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Attorneys for Plaintiffs

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
15 **IN AND FOR THE COUNTY OF MARICOPA**

16
17 BRUSH & NIB STUDIO, LC, a limited
18 liability company; JOANNA DUKA; and
BREANNA KOSKI,

19 Plaintiffs,

20 v.

21 CITY OF PHOENIX,

22 Defendant.
23
24
25
26
27

Case No. CV2016-052251

VERIFIED COMPLAINT

1 **Introduction**

2 1. This is a pre-enforcement civil rights lawsuit that seeks to protect the freedom of Arizona
3 artists to speak and create freely.

4 2. Phoenix City Code § 18.4(B) violates these freedoms. It compels artists to create art that
5 contradicts their artistic and religious beliefs. It prevents artists from discussing what art they can and
6 cannot create. And it does so through investigations, criminal fines, and jail time.

7 3. By compelling artists to create and by silencing their speech, § 18.4(B) violates the
8 Arizona Constitution’s Free Speech Clause, Religious Toleration Clause, Equal Protection Clause, Due
9 Process Clause, and the Arizona Free Exercise of Religion Act. Based on these provisions, Plaintiffs ask
10 this Court to enjoin and declare § 18.4(B) unconstitutional so that they and other Arizona artists can
11 return to doing what they do best – create and discuss authentic art that reflects *their* beliefs, not the
12 government’s.

13 4. Plaintiffs Joanna Duka and Breanna Koski are Christian artists who own and operate
14 Plaintiff Brush & Nib Studio, LC, an upscale hand-painting, hand-lettering, and calligraphy company.
15 Through Brush & Nib, Joanna and Breanna create and sell artwork – paintings, prints, wedding
16 invitations, etc. – customized for clients and their events.

17 5. Like other artists, Joanna and Breanna want to create art, promote art, and run their
18 business according to their artistic vision. And like many artists, Joanna and Breanna define their artistic
19 vision by their religious beliefs. According to these Christian beliefs, Joanna and Breanna must create
20 art, promote art, and run their business in ways that honor God.

21 6. One way Joanna and Breanna honor God is by creating and promoting art that reflects
22 God’s beauty. Joanna and Breanna hope that people see their art in person and on Brush & Nib’s
23 internet sites and contemplate beauty’s significance and source – God. In this respect, Joanna and
24 Breanna view their art and their business as their way to share God’s beauty with others.

25 7. Another way Joanna and Breanna honor God is by loving and respecting their customers.
26 Because Joanna and Breanna believe that God created everyone, they respect everyone, create art for
27 anyone, and are upfront and honest with everyone. As part of this transparency and honesty, Joanna and

1 Breanna must tell customers what they can and cannot create for them.

2 8. Joanna and Breanna also honor God by creating art consistent with their religious beliefs.
3 Joanna and Breanna cannot use their God-given talents and imaginations to create art that discredits
4 Him. And so, while Joanna and Breanna create art for anyone, they cannot create art for events that
5 violate their religious beliefs, including their beliefs about marriage.

6 9. As for these beliefs about marriage, Joanna and Breanna believe that God created
7 marriage as a union exclusively between one man and one woman. And they cannot create art for events
8 that celebrate any other kind of marriage, including same-sex marriage.

9 10. But Phoenix law strips artists of their freedom to choose what to create and what to say in
10 the marriage context. According to § 18.4(B)(1), “[d]iscrimination in places of public accommodation
11 against any person because of...sexual orientation...is contrary to the policy of the City of Phoenix and
12 shall be deemed unlawful.” To effectuate this policy, § 18.4(B)(2) says “[n]o person shall...refuse,
13 withhold from, or deny to any person...accommodations, advantages, facilities or privileges thereof
14 because of...sexual orientation...” And § 18(B)(3) makes it unlawful for public accommodations to
15 “display, circulate, publicize or mail any...communication which states or implies that any...service
16 shall be refused...because of...sexual orientation...or that any person, because of...sexual
17 orientation...would be unwelcome, objectionable, unacceptable, undesirable or not solicited.” If anyone
18 violates these terms, Phoenix can investigate and penalize them up to \$2500, six months in jail, and
19 three years probation *for each day* they violate the law. *See* Phoenix City Code § 18-7 and § 1-5.

20 11. Phoenix interprets § 18.4(B)(1-3) to require Joanna, Breanna, and Brush & Nib to create
21 art celebrating same-sex wedding ceremonies because they do so for opposite-sex wedding ceremonies.
22 These provisions also prevent Plaintiffs from explaining why they only support one-man/one-woman
23 marriage and why they cannot create art for marriages (such as same-sex marriages) that contradict their
24 religious beliefs about marriage.

25 12. Indeed, Phoenix has already investigated another business for declining to promote a
26 same-sex wedding ceremony for religious reasons and issued a formal report saying § 18.4(B) requires
27 businesses like Brush & Nib – those that create expression – to promote same-sex wedding ceremonies

1 if they promote opposite-sex wedding ceremonies.

2 13. In light of this report and § 18.4(B)'s plain terms, Joanna and Breanna face an imminent
3 and impossible choice: either a) violate their religious beliefs, create art for same-sex wedding
4 ceremonies, and not publish their beliefs about art and marriage, or b) suffer fines and jail time for
5 following their religious beliefs by declining to create this art and by publishing their beliefs.

6 14. But civil rights litigants do not have to choose between jail time and exercising their
7 fundamental rights. Just as litigants have challenged restrictions on everything from abortion to violent
8 video games before violating those restrictions, Joanna, Breanna, and Brush & Nib can challenge the
9 restrictions on their rights before Phoenix investigates, fines, or incarcerates them.

10 15. And Joanna, Breanna, and Brush & Nib should win their challenge. No matter how much
11 others may dislike Joanna and Breanna's beliefs about marriage, the government should neither invade
12 the artist's "freedom of mind" to compel art nor hinder the artist's freedom of speech to silence
13 expression about art. *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943). The artist's
14 internal space – where she thinks, imagines, hopes, and composes – is too valuable, too sacrosanct to
15 open to government reprogramming and compulsion, especially when Phoenix invades that space
16 selectively, compelling artists to convey some messages about marriages, not others; silencing some
17 messages about marriage, not others. When the government plays favorites in the marketplace of art and
18 ideas, we only get bad government, bad ideas, and worse art. Arizona citizens deserve better.

19 16. The Arizona Constitution and Free Exercise of Religion Act provide the freedom for
20 Arizona artists to create and speak in support of marriages they believe in. To restore this freedom in
21 Arizona, Joanna Duka, Breanna Koski, and Brush & Nib ask this Court to enjoin § 18.4(B)(1)-(3) and
22 declare that these provisions violate the rights we cherish so dearly – the rights to speak and to create
23 freely.

24 **Jurisdiction and Venue**

25 17. This action raises claims under state constitutional and statutory law, specifically the
26 Arizona Constitution's Free Speech Clause (Ariz. Const. art. 2, § 6); Religious Toleration Clause (Ariz.
27 Const. art. 20, ¶ 1); Equal Protection Clause (Ariz. Const. art. 2, § 13); Due Process Clause (Ariz. Const.

1 art. 2, § 4); and the Arizona Free Exercise of Religion Act (A.R.S. § 41–1493 et seq.).

2 18. This Court has original jurisdiction over these constitutional and statutory claims under
3 Ariz. Const. art. 6, § 14 and A.R.S. § 12-123.

4 19. This Court has authority to award the requested declaratory relief under A.R.S. §12-1831
5 et seq. and Arizona Rule of Civil Procedure 57; injunctive relief under A.R.S. §12-1801 et seq. and
6 Arizona Rule of Civil Procedure 65; costs and attorneys fees under A.R.S. § 12-341 et seq., A.R.S. § 12-
7 348, A.R.S. § 12-1840, A.R.S. § 41–1493.01(D), and the private attorney general doctrine, *see Arnold v.*
8 *Arizona Dep't of Health Servs.*, 160 Ariz. 593, 775 P.2d 521 (1989); and nominal damages under each
9 constitutional provision identified in ¶ 17, under A.R.S. § 12-122, and in accordance with the logic in
10 *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

11 20. Venue is proper in this county under A.R.S. §12-401 because Defendant is located there.

12 **Plaintiffs**

13 21. Joanna Duka and Breanna Koski are evangelical Christians.

14 22. They are each United States citizens, and each resides in Phoenix.

15 23. They are the two member-owners of Brush & Nib Studio, LC.

16 24. Brush & Nib Studio is a for-profit limited liability company organized under Arizona
17 law.

18 25. Brush & Nib's principal place of business is located within Phoenix city limits.

19 26. Brush & Nib has paid for and obtained a valid transaction privilege and use tax license
20 from the City of Phoenix to operate in Phoenix.

21 **Defendant**

22 27. City of Phoenix is a municipal corporation authorized under the Arizona constitution.
23 Phoenix has the power to sue and be sued. *See* Ariz. Const. art. XIII, § 2; A.R.S. § 9-499.01; Phoenix
24 City Charter ch. II, § 1(c).

25 28. Phoenix is responsible for passing and enforcing its ordinances, including the ordinance
26 challenged in this lawsuit – Phoenix City Code § 18.4(B).

27

1 **Factual Background**

2 **Born and raised: Joanna Duka's religious journey**

3 29. On December 7, 1996, in an upstairs room of her grandmother's Sacramento area home,
4 a three-year-old Joanna Duka asked her mother how she could accept Jesus into her heart.

5 30. Joanna's mother smiled, talked to Joanna about her question, and then led Joanna to her
6 father who read from the Bible and explained to Joanna the significance of trusting and following Jesus.

7 31. Joanna's father had explained this before. He had recently worked as a youth minister
8 and had just begun interviews to become a senior pastor at the time.

9 32. After her father's explanation, Joanna knelt down alongside her parents, prayed, and
10 began her life-long journey of following Jesus.

11 33. This spiritual journey overlapped a physical journey. From Sacramento, Joanna and her
12 family traveled south to other California cities as they accompanied Joanna's father who served as a
13 youth minister or a lead pastor for various churches.

14 34. But Joanna did not simply recite prayers and show up Sunday mornings. She immersed
15 herself in the churches her father served, participating in Sunday School, helping with neighborhood
16 outreaches, and singing before the congregation during offertories.

17 35. Eventually, Joanna and her family moved to Phoenix in 2002 when her father accepted a
18 lead pastor position at a Phoenix church.

19 36. Joanna joined, attended, and participated in this church until August 2014 when she
20 decided to find her own church home and began attending a church in North Phoenix.

21 37. Although Joanna has attended this church a short time, she committed quickly: she
22 formally joined the church, attends Sunday morning worship services, volunteers to provide childcare
23 for toddlers on Sunday mornings, and participates in the church's college and career ministry.

24 38. For this college and career ministry, she attends a weekly Bible study and accountability
25 group where attendees share prayer requests, pray for each other, and encourage each other to follow
26 their religious beliefs.

1 No woman is an island: Joanna's artistic journey

2 39. Besides fostering Joanna's religious upbringing, Joanna's parents also encouraged her to
3 pursue her musical talents.

4 40. At her mother and father's urging, Joanna began piano lessons around age 10.

5 41. And she used those lessons later in life. She began teaching piano in 2012.

6 42. But Joanna's mother did not take to Joanna's other artistic skill as quickly – handwriting.

7 43. Since Joanna's mother homeschooled Joanna, Joanna's mother controlled the curriculum
8 and decided not to teach cursive because she thought cursive frequently illegible.

9 44. That did not deter Joanna.

10 45. Around the second or third grade, Joanna taught herself how to write in cursive.

11 46. And ever since, Joanna has experimented with handwriting and learned different
12 handwriting fonts and styles.

13 47. Although Joanna periodically practiced her handwriting and her mother repeatedly
14 encouraged her to turn her handwriting talent into a career, Joanna considered handwriting nothing more
15 than a hobby. That changed in the fall of 2014.

16 48. At that point, Joanna began to consider putting her handwriting passion to good use by
17 starting her own calligraphy business.

18 49. Joanna first began to research how to start a calligraphy business and began to practice
19 handwriting more intensely.

20 50. Toward the end of 2014, she left her full-time marketing job so she could devote more of
21 her time to starting her business.

22 51. For several hours each day, Joanna practiced calligraphy and researched how to run a
23 calligraphy business.

24 52. But Joanna quickly lost hope.

25 53. She realized she had much to learn about starting a business.

26 54. She also learned from her research that calligraphy businesses often incorporate elaborate
27 hand-drawn paintings into their works.

1 55. Joanna tried to create these paintings, but she did not have the experience or talent to
2 create them.

3 56. So Joanna’s dreams floundered. But that changed when Joanna met someone with the
4 skills she lacked – Breanna Koski.

5 Taking the long way: Breanna Koski’s religious journey

6 57. Breanna Koski was born in Glendale, Arizona in 1992 and moved to Prescott with her
7 family five years later.

8 58. In Prescott, Breanna attended church for the first time with a friend when she was seven.

9 59. Around a year later, Breanna and her friend went with that church’s youth group to a
10 summer camp where Breanna placed her faith in Jesus.

11 60. But that faith hit some roadblocks.

12 61. Because Breanna’s friend switched to a different middle school, Breanna lost touch and
13 stopped attending church with her. So Breanna had no one to encourage her in her faith until she met her
14 future husband in a communications class at Yavapai College in 2012.

15 62. As that class progressed, Breanna and her future husband kept switching seats to get
16 closer to each other until they started talking and then dating. As they dated, Breanna’s future husband
17 led her back to the faith she embraced as a child.

18 63. Then, after she married and moved to Phoenix in November 2014, Breanna started to
19 attend the same church Joanna attended.

20 64. Since then, Breanna joined that church’s college and career ministry, participating in the
21 college and career Bible study and accountability group and helping with this group’s leadership.

22 With a little help from my friends: Breanna’s artistic journey

23 65. As with her faith journey, Breanna developed her artistic talents alone and then with her
24 husband’s encouragement.

25 66. During childhood, Breanna enjoyed art and often made arts and crafts.

26 67. In college, Breanna gravitated toward painting.

27 68. She taught herself how to paint on large canvass by experimenting and by watching

1 YouTube videos.

2 69. Breanna eventually began to give her paintings away as gifts.

3 70. In 2012, for example, she created and gave her future husband a painting of a cross with
4 the text of his favorite Bible verse, Romans 1:16 – “For I am not ashamed of the gospel because it is the
5 power of God that brings salvation to everyone that believes.”

6 71. That painting impressed Breanna’s future husband so much he encouraged her to keep
7 developing her skills. So Breanna continued to paint on large canvass and to give her paintings away.

8 72. Until 2014, Breanna never seriously considered pursuing art professionally.

9 73. Joanna Duka changed that.

10 Paths cross, sparks fly: Joanna & Breanna meet, start Brush & Nib

11 74. Joanna and Breanna met for the first time at their church’s college and career
12 accountability group on November 13, 2014.

13 75. At that meeting, Joanna asked others to pray for her and her new calligraphy business
14 because she was afraid and overwhelmed about starting a business for the first time.

15 76. That request stuck with Breanna.

16 77. She approached Joanna at another college and career Bible study meeting in mid-January
17 2015 and applauded Joanna for her courage. Breanna remarked that she painted and would be afraid to
18 start her own business.

19 78. A light switched on in Joanna’s head.

20 79. Joanna asked Breanna to consider working with her in the calligraphy company.

21 80. Breanna was skeptical. Not only had she never seriously considered starting a business,
22 she had never painted on the small prints needed for the invitations that would be a core part of the
23 business.

24 81. But Joanna encouraged Breanna to try her hand at creating smaller-scale paintings, and
25 Breanna eventually did so.

26 82. Breanna showed a small-scale print to Joanna in mid-January 2015, and Joanna came
27 away impressed. She realized that Breanna did exactly what the calligraphy company needed.

1 83. So, on January 30, 2015, at a Starbucks in North Phoenix, Joanna and Breanna met over
2 tea and hot chocolate, shared their artistic dreams, and committed to work together to create and sell
3 artwork containing calligraphy and hand-painting.

4 84. Over the next several months, Joanna and Breanna honed their plans further, committed
5 to starting a calligraphy and hand-painting business together, and discussed and implemented their plans
6 to start this new business.

7 85. In April 2015, they picked the name Brush & Nib Studio.

8 86. They chose this name to reflect their company's artistic nature and their equal artistic
9 contributions to their company.

10 87. The brush in the company's name refers to a paint brush.

11 88. The brush acknowledges Breanna's painting talents and contributions.

12 89. The nib in the company's name refers to the pointed pen tip that calligraphers insert in a
13 pen holder and then dip in ink to make thick and thin lines.

14 90. The nib acknowledges Joanna's handwriting talents and contributions.

15 91. The studio in the company's name refers to an art studio.

16 92. This studio reference acknowledges the company's inherently artistic and creative nature.

17 93. With their business name set, Joanna and Breanna launched their company's internet
18 presence on April 15, 2015 with an Instagram account.

19 94. This Instagram account is available here: <https://www.instagram.com/brushandnib/>.

20 95. On April 30, 2015, Joanna and Breanna launched Brush & Nib's website.

21 96. This website is the primary platform for Brush & Nib to receive orders, to inform the
22 public about Brush & Nib, and to communicate about Brush & Nib's artwork.

23 97. That website is available here: <http://www.brushandnib.com/>.

24 98. On May 21, 2015, Joanna and Breanna filed for and obtained a Limited Liability
25 Company certificate from the State of Arizona.

26 99. And on May 21, 2015, Brush & Nib began to formally accept orders from the general
27 public, fill orders, and do business in Phoenix.

1 100. Brush & Nib has continued to do business in Phoenix ever since May 21, 2015.

2 Eight days a week: Brush & Nib creates, sells, and promotes art

3 101. Brush & Nib is an upscale hand-painting, hand-lettering, and calligraphy company.

4 102. The homepage on Brush & Nib's website summarizes the services it provides and the
5 artwork it creates as follows:

6 Brush & Nib Studio specializes in hand-painting, hand-lettering, and calligraphy for
7 weddings, events, special occasions, business, home decor, and everyday moments. We
8 offer custom and pre-made save-the-dates, wedding invitations, wedding invitation suites,
9 wedding programs, vows, marriage certificates, place cards, escort cards, table numbers,
10 menus, wood signs, glass signs, chalkboard signs, reception decor, party invitations,
11 dinner invitations, birth announcements, graduation announcements, prints, custom cards,
12 stationery, business cards, logos, letterheads, and more. Designs feature watercolor and
13 acrylic art, leaves, florals, color washes, landscapes, classic calligraphy, modern
14 calligraphy, and brush lettering. Fine papers, flat printing, letterpress, foiling, and
15 thermography available.

16 103. This summary is accurate.

17 104. The webpage with this summary is available here: <http://www.brushandnib.com/>.

18 105. A true and correct copy of this webpage is attached to the Complaint as Exhibit 1
19 (highlights added).

20 106. Brush & Nib offers all its artwork and services for a price to the general public.

21 107. For example, Brush & Nib charges approximately \$900 for a set of 100 custom painted
22 and hand-lettered wedding invitations suites.

23 108. A wedding suite includes a wedding invitation, response card, additional card of the
24 customer's choice, blank outer envelope, and blank response card envelope.

25 109. The "pricing page" on Brush & Nib's website identifies the prices for some of its custom
26 works.

27 110. This pricing page is available here: <http://www.brushandnib.com/pricing/>.

1 111. A true and correct copy of this webpage is attached to the Complaint as Exhibit 2.

2 112. Brush & Nib creates and sells custom and pre-made works.

3 113. As for these pre-made works, Joanna and Breanna create them well before clients buy
4 them; Joanna and Breanna create them without knowing how they will be used; and Joanna and Breanna
5 create them without adding elements that reflect a particular client's event or usage.

6 114. As for Brush & Nib's custom works, Joanna and Breanna know how they will be used;
7 Joanna or Breanna design these works with a particular event or use in mind; Joanna or Breanna
8 collaborate with the client before creating these works; and Joanna or Breanna add unique elements to
9 each custom work, and these elements reflect a particular event or usage.

10 115. Joanna and Breanna design these custom elements to convey a particular message about
11 each client's event or requested usage.

