursue their profession as landlords free from unlawful interference by Defendants.

(B) Damages In General

74. In effect, Defendants have pursued an unlawful, multi-faceted policy that has restrained commerce, deprived Plaintiffs' liberty interest to freely pursue their chosen profession, and is in violation of the Fourteenth Amendment to the U.S. Constitution.

75. As a direct and proximate result of Defendants' foregoing policy, and the emanating acts therefrom, Plaintiffs and their interstate commerce business are injured victims and—as to their personal and professional lives, including as business owners—have incurred multi-faceted, substantial, and ongoing damages and losses, including, but not limited to, the losses of prior private tenancies of Plaintiffs, and Defendants' continuing incremental efforts towards causing the full loss of Plaintiffs' current private tenancy of Tenants Dye and Solis, all of which are acts by Defendants that have restrained the free flow of Plaintiffs' housing rental

activities; the loss of Plaintiffs' business in general; the loss of the ability to go forward with Plaintiffs' real estate developments; the attack on Plaintiffs' reputation in the housing rental community, destroying such a reputation in the process; the cause of Plaintiffs' severe emotional distress; and the degradation of the quality of Plaintiffs' lives in general. Plaintiffs are, thus, entitled to significant compensatory damages.

76. In addition to the entitlement of significant compensatory damages, Plaintiffs are each entitled to significant punitive damages from the individual Defendants, as they each have knowingly and willfully participated in the deprivation of Plaintiffs' liberty interest, repugnantly exhibiting a complete disregard for it.

77. Plaintiffs are entitled to a temporary, preliminary and permanent injunction against Defendants, enjoining them from continuing the foregoing policy and the emanating acts therefrom.

(C) Prayer for Relief

Wherefore, for the **Third Cause of Action**, Plaintiffs pray that a judgment be entered in their favor as follows:

H. For compensatory damages against all Defendants in an amount to be determined at a jury trial;

I. For punitive or exemplary damages against all individual Defendants in an amount to be determined at a jury trial;

J. For a temporary, preliminary and permanent injunction against all Defendants that enjoins them from engaging in the foregoing policy, including any act that is reflective of such a policy, that threatens to violate

Plaintiffs' liberty interest;

K. For declaratory and further relief as necessary, per 28 U.S. Code §§ 2201-2202;

L. Attorney's fees and costs incurred in defending Plaintiffs' right, per 42 U.S.C. § 1988;

M. Interest at the highest legal rate from the date first recoverable until paid in full; and any

N. Such other and further relief as the Court deems fair and just.

FOURTH CAUSE OF ACTION

42 U.S.C. § 1983 CIVIL RIGHTS VIOLATIONS:

14th AMENDMENT PROCEDURAL VIOLATIONS, PATTERN AND PRACTICE

78. Paragraphs 1-77 are hereby incorporated by this reference in support of this cause of action as though fully set forth herein.

79. Through their deliberate actions, Defendants have restrained the interstate commerce business of Plaintiffs, and, in doing so, deprived Plaintiffs of their right to business goodwill derived from secured business transactions/contracts/leases without procedural due process, all in violation of the Fourteenth Amendment to the U.S. Constitution, making such actionable under 42 U.S.C. § 1983.

(A) Defendants' Policy Has Restrained Plaintiffs' Business and Deprived Plaintiffs' Right to Business Goodwill

80. Plaintiffs have property status in goodwill derived from business transactions/secured contracts/leases.

1 81. Plaintiffs have been deprived of such goodwill as to their
2 customers/housing tenants through Defendants' direct incentive- and
3 threat-causing move-outs.

4 82. Defendants have initiated the deprivations of Plaintiffs' goodwill without
5 first affording Plaintiffs any relief, particularly without first affording
6 Plaintiffs some kind of hearing before depriving Plaintiffs' of their
7 property interests in their secured goodwill with their customers/housing
8 tenants.

9 **(B) Damages In General**

10 83. In effect, Defendants have pursued an unlawful, multi-faceted policy that
11 has restrained commerce, deprived Plaintiffs' right to procedural due
12 process protection of their goodwill, and is in violation of the Fourteenth
13 Amendment to the U.S. Constitution.

14 84. As a direct and proximate result of Defendants' foregoing policy, and the
15 emanating acts therefrom, Plaintiffs and their interstate commerce
16 business are injured victims and—as to their personal and professional
17 lives, including as business owners—have incurred multi-faceted,
18 substantial, and ongoing damages and losses, including, but not limited
19 to, the losses of prior private tenancies of Plaintiffs, and Defendants'
20 continuing incremental efforts towards causing the full loss of Plaintiffs'
21 current private tenancy of Tenants Dye and Solis, all of which are acts by
22 Defendants that have restrained the free flow of Plaintiffs' housing rental
23 activities; the loss of Plaintiffs' business in general; the loss of the ability
24 to go forward with Plaintiffs' real estate developments; the attack on
25 Plaintiffs' reputation in the housing rental community, destroying such a
26 reputation in the process; the cause of Plaintiffs' severe emotional

distress; and the degradation of the quality of Plaintiffs' lives in general. Plaintiffs are, thus, entitled to significant compensatory damages.

85. In addition to the entitlement of significant compensatory damages, Plaintiffs are each entitled to significant punitive damages from the individual Defendants, as they each have knowingly and willfully participated in the deprivation of Plaintiffs' right, repugantly exhibiting a complete disregard for it.

86. Plaintiffs are entitled to a temporary, preliminary and permanent injunction against Defendants, enjoining them from continuing the foregoing policy and the emanating acts therefrom.

(C) Prayer for Relief

Wherefore, for the **Fourth Cause of Action**, Plaintiffs pray that a judgment be entered in their favor as follows:

O. For compensatory damages against all Defendants in an amount to be determined at a jury trial;

P. For punitive or exemplary damages against all individual Defendants in an amount to be determined at a jury trial;

Q. For a temporary, preliminary and permanent injunction against all Defendants that enjoins them from engaging in the foregoing policy, including any act that is reflective of such a policy, that threatens to violate Plaintiffs' right;

R. For declaratory and further relief as necessary, per 28 U.S. Code §§ 2201-2202;

S. Attorney's fees and costs incurred in defending Plaintiffs' right, per 42

1 U.S.C. § 1988;

2 T. Interest at the highest legal rate from the date first recoverable until paid in
3 full; and any

4 U. Such other and further relief as the Court deems fair and just.

5 RESPECTFULLY submitted this 1st day of August 2014.

6 **SCHUTT LAW FIRM, P.L.C.**

7 By /s/ Kenneth W. Schutt, Jr.

8 Kenneth W. Schutt, Jr.

9 9375 E. Shea Blvd., Suite 100

10 Scottsdale, Arizona 85260

11 Attorneys for Plaintiffs

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15 ///

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CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2014, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

I also hereby certify that I electronically served, on August 1, 2014, the foregoing to the respective government-issued e-mail addresses of the following individual Defendants, and made arrangements for hard copies of such to be subsequently served on them via process server:

City of Tucson

c/o Roger Randolph, City Clerk

Roger.Randolph@tucsonaz.gov

Michael G. Rankin

Mike.Rankin@tucsonaz.gov

Julianne K. Hughes

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By /s/ Kenneth W. Schutt, Jr.