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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 Joshua Killeen; Emily Killeen; Ananda
17 Retreat, LLC,

18 *Plaintiffs,*

19 v.

20 Yavapai County; David Williams, in his
21 official capacity as Development Services
22 Director,

Defendants.

No.:

COMPLAINT

23 1. In this civil-rights case, Plaintiffs Joshua and Emily Killeen (the “Killeens”), and
24 their business Ananda Retreat, challenge restrictions on protected speech and association
25 that Defendant Yavapai County (“County”) imposed to punish them for code violations. In
26 March 2017, the Killeens bought 10 undeveloped acres for \$9,000 in rural Yavapai County
27 to build their American Dream: a minimalist, eco-conscious tiny home and a rustic event
28 space for weddings and yoga retreats. In August 2018, the County cited them for code

1 violations in developing their property—violations that Plaintiffs do not contest and
2 continue to work to rectify. In adjudicating their code violations, the County imposed a
3 total ban on Plaintiffs’ commercial speech and forbade them from holding free, non-
4 commercial gatherings on their land for potluck food, yoga, and fellowship (called
5 Wellness Wednesdays). These restrictions are unconstitutional, and Plaintiffs seek
6 declaratory and injunctive relief to vindicate their First and Fourteenth Amendment rights.

7 **JURISDICTION AND VENUE**

8 2. This Court has federal-question jurisdiction under 28 U.S.C. § 1331, the First
9 and Fourteenth Amendments to the U.S. Constitution, the Civil Rights Act of 1871 as
10 codified at 42 U.S.C. § 1983, and the Declaratory Judgments Act as codified at 28 U.S.C.
11 §§ 2201, *et seq.*

12 3. Venue is proper under 28 U.S.C. § 1391.

13 **PARTIES**

14 4. Plaintiff Joshua Killeen is a U.S. citizen and resident of Yavapai County,
15 Arizona, where he lives with his wife Plaintiff Emily Killeen.

16 5. Plaintiff Emily Killeen is a U.S. citizen and resident of Yavapai County,
17 Arizona, where she lives with her husband Plaintiff Joshua Killeen.

18 6. Plaintiff Ananda Retreat, LLC, is an Arizona limited-liability corporation in
19 good standing.

20 7. Defendant Yavapai County is a government body with the power to sue and be
21 sued. A.R.S. §§ 11-201(A)(1), 11-202(A).

22 8. Defendant David Williams, sued only in his official capacity, is the Director of
23 Yavapai County Development Services, the County’s code-enforcement agency.

24 **FACTS**

25 9. Joshua Killeen is a decorated combat veteran who served in Iraq as a
26 crewmember of a rocket-launch system.

27 10. Joshua took up photography in Iraq, documenting his unit’s action.

28 11. Joshua moved to San Diego after his discharge in 2007 and started a successful

1 wedding-photography business.

2 12. Like many returning veterans, Joshua struggled with alcohol abuse.

3 13. In 2015, Joshua began taking yoga classes at Sunset Yoga, which Emily founded
4 and ran.

5 14. Emily had her own history of substance abuse.

6 15. Yoga was the key to Emily's recovery from drug addiction.

7 16. Emily taught Joshua how to use yoga to get sober.

8 17. Joshua and Emily fell in love, and Joshua pledged a life of sobriety to be with
9 Emily.

10 18. Joshua and Emily are now married.

11 **The Killeens Make Yavapai County Their Home**

12 19. The Killeens decided to leave San Diego because the cost of living, especially
13 the cost of buying a home, was prohibitive.

14 20. The Killeens wanted a fundamentally different personal and professional
15 lifestyle in which they could avoid debt, live simply and sustainably, work less, and focus
16 on family more.

17 21. In March 2017, the Killeens bought ten undeveloped acres in unincorporated
18 Yavapai County at 1550 West Java Drive (APN 302-07-174A & 174C).

19 22. The Killeens call their new home "Ananda Retreat."

20 23. The Killeens conceived Ananda Retreat to serve several goals.

21 24. First, the Killeens wanted to live off the grid in an eco-friendly tiny home.

22 25. Next, the Killeens wanted a picturesque space to complement their work in
23 photography and yoga teaching.

24 26. The Killeens intended to make Ananda Retreat available for group events such
25 as weddings, family portraiture, and yoga classes.