12 116. Brush & Nib sells its pre-made works on its Etsy webpage.

13 117. This Etsy webpage is available at <https://www.etsy.com/shop/BrushandNibStudio>.

14 118. For example, Joanna and Breanna created a pre-made print with flowers and the text "Be
15 always Blooming."

16 119. No one ordered Brush & Nib to create this work. Joanna and Breanna created this work
17 of their own initiative and now sell this work on Brush & Nib's Etsy page.

18 120. Anyone can buy this pre-made print and use it in any way they wish.

19 121. While Brush and Nib's Etsy webpage contains mostly pre-made works, this Etsy page
20 also contains some works – like weddings invitations – that require additional custom input.

21 122. By their very nature, all of Brush & Nib's weddings creations – wedding save-the-dates,
22 wedding invitations, wedding invitation suites, wedding programs, wedding vows, marriage certificates,
23 wedding place cards, wedding escort cards, wedding menus, and wedding maps – contain a large custom
24 component because each wedding has a different bride or groom, different location, different date, and
25 different artistic scheme.

26 123. For example, each of these wedding creations requires custom lettering.

27 124. These wedding creations often require custom painting.

1 125. Brush & Nib’s wedding creations always reflect, contain content about, and convey
2 messages about a particular engaged couple, their upcoming marriage, their upcoming marriage
3 ceremony, and the celebration of that marriage.

4 126. As a result, the content and meaning of Brush & Nib’s wedding creations change for each
5 wedding.

6 127. Brush & Nib has never received a request for or created pre-made versions of the
7 wedding creations mentioned in ¶ 122.

8 128. Besides its wedding artwork, Brush & Nib also creates artwork for organizations.

9 129. For example, Brush & Nib creates business cards, logos, stationary, letterhead, and signs
10 for businesses and non-profit organizations.

11 130. Because organizations differ by name, location, services, branding, and purpose, Brush &
12 Nib’s organization-related works always contain a large custom component.

13 131. Brush & Nib’s organization-related works always reflect, contain content about, and
14 convey messages about a particular organization, its products or services, or its brand.

15 132. As a result, the content and meaning of Brush & Nib’s organization-related works varies
16 for each organization.

17 The portfolio: Brush & Nib’s painting, hand-lettering, and calligraphy

18 133. Brush & Nib creates artwork containing hand-drawn and handwritten paintings,
19 drawings, decorative letters, or words.

20 134. Brush & Nib creates these works through processes known as lettering and hand-
21 painting.

22 135. Most Brush & Nib works contain both lettering and hand-painting.

23 136. Brush & Nib uses two types of lettering: calligraphy and hand-lettering.

24 137. Joanna does the calligraphy and hand-lettering for most Brush & Nib projects, and
25 Breanna does the calligraphy and hand-lettering component for a few projects.

26 138. Calligraphy and hand-lettering are related yet distinct visual art forms.

27 139. Calligraphy is the visual art of writing decorative letters.

- 1 140. Calligraphy uses balanced, nearly identical letterforms that work together as a whole.
- 2 141. Calligraphers work with the same style repetitively on one project, often create a full
3 alphabet for each project, and must consider how letters interact in future combinations.
- 4 142. In the United States, wedding invitations often contain calligraphy.
- 5 143. Like other artists, calligraphers fall within different traditions and use different styles and
6 techniques.
- 7 144. Calligraphy traditions include Western, Arabic, and Chinese calligraphy.
- 8 145. These traditions date back hundreds and even thousands of years.
- 9 146. In its western tradition, calligraphy began with the ancient Egyptians' use of
10 hieroglyphics and developed many styles over time, such as Carolingian style, uncial style, half-uncial
11 style, Gothic style, and Roman style.
- 12 147. Calligraphy has strong roots in many countries including England, the United States,
13 China, Japan, Nepal, India, and Tibet.
- 14 148. Hand-lettering is the visual art of drawing letters.
- 15 149. Joanna does the hand-lettering for most Brush & Nib projects, and Breanna does the
16 hand-lettering for a few Brush & Nib projects.
- 17 150. Hand-lettering involves drawing an illustration where each letter is unique and sometimes
18 quite different. The artist then combines those letters in a way to create a unique typographic image.
- 19 151. Hand-letterers focus on the project as a whole, do not consider how each letter interacts
20 in future combinations outside the project, and do not attempt to ensure that their letters can be used
21 together in a different combination in the future.
- 22 152. In the United States, business logos and business signs often contain hand-lettering.
- 23 153. Although calligraphers and hand letterers often draw on past examples and traditions,
24 Joanna creates calligraphy and hand-lettering that uniquely reflect her technique, tastes, and inspirations.
- 25 154. Hand-painting is the visual art of painting by hand.
- 26 155. Breanna does the hand-painting for most Brush & Nib projects, and Joanna does the
27 hand-painting for a few Brush & Nib projects.

1 156. For most Brush & Nib projects that contain paintings, Breanna hand-paints on a small
2 scale rather than a large canvass.

3 157. Although painters often draw on past examples and traditions, Breanna creates paintings
4 that uniquely reflect her technique, tastes, and inspirations.

5 The process: Brush & Nib creates and customizes art for client events

6 158. Brush & Nib's custom projects take more time, effort, and artist-client collaboration than
7 its pre-made projects.

8 159. Brush & Nib can receive requests for custom projects through its Etsy page, e-mail, its
9 website, or any of its other social media platforms.

10 160. When Brush & Nib receives a custom project request, Joanna or Breanna typically
11 responds via email and thanks the potential customer.

12 161. If that initial request does not provide enough information, Joanna or Breanna send the
13 potential customer a questionnaire to fill out so that Joanna and Breanna can obtain enough information
14 to provide an accurate quote.

15 162. Joanna or Breanna sends a different questionnaire based on the project requested: a
16 wedding client questionnaire, a business/organization client questionnaire, or an events and occasions
17 client questionnaire.

18 163. True and correct copies of these questionnaires are attached to the Complaint as Exhibit
19 3.

20 164. Sometimes, Joanna or Breanna sends the potential customer follow-up questions via
21 email to obtain enough information for an accurate quote.

22 165. Once Joanna and Breanna obtain the necessary information, they evaluate that
23 information, determine a quote for the requested work, and send that quote to the potential customer.

24 166. If the potential customer agrees to the quote, Joanna or Breanna then emails the potential
25 customer a contract to sign.

26 167. Joanna and Breanna have a form contract that they edit for each particular project.

27 168. A true and correct copy of this form contract is attached to the Complaint as Exhibit 4.

1 169. Once the client signs the contract and sends it back with any required payment, Joanna
2 and Breanna begin to create the requested work.

3 170. At the beginning of this process, clients usually have a very general idea of what they
4 want, they convey that idea to Joanna or Breanna, and they then rely heavily on Joanna and Breanna –
5 their suggestions, judgment, talent, and discretion – to imagine a plan and artistic vision for the
6 requested work.

7 171. To help this process, Joanna or Breanna sometimes creates a Pinterest “board” for clients
8 or clients sometimes send their own Pinterest “board” to Joanna or Breanna.

9 172. A Pinterest “board” is a webpage on the Pinterest social media platform.

10 173. Once Joanna or Breanna creates this Pinterest “board,” the clients place pictures of text,
11 colors, designs, or objects they like on this “board.”

12 174. Joanna and Breanna can then view those images on the clients’ “board” and learn about
13 the clients’ tastes, goals, and needs.

14 175. Joanna or Breanna then typically dialogue with the client face-to-face or by telephone

15 176. Sometimes, Joanna or Breanna dialogue with the client through email.

16 177. During these conversations, Joanna or Breanna asks the clients about their tastes, their
17 goals, intended uses, and the context for the requested work.

18 178. For example, if clients request custom artwork for a particular event, Joanna or Breanna
19 asks the clients about that event, including what type of event is it, where the event will be, what will
20 occur at the event, and what is the event’s purpose.

21 179. During these conversations, Joanna or Breanna also educate the client about what will
22 look good, offer their own suggestions about how to make the requested work as beautiful as possible,
23 provide advice about what text, phrasing, and words to use (if the requested work contains words), and
24 propose their vision for what the requested work should look like and convey.

25 180. For example, when customers request custom wedding invitations, Joanna or Breanna
26 frequently suggests the particular words to use on that invitation in order to convey the appropriate
27 celebratory message through that invitation.

1 181. Brush & Nib obtains information about the client's event because that information affects
2 what and how Joanna and Breanna create.

3 182. Brush & Nib individually tailors its custom artwork for each individual client and for
4 each client's particular event.

5 183. Brush & Nib individually tailors its custom artwork to convey particular messages about
6 each client's particular event or usage.

7 184. When Brush & Nib creates a custom work for a particular event, that event, that event's
8 context, and that event's substance always impact the form Brush & Nib uses and the message Brush &
9 Nib attempts to convey in its custom artwork.

10 185. In fact, Joanna and Breanna view their clients' tastes and events as part of the raw
11 materials that they then reshape to convey their artistic vision in each work.

12 186. Once Joanna and Breanna gather information from the clients and agree on a general
13 concept, Joanna and Breanna create two to three different drafts of what the final work could look like.

14 187. During this drafting process, Joanna and Breanna collaborate with each other and discuss
15 their artistic vision for the work in light of the work's use and context.

16 188. Joanna and Breanna's collaborative process can span several hours over several days.

17 189. During this process, Joanna and Breanna often discuss and evaluate how numerous
18 artistic elements work together in the final work. These elements include paint color, letter color, paper
19 color, shade, font, point size, paper type, line length, ink, contrast, line height, line length, letter spacing,
20 space, text density, image density, shape, direction, texture, tone, emphasis, balance, repetition, contrast,
21 proportion, dominance, movement, distance, and perspective.

22 190. Joanna and Breanna use these elements to create artwork with the appropriate aesthetic
23 and message and artwork distinctive of their style.

24 191. Joanna and Breanna typically create their drafts and their finalized work together in the
25 studio at Breanna's home.

26 192. Sometimes, they work separately and then combine their work at Breanna's home.

27 193. The process for creating both drafts and final works normally involves drawing very

1 detailed, intricate, and small letters and paintings.

2 194. Frequently, this process for creating both drafts and final works takes many hours.

3 195. This process for creating both drafts and final works requires great concentration, focus,
4 attention to detail, and artistry.

5 196. Depending on the item requested, Joanna and Breanna could each take up to two to five
6 hours to create each draft.

7 197. Brush & Nib's Instagram account contains a video of Joanna hand-lettering.

8 198. This video is available at this link: <https://www.instagram.com/p/2o-RynAjN6/>.

9 199. In this video, Joanna slowly and carefully draws the word "Nib" using her speedball
10 flexible pen point Nib No. 512.

11 200. A true and correct copy of this video is attached to the Complaint as Exhibit 5.

12 201. Brush & Nib's Instagram account also contains a video of Breanna painting.

13 202. This video is available at this link: [https://www.instagram.com/p/2ZVu3DgjER/?taken-](https://www.instagram.com/p/2ZVu3DgjER/?taken-by=brushandnib)
14 [by=brushandnib](https://www.instagram.com/p/2ZVu3DgjER/?taken-by=brushandnib).

15 203. In this video, Breanna carefully and deliberately draws four leaves on a wreath using a
16 round sized number two brush.

17 204. A true and correct copy of this video is attached to the Complaint as Exhibit 6.

18 205. To create their drafts and their final artwork, Joanna or Breanna use many different tools,
19 mediums, and products specifically designed for artists.

20 206. Some of these tools and mediums include: Speedball flexible pen point nibs No. 99, No.
21 101, No. 103, No. 512 and No. 513; a size 2 and size 4 Master's Touch fine art studio script liner oil and
22 acrylic brush with synthetic hog bristles; a size 3/0 Artist's Loft Roma spotter brush; Higgins Eternal
23 Permanent Black Archival Carbon Writing Ink; Winsor & Newton calligraphy inks; Liquitex
24 Professional Heavy Body acrylic paint; Master's Touch, and Artist's Loft acrylic paint; Winsor &
25 Newton and Artist's Loft watercolor paint; and Strathmore 400 series mixed media paper and layout
26 bond.

27 207. After they finish their drafts, Joanna or Breanna presents them to the clients.

1 208. Joanna or Breanna and the clients then agree on a particular draft, discuss changes to a
2 particular draft, or start the process over and Joanna and Breanna create new drafts.

3 209. Once the client and Joanna or Breanna select a draft, Joanna and Breanna begin to create
4 the final work.

5 210. This typically takes Joanna and Breanna many hours.

6 211. For example, Joanna and Breanna typically take four to five hours to create each separate
7 wedding invitation and 8-12 hours to create each separate wedding invitation suite.

8 212. Joanna and Breanna have spent around ten hours to create one art print.

9 213. Depending on the nature of the custom work, Joanna and Breanna sometimes create one
10 final work and then give that work to their printer to print numerous replicas for the customer.

11 214. Other times, Joanna and Breanna must create each replica of a custom project by hand
12 because of the nature of that project.

13 215. For example, Joanna and Breanna must create each wedding invitation mailing envelope
14 by hand because each envelope contains a different mailing address and addressee.

15 216. Other times, Joanna and Breanna create each replica of a final project by hand for
16 practical reasons.

17 217. For example, Joanna and Breanna spent approximately 30 hours to create 15 invitation
18 cards for a holiday party – each card by hand – because it cost more to print replicas than to handwrite
19 them given the low number of cards requested.

20 218. Other times, clients can choose whether Joanna and Breanna create each replica by hand
21 or by printing each replica.

22 219. For example, customers can ask Brush & Nib to create wedding invitations through its
23 typical custom process and then to print each replica of that invitation via Brush & Nib's printer.

24 220. Or customers can ask Brush & Nib to create wedding invitations through its typical
25 custom process and then to re-create each replica by hand if customers pay Brush & Nib accordingly for
26 each hand-created replica.

27 221. After Joanna and Breanna create the final work, clients send the final payment to Brush

1 & Nib, and Joanna or Breanna mails or hand-delivers the final work to the clients.

2 222. Although clients sometimes propose a general idea of what they want and Joanna and
3 Breanna typically collaborate with clients, Joanna and Breanna ultimately create the artistic vision, the
4 artistic message, and the finalized artwork for each project.

5 223. Joanna and Breanna retain complete artistic freedom and control over the artistic process.

6 224. Joanna and Breanna also reserve the right to reject any suggestion, demand, or request
7 clients make for custom works.

8 225. Even if clients explicitly request it, Joanna and Breanna will not create any artwork or
9 aesthetic they consider objectionable.

10 226. For example, one client asked Brush & Nib to replicate someone else's business logo.

11 227. Joanna and Breanna declined and explained that the requested logo was someone else's
12 artwork and they would not replicate it.

13 228. Joanna and Breanna retain the right to control the artistic process and to veto any
14 objectionable artwork in the Brush & Nib client contract. *See* Exhibit 4, at 0014-15.¹

15 The property: Brush & Nib authors and owns its art

16 229. Because Brush & Nib creates its custom art and retains responsibility and control over its
17 creative process, Brush & Nib authors, owns, and speaks through its custom art.

18 230. Brush & Nib's clients do not author Brush & Nib's custom artwork or negate the
19 message Brush & Nib expresses through its artwork.

20 231. Federal copyright law acknowledges these facts.

21 232. Under federal copyright law, "[c]opyright protection subsists, in accordance with this
22 title, in original works of authorship fixed in any tangible medium of expression,..." including
23 "pictorial, graphic, and sculptural works." 17 U.S.C. § 102.

24 233. Every Brush & Nib artwork constitutes a pictorial and/or graphic work.
25

26 _____
27 ¹ All citations to exhibit page numbers refer to the page numbers of the "COMPL. EXHIBITS #####" Bates stamp.

- 1 234. Every Brush & Nib artwork involves a high degree of originality and creativity.
- 2 235. Brush & Nib clients never hire Brush & Nib as an employee.
- 3 236. Brush & Nib clients hire Brush & Nib as an independent contractor.
- 4 237. Brush & Nib clients do not control how Brush & Nib creates its custom artwork.
- 5 238. Brush & Nib alone controls how it creates its custom artwork.
- 6 239. According to its client contract, Brush & Nib reserves the right to control how it creates
7 its custom artwork, and its clients hire Brush & Nib as an independent contractor. *See* Exhibit 4, at
8 0014-15.
- 9 240. According to its client contract, Brush & Nib's custom artwork does not constitute a
10 work for hire. *See* Exhibit 4, at 0014.
- 11 241. For all these reasons, Brush & Nib constitutes the author of its custom artwork for
12 purposes of copyright law and retains the copyright for its custom design and artwork.
- 13 242. With that copyright, Brush & Nib alone retains the right to reproduce its designs and
14 custom artwork, to prepare derivative works, to distribute copies, and to display its custom designs and
15 artworks publicly. *See* 17 U.S.C. § 106.
- 16 243. Brush & Nib clients do not own the custom designs that Brush & Nib creates for them.
- 17 244. Brush & Nib retains ownership of a work's design even after clients buy that work.
- 18 245. According to its client contract, Brush & Nib reserves its ownership and copyright
19 interests in the design and the artwork created for clients. *See* Exhibit 4, at 0013-14.
- 20 246. Brush & Nib tells clients about this policy on the FAQ section of Brush & Nib's website.
- 21 247. This FAQ section is available at <http://www.brushandnib.com/faq/>.
- 22 248. A true and correct copy of this webpage is attached to the Complaint as Exhibit 7
23 (highlights added).
- 24 249. Since mid-February 2016, Brush & Nib has placed a self-identifying mark on its custom
25 works.
- 26 250. Brush & Nib will continue to place this mark on its custom works because, in Joanna and
27 Breanna's artistic judgment, they want Brush & Nib to identify with and be identified with its custom

1 artwork and to promote its artistic talent.

2 251. This mark identifies Brush & Nib as the owner, author, and speaker for its custom works.

3 252. This mark also ensures that observers know that Brush & Nib created and endorsed the
4 custom works and that its custom works speak for and represent Brush & Nib.

5 253. But this mark is not necessary to identify Brush & Nib as the creator of its custom
6 artwork. Wedding invitees commonly ask the bride, groom, or other members of the wedding party to
7 identify who created the wedding save-the-dates, wedding invitations, wedding programs, wedding
8 place cards, wedding escort cards, or wedding menus.

9 254. As for the mark Brush & Nib places on its custom creations, this mark typically consists
10 of the name “Brush & Nib Studio” in all capital letters.

11 255. Brush & Nib places this mark on every custom wedding invitation.

12 256. For other custom works, Brush & Nib uses a mark that consists of the initials “B&N.”

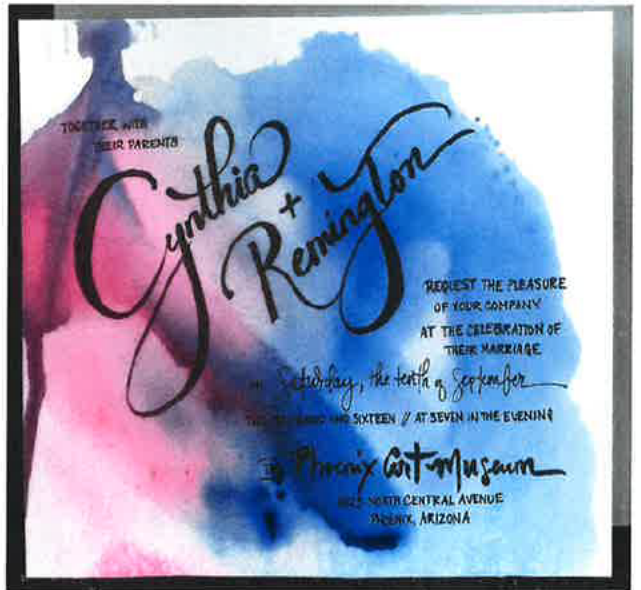
13 257. These initials stand for Brush & Nib Studio.

14 258. Brush & Nib uses this alternative mark on smaller artwork or when the nature of a
15 particular work requires a smaller mark.

16 259. Every Brush & Nib custom work speaks for Brush & Nib as well as for Joanna and
17 Breanna.

