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20 **IN THE UNITED STATES DISTRICT COURT**
 21 **FOR THE DISTRICT OF ARIZONA**

22 **NANCY MARKHAM,**
 23 **Plaintiff,**

24 **v.**

25 **CITY OF SURPRISE; MICHAEL**
 26 **FRAZIER in his individual and official**
 27 **capacities, and CHRISTOPHER TOVAR, in**
 28 **his individual capacity,**
Defendants.

No. 2:15-cv-01696-SRB

DECLARATION OF
NANCY MARKHAM

1
2 I, Nancy Markham, hereby truthfully declare under penalty of perjury as follows:

3 1. I am over eighteen years of age and am a resident of Surprise, Arizona. I have
4 personal knowledge of the matters described herein.

5 2. I am the Plaintiff in this lawsuit and submit this Declaration in support of
6 Plaintiff's Motion for a Preliminary Injunction.

7
8 3. I have been a resident of Surprise for eleven years.

9 4. From March 1, 2013 until February 28, 2015, I lived at 15526 West Ocotillo
10 Lane in Surprise ("the Property"), where I lived with my two sons.

11 5. I currently rent another home in Surprise.

12
13 6. My landlord at the Property was Xiaoli Wang. She employed Adam Botticello
14 from AZ Rental Homes to manage the Property.

15 7. My lease at the Property included a "Crime-Free Provision" that stated that
16 "[t]enant, occupants, family, guests, invitees, or other persons under the Tenant's control
17 shall not engage in . . . any criminal activity, including . . . any act of violence or threats of
18 violence . . . threatening or intimidating, unlawful discharge of firearms, or assault" and that
19 any violation of this provision would be a material and irreparable violation of the lease.
20

21 8. While I was living at the Property, I was the victim of domestic violence that
22 was perpetrated by my ex-boyfriend, R.V., on several occasions. I could not control R.V.
23 when he was violent towards me.
24

25 9. R.V. is the father of my youngest child.

26 10. R.V. never lived at my home on West Ocotillo Lane but he did visit on
27 occasion and saw our child.
28

1 11. I only ever called the police for help because I was facing or threatened with
2 domestic violence; I never called the police to the Property for any other reason, except for
3 one time when I accidentally dialed 911 and hung up.
4

5 12. I was never arrested for or charged with any crime at the Property.

6 13. At no point did any Surprise police officer mention that I could face penalty
7 under any local ordinance or that repeated calls to the police or instances of criminal activity
8 at the Property could result in my eviction or other penalty.
9

10 14. I called the police the first time on March 13, 2014 when I was attacked by
11 R.V. and feared for my safety. Early that morning, R.V. put his hands around my neck,
12 choked me repeatedly, and punched me in the mouth.
13

14 15. R.V. left before the police arrived at the Property.

15 16. After this, Surprise police officers came to my property of their own accord,
16 looking for R.V. to serve him with a charge stemming from the March 13, 2014 attack.
17

18 17. In March and April 2014, I called the police three other times to request help
19 relating to R.V.'s violence against me. I called once in March because R.V. had been calling
20 me repeatedly and I believed he had returned to the Property; I asked police to check that he
21 was not there before I returned. I called twice in April when he again was at the Property,
22 threatening me and refusing to leave.
23

24 18. I called the police three times in July because of domestic violence.

25 19. On July 22, 2014, my son let R.V. into my home to get some of his
26 belongings that he had left there.
27

28 20. R.V. began arguing with me and then left, but he took my car without my
permission so I called the police.

1 21. Officers located R.V. and the vehicle, issued R.V. a citation for driving with a
2 suspended license, and impounded my car.

3 22. The officers did not serve R.V. with the charge for the March 13, 2014
4 domestic violence incident.

5 23. I called 911 twice on July 31, 2014 when R.V. returned to the Property,
6 brandishing a gun and refusing to leave.
7

8 24. I called the police and told the 911 operator that R.V. was refusing to leave
9 the property and had a gun.
10

11 25. When police responded, R.V. was already gone so I asked police to leave the
12 Property.

13 26. A couple of hours later, R.V. returned to the Property, armed with a shovel
14 and the handgun, and was again trying to get into my home but it was locked.
15

16 27. I called 911 a second time at approximately 11pm and reported that R.V. had
17 returned, was armed, and was trying to enter my home.

18 28. Surprise police officers responded and arrested R.V. on charges of disorderly
19 conduct with a deadly weapon.
20

21 29. When police searched R.V., they found two syringes in his pocket and also
22 charged him with possession of drug paraphernalia.

23 30. On August 18, 2014, my property manager sent me an email that stated that
24 the Surprise police department had “put the owner in a position where they can no longer
25 allow [me] to stay as a tenant.”
26
27
28

1 31. The property manager told me that he and the landlord would return my
2 security deposit if I agreed to leave the Property and end my lease, but that if I did not
3 voluntarily leave, my landlord would formally evict me.
4

5 32. On August 20, 2014, R.V. again returned to the property and was intoxicated.
6 He refused to leave and waved a knife at me.