26 27. The Killeens also wanted to host wellness retreats for those struggling with
27 substance abuse or trauma, including special retreats for combat veterans like Joshua.

28 28. Finally, the Killeens needed Ananda Retreat—both the land and any

1 improvements—to be affordable.

2 29. Beginning in 2017, the Killeens started building Ananda Retreat.

3 30. The Killeens built an 860-square-foot home for themselves and their daughter.

4 31. The Killeens built a rustic barn for an event space.

5 32. The Killeens also built a tipi.

6 33. The Killeens landscaped Ananda Retreat and built a simple wooden arch over
7 the entrance.

8 **Yavapai County Development Services Halts Progress**

9 34. When they built Ananda Retreat, the Killeens were unaware of Yavapai County
10 zoning and permitting regulations.

11 35. The previous owner had assured the Killeens that no such regulations existed.

12 36. The Killeens thus did not get the permits the County requires.

13 37. On June 14, 2018, Yavapai County Development Services processed an
14 anonymous complaint about Ananda Retreat.

15 38. Inspector Jacob Lane investigated on behalf of Yavapai County Development
16 Services.

17 39. On June 28, 2018, Inspector Lane sent Plaintiffs a letter identifying violations of
18 the Yavapai County Planning and Zoning Ordinance.

19 40. Inspector Lane's letter advised the Killeens to:

20 Immediately stop activity, apply for and obtain a Use Permit for wedding
21 Venue/ Retreat or Apply for and obtain a building permit for primary
22 structure and waste water system or return the property to being vacant
23 land.

24 41. The Killeens were startled to learn of the violations. They have always wanted
25 to abide by environmental and safety standards.

26 42. When the Killeens received Mr. Lane's letter, Ananda Retreat was not yet open
27 to the public.

28 43. The Killeens immediately canceled a free community potluck dinner that they
had planned to hold on the Fourth of July.

1 44. On July 12, 2018, Joshua spoke on the phone with Inspector Lane and Yavapai
2 County land-use manager Rebecca Borowski about permitting requirements.

3 **The Killeens Meet with Development Services on August 9, 2018**

4 45. On August 9, 2018, the Killeens met in person with Yavapai County planning
5 officials Tammy DeWitt and Elizabeth Glowacki.

6 46. At the meeting, Ms. DeWitt and Ms. Glowacki reviewed the Killeens' intended
7 land uses and what permits would be required.

8 47. At the meeting, Ms. DeWitt advised the Killeens not to hold public events on
9 the property.

10 48. Other than their own wedding and those of some close family members, the
11 Killeens had never held public events at Ananda Retreat before the meeting with Ms.
12 DeWitt.

13 49. The Killeens never held public events at Ananda Retreat after the meeting with
14 Ms. DeWitt.

15 50. At the August 9, 2018 meeting, Ms. DeWitt did not advise Plaintiffs to cease
16 advertising Ananda Retreat.

17 51. Plaintiffs never agreed to cease advertising Ananda Retreat.

18 **Plaintiffs' Advertisements for Ananda Retreat**

19 52. Meanwhile, Inspector Lane continued his surveillance of Ananda Retreat and its
20 website throughout July and August 2018.

21 53. Inspector Lane presented his findings in a September 4, 2018 Land Use Division
22 Report for the Yavapai County Hearing Office.

23 54. Besides four photographs that Inspector Lane took of Ananda Retreat on June
24 27, 2018, Inspector Lane's surveillance file contained four Facebook screenshots.

25 55. On July 24, 2018, Plaintiff Joshua Killeen posted to Ananda Retreat's Facebook
26 page, with a picture of the rustic barn:

27 Come see how GREEEEEEEN we are! Thank you monsoon season, we
28 appreciate you! Book your special day today at Arizona's newest, self
sufficient, 100% off grid, rustic/chic wedding venue! Grand opening

1 pricing still in effect, and we would love to welcome you to the Ananda
2 Retreat family! Call to schedule your tour today!

3 56. Inspector Lane described this post as “Advertising Wedding Venue.”