18 260. Every Brush & Nib custom work reflects Joanna and Breanna’s vision of beauty, artistic
19 skill, commitment to excellence, and numerous hours of planning, writing, drawing, or painting.

1 261. Below are some examples of Brush & Nib's custom works:





262. A true and correct copy of these pictures is attached to the Complaint as Exhibit 8.

The passion: Joanna & Breanna's religious beliefs fuel Brush & Nib's art

263. Although Joanna and Breanna serve many roles – artists, entrepreneurs, daughters, friends – they primarily view themselves as Christians.

264. Joanna and Breanna subordinate all other obligations to their religious identity.

265. Joanna and Breanna are evangelical Christians who hold to historic Christian beliefs.

266. Joanna and Breanna believe that God has revealed His will in the Bible (2 Timothy 3:16), that God created people to value Him more than everything else (Isaiah 43:21; Colossians 1:16), that people have valued other things more than God (Romans 1:23), and that every person – including themselves – therefore needs the forgiveness and relational restoration God offers through His son, Jesus Christ (Romans 6:23).

267. Joanna and Breanna also hold a Christian view of vocation and work.

268. Joanna and Breanna believe that just as God works, God created humans to reflect Him by working (Genesis 1:26-28), that God entrusted humans to care for and perfect His creation by

1 working (Genesis 2:15), and that God ordered Christians to honor Jesus in their work (Colossians 3:17;
2 Colossians 3:23-25; 1 Corinthians 10:31).

3 269. Joanna and Breanna also believe that God has sovereignty over all aspects of their lives,
4 including their work. (Psalm 115:11; Proverbs 16:9).

5 270. Because of these religious beliefs about work, Joanna and Breanna cannot separate their
6 religious duties, religious identity, or religious beliefs into work and non-work, secular and sacred,
7 private and public.

8 271. Joanna and Breanna must live authentic, holistic Christian lives. They must seek to honor
9 God in all aspects of their lives, including all aspects of their work, and must seek to serve God and their
10 neighbors through their vocation.

11 272. As a result, Joanna and Breanna cannot do anything in their business that violates their
12 religious beliefs or dishonors God.

13 273. If Joanna and Breanna attempted to separate their work from their religious beliefs,
14 Joanna and Breanna would view themselves as hypocrites – professing God’s authority over their work
15 and then withholding their work from God.

16 274. Joanna and Breanna also hold a Christian view of art and creativity.

17 275. Joanna and Breanna view God as the very first artist who created the world from nothing
18 (Genesis 1:1), who then artistically formed the world from raw materials He created (Genesis 1:2-5),
19 who then breathed life into His creation (Genesis 2:7), and who finally reviewed His work and delighted
20 in it: “And God saw everything that he had made, and behold, it was very good.” (Genesis 1:31).

21 276. Joanna and Breanna believe that God cares for and remains closely connected to His
22 creation because He carefully created the world and made humans to reflect Him. (Psalm 24:1-3; Psalm
23 50:10-11).

24 277. Joanna and Breanna believe that they reflect God in the way they create: they artistically
25 and thoughtfully shape raw materials, they care about their works, and they remain intimately connected
26 to their works.

27 278. In fact, Joanna and Breanna believe that they infuse their artistic vision and, in a sense,

1 part of themselves into their art.

2 279. Joanna and Breanna also believe that their art reflects them, their personality, and their
3 artistic vision.

4 280. Joanna and Breanna believe that God made humans to create because God created the
5 world and God made humans to reflect Him. They also believe God called them to create artistic and
6 aesthetically pleasing works. (Genesis 4:21; Psalm 33:3).

7 281. Joanna and Breanna believe that God has called and equipped some people for
8 particularly artistic vocations. (Exodus 31:1-11; 35:30-36:1).

9 282. Joanna and Breanna believe that God has called them to be artists and equipped them
10 with special talents to create art through calligraphy, hand-painting, and hand-lettering.

11 283. Because God has called and equipped them to be artists, Joanna and Breanna believe that
12 they must honor God with their artistic talents and their artwork.

13 284. And because God requires all persons, including artists, to worship Him with their talents
14 and works, Joanna and Breanna believe that they too must seek to worship and glorify God with their
15 artistic talents and creations.

16 285. Joanna and Breanna also believe that God's character provides the absolute standard for
17 defining goodness, truth, and beauty; that all art should reflect, incarnate, cohere with, and promote
18 goodness, truth, and beauty; and that God demands art to reflect, incarnate, cohere with, and promote
19 goodness, truth, and beauty.

20 286. For Joanna and Breanna, the very standard by which to judge art comes from God.

21 287. And for Joanna and Breanna, the very purpose of art – their art included – is to glorify
22 God and to enchant the viewer with an image of goodness, truth, and beauty that in turn points the
23 viewer to God.

24 288. As a result, Joanna and Breanna seek to create art that promotes and conveys a message
25 that the beauty around us reflects a true and perfect beauty worthy of praise, namely the true and perfect
26 beauty that is and reflects God.

27 289. In fact, Joanna and Breanna seek to create art that contains, reflects, and conveys their

1 artistic and religious beliefs about what is good, true, and beautiful.

2 290. Because of Joanna and Breanna's religious beliefs about art and God, Joanna and
3 Breanna cannot create anything immoral, idolatrous, or dishonorable to God or use their artistic talents
4 in ways that promote anything immoral, idolatrous, or dishonorable to God.

5 291. Joanna and Breanna would violate their religious beliefs, violate their conscience,
6 dishonor their artistic calling and talents, and dishonor God if they used their artistic talents to create
7 artwork that dishonors God.

8 292. Joanna and Breanna also hold a Christian view of participation and promotion.

9 293. Joanna and Breanna believe that they cannot rejoice in, condone, participate in, or
10 promote anything dishonorable to God. (Ephesians 5:11; 1 Timothy 5:22; 1 Corinthians 10:1-22; 2
11 Corinthians 6:14-18).

12 294. Because of this religious belief and because of their religious beliefs about art and work,
13 Joanna and Breanna believe they cannot use their artistic talents or their business activities to rejoice in,
14 condone, participate in, or promote anything dishonorable to God.

15 295. For example, Joanna and Breanna believe that God created two distinct genders each in
16 God's image, and therefore men and women equally reflect God.

17 296. Because of this religious belief in gender equality, Joanna and Breanna believe that God
18 condemns any efforts to exploit women or to use images of the female body in a degrading way.

19 297. Joanna and Breanna also believe that they participate in, celebrate, and promote a
20 group's message when they create business logos, signs, or business cards for an organization.

21 298. For this reason, Joanna and Breanna cannot create any custom logos, signs, business
22 cards, or any other custom work for an entity that exploits women (like a strip club). To do so would
23 violate their religious beliefs, promote activities contrary to their religious beliefs, and express messages
24 contradicting their religious beliefs.

25 299. Joanna and Breanna also hold to the Christian church's historic view on marriage, sexual
26 desire, and sexual activity.

27 300. Joanna and Breanna believe that God created two distinct genders in His image, that God

1 ordained marriage to be between one man and one woman, and that God intends for all sexual activity to
2 occur within this one-man/one-woman marriage covenant. (Genesis 1:27-28, 2:24; Matthew 19:4-6;
3 Ephesians 5:22-33; Hebrews 13:4).

4 301. As a corollary to these beliefs and because of statements in the Bible addressing this
5 topic, Joanna and Breanna believe that all sexual acts outside a one-man/one-woman marriage covenant
6 violate God's will, including adulterous, polygamous, or homosexual behavior. (1 Corinthians 6:9-20).

7 302. Likewise, Joanna and Breanna believe that when they create custom wedding save-the-
8 dates, wedding invitations, wedding invitation suites, wedding programs, wedding vows, marriage
9 certificates, wedding place cards, wedding escort cards, wedding menus, wedding maps, and other
10 custom works for weddings, they participate in, celebrate, and promote those wedding ceremonies and
11 the marriages celebrated at those ceremonies.

12 303. As Christian artists, when Joanna and Breanna create custom wedding save-the-dates,
13 wedding invitations, wedding invitation suites, wedding programs, wedding vows, marriage certificates,
14 wedding place cards, wedding escort cards, wedding menus, wedding maps, and other custom works for
15 weddings, they convey celebratory, affirming, and promotional messages about those marriages and
16 wedding ceremonies.

17 304. For this reason, Joanna and Breanna cannot create custom wedding save-the-dates,
18 wedding invitations, wedding invitation suites, wedding programs, wedding vows, marriage certificates,
19 wedding place cards, wedding escort cards, wedding menus, wedding maps, or any other custom works
20 for any wedding ceremony not between one man and one woman (like a same-sex wedding ceremony).
21 To do so would violate their religious beliefs, promote activities contrary to their religious beliefs, and
22 express messages contradicting their religious beliefs.

23 305. Likewise, Joanna and Breanna cannot create custom business logos, signs, business
24 cards, or any other custom work for organizations that promote sexual activity outside of one-man/one-
25 woman marriage (like same-sex marriage). To do so would violate their religious beliefs, promote
26 activities contrary to their religious beliefs, and express messages contradicting their religious beliefs.

27 306. While Joanna and Breanna believe that all forms of sexual activity and sexual unions

1 outside of one-man/one-woman marriage violate God's will, Joanna and Breanna also believe that God
2 created everyone in His image.

3 307. Joanna and Breanna therefore believe everyone deserves to be treated with dignity and
4 respect regardless of their race, religion, age, sex, sexual orientation, or political beliefs.

5 308. Joanna and Breanna believe Jesus commanded Christians to love their neighbors no
6 matter who they are, what they believe, or what they do.

7 309. To love their customers, Joanna and Breanna believe they must be upfront and honest
8 with their customers and respectful toward their customers and their customers' time.

9 310. For these reasons, Joanna and Breanna would violate their religious duty to love their
10 neighbor if they lied to customers about what Brush & Nib could create or if they let their customers
11 falsely assume that they will create art when they cannot do so.

12 311. Likewise, to love others and to be upfront and honest with their customers, Joanna and
13 Breanna cannot hide the religious inspiration behind their art.

14 312. To fulfill their religious obligations to love others, Joanna and Breanna must tell others
15 about how their faith impacts their art and their artistic message.

16 313. To fulfill their religious obligations, Joanna and Breanna want to acknowledge and
17 explain their religious beliefs and their artistic vision on Brush & Nib's website.

18 314. Because Joanna and Breanna believe God made everyone in His image and commanded
19 them to love their neighbor, Joanna and Breanna do not object to and will happily create custom artwork
20 for lesbian, gay, bisexual, or transgender clients or for organizations run by lesbian, gay, bisexual, or
21 transgender persons so long as that artwork does not violate Joanna and Breanna's artistic and religious
22 beliefs, as is the case for all of their customers.

23 315. Joanna and Breanna do not consider customers' sexual orientations when they decide
24 whether to create artwork for customers.

25 316. Likewise, Joanna and Breanna do not object to and will happily sell their pre-made works
26 to anyone, to any organization, and for any event.

27 317. Joanna and Breanna simply cannot create custom artwork that conveys messages

1 condoning, supporting, or participating in activities or ideas that violate their religious beliefs, such as
2 custom artwork for same-sex wedding ceremonies.

3 Walking the line: Brush & Nib conveys Joanna & Breanna's beliefs

4 318. As artists and entrepreneurs, Joanna and Breanna attempt to tell the general public about
5 their art, their business, and their artistic message.

6 319. Brush & Nib uses its media platforms to achieve these goals.

7 320. Brush & Nib's media platforms include:

- 8 • Brush and Nib's website: <http://www.brushandnib.com/>
- 9 • Brush and Nib's Instagram account: <https://www.instagram.com/brushandnib/>
- 10 • Brush and Nib's Twitter account: <https://twitter.com/brushandnib>
- 11 • Brush and Nib's Facebook page: <https://www.facebook.com/brushandnib/>
- 12 • Brush and Nib's Pinterest page: <https://www.pinterest.com/brushandnib/>
- 13 • Brush and Nib's Yelp page: <http://www.yelp.com/biz/brush-and-nib-studio-phoenix>
- 14 • Brush and Nib's knot.com page: [https://www.theknot.com/marketplace/brush-and-nib-studio-](https://www.theknot.com/marketplace/brush-and-nib-studio-phoenix-az-951362)
15 [phoenix-az-951362](https://www.theknot.com/marketplace/brush-and-nib-studio-phoenix-az-951362)
- 16 • Brush and Nib's wedding vibe page: <http://weddingvibe.com/arizona/phoenix/invitations/>
- 17 • Brush and Nib's Etsy webpage: <https://www.etsy.com/shop/BrushandNibStudio>.

18 321. Through these platforms, potential customers can contact Brush & Nib.

19 322. For example, potential customers can fill out an inquiry form on Brush & Nib's website.

20 323. The webpage with this form is available at <http://www.brushandnib.com/contact/>.

21 324. A true and correct copy of this webpage is attached to the Complaint as Exhibit 9.

22 325. On some of Brush & Nib's media platforms, potential customers can order artwork from
23 Brush & Nib.

24 326. For example, customers can order pre-made artwork on Brush & Nib's Etsy webpage
25 through an automated system without interacting with Joanna or Breanna.

26 327. On other Brush & Nib media platforms, Brush & Nib and potential customers can
27 interact and leave messages for each other.

1 328. For example, Brush & Nib leaves messages and viewers post their own messages on
2 Brush & Nib's Instagram account.

3 329. Brush & Nib's Instagram account also links to Brush & Nib's website.

4 330. On most of its media platforms, Brush & Nib displays examples of its artwork.

5 331. On many of its platforms, Brush & Nib discusses and explains its art.

6 332. Brush & Nib typically displays what it creates on its media platforms.

7 333. Because of the visual nature of its art, Brush & Nib must display and explain its art to the
8 public to effectively communicate its artistic message and to effectively tell people about its business.

9 334. Without the freedom to display and explain its art to the general public, Brush & Nib
10 could not compete in the marketplace and could not convey its artistic message.

11 335. For this reason, in its client contracts, Brush & Nib reserves the right to publicly display
12 and describe its artwork. *See Exhibit 4, at 0014.*

13 336. Because Brush & Nib uses the internet to inform the public about its artwork, Brush &
14 Nib receives requests for custom artwork from customers across the United States.

15 337. Brush & Nib can also ship its artwork to customers across the United States.

16 338. Calligraphy and hand-lettering businesses like Brush & Nib typically serve clients across
17 the country and the world because these businesses can easily ship their works almost anywhere.

18 339. Joanna and Breanna describe their artistic vision and skills on Brush & Nib's website.

19 340. For example, Brush & Nib's website contains a "Meet Us" section with the following
20 statement:

21 Hello there. I am Breanna. As a kid, I always relished crafts and painting. I am a self-taught
22 artist. Acrylic paint is my medium. Creating beauty with a brush is something that puts a smile
23 on my face. I love seeing all the tiny details come together to achieve a dramatic finish. It is so
24 rewarding to see a finished product in the hands of another.

25 341. Breanna wrote this statement.

26 342. This statement is accurate.

27 343. The "Meet Us" section of Brush & Nib's website is available at the webpage here:

1 <http://www.brushandnib.com/meet-us/>.

2 344. A true and correct copy of this webpage is attached to the Complaint as Exhibit 10.

3 345. That same webpage also contains the following statement:

4 Beautiful handwriting has been one of my passions since I was a little girl. As a teenager, I
5 received my first calligraphy set and fell in love with dipping the pen in ink and creating thick
6 and thin lines with the delicate nib. Now, I am delighted to be doing this every day, creating
7 something memorable for the special people I have the joy of working with! I love the
8 timelessness of classic lettering and I'm also drawn to the clean lines and drama of modern
9 calligraphy. I'm always experimenting with new styles!

10 346. Joanna wrote that statement about herself.

11 347. That statement is accurate.

12 348. Because Joanna and Breanna seek to authentically follow Jesus, Joanna and Breanna do
13 not hide their religious beliefs from Brush & Nib's website, Brush & Nib's social media sites, or Brush
14 & Nib's artwork.

15 349. For example, the "Meet Us" section on Brush & Nib's website contains the following
16 statement under the name Breanna Koski: "I believe God's design uses all the little details in our lives to
17 create a beautiful masterpiece, so little moments are where I find the most joy."

18 350. Breanna wrote that statement about herself.

19 351. That statement is accurate.

20 352. The "Meet Us" section of Brush & Nib's website also contains the following statements
21 under the name Joanna Duka: "I love playing piano, reading, and grey, cloudy days! Jesus is my hope
22 and salvation. I am humbled by His grace and love. Phil 3:8."

23 353. Joanna wrote that statement about herself.

24 354. That statement is accurate.

25 355. Brush & Nib's website also contains a "Blog" section.

26 356. This "Blog" section contains the following statements:

- 27
- Congratulations Jordon & Emma! We wish you many years of happiness while glorifying God in

1 your marriage!

- 2 • Love is our greatest treasure. Since the beginning of time, man and woman have come together
3 in an unbreakable covenant. This is one of God's most wonderful gifts to us here on earth. There
4 is nothing else like the love that God has for us.

5 Webster's dictionary defines love as "a feeling of strong or constant affection for a person."

6 God's definition of love is so much greater than that. It is not just affection or sexual desire, it is
7 an action that we live out.

8 God's word says "Love is patient and kind, it does not envy or boast, it is not arrogant or rude, it
9 does not insist on its own way, it is not irritable or resentful, it does not rejoice at wrongdoing
10 but rejoices with the truth. Love bears all things, believes all things, hopes all things, endures all
11 things. Love never ends." - 1 Corinthians 13:4-8

12 We are so inspired by this verse. It sheds light on how important it is to love in the way God has
13 shown us through His Word.

14 Love is the most gentle feeling that we express. It brings beauty to our lives and our
15 relationships, but also gives joy to others. If we live without love, we live for nothing.

16 Earlier in 1 Corinthians 13:1-4, we are told that, "If I speak in the tongues of men and of angels,
17 but have not love, I am a noisy gong or a clanging cymbal. And if I have prophetic powers, and
18 understand all mysteries and all knowledge, and if I have all faith, so as to remove mountains,
19 but have not love, I am nothing. If I give away all I have, and if I deliver up my body to be
20 burned, but have not love, I gain nothing."

21 These verses have inspired us to create our art in the spirit of love. We pray that God would use
22 our brush and nib to spread the love that only He can give. Whatever you may be doing today, or
23 this week, we pray that you too would be inspired to do it in love.

24 357. This "Blog" section of Brush & Nib's website is available at the webpage here:

25 <http://www.brushandnib.com/blog/>.

26 358. A true and correct copy of excerpts of this webpage is attached to the Complaint as
27 Exhibit 11.

1 359. Brush & Nib's Instagram account contains a picture of a print Joanna and Breanna
2 created for Brush & Nib.

3 360. This print states as follows: "But they who wait for the Lord shall renew their strength.
4 Isaiah 40:31A."

5 361. Brush & Nib offers to create and sell this print.

6 362. Brush & Nib's Instagram account also contains the following text alongside the picture of
7 the Isaiah 40:31 print:

8 A word of hope and encouragement for your Tuesday! We think the brush lettering and subtle
9 neutrals are simple and striking, letting these powerful words speak for themselves. Do you have
10 a favorite scripture, song lyrics, or quote you would like to see here? Comment below and let us
11 know!

12 363. Joanna wrote this text.

13 364. The picture of the Isaiah 40:31 print and the text described above are available at the
14 webpage here: https://www.instagram.com/p/7qXA_6AjLq/.

15 365. A true and correct copy of this webpage is attached to the Complaint as Exhibit 12
16 (highlights added).

17 366. Brush & Nib's Instagram account contains a picture of a framed print Joanna created for
18 Brush & Nib.

19 367. The above print states as follows: "I have found the one whom my soul loves. Song of
20 Songs 3:4."

21 368. Brush & Nib offers this print for sale.

22 369. The picture of the framed print is available on the webpage here:
23 <https://www.instagram.com/p/26nrVKgjHd/>.

24 370. A true and correct copy of this webpage is attached to the Complaint as Exhibit 13.

25 371. Brush & Nib's Instagram account also contains the picture of another print Joanna and
26 Breanna created for Brush & Nib.