7 33. At this time, although I was not aware of the Nuisance Policy in Surprise or
8 that the City of Surprise could penalize me for calling 911, I knew that Surprise had
9 communicated with my landlord about police responding to the Property. For that reason, I
10 communicated with my landlord about police responding to the Property. For that reason, I
11 second-guessed whether I should call the police and did not immediately call even though I
12 felt threatened. However, because the situation was serious, I did end up calling the police.

13 34. Surprise police officers responded and finally arrested R.V. under the active
14 warrant for aggravated assault relating to the domestic violence incident against me on
15 March 13th. They also charged him with additional counts of assault, assaulting police
16 officers, and obstructing justice.
17

18 35. I got a protection order against R.V. that same day.
19

20 36. On August 26, 2014, I responded to the property manager's threat that he
21 would evict me and assured him that any problems at my home had been resolved because
22 of the protection order against R.V. and because R.V. was now incarcerated.

23 37. The property manager was receptive to this explanation and asked me to send
24 him the police report that would verify this. I sent the property manager the materials he
25 requested on September 2nd.
26
27
28

1 38. From our conversation, I believed that the property manager was willing to
2 work matters out, understood that I was the victim of any disturbance at the property, and
3 would not force me and my children to leave our home.
4

5 39. I was shocked when the property manager responded to me on September 12,
6 2014 and told me that my landlord was not willing to let me stay. The property manager told
7 me that I would be evicted the following month if I failed to move before then.
8

9 40. I asked the property manager why I was being evicted and explained that
10 there was no criminal activity going on in my home but that this was a domestic violence
11 issue. I made it clear that R.V., the perpetrator of this violence, was not living at the
12 property.
13

14 41. The property manager replied that he had no choice but to move forward with
15 an eviction. He stated that this action was at the direction of the city, which has a local law
16 that allows them to designate a home with police activity a public nuisance.
17

18 42. When I again asked for more information, the property manager suggested
19 that I contact the Surprise Police Department for more information. The property manager
20 explained that the police department was “threatening to deem the property a public
21 nuisance.”
22

23 43. Based on these statements, I believed that I would be evicted on or soon after
24 October 1, 2014.
25

26 44. I was extremely distressed to learn that I was being punished because of the
27 domestic violence perpetrated against me and my calls to the police to report this violence
28 and seek help.

1 45. With the assistance of the ACLU, I sent Defendants a letter on October 2,
2 2014 that notified them that their actions under the Nuisance Policy were unlawful and
3 demanded that they cease their enforcement of this policy against me and my landlord.
4

5 46. Defendants did not assure me that the Nuisance Policy would not be enforced
6 against me in the future. They did not even indicate that I would not face penalty for crimes
7 committed against me or calls for police assistance when I was the victim of domestic
8 violence.
9

10 47. The ACLU also contacted my landlord on my behalf. While I received no
11 initial response from the landlord or property manager, upon further communications with
12 my attorney, the property manager said that there was no pending eviction action against
13 me.
14

15 48. However, my landlord still declined to renew my lease in March 2015 and I
16 was forced to move to another property in Surprise.

17 49. Now that I know about the Surprise Nuisance Policy, its continued existence
18 has made me unable to call the police or seek police assistance in the future.
19

20 50. I have already decided not to call the police in situations where I otherwise
21 would have and I would not feel capable of calling the police in the future, even if I believe
22 that my safety is imminently threatened or if I was the victim of crime at the property that
23 was not related to domestic violence. For instance, if I came home and found that my home
24 had been robbed, my first response would be to avoid calling 911 if at all possible. I would
25 accept the loss of my possessions, rather than calling the police and risk the loss of my
26 home.
27
28

1 51. I always thought calling 911 or the police was what residents should do when
2 they are in danger, but I now live in fear because I cannot access emergency assistance or
3 protection.
4

5 52. Pursuant to the Surprise Nuisance Policy, the lease at my new home includes
6 another crime-free provision, nearly identical to that at the Property. It allows my current
7 landlord to evict me upon any criminal activity at the property.
8

9 53. Based on my previous experience, I know that any future calls to the police
10 could count as a nuisance offense at my home, alert my landlord to the Nuisance Policy, and
11 lead to my eviction. I also know that a single call to the police or occurrence of crime at the
12 property, even if I were the victim, would permit my landlord to evict me under the crime
13 free lease that is mandated by the Nuisance Policy.
14

15 54. This is especially distressing, as R.V. has been released from prison.

16 55. If the Nuisance Policy remains in force, I fear that I will be put in a situation
17 where I have to choose between calling the police in an emergency and losing my home, or
18 being attacked and seriously injured.
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1 I, Nancy Markham, hereby declare that I am the Plaintiff in *Markham v. City of*
2 *Surprise et al.*, and that I have read the foregoing Declaration, and that I know of the
3 contents thereof; that the same are true and correct to the best of my belief.

4 I declare under penalty of perjury that the foregoing is true and correct.

5
6 DATED this 31st day of August, 2015.

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9 /s/ Nancy Markham
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