4 57. On August 8, 2018, Plaintiff Joshua Killeen posted to Ananda Retreat’s
5 Facebook page, with a picture of sunset over the tipi:

6 Every. Single. Sunset.... seriously! Every single sunset at our beautiful
7 Ananda Retreat is so special! Our ceremony space is placed beautifully
8 to capture the lighting perfectly for your special day, and your “golden
9 hour” photos are sure to stun! If you [or] anyone you know is looking for
a dream wedding experience, be sure to tag/share! #booknow 📌
#arizonaweddingvenue #rusticwedding #rusticweddings
#northernarizonaweddings #arizonaweddings #weddingvenues
#weddings #weddingday #ceremonyarch #naturalweddings
#anandaretreataz #weddingretreat #rusticchic

10 58. Inspector Lane described this post as “Advertising Dream wedding Experience.”

11 59. On August 15, 2018, Plaintiff Joshua Killeen posted to Ananda Retreat’s
12 Facebook page, with another picture of a sunset over the tipi:

13 We keep raving on the #anandaretreataz sunsets, well, I say for good
14 reason! Take a look at this awesome southwest skyline! The Ananda
15 Retreat Tipi makes for an amazing bridal suite to get ready in for your
16 special day as well!! #rusticwedding #retreatwedding #arizonaweddings
#northernarizonaweddings #bridalsuite #booknow ❤️
#weddingdiscounts

17 60. Inspector Lane described this post as “Advertising Tipi for Brid[al] suite.”

18 61. On August 21, 2018, Plaintiff Joshua Killeen posted to Ananda Retreat’s
19 Facebook page, with a picture of a baby sitting in the property’s wild grasses:

20 Looking for an amazing spot to have your family photos taken ALL
21 INCLUSIVE?!?! Photography, beautiful scenery, ALL IN ONE, Ananda
22 Retreat is the place to be! A big thanks to this little cutie and her amazing
23 family for being so incredibly photogenic!

24 62. Inspector Lane described this post as “Advertising Photography Spot ‘All
25 Inclusive’.”

26 63. After their meeting with Development Services on August 9, 2018, the Killeens
27 never advertised anything that would occur before code compliance.

28 64. The purpose of Plaintiffs’ advertising in the summer of 2018—and the purpose
of the advertising that they want to resume—is generating public awareness and goodwill,
identifying potential clients, inviting discussion with potential clients about how Ananda

1 Retreat might one day serve them, and creating a potential revenue stream with deposits
2 for future events.

3 **Plaintiffs’ “Wellness Wednesday” Yoga Potlucks**

4 65. The County also misinterpreted the “public events” that the Killeens had been
5 advertising.

6 66. On June 27, 2018, Inspector Lane observed that the Ananda Retreat website
7 “invites members of the public to come to the property every Wednesday starting on July
8 4th for yoga and a Vegetarian Dinner.”

9 67. In fact, the Killeens had invited “the public”—i.e., their neighbors—to Ananda
10 Retreat for what they hoped would be regular community gatherings they called “Wellness
11 Wednesdays.”

12 68. The initial Wellness Wednesday scheduled for July 4, 2018, never happened.
13 The Killeens canceled the events in response to Inspector Lane’s letter advising them that
14 they had code violations.

15 69. Wellness Wednesdays would not have been commercial events.

16 70. Wellness Wednesdays would have been free of charge.

17 71. Wellness Wednesdays would not have required the use of any structure on the
18 Killeens’ property.

19 72. The Facebook post that Mr. Lane identified for the first Wellness Wednesday
20 did not list a price.

21 73. The Facebook post that Mr. Lane identified for the first Wellness Wednesday
22 promoted a potluck vegetarian dinner in which each person attending would bring a dish
23 to contribute to the meal.

24 74. Noncommercial social potlucks are exempt from regulation under Arizona’s
25 food-safety laws. A.R.S. § 36-136(I)(4)(A); A.A.C. R9-8-102(B)(12).

26 75. Wellness Wednesdays were promoted to the Killeens’ friends and others in the
27 community who might want to join their neighbors for vegetarian potluck dinners, yoga,
28 and fellowship.

1 76. Wellness Wednesdays were intended as an expression of Plaintiffs' life
2 philosophy centering around connections to family, friends, neighbors, and the wider
3 community.

4 **Yavapai County Hearing Office Proceedings and the Prohibition on Commercial**
5 **Speech**

6 77. On August 24, 2018, Inspector Lane served Joshua with a notice of violation,
7 rules of procedure, rights and responsibilities, and notice of a hearing at the Yavapai
8 County Hearing Office on September 4, 2018.

9 78. On September 4, 2018, Inspector Lane reviewed Ananda Retreat's Facebook
10 page and observed that the "reported advertisements [are] still posted and accessible to the
11 public."