27 372. Brush & Nib offers to create and sell this print.

1 373. This print states as follows: “Love bears all things believes all things hopes all things
2 endures all things Love never fails 1 Corinthians 13.”

3 374. The picture of this 1 Corinthians 13 print is available at the webpage here:
4 <https://www.instagram.com/p/2jrZswAjHV/>.

5 375. A true and correct copy of this webpage is attached to the Complaint as Exhibit 14.

6 376. Brush & Nib’s Instagram account contains the following text alongside pictures of
7 Joanna and Breanna: “We reside and work in the sunny Phoenix area. We both love Jesus and pray He is
8 honored and glorified through all we do.”

9 377. Joanna wrote this text.

10 378. This text accurately describes Joanna and Breanna.

11 379. This text is available at the webpage here: https://www.instagram.com/p/2ZG6e_AjIf/.

12 380. A true and correct copy of this webpage is attached to the Complaint as Exhibit 15
13 (highlights added).

14 Bad moon rising: the threat to Joanna and Breanna’s artistic and religious freedom

15 381. Because Joanna and Breanna discuss their faith on Brush & Nib’s media platforms and
16 because their faith affects everything they do, Joanna and Breanna have had to confront how their faith
17 affects their business and their art.

18 382. This confrontation became especially pressing for the topic of same-sex marriage because
19 Joanna and Breanna create art for weddings and government entities have attempted to force Christians
20 in the wedding industry to celebrate and promote same-sex marriage ceremonies.

21 383. Even before Breanna thought about starting a business, she saw news reports in 2014
22 about Christian business owners – bakers, florists, and photographers – who had been sued for declining
23 to celebrate and promote same-sex wedding ceremonies.

24 384. Breanna sympathized with these Christian owners and agreed with the stance they took.
25 Breanna knew she could not spend her time, effort, energy, and talents to create artwork for an event
26 that violated her religious beliefs.

27 385. After Breanna and Joanna started Brush & Nib, they began to personally confront the

1 same artistic and religious freedom issues.

2 386. On April 9, 2015, Breanna attended an event sponsored by Arizona Christian University
3 where the University awarded the Daniel Award for Courageous Public Faith to Hobby Lobby's
4 founders – David and Barbara Green.

5 387. The Greens received this award for defending religious liberty by suing the federal
6 government to stop it from forcing Hobby Lobby to provide insurance coverage for abortifacients
7 against the Greens' religious beliefs.

8 388. Ultimately, Hobby Lobby and co-petitioner Conestoga Wood won their case before the
9 United States Supreme Court in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

10 389. At the Arizona Christian University event, the Greens discussed their faith, the role their
11 faith played in their business, and the reasons their faith compelled them to litigate to protect their right
12 to operate their business in accordance with their religious beliefs.

13 390. After this event, a friend who attended the event asked Breanna if she would create
14 artwork for same-sex wedding ceremonies for her new artistic business.

15 391. Breanna knew she could not but realized she needed to discuss this issue with Joanna.

16 392. A few weeks later, Breanna and Joanna began discussing whether Brush & Nib would
17 create artwork for same-sex wedding ceremonies.

18 393. During these conversations, Breanna and Joanna looked at Bible passages that discussed
19 marriage, marriage's definition and purpose, homosexuality, and how Christians should respond to those
20 who disagreed with them.

21 394. Breanna and Joanna discussed how these passages applied to them and their business.

22 395. During these conversations in April, Breanna and Joanna agreed that they and their
23 business could not create custom art celebrating and promoting events, like same-sex wedding
24 ceremonies, that violated their religious beliefs.

25 396. With that decision made, Breanna and Joanna agreed to pray about the issue more and to
26 discuss how they could lovingly respond to someone who asked them to create art for same-sex wedding
27 ceremonies.

1 397. Joanna also decided that she should seek legal advice to learn about her company's
2 potential liability and its right to create artwork consistent with its owners' religious beliefs.

3 398. A few weeks after Joanna and Breanna's conversations in April, some of Joanna's friends
4 and family commented to her that she identified herself as Christian on Brush & Nib's website.

5 399. These friends and family members expressed concern that someone may try to target and
6 sue Joanna and Breanna just as people had sued other Christians in the wedding industry for declining to
7 promote same-sex wedding ceremonies.

8 400. Because of these inquiries, Joanna felt a greater urgency to learn about her rights.

9 401. Then, on June 26, 2015, the Supreme Court issued its decision in *Obergefell v. Hodges*
10 creating a constitutional right to same-sex marriage. 135 S. Ct. 2584 (2015).

11 402. During the next few days, Breanna and Joanna noticed the outpouring of support on
12 social media in favor of the *Obergefell* decision.

13 403. Breanna and Joanna noticed that many artists and artistic businesses expressed support
14 for *Obergefell* and that many of these artists and artistic businesses even created artwork to show
15 support for same-sex marriage.

16 404. In light of this outpouring of support for same-sex marriage and the *Obergefell* decision,
17 Breanna and Joanna felt an even stronger urgency to learn about their rights and whether they would
18 violate any laws if they only created artwork in accordance with their beliefs about marriage. But after
19 Breanna and Joanna sought legal advice, they learned about an ordinance that restricted what they could
20 say and what they could create – Phoenix City Code § 18.

21 Brave new world: Phoenix amends City Code § 18, restricts artistic and religious freedom

22 405. On February 26, 2013, the Phoenix City Council amended its Human Relations
23 Ordinance by a 5-3 vote.

24 406. Among other things, this amendment prohibited public accommodations from
25 discriminating on the basis of sexual orientation or gender identity.

26 407. The February 26 vote occurred immediately after a public hearing in Orpheum Theatre.

27 408. Around 500 people attended that public hearing that lasted around five hours.

1 409. At this public hearing, many people spoke for and against the proposed amendment.

2 410. According to one media report, “[f]ew Phoenix City Council meetings have matched the
3 drama and vitriol that filled the Orpheum Theatre...” that day.

4 411. That media report is available on the webpage here:

5 [http://www.azcentral.com/story/news/local/phoenix/2014/08/05/phoenix-law-generates-gay-
discrimination-complaints/13629241/](http://www.azcentral.com/story/news/local/phoenix/2014/08/05/phoenix-law-generates-gay-
6 discrimination-complaints/13629241/)

7 412. A true and correct copy of this webpage is attached to the Complaint as Exhibit 16
8 (highlights added).

9 413. As that same news article noted, “[a]t the time, opponents and supporters of the law
10 spoke at length about its potentially sweeping consequences. There were yelling and tears, and the
11 ideological divide grew even wider. Conservative groups and religious traditionalists raised fears that
12 the measure could lead to a tsunami of lawsuits against small businesses....”

13 414. That description of the meeting is accurate.

14 415. The Roman Catholic Diocese of Phoenix issued a statement opposing the amendment.

15 416. That statement said in part:

16 [T]he City of Phoenix is scheduled to consider a proposed ordinance that purports to protect
17 individuals from unjust discrimination, but which is so broadly worded that it risks trampling the
18 religious liberties of Phoenix citizens for doing nothing more than living their faith. As written,
19 the proposed ordinance could be interpreted as forcing people to actively endorse, support and
20 promote actions and behaviors that violate their own personal, deeply held religious beliefs. By
21 failing to provide a clear means by which individuals may, in good conscience and without
22 malice, practice their faith and live their values without fear of prosecution and punishment, the
23 proposed “non-discrimination” ordinance actually could be used as a means to codify and
24 mandate unjust discrimination against people of faith. Such a result would clearly run afoul of
25 the time-honored tradition of religious freedom on which our nation was founded.

26 417. A true and correct copy of a Roman Catholic Diocese of Phoenix webpage with this
27 statement is attached to the Complaint as Exhibit 17.

1 418. The amended Phoenix ordinance appears in Phoenix City Code Chapter 18.

2 419. City Code § 18-4(B) states in part as follows:

3 1. Discrimination in places of public accommodation against any person because of race, color,
4 religion, sex, national origin, marital status, sexual orientation, gender identity or expression, or
5 disability is contrary to the policy of the City of Phoenix and shall be deemed unlawful.

6 2. No person shall, directly or indirectly, refuse, withhold from, or deny to any person, or aid in
7 or incite such refusal, denial or withholding of, accommodations, advantages, facilities or
8 privileges thereof because of race, color, religion, sex, national origin, marital status, sexual
9 orientation, gender identity or expression, or disability nor shall distinction be made with respect
10 to any person based on race, color, religion, sex, national origin, marital status, sexual
11 orientation, gender identity or expression, or disability in connection with the price or quality of
12 any item, goods or services offered by or at any place of public accommodation.

13 3. It is unlawful for any owner, operator, lessee, manager, agent or employee of any place of
14 public accommodation to directly or indirectly display, circulate, publicize or mail any
15 advertisement, notice or communication which states or implies that any facility or service shall
16 be refused or restricted because of race, color, religion, sex, national origin, marital status, sexual
17 orientation, gender identity or expression, or disability or that any person, because of race, color,
18 religion, sex, national origin, marital status, sexual orientation, gender identity or expression, or
19 disability would be unwelcome, objectionable, unacceptable, undesirable or not solicited.

20 420. Phoenix City Code § 18-3 defines places of public accommodation as follows:

21 Places of accommodation means all public places of entertainment, amusement or recreation, all
22 public places where food or beverages are sold, public places operated for the lodging of
23 transients or for the benefit, use or accommodation of those seeking health or recreation and all
24 establishments offering their services, facilities or goods to or soliciting patronage from the
25 members of the general public. Any dwelling, any private club or any place which is in its nature
26 distinctly private is not a place of public accommodation.

27 421. Brush & Nib qualifies as a “public accommodation” under City Code § 18.

1 422. Brush & Nib Studio qualifies as a “public accommodation” under City Code § 18 for at
2 least two reasons: (1) Brush & Nib is an establishment that offers its services and goods to the members
3 of the general public; and (2) Brush & Nib is an establishment that solicits patronage from the members
4 of the general public.

5 423. Accordingly, the § 18(B)(1-2) prohibition on sexual orientation discrimination applies to
6 Brush & Nib and to its operations.

7 424. Phoenix interprets § 18.4(B)(1-2) to bar public accommodations from declining to
8 provide a service to same-sex couples that it would provide to opposite-sex couples.

9 425. Phoenix interprets § 18.4(B)(1-2) to require public accommodations to provide any
10 service to same-sex couples that public accommodations would also provide to opposite-sex couples.

11 426. Likewise, the § 18.4(B)(3) prohibition on publicizing statements applies to Brush & Nib
12 and its operations.

13 427. Phoenix interprets § 18.4(B)(3) to bar public accommodations and their owners from
14 publicizing statements indicating an intent to decline to provide services in the same-sex marriage
15 context that the public accommodation would provide in the opposite-sex marriage context.

16 428. Phoenix interprets § 18.4(B)(3) to bar public accommodations and their owners from
17 publicizing statements exclusively supporting one-man/one-woman marriage or statements opposing
18 same-sex marriage.

19 429. City Code § 18 empowers the Phoenix Equal Opportunity Department and the Phoenix
20 City Attorney to enforce § 18.

21 430. To initiate enforcement proceedings, a person can file a complaint alleging a § 18
22 violation on behalf of herself or on behalf of someone else with the Equal Opportunity Department.

23 431. A member of the Equal Opportunity Department can also file a complaint on behalf of
24 someone else.

25 432. Once someone files a complaint, the Equal Opportunity Department notifies the accused
26 and begins to investigate the matter.

27 433. After investigating, the Equal Opportunity Department issues a report of its findings.

1 434. If this report determines that reasonable cause exists to believe an illegal activity has
2 occurred, the Equal Opportunity Department seeks to resolve the matter and stop the alleged
3 discrimination through informal means like persuasion, mediation, or conciliation.

4 435. If these informal means do not stop the alleged discrimination, the Equal Opportunity
5 Department refers the case to the City Attorney for criminal prosecution.

6 436. City Code § 18-7 specifies the penalties for violating § 18-4.

7 437. City Code § 18-7 imposes criminal penalties on someone who violates § 18-4.

8 438. City Code § 18-7 states in part as follows:

9 *Criminal sanctions.* Upon conviction of each violation of any provisions of this article not
10 otherwise provided for, the person so convicted shall be guilty of a Class 1 misdemeanor.

11 439. City Code § 1-5 specifies the penalties for a Class 1 misdemeanor.

12 440. City Code § 1-5 states in part as follows:

13 [A]ny person violating any such provisions of this Code or any ordinance is guilty of a Class 1
14 misdemeanor punishable by a fine not exceeding two thousand five hundred dollars or
15 imprisonment for a term not exceeding six months or probation not to exceed three years or any
16 combination of such fine and imprisonment, and probation in the discretion of the City
17 magistrate. Each day any violation of any provisions of this Code or of any ordinance shall
18 continue shall constitute a separate offense.

19 441. Accordingly, Brush & Nib, Joanna, and Breanna commit a separate and distinct
20 misdemeanor each day they follow their religious beliefs and a) decline to create art for a same-sex
21 wedding ceremony or b) publicize a statement indicating their intent to decline to create artwork for a
22 same-sex wedding ceremony or c) publicize a statement that states or implies same-sex couples are
23 unwelcome, objectionable, unacceptable, undesirable or not solicited.

24 442. Phoenix punishes each of these misdemeanor violations by jail time, a fine, probation, or
25 any combination of these.

26 443. City Code § 18.4 uses criminal penalties to prohibit four things that Brush & Nib, Joanna,
27 and Breanna want and feel compelled to do because of their artistic and religious beliefs:

- 1 • Decline requests to create custom artwork that violates Joanna and Breanna’s religious and
2 artistic beliefs, including any custom artwork for or supporting same-sex wedding ceremonies.
- 3 • Publicize a statement on Brush & Nib’s website that explains Joanna and Breanna’s religious
4 beliefs in favor of one-man/one-woman marriage exclusively.
- 5 • Publicize a statement on Brush & Nib’s website that states an intent to decline to create custom
6 artwork for or supporting same-sex wedding ceremonies.
- 7 • Publicize a statement on Brush & Nib’s website that explains why Joanna and Breanna cannot
8 create custom artwork that violates their artistic and religious beliefs, including any custom
9 artwork for or supporting same-sex wedding ceremonies.

10 Worst fears confirmed: Phoenix interprets City Code § 18 to restrict artistic and religious freedom

11 444. Through a public records request, Brush & Nib, Joanna, and Breanna learned of
12 documents indicating how Phoenix interprets and applies City Code § 18.4.

13 445. This record request asked for documents discussing § 18.4(B), investigations under
14 § 18.4(B), and enforcement and interpretation of § 18.4(B).

15 446. A true and correct copy of this request is attached to the Complaint as Exhibit 18.

16 447. Phoenix provided responsive documents to this request on November 23, 2015.

17 448. A true and correct copy of these documents is attached to the Complaint as Exhibit 19.

18 449. According to these documents, a same-sex couple complained to the Phoenix Equal
19 Opportunity Department on January 9, 2015 about a public accommodation that allegedly discriminated
20 against them on the basis of their sexual orientation.

21 450. According to the couple’s allegation, a for-profit wedding business had discriminated
22 against them when that business’s owner declined to provide services to them because of the owner’s
23 religious beliefs against same-sex marriage.

24 451. An ordained minister operated that wedding business.

25 452. That wedding business offered ministerial services, photography services, tables, and
26 chairs for weddings.

27 453. Upon information and belief, this wedding business does not have a physical storefront.

1 454. This wedding business advertises and solicits to the general public through a website.

2 455. After receiving the complaint, the Equal Opportunity Department investigated and issued
3 a final investigative report. *See Exhibit 19, at 0071-77.*

4 456. That final investigative report made numerous findings and conclusions, including the
5 following:

- 6 • By declining to provide its expressive services in the same-sex marriage context, the business
7 owner engaged in “a denial of service based on protected status.”
- 8 • “The business owners are religious, but the business is secular and does not promulgate a
9 religious belief or system.”
- 10 • “[T]he organization does not meet the definition of a bona fide religious organization and
11 therefore is not exempt from the anti-discrimination requirements in the Phoenix City Code,
12 Chapter 18.”

13 457. Despite these conclusions, the final investigative report found insufficient evidence of
14 discrimination for the following reasons:

- 15 • Clergy like the business owner have “state and federal protections that shield them from being
16 required to provide ministerial services that do not align with their sincerely held religious
17 beliefs”; and
- 18 • Complainants could not prove that “they were only seeking tables, chairs, or photography
19 services” as opposed to ministerial services.

20 458. Neither Joanna nor Breanna is an ordained minister.

21 459. Brush & Nib does not offer ministerial services.

22 460. According to the final investigative report, City Code Chapter 18 requires for-profit
23 businesses to offer photography services to same-sex couples for their wedding ceremonies if businesses
24 offer the same services to opposite-sex couples.

25 461. According to the final investigative report, City Code Chapter 18 requires for-profit
26 businesses to create artwork like photography for same-sex wedding ceremonies if businesses offer to
27 create the same artwork for opposite-sex wedding ceremonies.

1 462. According to the final investigative report, City Code Chapter 18 requires for-profit
2 businesses to provide photography services to same-sex couples for their wedding if businesses offer the
3 same photography services to opposite-sex couples regardless of the business owners' religious beliefs.

4 463. The final investigative report's logic and conclusions demonstrate the following:

- 5 • Brush & Nib is a public accommodation under City Code Chapter 18 because Brush & Nib
6 sells items to the general public through its website.
- 7 • City Code Chapter 18 requires Brush & Nib, Joanna, and Breanna to create custom artwork for
8 same-sex wedding ceremonies regardless of their religious beliefs because Brush & Nib offers
9 to create similar artwork for opposite-sex wedding ceremonies.
- 10 • City Code Chapter 18 prohibits Brush & Nib, Joanna, and Breanna from publicizing statements
11 on Brush & Nib's website if those statements explain their religious beliefs in favor of one-
12 man/one-woman marriage exclusively or against same-sex marriage.
- 13 • City Code Chapter 18 prohibits Brush & Nib, Joanna, and Breanna from publicizing statements
14 on Brush & Nib's website if those statements decline to create or explain an inability to create
15 custom artwork for or supporting same-sex wedding ceremonies.

16 464. The City of Phoenix Equal Opportunity Department affirmed and adopted the final
17 investigative report's logic, conclusions, and ruling in an order signed by the Department's Director. *See*
18 Exhibit 19, at 0166-67.

19 The dotted line: Joanna & Breanna codify their beliefs in Brush & Nib's documents

20 465. After discussing their artistic and religious beliefs in the spring of 2015 and learning that
21 City Code § 18.4 threatens their freedoms, Joanna and Breanna amended Brush & Nib's business
22 documents.

23 466. They did so to explain their joint agreements about God, marriage, and artistic freedom,
24 and to protect their religious and artistic freedoms as much as possible.

25 467. These amendments did not change how Brush & Nib operated.

26 468. Brush & Nib has always operated in accordance with Joanna and Breanna's religious
27 beliefs.

1 469. The amendments merely codified and confirmed Brush & Nib’s prior practices.

2 470. The amendments also codified Joanna’s and Breanna’s beliefs into a joint statement that
3 would formally bind their business going forward.

4 471. Joanna and Breanna wanted to codify these beliefs and practices because they addressed
5 very important issues that would affect their business. These issues include the purpose of their business,
6 their artistic freedom, their religious expression, and their process for deciding whether to create art.

7 472. Joanna and Breanna did not make these changes earlier because they had never started a
8 business before, had never confronted a concrete situation requiring them to articulate their artistic and
9 religious beliefs in such detail, and did not realize the need for such detail in their business documents
10 until learning about the threat against their business.

11 473. That all changed when Joanna and Breanna learned about City Code § 18.4.

12 474. Therefore, after they realized the need, Joanna and Breanna amended their business
13 documents, including their operating agreement, to codify and explain their beliefs and practices.

14 475. A true and correct copy this Operating Agreement (with addresses redacted) is attached
15 to the Complaint as Exhibit 20.

16 476. This Operating Agreement identifies the company’s core beliefs, values, goals, and
17 operating procedures.

18 477. Brush & Nib abides by its Operating Agreement.

19 478. The statements in Brush & Nib’s Operating Agreement accurately reflect Joanna and
20 Breanna’s beliefs, values, goals, and procedures for Brush & Nib.

21 479. Brush & Nib’s purpose is to create authentic artwork that echoes God’s perfect and true
22 beauty.

23 480. Brush & Nib reserves the right to decline requests for any custom artwork that violates its
24 owners’ artistic or religious beliefs.

25 481. Brush & Nib’s policy is to decline to create any custom artwork that violates its owners’
26 artistic or religious beliefs, such as artwork for same-sex wedding ceremonies.

1 Pledge allegiance: City Code § 18 compels artists to create objectionable art

2 482. Because § 18.4(B)(1-2) requires Brush & Nib, Joanna, and Breanna to create artwork that
3 violates their religious and artistic beliefs, because Phoenix investigates businesses for declining to
4 create certain artwork, because Phoenix has enforced and interpreted § 18.4(B)(1-2) to require
5 expressive businesses to violate their owners' religious beliefs, and because § 18.4 imposes criminal
6 penalties, Brush & Nib, Joanna, and Breanna face an impossible choice between three options.

7 483. First, Brush & Nib, Joanna, and Breanna could receive and then decline a request to
8 create artwork that violates their artistic and religious beliefs, such as custom artwork for same-sex
9 wedding ceremonies.

10 484. But if Brush & Nib, Joanna, and Breanna declined such a request or if they even delayed
11 in responding to such a request because of their artistic and religious beliefs about one-man/one-woman
12 marriage, Brush & Nib, Joanna, and Breanna would violate the law and expose themselves to
13 investigation and criminal penalties.

14 485. Brush & Nib, Joanna, and Breanna are reasonably sure to receive requests to create
15 custom art for same-sex wedding ceremonies because Brush & Nib operates in the wedding industry and
16 same-sex marriage is now legal throughout the United States, including Arizona.

17 486. Since Brush & Nib opened in May 2015, Brush & Nib has received more requests for and
18 created more artwork for weddings than any other event.

19 487. Polling data confirms that it is reasonably sure Brush & Nib will receive requests to
20 create art for same-sex wedding ceremonies.

21 488. According to data from a Gallup poll, same-sex marriages have increased in number and
22 percent from June 26, 2015 to November 3, 2015, both in states where same-sex marriage was legal
23 before *Obergefell v. Hodges* and in states where same-sex marriage was illegal before *Obergefell*.

24 489. This Gallup poll data is available on the webpage here:

25 <http://www.gallup.com/poll/186518/sex-marriages-supreme-court->
26 [ruling.aspx?utm_source=alert&utm_medium=email&utm_content=morelink&utm_campaign=syndicati](http://www.gallup.com/poll/186518/sex-marriages-supreme-court-ruling.aspx?utm_source=alert&utm_medium=email&utm_content=morelink&utm_campaign=syndicati)
27 [on.](http://www.gallup.com/poll/186518/sex-marriages-supreme-court-ruling.aspx?utm_source=alert&utm_medium=email&utm_content=morelink&utm_campaign=syndicati)

1 490. A true and correct copy of this webpage is attached to the Complaint as Exhibit 21.

2 491. The Williams Institute also issued a study estimating that 7,909 Arizona same-sex
3 couples would marry within the first three years of same-sex marriage becoming legal in Arizona.

4 492. This study estimates that same-sex couples would spend \$47.5 million on weddings in
5 Arizona within the first three years of same-sex marriage becoming legal.

6 493. This study is available on the webpage here: [http://williamsinstitute.law.ucla.edu/wp-](http://williamsinstitute.law.ucla.edu/wp-content/uploads/AZ-Econ-Impact-June-2014.pdf)
7 [content/uploads/AZ-Econ-Impact-June-2014.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/AZ-Econ-Impact-June-2014.pdf).

8 494. A true and correct copy of the webpage with this Williams Institute study is attached to
9 the Complaint as Exhibit 22.

10 495. In light this data about same-sex marriages, it is reasonably sure Brush & Nib, Joanna,
11 and Breanna will receive requests to create custom artwork for same-sex wedding ceremonies.

12 496. Second, Brush & Nib, Joanna, and Breanna could stop creating art for all weddings,
13 businesses, and non-profit entities and close their business.

14 497. But this option would violate God's call to Joanna and Breanna to use their artistic talents
15 and gifts.

16 498. Joanna and Breanna do not want to close their business, stop creating art, or leave the
17 calligraphy/hand-painting industry merely because they follow their artistic and religious beliefs.

18 499. Third, Brush & Nib, Joanna, and Breanna could create custom artwork that violates their
19 artistic and religious beliefs.

20 500. But Joanna and Breanna will not choose this third option because they will not
21 compromise their artistic and religious beliefs.

22 501. Joanna and Breanna want to and can only create art that promotes or is consistent with
23 God's design for marriage. To do anything else would violate their artistic and religious beliefs.

24 502. Thus, Brush & Nib, Joanna, and Breanna cannot take any of the three options discussed
25 above without suffering severe harm.

26 503. Because Joanna and Breanna cannot follow any of these options, they cannot presently
27 plan ahead for their business.

1 504. City Code § 18.4(B) creates great uncertainty for Joanna and Breanna about whether they
2 can operate their business in the future and about how they can currently operate their business.

3 505. Faced with the three impossible options described above, Joanna and Breanna would
4 rather close their business or violate the law than violate their artistic and religious beliefs.

5 506. To remain faithful to their beliefs, Joanna and Breanna will decline to create custom art
6 for any project that violates their artistic or religious beliefs even if doing so violates City Code § 18.4.

7 507. Therefore, when customers request Brush & Nib to create custom art that violates Joanna
8 or Breanna’s artistic and religious beliefs, Joanna and Breanna desire to send the following statement to
9 those customers:

10 Thank you very much for contacting Brush & Nib Studio about your custom project. Brush &
11 Nib Studio is a for-profit art studio that is owned by Christian artists who operate this studio in
12 accordance with our artistic and religious beliefs. Because these beliefs inspire everything we do
13 – from why we create art to how we create art to what art we create – we must remain true to
14 these beliefs. We cannot be authentic artists or create high quality authentic artwork if that
15 artwork compromises who we are or what we believe. Unfortunately, we have determined that
16 we cannot remain consistent with our beliefs and create the specific project you have requested.
17 Therefore, we will have to decline to create your request. We greatly value you and your
18 business however and would happily consider creating artwork for you for a different project.
19 Thank you again for your consideration.

20 Ignorance is strength: City Code § 18 silences statements supporting traditional marriage

21 508. Because § 18.4(B)(3) prohibits Brush & Nib, Joanna, and Breanna from publishing
22 statements about what they can and cannot create, because Phoenix investigates businesses for
23 publishing statements that Brush & Nib, Joanna, and Breanna want to publish, because Phoenix has
24 interpreted § 18.4 to silence speech by expressive businesses, and because § 18.4 imposes criminal
25 penalties, Brush & Nib, Joanna, and Breanna face an impossible choice between two options.

26 509. First, Joanna and Breanna could hide their artistic and religious beliefs from their
27 customers and the public.

1 510. But Joanna and Breanna want and are religiously compelled to be upfront and authentic
2 about their business and about their religious and artistic beliefs.

3 511. Breanna and Joanna believe they must be upfront with their customers about what they
4 can and cannot do and how their faith affects their artistic vision, including what art they can create.

5 512. Joanna and Breanna cannot mislead customers into believing that Brush & Nib offers to
6 create artwork it does not or holds beliefs it does not.

7 513. If customers ask Brush & Nib to create custom art for events promoting same-sex
8 marriage, such as same-sex wedding ceremonies, Joanna or Breanna must answer that inquiry and
9 decline to create the custom art.

10 514. Nor can Joanna and Breanna hide their religious identity or the religious inspiration
11 behind their artwork. To honor and acknowledge God, Joanna and Breanna must explain their religious
12 beliefs about their art, about marriage, and about what they can and cannot create.

13 515. Breanna and Joanna believe that they cannot authentically run their business and hide
14 their deeply held religious opinions on important topics affecting their business.

15 516. After Joanna and Breanna saw the outpouring of support in favor of the *Obergefell*
16 decision and thought more about the value of their artistic freedom and their beliefs about marriage,
17 Joanna and Breanna wondered – if other artists can create artwork consistent with their beliefs, can
18 voice their support for same-sex marriage, and can freely express their views about topics important to
19 them, why can we not create artwork consistent with our beliefs and explain our beliefs about a topic
20 important to us?

21 517. After this outpouring of support in favor of the *Obergefell* decision, Joanna and Breanna
22 also further appreciated the significance of their beliefs about marriage and the increasing need to
23 discuss those beliefs in a public setting.

24 518. Breanna and Joanna therefore see the need and have a religious obligation for their
25 business to publicly explain how their religious beliefs shape their business decisions about art and
26 artistic freedom.

27 519. Breanna and Joanna also see the need and have a religious obligation to explain their

1 religious beliefs about marriage.

2 520. For all these reasons, Joanna and Breanna want to publish a particular statement on Brush
3 & Nib’s website that will: explain their artistic and religious beliefs as they relate to Brush & Nib and
4 Brush & Nib’s art; decline to create custom artwork for certain events including same-sex wedding
5 ceremonies; explain Joanna and Breanna’s artistic and religious reasons for not creating custom artwork
6 for certain events; explain Joanna and Breanna’s beliefs in support of one-man/one-woman marriage
7 exclusively; and explain Joanna and Breanna’s artistic and religious reasons for not creating artwork for
8 same-sex wedding ceremonies.

9 521. A true and correct copy of the exact statement Joanna and Breanna want to publish on
10 Brush & Nib’s website is attached to this Complaint as Exhibit 23.

11 522. This statement contains the words “click here,” and these words link to an article that
12 further explains Joanna and Breanna’s religious beliefs generally and their religious beliefs about
13 marriage in particular.

14 523. This article is available on the webpage here: [http://www.desiringgod.org/articles/the-](http://www.desiringgod.org/articles/the-surpassing-goal-marriage-lived-for-the-glory-of-god)
15 [surpassing-goal-marriage-lived-for-the-glory-of-god](http://www.desiringgod.org/articles/the-surpassing-goal-marriage-lived-for-the-glory-of-god).

16 524. A true and correct copy of this article is attached to this Complaint as Exhibit 24.

17 525. Joanna and Breanna wish to publish the statement mentioned in ¶¶ 520-24 on Brush &
18 Nib’s website so that Brush & Nib’s website looks like the screen shot attached to the Complaint as
19 Exhibit 25.

20 526. If Joanna and Breanna publish the statement mentioned in ¶¶ 520-24 on Brush & Nib’s
21 website, they will place the statement on a separate page on this website. This page will be entitled “Our
22 Vision” and will be viewable and accessible under the “About” tab on Brush & Nib’s website, below the
23 entry entitled “Meet Us” and above the entry entitled “FAQ.”

24 527. Joanna and Breanna also wish to make similar statements to Brush & Nib customers.

25 528. But if Joanna and Breanna publish these statements on Brush & Nib’s website or to
26 customers, Joanna and Breanna would encounter the second option of their dilemma: they will violate
27 § 18.4(B)(3) – the prohibition on posting statements.

1 529. If Joanna and Breanna publish the statement mentioned in ¶¶ 520-24 on Brush & Nib’s
2 website or similar statements to Brush & Nib customers, Brush & Nib, Joanna, and Breanna would
3 violate § 18.4(B)(3).

4 530. City Code § 18.4(B)(3) chills and deters Brush & Nib’s, Joanna’s, and Breanna’s desired
5 speech.

6 531. For fear of violating § 18.4(B)(3), for fear of being investigated, and for fear of suffering
7 criminal penalties, Brush & Nib, Joanna, and Breanna have not and will not publish the statement
8 mentioned in ¶¶ 520-24 on Brush & Nib’s website or make similar statements to Brush & Nib
9 customers.

10 532. If not for § 18.4(B)(3), Brush & Nib, Joanna, and Breanna would immediately publish the
11 statement mentioned in ¶¶ 520-24 on Brush & Nib’s website and make similar statements to customers.

12 533. Thus, Brush & Nib, Joanna, and Breanna must choose between a) violating the law,
13 undergoing investigation, and suffering fines and jail time for each day they publish their statements or
14 b) staying silent about their beliefs on art, religion, and marriage.

15 534. Joanna and Breanna cannot accept either choice.

16 Picking sides: City Code § 18 allows others to create art and speak in favor of same-sex marriage

17 535. While Brush & Nib want to create art and publish statements consistent with Joanna and
18 Breanna’s artistic and religious beliefs, many other artists and invitation businesses in Arizona and in
19 other states hold different religious and artistic beliefs than Joanna and Breanna.

20 536. Therefore, many other invitation businesses and artists in Arizona and in other states can
21 create art for events that Brush & Nib cannot.

22 537. Likewise, many other invitation businesses and artists in Arizona and in other states
23 publish statements explaining beliefs different from and even opposed to Joanna and Breanna’s artistic
24 and religious beliefs.

25 538. For example, many invitation businesses in Arizona will create artwork for same-sex
26 wedding ceremonies.

27 539. One such business is Sundance Invitations.

1 540. Sundance Invitations is based in Phoenix and does business in Phoenix.

2 541. According to the front page of Sundance's website, Sundance Invitations is "A Proud
3 LGBT Business."

4 542. This front page also contains a rainbow flag.

5 543. The front page also states: "Arizona LGBT Weddings & Events If you are looking for
6 event and wedding specialists that are LGBT friendly come and see our facebook group Arizona LGBT
7 Weddings!! We created this group to give LGBT couples a place to find not just a place to find
8 businesses that will work with you but look forward to working with you and creating your big day!!
9 <https://www.facebook.com/groups/ArizonaLGBTWeddings/>".

10 544. This front page is available here: <http://www.sundanceinvitations.com/>.

11 545. A true and correct copy of this front page is attached to the Complaint as Exhibit 26
12 (highlights added).

13 546. Many other Arizona calligraphy and invitation companies advertise in gay friendly
14 publications.

15 547. For example, five calligraphy and invitation companies advertise on the wedding section
16 of gayarizona.com.

17 548. In these advertisements, three of the companies list a Phoenix address, one company lists
18 a Scottsdale address, and the other company says it serves "the Phoenix Metro Area." *See Exhibit 27, at*
19 *0271-72.*

20 549. The website with these advertisements is available here:
21 <http://gayarizona.com/phoenix/wedding/>.

22 550. A true and correct copy of this webpage is attached to the Complaint as Exhibit 27
23 (highlights added).

24 551. Many other calligraphy and invitation companies operate outside Arizona yet will still
25 create art for same-sex wedding ceremonies in Arizona.

26 552. For example, gayweddings.com contains a vendor list of "LGBTQ-Friendly Wedding
27 Vendors."

1 553. In the invitation category for “LGBTQ-Friendly Wedding Vendors,” gayweddings.com
2 lists 55 calligraphy and invitation companies that serve Arizona.

3 554. The webpage with these search results is available here:
4 [http://gayweddings.com/vendors/?f-zip=arizona&f-cat=invitation&e-search=1&pa=1&f-
6 vsb=vendor_name](http://gayweddings.com/vendors/?f-zip=arizona&f-cat=invitation&e-search=1&pa=1&f-
5 vsb=vendor_name).

6 555. A true and correct copy of this webpage is attached to the Complaint as Exhibit 28.

7 556. Upon information and belief, these 55 calligraphy and invitation companies will create
8 artwork and invitations for same-sex wedding ceremonies in Arizona.

9 557. Besides these 55 calligraphy and invitation companies, gayweddings.com lists other
10 calligraphy and invitation companies that do business outside of Arizona.

11 558. Upon information and belief, these calligraphy and invitation companies will also create
12 artwork and invitations for same-sex wedding ceremonies.

13 559. Because of the ability of calligraphy and invitation companies to ship their artwork
14 anywhere in the United States, many calligraphy and invitation companies that do business outside of
15 Arizona will also create artwork for weddings in Arizona.

16 560. Upon information and belief, many of the calligraphy and invitation companies that
17 gayweddings.com lists as doing business outside of Arizona will also create artwork for same-sex
18 weddings in Arizona.

19 561. In light of the options listed above, same-sex couples in Arizona can find multiple
20 calligraphy and invitation companies willing to create artwork for same-sex wedding ceremonies.

21 562. In fact, everyone who asks Brush & Nib to create custom artwork for same-sex wedding
22 ceremonies will eventually receive custom artwork because Brush & Nib will refer these requests to
23 other calligraphy and invitation companies that create for same-sex wedding ceremonies.

24 563. If Joanna or Breanna believes a potential customer has requested Brush & Nib to create
25 custom artwork for a same-sex wedding ceremony, Joanna and Breanna want to send the following
26 statement to that customer:

27 Thank you very much for contacting Brush & Nib Studio about your custom project. Brush &

1 Nib Studio is a for-profit art studio that is owned by Christian artists who operate this studio in
2 accordance with our artistic and religious beliefs. Because these beliefs inspire everything we do
3 – from why we create art to how we create art to what art we create – we must remain true to
4 these beliefs. We cannot be authentic artists or create high quality authentic artwork if that
5 artwork compromises who we are or what we believe. Unfortunately, we have determined that
6 we cannot remain consistent with our beliefs and create the specific project you have requested.
7 Therefore, we will have to decline to create your request. We greatly value you and your
8 business however and would happily consider creating artwork for you for a different project. If
9 you want custom artwork for a same-sex wedding ceremony, we encourage you to visit this
10 webpage: [http://gayweddings.com/vendors/?f-zip=arizona&f-cat=invitation&e-](http://gayweddings.com/vendors/?f-zip=arizona&f-cat=invitation&e-search=1&pa=1&f-vs=vendor_name)
11 [search=1&pa=1&f-vs=vendor_name](http://gayweddings.com/vendors/?f-zip=arizona&f-cat=invitation&e-search=1&pa=1&f-vs=vendor_name). It contains a list of Arizona invitation businesses that can
12 create artwork for same-sex wedding ceremonies. These businesses will create much better
13 artwork for your particular event than we can. Thank you again for your consideration.

14 564. Although Brush & Nib wants to send this response to anyone requesting custom artwork
15 for same-sex wedding ceremonies, Brush & Nib will not do so for fear of violating City Code § 18.

16 565. If not for § 18, Brush & Nib would send the response in ¶ 563 to anyone Joanna or
17 Breanna believes to be requesting custom artwork for same-sex wedding ceremonies.

18 566. Besides calligraphy and invitation companies, many other Arizona businesses serve
19 same-sex wedding ceremonies and same-sex couples.

20 567. For example, many Fortune 500 companies do business in Phoenix and almost all
21 Fortune 500 businesses have policies protecting LGBT employees and job applicants.

22 568. An organization called the Human Rights Campaign publishes a yearly study called the
23 Corporate Equality Index that rates American businesses on LGBT issues.

24 569. According to this study's 2016 edition, 93% of Fortune 500 companies have policies
25 protecting LGBT employees.

26 570. A copy of this 2016 study is available here: [http://hrc-assets.s3-website-us-east-](http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/CEI-2016-FullReport.pdf)
27 [1.amazonaws.com//files/assets/resources/CEI-2016-FullReport.pdf](http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/CEI-2016-FullReport.pdf).

1 571. Many Phoenix businesses even promote the acceptance of same-sex marriage.

2 572. For example, many national and Arizona businesses expressed support for the *Obergefell*
3 v. *Hodges* decision requiring states to recognize same-sex marriage.

4 573. As one article in the Phoenix Business Journal summarized, “[t]he reaction from
5 Corporate America, Madison Avenue and some of the top brands nationally and in Arizona to last
6 week’s same-sex marriage decision was a landslide of positivity.”

7 574. A copy of this news article is available here:
8 [http://www.bizjournals.com/phoenix/blog/business/2015/06/why-corporate-america-and-big-](http://www.bizjournals.com/phoenix/blog/business/2015/06/why-corporate-america-and-big-arizonabrands.html)
9 [arizonabrands.html](http://www.bizjournals.com/phoenix/blog/business/2015/06/why-corporate-america-and-big-arizonabrands.html).