12 79. Inspector Lane's September 4, 2018 report, on behalf of the County,
13 recommended a \$100 fine and a \$7,500 sanction "to be suspended if the property is brought
14 into compliance."

15 80. Proposing conditions of compliance, Inspector Lane recommended the Killeens
16 "OBTAIN ISSUED PERMITS" and "CEASE ALL DISALLOWED NON-
17 RESIDENTIAL ACTIVITY," or "REMOVE ALL STRUCTURES." The Killeens would
18 also have to pass a compliance inspection.

19 81. In full, Inspector Lane's recommendation to "CEASE ALL DISALLOWED
20 NON-RESIDENTIAL ACTIVITY" appeared as follows:

21 2. IMMEDIATELY CEASE ALL DISALLOWED NON-
22 RESIDENTIAL ACTIVITY ON THE PROPERTY INCLUDING, BUT
23 NOT LIMITED TO: WEDDINGS, RETREATS, GROUP
24 PHOTOGRAPHY, WELLNESS CLINICS, YOGA CLASSES,
25 POTLUCKS, CATERED EVENTS AND ANY OTHER TYPE OF
26 PUBLIC GATHERING, UNTIL AN APPROVED USE PERMIT IS
27 OBTAINED AND ALL STIPULATIONS SATISFIED[.]

28 82. Inspector Lane did not recommend the Killeens be ordered to stop advertising.

83. Instead, the idea to ban the Killeens from advertising originated at the public
hearing at the Yavapai County Hearing Office on September 4, 2018.¹

¹ Plaintiffs' counsel secured an audio recording of this hearing through Arizona's

1 84. This hearing was conducted by Hearing Officer Larry Jacobs. Defendant
2 Williams, director of Yavapai County Development Services, as well as his staff members,
3 appeared for Development Services.

4 85. At the hearing, Joshua reiterated that he had “made very clear in that preliminary
5 code review [on August 9] that we [Killeens] have not had any—we had our own wedding.
6 That’s all we’ve done on the property. No commercial activity.”

7 86. Joshua stressed that he and Emily had been openly communicating with
8 Development Services throughout its investigation of Ananda Retreat.

9 87. Less than ten minutes later, Hearing Officer Jacobs stated that: “I have to look
10 out for the public that are out there, you know, that might be responding to one of [Ananda
11 Retreat’s] Facebook ads.”

12 88. Six minutes after that, Director Williams stated that: “What I may recommend
13 is . . . perhaps a ceasing of all advertisement until the use permit is approved.”

14 89. Six minutes after that, Hearing Officer Jacobs stated that: “I agree with Mr.
15 Williams. I mean, if you’re—you may not want to be doing *any* advertising or taking in
16 *any* future requests to come to your property because I—I can’t see all of this even being
17 done within calendar year 2018.”

18 90. The Yavapai County Planning & Zoning Ordinance does not authorize
19 advertising restrictions as a remedy for code violations. *See* Yavapai Cty. Planning &
20 Zoning Ordinance § 205.

21 91. Hearing Officer Jacobs postponed judgment by continuing the hearing to
22 November 6, 2018.

23 92. Meanwhile, the Killeens had set out bringing Ananda Retreat into compliance
24 as early as July 2018. Their efforts continued after the hearing of September 4, 2018.

25 **The Killeens’ Acknowledgement and Administrative Judgment**

26 93. Sometime in early October 2018, Joshua visited Development Services and was
27 given a form “Acknowledgement of Violation(s)” for him and Emily to consider, sign, and

28 Public Records Law, A.R.S. §§ 39-121, *et seq.*

1 return.

2 94. In relevant part, the form acknowledgement read:

3 2. IMMEDIATELY CEASE ALL DISALLOWED NON-
4 RESIDENTIAL ACTIVITY, AND ADVERTISING OF ALL
5 **DISALLOWED NON-RESIDENTIAL ACTIVITY**, ON THE
6 PROPERTY INCLUDING BUT NOT LIMITED TO: WEDDINGS,
7 RETREATS, GROUP PHOTOGRAPHY, WELLNESS CLINICS,
8 YOGA CLASSES, POTLUCKS, CATERED EVENTS, AND ANY
9 **OTHER TYPES OF PUBLIC GATHERINGS**, UNTIL AN
10 APPROVED USE PERMIT IS OBTAINED AND ALL
11 STIPULATIONS ARE SATISFIED[.] (emphases added in bold).

12 95. The form acknowledgement would “admit responsibility” for bringing Ananda
13 Retreat into compliance, and would “agree that if compliance is not met,” a \$7,500 sanction
14 would be recommended against the Killeens.

15 96. The plain meaning of “CEASE ALL . . . ADVERTISING OF ALL
16 DISALLOWED NON-RESIDENTIAL ACTIVITY” is for the Killeens to stop all
17 commercial speech related to Ananda Retreat.

18 97. The form acknowledgement’s commercial-speech prohibition left no room for
19 the Killeens to advertise Ananda Retreat without reference to any set date in general,
20 “coming-soon” terms.

21 98. Defendants do not routinely prohibit businesses from advertising until code
22 violations are resolved.

23 99. Defendants have never ordered a large chain business such as McDonalds or
24 Home Depot to cease advertising when land-use violations are identified at the site of a
25 new location.

26 100. Defendants have never issued an administrative land-use judgment imposing
27 speech restrictions on a party represented at the administrative stage by an attorney.

28 101. The plain meaning of “CEASE ALL . . . POTLUCKS” and “ANY OTHER
TYPES OF PUBLIC GATHERINGS” is for the Killeens not to hold the free, non-
commercial Wellness Wednesday gatherings that they originally intended to begin holding
on July 4, 2018.

102. The form acknowledgement’s public-gathering prohibition applied to all

1 gatherings on the Killeens' property, whether in an unpermitted structure or outside.

2 103. The form acknowledgement's public-gathering prohibition left no room for
3 the Killeens to host free, non-commercial community gatherings to share potluck dinners,
4 yoga, and fellowship with their neighbors.

5 104. The form acknowledgement stated in bold type that "**This is not a binding**
6 **agreement.**"

7 105. Instead, the form acknowledgement stated, also in bold type, that "[t]he
8 **Hearing Officer will enter a judgment . . . explaining what the Defendant must do to**
9 **comply with the applicable Ordinances and Codes.**"

10 106. When they gave Joshua the form acknowledgement, Tammy DeWitt,
11 Rebecca Borowski, and/or Jacob Lane also told Joshua to take down Ananda Retreat's
12 website.

13 107. The Killeens reasonably feared that, despite their wish to advertise, Yavapai
14 County Development Services dictated whether the Killeens would ever realize their
15 dreams for Ananda Retreat.

16 108. Their reasonable fear of Development Services induced the Killeens to sign
17 the form acknowledgement.

18 109. The Killeens returned their signed acknowledgement on October 29, 2018.

19 110. That same day, the Killeens applied for as-built permits to bring Ananda
20 Retreat into compliance.

21 111. Based on the Killeens' signed acknowledgement, Yavapai County Hearing
22 Officer Peter Van Haren entered an administrative judgment against the Killeens on
23 November 2, 2018.

24 112. The terms of the administrative judgment are substantially identical to the
25 terms of the Killeens' signed acknowledgement.

26 113. The Killeens have not engaged in commercial speech for Ananda Retreat as
27 a direct result of the prohibition in the November 2, 2018 judgment of the Hearing Officer.

28 114. The Killeens have not held a Wellness Wednesday as a direct result of the

1 prohibition in the November 2, 2018 judgment of the Hearing Officer.

2 **Developments Since the Administrative Judgment**

3 115. Since the hearing officer's judgment in November 2018, the Killeens have
4 continued to bring Ananda Retreat into compliance.

5 116. On April 3, 2019, the Yavapai County Board of Supervisors voted
6 unanimously to approve a conditional use permit for Ananda Retreat allowing residential
7 and commercial activity on the property.

8 117. The Killeens have since fulfilled some, though not all, of the conditions of
9 their use permit.

10 118. The Killeens have been diligent in working to fulfill the conditions of their
11 use permit.

12 119. Their compliance efforts have often been delayed by lagging and/or
13 inconsistent answers from County officials in response to the Killeens' questions.

14 120. Still, the Killeens have communicated in good faith with the County
15 throughout the permit process.

16 121. At considerable expense, Plaintiffs submitted, and the County approved, a
17 soil characterization report.

18 122. An approved soil characterization report is required to apply for a septic tank
19 permit.

20 123. The Killeens secured a septic tank permit in August 2019.

21 124. Also at considerable expense, Plaintiffs have obtained a geotechnical report.