10 575. A true and correct copy of this news article is attached to the Complaint as Exhibit 29
11 (highlights added).

12 576. City Code § 18.4(B)(3) does not prohibit artists and expressive businesses from
13 publishing statements explaining their artistic, religious, and political beliefs supporting same-sex
14 marriage.

15 577. In fact, many Phoenix artists currently publish statements in support of same-sex
16 marriage, such as Sundance Invitations. *See supra* ¶¶ 539-45.

17 578. And across the country, artists connect their art to their beliefs about same-sex marriage
18 and explain how their art supports same-sex marriage.

19 579. For example, 14 Stories is a for-profit event planning firm that specializes in producing
20 LGBT weddings.

21 580. 14 Stories charges for these services.

22 581. 14 Stories offers to plan weddings in Arizona.

23 582. According to 14 Stories’ website, 14 Stories seeks not only “to design innovative,
24 distinctive weddings but also create a wedding industry inclusive of all couples.”

25 583. The webpage with this quote is available here: [http://www.14stories.com/about-the-gay-](http://www.14stories.com/about-the-gay-wedding-planners.htm)
26 [wedding-planners.htm](http://www.14stories.com/about-the-gay-wedding-planners.htm).

27 584. A true and correct copy of this webpage is attached to the Complaint as Exhibit 30

1 (highlights added).

2 585. On the same webpage, 14 Stories explains its name this way:

3 What's the 14?

4 The number 14 has a powerful legacy in marriage's civil rights history. The U.S. Constitution's
5 14th amendment worked toward establishing nationwide marriage equality and ending the ban
6 on interracial marriage. The historic court case that first brought marriage equality to
7 Massachusetts in 2004 had 14 plaintiffs. We believe that these stories - and your stories - change
8 the world. Our work is to translate these stories into once-in-a-lifetime, one-of-a-kind weddings.

9 586. According to the same webpage, 14 Stories supports HRC, Lambda Legal, The Point
10 Foundation, GLAD, Marriage Equality USA, and the Family Equality Council.

11 587. These organizations advocate for legal and social acceptance of same-sex marriage.

12 588. 14 Stories' website also contains a blog.

13 589. One blog entry explains 14 Stories's purpose this way:

14 I honestly try to focus this blog on the "how to..." elements of wedding planning, but the truth is
15 that 14 Stories is an activist-type company. We care about the laws. We only plan legal
16 weddings. We provide every couple we meet with a list of resources that can help them protect
17 their families. The reality is, for LGBT couples, marriage is not enough.

18 590. This blog entry is available here:

19 [http://www.14stories.com/ blog/Weddings_Redefined/post/Thoughts_on Proposition_1_in North Car
20 olina/](http://www.14stories.com/blog/Weddings_Redefined/post/Thoughts_on Proposition_1_in_North_Carolina/).

21 591. A true and correct copy of this webpage is attached to the Complaint as Exhibit 31

22 (highlights added).

23 592. Many other 14 Stories' blog entries support same-sex marriage and encourage readers to
24 vote for and give money in support of same-sex marriage.

25 593. For example, one blog entry discussed Proposition 8 – a California voter proposition
26 protecting traditional marriage – and encouraged readers to volunteer and give money to nullify
27 Proposition 8.

1 594. This blog entry is available here:

2 http://www.14stories.com/blog/Weddings_Redefined/post/The_Final_Word_on_Prop_8/.

3 595. A true and correct copy of this webpage is attached to the Complaint as Exhibit 32.

4 596. Another artistic business that creates art supporting same-sex marriage is Ladyfingers
5 Letterpress.

6 597. Ladyfingers Letterpress is a for-profit invitation and stationary company based in
7 Colorado Springs, Colorado.

8 598. Ladyfingers Letterpress creates and sells hand-drawn, custom invitations and stationary –
9 including wedding invitations – as well as pre-made works.

10 599. Ladyfingers Letterpress creates and sells its custom and pre-made works for customers
11 across the country, including Arizona.

12 600. The Ladyfingers Letterpress website describes Ladyfingers’ work this way: “We here at
13 Ladyfingers Letterpress enjoy using the fine art of hand-lettering to make your custom name and/or
14 address especially unique.”

15 601. The webpage with this text is available here:

16 <http://ladyfingersletterpress.com/pages/policies>.

17 602. A true and correct copy of this webpage is attached to the Complaint as Exhibit 33
18 (highlights added).

19 603. This same webpage also states the following: “We are not obligated to accept any job,
20 and our refund of your payment at our discretion will release us from any further obligation to you
21 whatsoever.” Exhibit 33, at 0342.

22 604. Ladyfingers Letterpress creates and sells works that support same-sex marriage.

23 605. For example, Ladyfingers Letterpress creates and sells a “Queer Folk” greeting cards
24 collection.

25 606. This “Queer Folk” collection is available at this webpage:

26 <http://ladyfingersletterpress.com/collections/gay-folk>.

27 607. A true and correct copy of this webpage is attached to the Complaint as Exhibit 34.

1 608. Among the cards in this collection, Ladyfingers Letterpress creates and sells a “Marriage
2 Equality Letterpress Print” containing an excerpt of the *Obergefell* decision.

3 609. Ladyfingers Letterpress’s website describes this print this way:

4 On June 26, 2015, Justice Anthony Kennedy released these words that changed the world for
5 millions of LGBT Americans when the Supreme Court ruled that all couples have the right to
6 marry. Commemorate this beautiful moment with a 11" x 14" hand-lettered design that we’ve
7 letterpress printed onto soft and thick 110lb Crane's Lettra Paper. Perfect for wedding gifts and
8 anniversaries! Available in Ecu or Blush Paper.

9 610. The webpage with this text and with a picture of the “Marriage Equality Letterpress
10 Print” is available here: [http://ladyfingersletterpress.com/collections/gay-folk/products/marriage-
equality-letterpress-print](http://ladyfingersletterpress.com/collections/gay-folk/products/marriage-
11 equality-letterpress-print).

12 611. A true and correct copy of this webpage is attached to the Complaint as Exhibit 35.

13 612. Another artistic business that creates art supporting same-sex marriage is Design with
14 Heart Studio.

15 613. Design with Heart Studio is a for-profit design company based in Worthington, Ohio.

16 614. Design with Heart Studio creates and sells pre-made and custom art prints, greeting
17 cards, and wedding suites, including wedding invitations.

18 615. Design with Heart Studio creates and sells its custom and pre-made works for customers
19 across the country, including Arizona.

20 616. A webpage on Design with Heart Studio’s website describes the purpose and inspiration
21 for Design with Heart Studio’s artwork this way:

22 Design With Heart was inspired by a simple but powerful premise: love is love. It’s how we live
23 our lives and it’s what we think everyone has in common. Love is love, no matter who you are or
24 what the occasion.

25 At Design With Heart, we’re perennial optimists. We believe marriage equality will be the law
26 of the land. We believe the American family comes in all shapes, sizes and colors. We believe
27 that inclusion is for everyone. We believe in love. Our founder, Jason, and his husband, Chris,

1 are going on 20 years together. When they were legally married — attended by their two adopted
2 children — the grooms were celebrated with an outpouring of love. But Jason noticed how few
3 options people had for buying cards to celebrate the occasion.

4 Love lit the creative spark that became Design With Heart. We say all the things that people
5 want to say, no matter who they are or who they love.

6 617. The webpage with this text is available here: <http://designwithheart.com/about/>.

7 618. A true and correct copy of this webpage is attached to the Complaint as Exhibit 36
8 (highlights added).

9 619. Design with Heart Studio creates and sells works supporting same-sex marriage.

10 620. For example, Design with Heart Studio creates and sells a print entitled “Arizona
11 celebrates marriage equality.”

12 621. This print depicts the state of Arizona with a heart and then with the text “Love Wins!
13 Celebrating Marriage Equality.”

14 622. The webpage with a picture of this print is available here:
15 <http://designwithheart.com/?artprints=arizona-celebrates-marriage-equality>.

16 623. A true and correct copy of this webpage is attached to the Complaint as Exhibit 37.

17 624. Design with Heart Studio also creates and sells greeting cards with illustrations of a heart
18 filled in with rainbow colors.

19 625. Pictures of these greeting cards are available here:
20 <http://designwithheart.com/greetingcards/lgbt/>.

21 626. A true and correct copy of this webpage is attached to the Complaint as Exhibit 38.

22 627. As the above examples show, many artists create and sell artwork – including wedding
23 invitations, cards, and prints – supporting same-sex marriage.

24 628. As the above examples show, many artists sell art and publish statements explaining their
25 art, their artistic motivations, and their artistic beliefs.

26 629. As the above examples show, many artists sell art and publish statements explaining their
27 beliefs about marriage and about same-sex marriage.

1 630. As the above examples show, many artists sell art and publish statements supporting
2 same-sex marriage.

3 631. As the above examples show, many artists sell art and publish statements connecting their
4 artistic inspirations to their beliefs about equality, marriage, and politics.

5 632. As the above examples show, many artists sell their art and reserve the right to decline to
6 create artwork that violates their beliefs.

7 633. Brush & Nib, Joanna, and Breanna whole-heartedly support the rights of these and other
8 artists to create and sell art consistent with their beliefs; to decline to create art inconsistent with their
9 beliefs; to publish statements explaining their beliefs about art, marriage, religion, and politics; to
10 publish statements reserving their right to decline to create art inconsistent with their beliefs; and to
11 publish statements expressing support for same-sex marriage.

12 634. Brush & Nib, Joanna, and Breanna merely want to exercise the same rights these other
13 artists have exercised.

14 635. But § 18.4 prohibits Brush & Nib, Joanna, and Breanna from exercising the same rights
15 these other artists have exercised because of the content and viewpoint of Joanna and Breanna's
16 religious and artistic beliefs and message.

17 All in: this lawsuit raises important questions about the public's right to create and speak

18 636. Joanna and Breanna bring this lawsuit to clarify their constitutional and statutory rights to
19 live, speak, create, and operate their business in accordance with their artistic and religious beliefs.

20 637. Joanna and Breanna also bring this lawsuit to clarify the constitutional and statutory
21 rights of all Arizonians to live, speak, create, and operate their businesses in accordance with their
22 beliefs.

23 638. This lawsuit raises issues of great public interest, including the scope of religious and
24 artistic freedom; the proper relationship between anti-discrimination laws, freedom of speech, and
25 religious freedom; the meaning of free speech and religious liberty; the ability of governments to target
26 particular viewpoints; and the ability of the government to silence dissent.

27 639. These issues have garnered nationwide news coverage.

1 Breanna.

2 650. Brush & Nib, Joanna, and Breanna do not have an adequate monetary remedy or remedy
3 at law for the loss of their constitutional and statutory rights.

4 **First Cause of Action**

5 **Arizona Constitution Art. 2, § 6: Freedom of Speech**

6 651. Plaintiffs repeat and reallege each allegation contained in ¶¶ 1–650 of this Complaint.

7 652. Art. 2, § 6 of the Arizona Constitution says “[e]very person may freely speak, write, and
8 publish on all subjects, being responsible for the abuse of that right.”

9 653. Art. 2, § 6 of the Arizona Constitution protects the right to speak, to publish speech, to
10 create speech, and to sell speech.

11 654. Art. 2, § 6 protects the right to speak, to publish speech, to create speech, and to sell
12 speech about artistic, religious, and political topics and viewpoints.

13 655. Art. 2, § 6 protects commercial speech as much as artistic, religious, and political speech.

14 656. Art. 2, § 6 protects the right to not speak, to not publish, to not create, and to not sell
15 speech.

16 657. Art. 2, § 6 prevents the government from compelling people to express or support a
17 message not of their own choosing and to speak when they would rather remain silent.

18 658. Art. 2, § 6 protects individuals, partnerships, companies, and closely-held corporations.

19 659. Art. 2, § 6 provides more protection for speech than the First Amendment to the United
20 States Constitution.

21 660. Joanna and Breanna own and operate Brush & Nib Studio, LC which creates custom art
22 for clients and for clients’ events.

23 661. Joanna, Breanna, and Brush & Nib create custom art to convey their artistic and religious
24 messages about beauty.

25 662. Joanna, Breanna, and Brush & Nib’s custom art; the paintings, drawings, letters, and
26 words in this art; the process of creating this art; the process of selling this art; and the business of
27 creating and selling this art each constitute protected speech under Art. 2, § 6.

1 663. Joanna, Breanna, and Brush & Nib engage in protected non-commercial speech when
2 they publish statements on their website, convey statements to clients, create their custom art, promote
3 their art on the internet, distribute this art, and sell this art to clients.

4 664. Joanna, Breanna, and Brush & Nib engage in protected speech when Brush & Nib
5 engages in the business of promoting, creating, and selling custom art to clients.

6 665. In accordance with their artistic and religious beliefs, Joanna, Breanna, and Brush & Nib
7 will only create and sell custom art consistent with their artistic and religious beliefs.

8 666. Because of their artistic and religious beliefs, Joanna, Breanna, and Brush & Nib have
9 and will create and sell custom art for opposite-sex wedding ceremonies and for other events that
10 support marriage between one man and one woman.

11 667. But because of their artistic and religious beliefs, Joanna, Breanna, and Brush & Nib have
12 not created or sold and will not create or sell custom art for any event that supports any marriage except
13 marriage between one man and one woman, such as a same-sex wedding ceremony.

14 668. Brush & Nib's policy is to decline to create or sell any custom art for events that support
15 any marriage except marriage between one man and one woman, such as same-sex wedding ceremonies.

16 669. Phoenix City Code § 18.4(B)(1-2) requires Joanna, Breanna, and Brush & Nib to create
17 and sell custom art for events supporting same-sex marriage such as same-sex wedding ceremonies
18 because Joanna, Breanna, and Brush & Nib create and sell custom art for opposite-sex wedding
19 ceremonies.

20 670. By compelling Joanna, Breanna, and Brush & Nib to create and sell custom art for events
21 supporting same-sex marriage, § 18.4(B)(1-2) compels Joanna, Breanna, and Brush & Nib to speak
22 messages they do not want to speak, to speak when they would rather remain silent, and to speak
23 messages that contradict their religious and artistic messages in favor of one-man/one-woman marriage.

24 671. Because Joanna, Breanna, and Brush & Nib will not create or sell custom art for events
25 supporting any marriage except marriage between one man and one woman and because Brush & Nib
26 has a policy of not creating or selling custom art for events supporting any marriage except marriage
27 between one man and one woman, Phoenix could now investigate or criminally prosecute Joanna,

1 Breanna, and Brush & Nib for violating § 18.4(B)(1-2).

2 672. If Phoenix convicts Joanna, Breanna, or Brush & Nib for violating § 18.4(B)(1-2), they
3 would be guilty of a Class 1 misdemeanor and could be imprisoned for up to six months, or be fined up
4 to \$2500, or receive probation up to three years, or receive any combination of these penalties.

5 673. For each day Joanna, Breanna, and Brush & Nib persist in declining to create and sell
6 custom art for same-sex wedding ceremonies, they are each guilty of a separate offense and subject to
7 rapidly escalating fines and jail terms.

8 674. Section 18.4(B)(1-2) effectively compels two Christian artists and their expressive
9 business – under the threat of fines and imprisonment – to create and sell art for and therefore promote
10 same-sex wedding ceremonies in violation of their artistic and religious beliefs.

11 675. As applied to Joanna, Breanna, and Brush & Nib, this speech compulsion infringes their
12 rights under Art. 2, § 6 of the Arizona Constitution.

13 676. Besides wanting to create art consistent with their artistic and religious beliefs, Joanna,
14 Breanna, and Brush & Nib want to publicly discuss their beliefs about art, religion, and marriage.

15 677. Specifically, Joanna, Breanna, and Brush & Nib want to explain their religious
16 inspiration for their artistic vision, want to tell their customers and the general public that they will not
17 create custom art for events promoting same-sex marriage, and want to explain their artistic and
18 religious reasons for not creating art that violates their beliefs, including their reasons for not creating art
19 for events that promote same-sex marriage.

20 678. Joanna, Breanna, and Brush & Nib want to publish these statements on Brush & Nib's
21 website and its other media platforms and want to make these statements directly to customers.

22 679. This desired speech is protected speech under Art. 2, § 6.

23 680. But Joanna, Breanna, and Brush & Nib have not and will not make their desired
24 statements because of § 18.4(B)(3).

25 681. Section 18.4(B)(3) prohibits Joanna, Breanna, and Brush & Nib from publishing their
26 desired statements and from telling their desired statements to customers.

27 682. Specifically, § 18.4(B)(3) prohibits Joanna, Breanna, and Brush & Nib from publishing

1 their inability to create custom art for same-sex wedding ceremonies or for other events that promote
2 same-sex marriage and from explaining their artistic and religious reasons for not creating custom art for
3 same-sex wedding ceremonies or for other events that promote same-sex marriage.

4 683. If Joanna, Breanna, or Brush & Nib publish their desired statements or explain their
5 beliefs to customers, Joanna, Breanna, and Brush & Nib would violate § 18.4(B)(3).

6 684. Because Joanna, Breanna, and Brush & Nib would violate § 18.4(B)(3) by expressing
7 their desired messages, Phoenix would be able to investigate and criminally prosecute Joanna, Breanna,
8 and Brush & Nib for violating this ordinance if Joanna, Breanna, and Brush & Nib speak their desired
9 messages.

10 685. If Phoenix convicts Joanna, Breanna, or Brush & Nib for violating § 18.4(B)(3), they
11 would be guilty of a Class 1 misdemeanor and could be imprisoned for up to six months, or be fined up
12 to \$2500, or receive probation up to three years, or receive any combination of these penalties.

13 686. For each day Joanna, Breanna, and Brush & Nib express their desired speech, they would
14 each be guilty of a separate offense and thus subject to rapidly escalating fines and jail terms.

15 687. Joanna, Breanna, and Brush & Nib have not and will not publish their desired statements
16 in order to avoid violating § 18.4(B)(3) and to avoid incurring the penalties for violating this law.

17 688. If not for § 18.4(B)(3), Joanna, Breanna, and Brush & Nib would immediately speak and
18 publish their desired messages.

19 689. Section 18.4(B)(3) chills and deters Joanna, Breanna, and Brush & Nib's desired speech.

20 690. Joanna, Breanna, and Brush & Nib currently suffer ongoing harm because of § 18.4(B)(3)
21 – namely the self-censorship and suppression of their protected speech to avoid criminal penalties.

22 691. As applied to Joanna, Breanna, and Brush & Nib, this suppression of speech infringes
23 their rights under Art. 2, § 6.

24 692. Art. 2, § 6 also protects the right to freely associate and to not associate.

25 693. Art. 2, § 6 prohibits the government from compelling persons to expressively associate
26 with others in the process of creating and disseminating speech.

27 694. Joanna, Breanna, and Brush & Nib engage in expressive association because they join

1 together to create custom art with particular messages about art, religion, and marriage.

2 695. Joanna, Breanna, and Brush & Nib also associate and collaborate with Brush & Nib
3 clients during the creative process when Joanna and Breanna imagine and create custom artwork for
4 Brush & Nib clients and their events.

5 696. Because Joanna, Breanna, and Brush & Nib associate and collaborate with clients and
6 their events to create art promoting opposite-sex marriage, § 18.4(B)(1-2) compels Joanna, Breanna, and
7 Brush & Nib to associate and collaborate with clients and their events to create art promoting same-sex
8 marriage.

9 697. Through their art and Brush & Nib's media platforms, Joanna, Breanna, and Brush & Nib
10 advocate particular beliefs about art, religion, and marriage including the beliefs that art should reflect
11 God's beauty, truth, and goodness and that marriage should reflect God's truth about marriage, such as
12 the truth that opposite-sex marriage alone reflects God's love for His Church.

13 698. Section 18.4(B)(1-2) significantly affects Joanna, Breanna, and Brush & Nib's ability to
14 advocate their beliefs about art, religion, and marriage by forcing them to associate with others in the
15 process of creating and disseminating speech that Joanna, Breanna, and Brush & Nib consider
16 objectionable on the topics of art, religion, and marriage.