22 125. A geotechnical report is required to apply for a building permit.

23 126. Before the novel coronavirus pandemic, Plaintiffs were preparing to apply
24 for an as-built permit for their tiny home.

25 127. For now, the novel coronavirus pandemic has halted all relevant activity at
26 Ananda Retreat.

27 128. Nevertheless, Plaintiffs are determined to weather the pandemic and bring
28 Ananda Retreat into compliance as soon as practicable.

1 129. As soon as Ananda Retreat is brought into compliance, Plaintiffs want to
2 open it up for reservations.

3 130. Even before Ananda Retreat is brought into compliance, Plaintiffs want to
4 advertise it for future reservations.

5 **INJURY TO PLAINTIFFS**

6 131. When Yavapai County compelled the Killeens to sign the October 29, 2018
7 Acknowledgement of Violation(s) document and issued the November 2, 2018 judgment,
8 Plaintiffs ceased engaging in commercial speech related to Plaintiff Ananda Retreat.

9 132. But for the County's restriction on their commercial speech, Plaintiffs would
10 have in the past continuously engaged in commercial speech of a general character to
11 generate public goodwill, identify potential clients, and invite discussion with those clients
12 about how Ananda Retreat might be able to serve their needs when it is lawfully able to
13 hold events on their property.

14 133. But for the County's restriction on their commercial speech, Plaintiffs would
15 in the future continuously engage in commercial speech of a general character to generate
16 public goodwill, identify potential clients, and invite discussion with those clients about
17 how Ananda Retreat might be able to serve their needs when it is lawfully able to hold
18 events on their property.

19 134. But for the County's restriction on their commercial speech, past and present,
20 Plaintiffs would have established relationships with potential clients that could have
21 generated revenue in the form of deposits to accelerate the process of complying with the
22 County's land-use requirements.

23 135. But for the County's restriction on their right to associate, the Killeens would
24 have in the past held free Wellness Wednesday events on their property involving free
25 potluck dinners, free yoga, and free fellowship among friends and members of the
26 community who wish to become friends.

27 136. But for the County's restriction on their right to assemble, the Killeens would
28 in the future hold free Wellness Wednesday events on their property involving free potluck

1 dinners, free yoga, and free fellowship among friends and members of the community who
2 wish to become friends.

3 137. But for the County’s restriction on their right to assemble, past and present,
4 the Killeens would have enjoyed (and would enjoy in the future) non-commercial activities
5 with friends and members of their community such as potluck dinners, yoga, and
6 fellowship.

7 138. The loss of non-commercial dinners, yoga, and fellowship with friends and
8 members of the community is a significant injury to the Killeens because a major reason
9 for their relocation to rural Arizona was to live a simple, wellness-oriented life with
10 authentic connections to the community around them—connections that Yavapai County’s
11 restriction on their right to associate have impeded and continue to impede.

12 **COUNT ONE**

13 **Freedom of Speech**

14 139. Plaintiffs incorporate and reallege paragraphs 1 to 138.

15 140. The First Amendment to the U.S. Constitution protects the right to engage in
16 commercial speech about lawful activities.

17 141. The advertising ban entered in the administrative judgment of November 2,
18 2018, does not distinguish between: (1) general advertising for the purpose of generating
19 goodwill, identifying potential clients for the future, and inviting conversations with
20 potential clients about how Ananda Retreat could serve them in the future when lawful to
21 do so; and (2) advertising specific events that would be illegal if held before the property
22 is code compliant.

23 142. Weddings, wedding photography, yoga classes, and yoga retreats are all
24 lawful activities.

25 143. The commercial speech in which Plaintiffs engaged in the past concerned
26 lawful activity.

27 144. The commercial speech in which Plaintiffs wish to engage in the future
28 concerns lawful activity.

1 145. The commercial speech in which Plaintiffs engaged in the past was not
2 misleading.

3 146. The commercial speech in which Plaintiffs wish to engage in the future is not
4 misleading.

5 147. Yavapai County has an interest in land-use compliance.

6 148. Prohibiting Plaintiffs from engaging in non-misleading commercial speech
7 about lawful activity does not advance the County's interest in land-use compliance.

8 149. Prohibiting Plaintiffs from engaging in non-misleading commercial speech
9 about lawful activity is not tailored to the County's interest in land-use compliance.