17 699. Joanna, Breanna, and Brush & Nib cannot authentically or convincingly promote their
18 beliefs that art should reflect God's beauty, truth, and goodness, including their beliefs about marriage,
19 when Phoenix compels Joanna, Breanna, and Brush & Nib to associate with others in the process of
20 creating and disseminating speech that contradicts their speech about art, religion, and marriage.

21 700. As applied to Joanna, Breanna, and Brush & Nib, this compelled association infringes
22 their rights under Art. 2, § 6.

23 701. Art. 2, § 6 also prohibits content and viewpoint discrimination.

24 702. Phoenix enforces § 18.4 in a content and viewpoint discriminatory manner in relation to
25 the topic of marriage.

26 703. Under § 18.4(B)(3), Phoenix will not prosecute or threaten to prosecute expressive
27 businesses or their owners who speak messages in favor of same-sex marriage and who exclusively

1 encourage customers to seek expressive services for events promoting same-sex marriage, but Phoenix
2 will prosecute or threaten to prosecute expressive businesses like Brush & Nib and their owners who
3 speak messages that exclusively favor one-man/one-woman marriage, that oppose same-sex marriage, or
4 that decline to create speech for events promoting same-sex marriage.

5 704. Thus, expressive businesses and their owners who provide wedding services must refrain
6 from speaking messages that exclusively favor one-man/one-woman marriage, that oppose same-sex
7 marriage, or that decline to create speech for events promoting same-sex marriage in order to avoid
8 criminal prosecution and potential fines, jail time, and probation.

9 705. Thus, § 18.4(B)(3) singles out, punishes, suppresses, and deters some speech solely
10 because of its content and viewpoint about marriage.

11 706. Joanna, Breanna, and Brush & Nib have not and will not publish their desired statements
12 about art, religion, and marriage in order to avoid violating the content and viewpoint restrictions in
13 § 18.4(B)(3) and to avoid incurring the penalties for violating this law.

14 707. If not for § 18.4(B)(3), Joanna, Breanna, and Brush & Nib would immediately speak their
15 desired messages.

16 708. Section 18.4(B)(3) chills and deters Joanna, Breanna, and Brush & Nib's desired speech.

17 709. Joanna, Breanna, and Brush & Nib currently suffer ongoing harm because of §18.4(B)(3)
18 – namely the self-censorship and suppression of their protected speech to avoid criminal penalties.

19 710. Facially and as applied to Joanna, Breanna, Brush & Nib and third parties, this content
20 and viewpoint discrimination infringes their rights under Art. 2, § 6.

21 711. Under § 18.4(B)(1-2), Phoenix will not prosecute or threaten to prosecute expressive
22 businesses that provide wedding services for same-sex ceremonies and express messages in favor of
23 same-sex marriage, but Phoenix will prosecute or threaten to prosecute expressive businesses like Brush
24 & Nib that provide wedding services only for opposite-sex wedding ceremonies and thereby promote the
25 message that marriage should be reserved for one man and one woman relationships.

26 712. An expressive business that offers wedding services must hold and express a view
27 favorable to same-sex marriage to avoid criminal prosecution and potential fines, jail time, and

1 probation.

2 713. In light of the criminal fines and jail time that § 18.4(B)(1-2) imposes on violators,
3 § 18.4(B)(1-2) imposes a content and viewpoint-based litmus test on the ability of Phoenix residents to
4 own an expressive business.

5 714. As applied to Joanna, Breanna, and Brush & Nib, this content and viewpoint
6 discrimination infringes their rights under Art. 2, § 6.

7 715. Art. 2, § 6 also prohibits the government from conditioning a benefit on the
8 relinquishment of a constitutional right.

9 716. Joanna, Breanna, and Brush & Nib have the right to create and sell expressive content
10 they choose, to promote religious and artistic messages they choose, to participate in the creation of
11 speech they choose, and to exercise their religion by operating their expressive business without having
12 to suffer jail time, fines, probation, and other arbitrary limitations on those rights.

13 717. By compelling Joanna, Breanna, and Brush & Nib to create and sell speech for events
14 supporting same-sex marriage such as same-sex wedding ceremonies, § 18.4(B)(1-2) unconstitutionally
15 conditions the receipt of state benefits — the right to speak, to publish speech, to create speech, to sell
16 speech, to remain silent, and to exercise their religion — on Joanna, Breanna, and Brush & Nib’s
17 surrendering, suspending, or limiting their constitutional rights.

18 718. As applied to Joanna, Breanna, and Brush & Nib, this unconstitutional condition
19 infringes their rights under Art. 2, § 6.

20 719. Art. 2, § 6 also prohibits the government from regulating expression based on vague
21 guidelines that give officials unbridled discretion to arbitrarily allow some expression and prohibit other
22 expression.

23 720. Section 18.4(B)(3) grants unbridled discretion because it prohibits public
24 accommodations from displaying, circulating, publicizing or mailing any “communication which states
25 or implies” that “that any person, because of...sexual orientation, gender identity or expression...would
26 be unwelcome, objectionable, unacceptable, undesirable or not solicited.”

27 721. Section 18 never defines unwelcome, objectionable, unacceptable, undesirable or not

1 solicited, and § 18 never explains which statements state or imply that someone would be unwelcome,
2 objectionable, unacceptable, undesirable or not solicited.

3 722. This vague language allows officials to censor speech out of dislike for particular
4 viewpoints, allows officials to hide their inappropriate content and viewpoint discrimination behind
5 vague language, and prevents potential speakers from knowing whether their speech violates the law.

6 723. Anytime a public accommodation or its owner criticizes someone, someone's ideas,
7 someone's beliefs, someone's actions, or someone's speech, that statement would imply that someone is
8 unwelcome, objectionable, unacceptable, undesirable or not solicited.

9 724. Because almost any statement could violate § 18.4(B)(3), Phoenix officials must pick and
10 choose which statements do violate § 18.4(B)(3).

11 725. Joanna, Breanna, Brush & Nib, and other citizens' rights now turn on the whim of
12 government bureaucrats.

13 726. Because § 18.4(B)(3) does not provide sufficient clarity to speakers and empowers
14 officials to restrict speech based on content and viewpoint, Joanna, Breanna, and Brush & Nib have not
15 and will not publish their desired statements about art, religion, and marriage to avoid violating
16 § 18.4(B)(3) and to avoid incurring the penalties for violating this law.

17 727. If not for the vagueness in § 18.4(B)(3), Joanna, Breanna, and Brush & Nib would
18 immediately speak their desired messages.

19 728. Section 18.4(B)(3) chills and deters Joanna, Breanna, Brush & Nib, and third parties'
20 speech.

21 729. Joanna, Breanna, Brush & Nib, and third parties currently suffer ongoing harm because
22 of § 18.4(B)(3) – namely the self-censorship and suppression of their protected speech to avoid criminal
23 penalties.

24 730. Facially and as applied to Joanna, Breanna, Brush & Nib, and third parties, this
25 vagueness infringes their rights under Art. 2, § 6.

26 731. Art. 2, § 6 also prohibits the government from regulating expression based on overbroad
27 regulations that suppress too much protected speech.

1 732. Section 18.4(B)(3) is overbroad because it prohibits public accommodations from
2 directly or indirectly displaying, circulating, publicizing or mailing any “communication” which states
3 or implies that any facility or service shall be refused or restricted because of...sexual orientation...”

4 733. This language applies to both expressive and non-expressive businesses.

5 734. Nothing in § 18.4 limits its scope to statements about non-expressive activities like
6 housing or employment.

7 735. This language is overbroad because it restricts the ability of expressive businesses like
8 newspapers, book publishers, printers, musicians, authors, movie studios, playwrights, web designers,
9 and others to communicate their right to speak and to create speech in accordance with their beliefs and
10 their right to decline to speak and create speech that violates their beliefs.

11 736. Section 18.4(B)(3) is also overbroad because it prohibits public accommodations from
12 displaying, circulating, publicizing or mailing any “communication which states or implies...that any
13 person, because of...sexual orientation...would be unwelcome, objectionable, unacceptable, undesirable
14 or not solicited.”

15 737. Section 18 never defines unwelcome, objectionable, unacceptable, undesirable or not
16 solicited; never limits the scope of these terms; and never explains which statements state or imply that
17 someone would be unwelcome, objectionable, unacceptable, undesirable or not solicited.

18 738. This language is overbroad because it prohibits too many protected statements –
19 including political and religious statements – that criticize someone, someone’s ideas, someone’s
20 beliefs, someone’s actions, or someone’s speech.

21 739. This language is overbroad because it prohibits too many protected statements –
22 including political and religious statements – that exclusively favor someone, someone’s ideas,
23 someone’s beliefs, someone’s actions, or someone’s speech.

24 740. If not for the overbreadth in § 18.4(B)(3), Joanna, Breanna, and Brush & Nib would
25 immediately speak their desired messages about art, religion, and marriage.

26 741. Because of its overbreadth, § 18.4(B)(3) chills and deters Joanna, Breanna, Brush & Nib,
27 and third parties’ speech.

1 742. Joanna, Breanna, Brush & Nib, and third parties currently suffer ongoing harm because
2 of § 18.4(B)(3) – namely the self-censorship and suppression of their protected speech to avoid criminal
3 penalties.

4 743. Facially and as applied to Joanna, Breanna, Brush & Nib, and third parties, this
5 overbreadth infringes their rights under Art. 2, § 6.

6 744. Because § 18.4(B)(1-2) infringes rights under Art. 2, § 6, Section 18.4(B)(1-2) and
7 Phoenix’s enforcement of this ordinance chill, deter, and restrict Joanna, Breanna, and Brush & Nib
8 from exercising their speech rights under Art. 2, § 6.

9 745. Because § 18.4(B)(3) infringes rights under Art. 2, § 6, Section 18.4(B)(3) and Phoenix’s
10 enforcement of this ordinance chill, deter, and restrict Joanna, Breanna, Brush & Nib, and third parties
11 from exercising their speech rights under Art. 2, § 6.

12 746. Because § 18.4(B)(1-3) infringe rights under Art. 2, § 6, these provisions must further a
13 compelling interest in a narrowly tailored way.

14 747. Phoenix does not serve any legitimate, rational, substantial, or compelling interest in
15 forcing Joanna, Breanna, Brush & Nib, or third parties to violate their speech rights under Art. 2, § 6.

16 748. The Phoenix Equal Opportunity Department has only received and investigated two
17 complaints of a public accommodation discriminating on the basis of sexual orientation.

18 749. The Phoenix Equal Opportunity Department has never found a for-cause showing of a
19 public accommodation discriminating on the basis of sexual orientation.

20 750. The Phoenix Equal Opportunity Department has never received a complaint of a public
21 accommodation publishing a statement declining to serve someone based on sexual orientation.

22 751. The Phoenix Equal Opportunity Department has never found an actual for-cause showing
23 of a public accommodation publishing a statement declining to serve someone based on sexual
24 orientation.

25 752. Section 18.4(B)(3) applies only to public accommodation owners, operators, lessees,
26 managers, and agents; § 18.4(B)(3) does not restrict the speech, advertisements, notices or
27 communications made by anyone else or any other entity.

1 them to explain to their customers and to the general public the reasons they cannot create custom art for
2 events that promote same-sex marriage such as same-sex wedding ceremonies.

3 765. Joanna, Breanna, Brush & Nib, and third parties hold sincere religious beliefs that require
4 them to explain the religious motivations for and the religious meaning of their art.

5 766. Joanna, Breanna, Brush & Nib, and third parties hold sincere religious beliefs that require
6 them to explain their religious beliefs about marriage.

7 767. Joanna, Breanna, and Brush & Nib would violate their religious beliefs if they lied to
8 their customers or mislead their customers into thinking that Brush & Nib creates custom art for events
9 that promote same-sex marriage when Brush & Nib does not.

10 768. Third parties also hold sincere religious beliefs that require them to make political and
11 religious statements critical of other's ideas, other's beliefs, other's actions, or other's speech.

12 769. Joanna, Breanna, and Brush & Nib's religious beliefs about marriage, art, honesty, and
13 business come from the Bible and Christian doctrine.

14 770. Joanna and Breanna operate Brush & Nib in accordance with their religious beliefs.

15 771. Joanna's, Breanna's, Brush & Nib's, and third parties' compliance with their religious
16 convictions constitutes an exercise of religion under FERA.

17 772. Section 18.4(B)(1-2) forces Joanna, Breanna, and Brush & Nib to choose between three
18 impossible options: 1) adhere to their religious beliefs, decline to create and sell custom art for same-sex
19 wedding ceremonies, and suffer criminal prosecution, jail time, criminal fines, and probation; or 2)
20 violate their religious beliefs, create and sell custom art for same-sex wedding ceremonies; or 3) violate
21 their religious beliefs, close their business, and suffer financial loss.

22 773. Section 18.4(B)(1-2) and its penalties effectively prevent Joanna and Breanna from
23 owning and operating an expressive business and adhering to key aspects of their faith.

24 774. Section 18.4(B)(1-2) and Phoenix's enforcement of this ordinance impose severe
25 coercive pressure on Joanna, Breanna, and Brush & Nib to change or violate their religious beliefs.

26 775. Section 18.4(B)(1-2) thereby substantially burdens Joanna, Breanna, and Brush & Nib's
27 religious exercise.

1 776. Section 18.4(B)(3) forces Joanna, Breanna, Brush & Nib, and third parties to choose
2 between two impossible options: 1) adhere to their religious beliefs, publish their religiously motivated
3 and required statements, and suffer criminal prosecution, jail time, criminal fines, and probation; or 2)
4 violate their religious beliefs and refrain from publishing their religiously motivated and required
5 statements.

6 777. Section 18.4(B)(3) and its penalties prevent Joanna, Breanna, Brush & Nib, and third
7 parties from speaking religiously motivated and required statements.

8 778. If not for § 18.4(B)(3), Joanna, Breanna, and Brush & Nib would immediately speak their
9 religiously motivated and required messages.

10 779. Because it suppresses religiously motivated and required messages, § 18.4(B)(3) chills
11 and deters Joanna, Breanna, Brush & Nib, and third parties' religious exercise.

12 780. Joanna, Breanna, Brush & Nib, and third parties currently suffer ongoing harm because
13 of § 18.4(B)(3) – namely the self-censorship and suppression of their religiously motivated and required
14 messages to avoid criminal penalties.

15 781. Section 18.4(B)(3) and Phoenix's enforcement of this law impose severe coercive
16 pressure on Joanna, Breanna, Brush & Nib, and third parties to change or violate their religious beliefs.

17 782. Section 18.4(B)(3) thereby substantially burdens Joanna, Breanna, Brush & Nib, and
18 third parties' religious exercise.

19 783. FERA says that the government must show that its substantial burden on a person's
20 religious exercise is "both: 1. In furtherance of a compelling governmental interest. 2. The least
21 restrictive means of furthering that compelling governmental interest."

22 784. Phoenix does not serve any legitimate, rational, substantial, or compelling interest in
23 forcing Joanna, Breanna, or Brush & Nib to violate their religious beliefs by creating or selling custom
24 art for events that promote same-sex marriage such as same-sex wedding ceremonies.

25 785. Phoenix does not serve any interest in a narrowly tailored way by forcing Joanna,
26 Breanna, or Brush & Nib to violate their religious beliefs by creating or selling custom art for events that
27 promote same-sex marriage such as same-sex wedding ceremonies.

1 786. Phoenix has many alternative, less restrictive mechanisms to achieve any legitimate
2 interests other than forcing Joanna, Breanna, or Brush & Nib to violate their religious beliefs by creating
3 or selling custom art for events that promote same-sex marriage such as same-sex wedding ceremonies.

4 787. Phoenix does not serve any legitimate, rational, substantial, or compelling interest in
5 forcing Joanna, Breanna, Brush & Nib, or third parties to violate their religious beliefs by refraining to
6 express their religiously motivated and required statements.

7 788. Phoenix does not serve any interest in a narrowly tailored way by forcing Joanna,
8 Breanna, Brush & Nib, or third parties to violate their religious beliefs by refraining to express their
9 religiously motivated and required statements.

10 789. Phoenix has many alternative, less restrictive mechanisms to achieve any legitimate
11 interests other than forcing Joanna, Breanna, Brush & Nib, or third parties to violate their religious
12 beliefs by refraining to express their religiously motivated and required statements.

13 790. Accordingly, as applied to Joanna, Breanna, and Brush & Nib, § 18.4(B)(1-2) violates
14 their right to freely exercise their religion as guaranteed by FERA.

15 791. Accordingly, facially and as applied to Joanna, Breanna, Brush & Nib, and third parties,
16 § 18.4(B)(3) violates their right to freely exercise their religion as guaranteed FERA.

17 THEREFORE, Plaintiffs ask the Court to grant the relief in the Prayer for Relief.

18 **Third Cause of Action**

19 **Arizona Constitution Art. 20, ¶ 1: Religious Toleration**

20 792. Plaintiffs repeat and reallege each allegation contained in ¶¶ 1–650 of this Complaint.

21 793. Art. 20, ¶ 1 of the Arizona Constitution says “[p]erfect toleration of religious sentiment
22 shall be secured to every inhabitant of this state, and no inhabitant of this state shall ever be molested in
23 person or property on account of his or her mode of religious worship, or lack of the same.”

24 794. Art. 20, ¶ 1 protects individuals, partnerships, companies, and closely-held corporations.

25 795. Art. 20, ¶ 1 provides greater protection than the First Amendment to the United States
26 Constitution.

27 796. Art. 20, ¶ 1 requires all regulations – even neutral and generally applicable ones – to

1 serve a compelling government interest in a narrowly tailored way if those regulations substantially
2 burden someone's religious exercise.

3 797. Joanna, Breanna, and Brush & Nib hold sincere religious beliefs that prohibit them from
4 creating or selling custom art that violates their religious beliefs.

5 798. For example, Joanna, Breanna, and Brush & Nib hold sincere religious beliefs that
6 prohibit them creating or selling custom art for events that promote same-sex marriage such as same-sex
7 wedding ceremonies.

8 799. Joanna, Breanna, Brush & Nib, and third parties hold sincere religious beliefs that require
9 them to tell their customers and the general public that they cannot create custom art for events that
10 promote same-sex marriage such as same-sex wedding ceremonies.

11 800. Joanna, Breanna, Brush & Nib, and third parties hold sincere religious beliefs that require
12 them to explain to their customers and to the general public the reasons they cannot create custom art for
13 events that promote same-sex marriage such as same-sex wedding ceremonies.

14 801. Joanna, Breanna, Brush & Nib, and third parties hold sincere religious beliefs that require
15 them to explain the religious motives for and the religious meaning of their art.

16 802. Joanna, Breanna, Brush & Nib, and third parties hold sincere religious beliefs that require
17 them to explain their religious beliefs about marriage.

18 803. Joanna, Breanna, and Brush & Nib would violate their religious beliefs if they lied to
19 their customers or mislead their customers into thinking that Brush & Nib creates custom art for events
20 that promote same-sex marriage when Brush & Nib does not.

21 804. Third parties also hold sincere religious beliefs that require them to make political and
22 religious statements critical of other's ideas, other's beliefs, other's actions, or other's speech.

23 805. Joanna and Breanna's religious beliefs about marriage, art, and business come from the
24 Bible and Christian doctrine.

25 806. Joanna and Breanna operate Brush & Nib in accordance with their religious beliefs.

26 807. Joanna's, Breanna's, Brush & Nib's, and third parties' compliance with their religious
27 convictions constitutes a religious exercise, religious sentiment, and religious worship under Art. 20, ¶ 1.

1 808. The right to religious exercise, religious sentiment, and religious worship encompasses
2 the right to speak religiously motivated messages, to speak religiously required messages, to speak
3 religious messages, and to not speak to comply with religious dictates.

4 809. Section 18.4(B)(1-2) forces Joanna, Breanna, and Brush & Nib to choose between three
5 impossible options: 1) adhere to their religious beliefs, decline to create and sell custom art for same-sex
6 wedding ceremonies, and suffer criminal prosecution, jail time, criminal fines, and probation; or 2)
7 violate their religious beliefs and create and sell custom art for same-sex wedding ceremonies; or 3)
8 violate their religious beliefs, close their business, and suffer financial loss.

9 810. Section 18.4(B)(1-2) and its penalties prevent Joanna and Breanna from owning and
10 operating an expressive business and adhering to a key aspect of their faith.

11 811. Section 18.4(B)(1-2) and Phoenix's enforcement of these provisions impose severe
12 coercive pressure on Joanna, Breanna, and Brush & Nib to change or violate their religious beliefs.

13 812. Section 18.4(B)(1-2) thereby substantially burdens Joanna, Breanna, and Brush & Nib's
14 religious exercise.

15 813. Section 18.4(B)(3) forces Joanna, Breanna, Brush & Nib, and third parties to choose
16 between two impossible options: 1) adhere to their religious beliefs, publish their religiously motivated
17 and required statements, and suffer criminal prosecution, jail time, criminal fines, and probation; or 2)
18 violate their religious beliefs and refrain from publishing their religiously motivated and required
19 statements.

20 814. Section 18.4(B)(3) and its penalties prevent Joanna, Breanna, Brush & Nib, and third
21 parties from speaking religiously motivated and required statements.

22 815. Section 18.4(B)(3) and its penalties chill and deter the religious motivated and required
23 expression by Joanna, Breanna, Brush & Nib, and third parties.

24 816. If not for § 18.4(B)(3), Joanna, Breanna, and Brush & Nib would immediately speak their
25 religiously motivated and required messages.

26 817. Because it suppresses religiously motivated and required messages, § 18.4(B)(3) chills
27 and deters Joanna, Breanna, Brush & Nib, and third parties' religious practice.

1 818. Joanna, Breanna, Brush & Nib, and third parties currently suffer ongoing harm because
2 of § 18.4(B)(3) – namely the self-censorship and suppression of their religiously motivated and required
3 messages to avoid criminal penalties.

4 819. Section 18.4(B)(3) and Phoenix’s enforcement of this ordinance impose severe coercive
5 pressure on Joanna, Breanna, Brush & Nib, and third parties to change or violate their religious beliefs.

6 820. Section 18.4(B)(3) thereby substantially burdens Joanna, Breanna, Brush & Nib, and
7 third parties’ religious exercise.

8 821. Even if Art. 20, ¶ 1 only requires neutral and generally applicable regulations to serve
9 reasonable interests, Art. 20, ¶ 1 still requires regulations to serve a compelling government interest in a
10 narrowly tailored way if that regulation is not neutral or generally applicable.

11 822. Section 18.4(B) must serve a compelling government interest in a narrowly tailored way
12 because § 18.4(B) is not neutral or generally applicable.

13 823. Section 18.4(B)(1-2) is not neutral and imposes special disabilities on Joanna, Breanna,
14 Brush & Nib because of their religious beliefs.

15 824. Section 18.4(B)(1-2) and Phoenix’s enforcement of these provisions impermissibly prefer
16 some religious views over others by permitting those whose religious beliefs support same-sex marriage
17 to own and operate marriage-related expressive businesses according to their religious beliefs without
18 fear of punishment, while imposing penalties on those who own and operate marriage-related expressive
19 businesses according to religious beliefs that bar them from supporting same-sex marriage.

20 825. Phoenix’s preference for some religious views over others violates Art. 20, ¶ 1.

21 826. Section 18.4(B)(3) is not neutral and imposes special disabilities on Joanna, Breanna, and
22 Brush & Nib because of their religious beliefs.

23 827. Section 18.4(B)(3) and Phoenix’s enforcement of this ordinance impermissibly prefer
24 some religious views over others by allowing those who own and operate public accommodations to
25 express their religious beliefs in favor of same-sex marriage without fear of punishment, while imposing
26 penalties on those who own and operate public accommodations and express their religious beliefs
27 against same-sex marriage.

1 828. Phoenix's preference for some religious views over others violates Art. 20, ¶ 1.

2 829. Section 18.4(B)(1-3) are not generally applicable because § 18.4 categorically exempts
3 "bona fide religious organizations" from the prohibitions in § 18.4(B)(1-3). *See City Code*
4 § 18.4(B)(4)(a).

5 830. Because § 18.4(B) broadly exempts bona fide religious organizations, Phoenix has no
6 legitimate reason for not extending a religious exemption to Joanna and Breanna who are Christians and
7 express Christian beliefs.

8 831. Section 18.4(B) also violates Joanna, Breanna, and Brush & Nib's free exercise rights
9 under the hybrid rights doctrine because § 18.4(B) implicates their free exercise rights in conjunction
10 with other constitutional protections like freedom of speech, due process, and equal protection.

11 832. Because § 18.4(B)(1-3) substantially burdens Joanna, Breanna, and Brush & Nib's
12 religious practice, this ordinance must further a compelling interest in a narrowly tailored way.

13 833. Because § 18.4(B)(1-3) is not neutral or generally applicable, this ordinance must further
14 a compelling interest in a narrowly tailored way.

15 834. Phoenix does not serve any legitimate, rational, substantial, or compelling interest in
16 forcing Joanna, Breanna, or Brush & Nib to violate their religious beliefs by creating or selling custom
17 art for events that promote same-sex marriage such as same-sex wedding ceremonies.

18 835. Phoenix does not serve any interest in a narrowly tailored way by forcing Joanna,
19 Breanna, or Brush & Nib to violate their religious beliefs by creating or selling custom art for events that
20 promote same-sex marriage such as same-sex wedding ceremonies.

21 836. Phoenix has many alternative, less restrictive mechanisms to achieve any legitimate
22 interests other than forcing Joanna, Breanna, or Brush & Nib to violate their religious beliefs by creating
23 or selling custom art for events that promote same-sex marriage such as same-sex wedding ceremonies.

24 837. Phoenix does not serve any legitimate, rational, substantial, or compelling interest in
25 forcing Joanna, Breanna, Brush & Nib, or third parties to violate their religious beliefs by refraining to
26 express their religiously motivated and required statements.

27 838. Phoenix does not serve any interest in a narrowly tailored way by forcing Joanna,

1 Breanna, Brush & Nib, or third parties to violate their religious beliefs by refraining to express their
2 religiously motivated and required statements.

3 839. Phoenix has many alternative, less restrictive mechanisms to achieve any legitimate
4 interests other than forcing Joanna, Breanna, Brush & Nib, or third parties to violate their religious
5 beliefs by refraining to express their religiously motivated and required statements.

6 840. Section 18.4 and Phoenix's enforcement of this law chill and deter Plaintiffs' freedom of
7 religious exercise and expression, both of which are rights guaranteed by Art. 20, ¶ 1.

8 841. Accordingly, as applied to Joanna, Breanna, and Brush & Nib, § 18.4(B)(1-2) violates
9 their right to freely exercise their religion as guaranteed by Art. 20, ¶ 1.

10 842. Accordingly, facially and as applied to Joanna, Breanna, Brush & Nib, and third parties,
11 § 18.4(B)(3) violates their right to freely exercise their religion as guaranteed by Art. 20, ¶ 1.

12 THEREFORE, Plaintiffs ask the Court to grant the relief in the Prayer for Relief.

13 **Fourth Cause of Action**

14 **Arizona Constitution Art. 2, § 13: Equal Protection**

15 843. Plaintiffs repeat and reallege each allegation contained in ¶¶ 1–650 of this Complaint.

16 844. Art. 2, § 13 of the Arizona Constitution says “[n]o law shall be enacted granting to any
17 citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the
18 same terms, shall not equally belong to all citizens or corporations.”

19 845. Art. 2, § 13 of the Arizona Constitution guarantees the equal protection of the laws,
20 which prohibits Phoenix from treating Joanna, Breanna, or Brush & Nib differently from similarly
21 situated persons and businesses.

22 846. Art. 2, § 13 protects individuals, partnerships, companies, and closely-held corporations.

23 847. Art. 2, § 13 provides the same benefits as, uses the same standards as, and is construed
24 like the Equal Protection Clause in the Fourteenth Amendment to the United States Constitution.

25 848. The government may not treat someone disparately as compared to similarly situated
26 persons when this disparate treatment burdens a fundamental right.

27 849. Joanna, Breanna, and Brush & Nib are similarly situated to other persons and expressive

1 businesses that provide marriage-related services.

2 850. Joanna, Breanna, and Brush & Nib are similarly situated to other persons and businesses
3 that express artistic, religious, and political messages about art, religion, and marriage.

4 851. Section 18.4(B)(1-2) and Phoenix's enforcement of these laws treat Plaintiffs' religious
5 and artistic speech and religious exercise differently from those similarly situated to Plaintiffs by
6 permitting those whose religious and artistic beliefs support same-sex marriage to own and operate a
7 marriage-related expressive business according to their religious and artistic beliefs without fear of
8 punishment, while imposing penalties on those who own and operate marriage-related expressive
9 businesses according to religious and artistic beliefs that bar them from supporting same-sex marriage.

10 852. Section 18.4(B)(3) and Phoenix's enforcement of this law treat Plaintiffs' religious and
11 artistic speech and religious exercise differently from those similarly situated to Plaintiffs by permitting
12 those whose religious and artistic beliefs support same-sex marriage to express their beliefs without fear
13 of punishment, while imposing penalties on those who express artistic and religious beliefs opposing
14 same-sex marriage.

15 853. Phoenix's discriminatory enforcement of § 18.4(B)(1-3) violates several fundamental
16 rights of Joanna, Breanna, and Brush & Nib, such as their freedom of speech, due process, and free
17 exercise of religion.

18 854. When the government enforces its regulations in a way that infringes fundamental rights,
19 courts presume discriminatory intent.

20 855. This Court should presume Phoenix's discriminatory intent because Phoenix has
21 intentionally discriminated against Joanna, Breanna, and Brush & Nib's religious speech and religious
22 exercise.

23 856. Phoenix has no legitimate, rational, substantial, or compelling state interest for such
24 disparate treatment of Joanna, Breanna, or Brush & Nib.

25 857. Phoenix's disparate treatment of Joanna, Breanna, and Brush & Nib does not serve any
26 interest in a narrowly tailored way.

27 858. As applied to Joanna, Breanna, and Brush & Nib, § 18.4(B)(1-3) violates their right to

1 equal protection of the laws as guaranteed by Art. 2, § 13.

2 THEREFORE, Plaintiffs ask the Court to grant the relief in the Prayer for Relief.

3 **Fifth Cause of Action**

4 **Arizona Constitution Art. 2, § 4: Due Process**

5 859. Plaintiffs repeat and reallege each allegation contained in ¶¶ 1–650 of this Complaint.

6 860. Art. 2, § 4 of the Arizona Constitution says “[n]o person shall be deprived of life, liberty,
7 or property without due process of law.”

8 861. Art. 2, § 4 of the Arizona Constitution protects individuals, partnerships, companies, and
9 closely-held corporations.

10 862. Art. 2, § 4 provides the same benefits as, uses the same standards as, and is construed like
11 the Due Process Clause in the Fourteenth Amendment to the United States Constitution.

12 863. Art. 2, § 4 guarantees persons the right to due process of law, which includes the right to
13 own and operate a business and earn a livelihood free from unreasonable governmental interference.

14 864. Section 18.4(B)(1-2) unreasonably interferes with Joanna, Breanna, and Brush & Nib’s
15 due process rights by threatening them with criminal penalties if they continue to operate their business
16 in accordance with their religious and artistic convictions.

17 865. As applied to Joanna, Breanna, and Brush & Nib, § 18.4(B)(1-2) thus infringes their right
18 to due process as guaranteed by Art. 2, § 4.

19 866. Art. 2, § 4 also prohibits the government from regulating speech or conduct based on
20 vague guidelines that give officials unbridled discretion to arbitrarily prohibit some expression and
21 action and that fail to give speakers and actors sufficient notice whether their actions violate the law.

22 867. Section 18.4(B)(3) contains vague language because it prohibits public accommodations
23 from displaying, circulating, publicizing or mailing any “communication which states or implies” that
24 “any person, because of...sexual orientation, gender identity or expression...would be unwelcome,
25 objectionable, unacceptable, undesirable or not solicited.”

26 868. Section 18 never defines unwelcome, objectionable, unacceptable, undesirable or not
27 solicited, and § 18 never explains which statements state or imply that someone would be unwelcome,

1 objectionable, unacceptable, undesirable or not solicited.

2 869. This vague language allows Phoenix officials to censor speech out of dislike for
3 particular viewpoints, allows Phoenix officials to hide its content and viewpoint discrimination behind
4 vague language, and prevents potential speakers from knowing whether their speech violates the law.

5 870. Anytime a public accommodation or its owner criticizes someone, someone's ideas,
6 someone's beliefs, someone's actions, or someone's speech, that statement would imply that someone is
7 unwelcome, objectionable, unacceptable, undesirable or not solicited.

8 871. Because almost any statement could violate § 18.4(B)(3), Phoenix officials must pick and
9 choose which statements do violate this law.

10 872. Therefore, the rights of Joanna, Breanna, Brush & Nib, and other citizens now turn on the
11 whim of government bureaucrats, and Joanna, Breanna, Brush & Nib, and other citizens cannot know
12 whether their desired speech violates the law.

13 873. Because § 18.4(B)(3) does not provide sufficient clarity to speakers and empowers
14 officials to make content and viewpoint based restrictions, Joanna, Breanna, and Brush & Nib have not
15 and will not publish their desired statements about art, religion, and marriage in order to avoid violating
16 this law and to avoid incurring the penalties for violating this law.

17 874. If not for the vagueness in § 18.4(B)(3), Joanna, Breanna, and Brush & Nib would
18 immediately speak their desired messages.

19 875. Section 18.4(B)(3) chills and deters Joanna, Breanna, Brush & Nib, and third parties'
20 speech.

21 876. Joanna, Breanna, Brush & Nib, and third parties currently suffer ongoing harm because
22 of § 18.4(B)(3) – namely the self-censorship and suppression of their protected speech to avoid criminal
23 penalties.

24 877. Because § 18.4(B)(1-3) chill, deter, and infringe on the due process rights of Joanna,
25 Breanna, Brush & Nib, and other citizens, these laws must further a compelling interest in a narrowly
26 tailored way.

27 878. Phoenix does not serve any legitimate, rational, substantial, or compelling interest in

1 stopping Joanna, Breanna, or Brush & Nib from owning and operating a business and from earning a
2 livelihood.

3 879. Phoenix does not serve any interest in a narrowly tailored way by stopping Joanna,
4 Breanna, or Brush & Nib from owning and operating a business and from earning a livelihood.

5 880. Phoenix has many alternative, less restrictive mechanisms to achieve any legitimate
6 interests other than stopping Joanna, Breanna, or Brush & Nib from owning and operating a business
7 and from earning a livelihood.

8 881. Phoenix does not serve any legitimate, rational, substantial, or compelling interest in
9 using vague language to deter Joanna, Breanna, Brush & Nib, or third parties' expression.

10 882. Phoenix does not serve any interest in a narrowly tailored way in using vague language to
11 deter Joanna, Breanna, Brush & Nib, or third parties' expression.

12 883. Phoenix has many alternative, less restrictive mechanisms to achieve any legitimate
13 interests other than using vague language to deter Joanna, Breanna, Brush & Nib, or third parties'
14 expression.

15 884. Accordingly, as applied to Joanna, Breanna, and Brush & Nib, § 18.4(B)(1-2) violates
16 their right to due process as guaranteed by Art. 2, § 4.

17 885. Accordingly, facially and as applied to Joanna, Breanna, Brush & Nib, and third parties,
18 § 18.4(B)(3) violates their right of due process as guaranteed by Art. 2, § 4.

19 THEREFORE, Plaintiffs ask the Court to grant the relief in the Prayer for Relief.

20 **Prayer for Relief**

21 Plaintiffs ask this Court to enter judgment against Defendant and to provide the following relief:

22 1. A temporary restraining order, preliminary injunction, and permanent injunction to stop
23 Phoenix and any person acting in concert with it from enforcing § 18-4(B)(3) facially, as-applied to
24 third-parties' protected communications, and as-applied to Plaintiffs' desired communications a)
25 promoting one-man/one-woman marriage exclusively, b) declining to create custom artwork promoting
26 events or ideas that violate their beliefs about one-man/one-woman marriage, and c) explaining their
27 artistic and religious beliefs about what they can and cannot create.

1 2. A declaration that § 18-4(B)(3) violates the Arizona Constitution's Free Speech Clause,
2 Religious Toleration Clause, Equal Protection Clause, Due Process Clause, and the Arizona Free
3 Exercise of Religion Act facially, as-applied to third-parties' protected communications, and as-applied
4 to Plaintiffs' desired communications a) promoting one-man/one-woman marriage exclusively, b)
5 declining to create custom artwork promoting events or ideas that violate their beliefs about one-
6 man/one-woman marriage, and c) explaining their artistic and religious beliefs about what they can and
7 cannot create.

8 3. A temporary restraining order, preliminary injunction, and permanent injunction to stop
9 Phoenix and any person acting in concert with it from enforcing § 18-4(B)(1-2) to require Plaintiffs to
10 create custom artwork promoting events or ideas that violate their beliefs about one-man/one-woman
11 marriage;

12 4. A declaration that § 18-4(B)(1-2) violates the Arizona Constitution's Free Speech Clause,
13 Religious Toleration Clause, Equal Protection Clause, Due Process Clause, and the Arizona Free
14 Exercise of Religion Act when § 18-4(B)(1-2) is applied to force Plaintiffs to create custom artwork
15 promoting events or ideas that violate their beliefs about one-man/one-woman marriage;

16 5. That this Court adjudge, decree, and declare the rights and other legal relations of the
17 parties to the subject matter here in controversy so that these declarations shall have the force and effect
18 of final judgment;

19 6. That this Court retain jurisdiction of this matter for the purpose of enforcing its orders;

20 7. That the Court award Plaintiffs' costs and expenses of this action, including reasonable
21 attorneys' fees, in accordance with A.R.S. § 12-341 et seq., A.R.S. § 12-348, A.R.S. § 12-1840, A.R.S.
22 § 41-1493.01(D), and the private attorney general doctrine, *see Arnold v. Arizona Dep't of Health*
23 *Servs.*, 160 Ariz. 593, 609, 775 P.2d 521, 537 (1989);

24 8. That this Court award \$1 of nominal damages to each Plaintiff for the violation of their
25 rights;

26 9. That this Court issue the requested injunctive relief without a condition of bond or other
27 security being required of Plaintiffs; and

1 10. That the Court grant any other relief that it deems equitable and just in the circumstances.
2
3

4
5 **RESPECTFULLY SUBMITTED** this 12th day of May, 2016.

6
7 By: _____

8 Jeremy D. Tedesco (Arizona Bar No. 023497)
9 Jonathan A. Scruggs (Arizona Bar No. 030505)
10 Samuel D. Green (Arizona Bar No. 032586)
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27
Attorneys for Plaintiffs

Verification

I, Joanna Duka, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct, except for the matters stated on information and belief, and I believe these matters to be true.

Executed this 29th day of April, 2016.

Joanna Duka
Joanna Duka

Verification

I, Breanna Koski, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct, except for the matters stated on information and belief, and I believe these matters to be true.

Executed this 29th day of April, 2016.

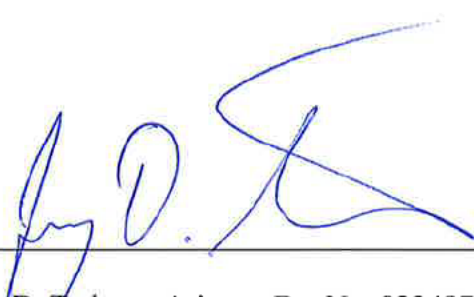
Breanna Koski
Breanna Koski

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 12, 2016, I conventionally filed the foregoing paper with
3 the Clerk of Court; and I hereby certify that the foregoing paper will be served via private process server
4 with the Summons and Complaint to the following participants:

5
6 City of Phoenix
7 Clerk, Cris Meyer
8 200 W. Washington Street
9 Phoenix, AZ 85003

10 By: _____

11 
12 Jeremy D. Tedesco Arizona Bar No. 023497
13 jtedesco@ADFlegal.org
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19 *Attorney for Plaintiffs*