10 150. In imposing a speech ban on Plaintiffs, when not imposing speech bans on
11 other speakers in Yavapai County with unresolved code violations, Defendants are making
12 unconstitutional distinctions among speakers.

13 151. Requiring Plaintiffs to discontinue speaking as a condition of securing land-
14 use permits is an unconstitutional condition.

15 152. Yavapai County's suppression of Plaintiffs' protected commercial speech
16 had inflicted and continues to inflict irreparable harms.

17 153. Absent preliminary and permanent injunctive relief, these harms will
18 continue indefinitely.

19 **COUNT TWO**

20 **Substantive Due Process**

21 154. Plaintiffs incorporate and reallege paragraphs 1 to 138.

22 155. The Due Process Clause of the Fourteenth Amendment to the U.S.
23 Constitution protects the right to make social invitations onto one's private property.

24 156. The right to make social invitations onto one's private property is deeply
25 rooted in American history.

26 157. The Killeens want to extend social invitations onto Ananda Retreat by
27 hosting their Wellness Wednesday events.

28 158. The Killeens' Wellness Wednesday events are noncommercial.

1 170. The Equal Protection Clause of the Fourteenth Amendment to the U.S.
2 Constitution protects the right of similarly situated persons to be treated the same, not
3 differently, by the government.

4 171. Here, Plaintiffs are similarly situated to other persons and entities that own
5 property in Yavapai county, that are developing their property for commercial purposes,
6 and that—prior to opening to the general public during the development process—are cited
7 by Defendant Yavapai County for violations of zoning or permitting regulations.

8 172. As a matter of written Yavapai County policy, Defendants do not regularly
9 impose restrictions on the speech of property owners who have violated County permitting
10 and zoning regulations.

11 173. As a matter of unwritten Yavapai County policy, Defendants do not regularly
12 impose restrictions on the speech of property owners who have violated County permitting
13 and zoning regulations.

14 174. Defendant Yavapai County ordinances do not authorize Defendants to
15 impose restrictions on the speech of property owners who have violated County permitting
16 and zoning regulations.

17 175. Defendants have never imposed speech restrictions on large chain
18 businesses, such as McDonald's or Home Depot, that have violated County land-use
19 regulations while constructing a new location within Yavapai county.

20 176. Defendants have never imposed speech restrictions on a property owner who
21 violated land-use regulations if that property owner was represented by an attorney at
22 Defendant Yavapai County's administrative hearing on the violation.

23 177. Defendants imposed a speech restriction on Plaintiffs despite the fact that
24 Plaintiffs were new property owners in the region, that Plaintiffs had no history of land-
25 use violations, that there was no evidence that Plaintiffs' speech had in the past or would
26 in the future harm anyone, and that Plaintiffs were working diligently to bring their
27 property into compliance.

28 178. Because speech is a fundamental right, Defendants must satisfy heightened

1 scrutiny to justify its discrimination against certain speakers, such as Plaintiffs, and its
2 discrimination in favor of other speakers, such as large chain businesses.

3 179. Here, Defendants singled out Plaintiffs for speech restrictions because of
4 their modest means and lack of legal representation.

5 180. Defendants cannot prove that imposing a speech restriction on Plaintiffs on
6 the basis of their limited financial means and lack of representation, while not imposing
7 similar restrictions on speakers with greater financial means and legal representation, is
8 tailored to advance any substantial government interest.

9 181. Yavapai County's suppression of Plaintiffs' protected speech had inflicted
10 and continues to inflict irreparable harms.

11 182. Absent preliminary and permanent injunctive relief, these harms will
12 continue indefinitely.

13 **PRAYER FOR RELIEF**

14 A. Plaintiffs respectfully request preliminary and permanent injunctions enjoining
15 Defendants' prohibition on advertising Ananda Retreat;

16 B. Plaintiffs respectfully request preliminary and permanent injunctions enjoining
17 Defendants' prohibition on free Wellness Wednesday events;

18 C. Plaintiffs respectfully request a declaration that the prohibition on advertising
19 violates the First Amendment right to commercial speech;

20 D. Plaintiffs respectfully request a declaration that the prohibition on free Wellness
21 Wednesday events violates the Fourteenth Amendment right to associate on private
22 property;

23 E. Nominal damages in the amount of \$10.00;

24 F. Attorneys' fees and costs;

25 G. Any further relief that the Court deems just and proper.
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Respectfully submitted,

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