

WO

1

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9 RONALD COOKE and JINJER COOKE,
10 husband and wife,

No. CV-10-08105-PHX-JAT

11

Plaintiffs,

ORDER

12

12 THE STATE OF ARIZONA ex rel. TERRY
13 GODDARD, the Attorney General; and THE
14 CIVIL RIGHTS DIVISION OF THE
ARIZONA DEPARTMENT OF LAW,

15

Plaintiff-Intervenor,

16

v.

17

17 TOWN OF COLORADO CITY, ARIZONA,
18 et al.,

19

Defendants.

20

20 Pending before the Court is Movant United Effort Plan Trust (“UEP”)’s Motion
21 for Order to Show Cause, (Doc. 738), in which UEP argues that defendant Colorado City
22 (“Colorado City”) should be held in contempt “for continuing religious discrimination in
23 violation” of prior Court orders, primarily the injunction issued on November 26, 2014.
24 (Doc. 723). The Court now rules on the pending motion.¹

25

26 ¹ The Court’s docket shows that UEP filed two “replies” in support of its motion.
27 UEP’s first reply was filed on January 13, 2016. (Doc. 742). The next day, UEP filed a
28 second reply, (Doc. 743), that failed to identify itself as an amended reply. Nonetheless, it
is evident to the Court that UEP sought to amend its reply in support of the pending
motion and include an additional declaration. (Doc. 743 at 11- 14). The amended reply

1 **I. Background**

2 In the interest of brevity, the Court restricts its recitation of the facts to those
3 pertinent to the pending motion. See the Orders of February 13, 2013, and September 4,
4 2015, for a full recounting of the matter’s background. (Doc. 318 at 2-10; Doc. 703).

5 Following a jury trial in which Plaintiffs Ron and Jinjer Cooke (collectively, the
6 “Cokes”) and Plaintiff-Intervenor the State of Arizona (the “State”) prevailed over
7 Defendants,² the Court entered the Amended Judgment and Permanent Injunction
8 (hereafter the “injunction”). (Doc. 724 at 1). The injunction, in part, enjoined the
9 following:

10 During the ten-year period beginning from the date of this
11 Judgment, Defendants and their agents shall not (1)
12 discriminate because of religion against any person in the
13 terms, conditions, or privileges of the provision of services or
14 facilities in connection with the sale or rental of a dwelling; or
15 (2) coerce, intimidate, threaten, interfere with, or retaliate
16 against any person in the enjoyment of his or her dwelling
17 because of religion or because that person has asserted rights,
18 or encouraged others to assert their rights, protected by the
19 federal Fair Housing Act or the Arizona Fair Housing Act.

20 (Doc. 724 at 2). The injunction shall “remain in place for ten years from the date of th[e]
21 Judgment,” and the Court “retain[ed] jurisdiction to enforce it.” (Id. at 2-3).

22 On December 14, 2015, UEP, “on behalf of itself and its beneficiaries who possess
23 occupancy agreements to reside on UEP property,” moved this Court to find Colorado
24 City in contempt of the aforementioned injunction “for continuing religious
25 discrimination.” (Doc. 738 at 1). UEP seeks a “limited period of discovery,” and an
26 evidentiary hearing to establish that: (1) Colorado City passed a 2007 Land Division
27 Ordinance (hereafter the “Subdivision Ordinance”) with the “express intent” of
28 discriminating against individuals who do not belong to the Fundamentalist Church of

was timely filed in accordance with LRCiv 7.2(d), and the Court will consider it as part
of the record. (Doc. 743). The Court will disregard the initial reply. (Doc. 742).

² Colorado City is a named defendant in this matter. The pending motion addresses
only Colorado City’s actions. The Court need not delineate the other named defendants.

1 Jesus Christ of Latter Day Saints (FLDS); (2) the passage and application of the
2 Subdivision Ordinance resulted in religious discrimination against UEP and its
3 beneficiaries; and (3) Colorado City “has engaged in disparate treatment in applying the
4 Subdivision Ordinance to residents of the city” on the basis of their affiliation with the
5 FLDS. (Id. at 7-8).

6 With the motion fully briefed,³ the Court turns to the merits of UEP’s claim.

7 II. Discussion

8 The parties’ briefing raises two issues that must be addressed by the Court:⁴ (1)
9 whether UEP has standing to move this Court itself or on behalf of its beneficiaries to
10 find Colorado City in contempt; (Doc. 740 at 9-10); and (2) whether litigation initiated by
11 Colorado City in Maricopa County Superior Court precludes this Court from considering
12 UEP’s motion. (Id. at 10-11). Each will be addressed in turn.

13 14 (A) Standing

15
16
17 ³ Colorado City filed an untimely response to UEP’s motion that the Court elected
18 to consider as part of the record. (Doc. 740).

19 ⁴ Colorado City’s response and UEP’s reply were somewhat unclear in presenting
20 their respective arguments. For example, Colorado City seems to argue that UEP failed to
21 identify the specific beneficiaries it filed the motion on behalf of, UEP failed to allege
22 that Colorado City discriminated against the Trust itself, UEP requested “general” relief
23 outside of the scope of the injunction, UEP lacks standing, the injunction only covers
24 individuals seeking individual relief, and that the Maricopa County litigation will resolve
25 the issues that form the basis of UEP’s motion. (Doc. 740 at 9-10). UEP, in response,
26 argues that (1) Colorado City discriminated against it “in connection with the sale or
27 rental of a dwelling,” (2) UEP has standing to assert claims on behalf of itself and certain
28 beneficiaries, (3) UEP seeks particularized relief from this Court, and (4) that the
Maricopa County litigation has no impact on this motion. (Doc. 743 at 4-6). The Court
concludes that this assemblage of arguments from both parties may be consolidated into
two issues: (1) whether UEP has standing to file the pending motion on behalf of itself
and its beneficiaries; and (2) whether this Court should hold an evidentiary hearing in
light of ongoing state court litigation.

1 The Court begins with the issue of whether UEP has individual standing to move
2 the Court on its own behalf. The launching point for the Court’s analysis is the September
3 4, 2014, Order that—in part—“permanently enjoine[d] Defendants [to include Colorado
4 City] from discriminating on the basis of religion in performing their official duties” and
5 retained “jurisdiction in this case for ten years.” (Doc. 703 at 6-7). The Court’s authority
6 to issue the injunction emanated from A.R.S. § 41-1491.35 (2014), which permits the
7 Court to “award preventive relief, including a permanent or temporary injunction,
8 restraining order or other order against the person responsible for a violation of the
9 Arizona Fair Housing Act [AFHA] as necessary to assure the full enjoyment of the rights
10 granted by this article.” (Doc. 703 at 6). Thus, while the Court’s relief is designed to
11 prevent Defendants from violating citizens’ rights enshrined in the First Amendment, the
12 injunction is grounded in the AFHA.⁵

13 The Court’s September 4, 2014, Order stated that “the State or an aggrieved party
14 will be able to move for an order finding Defendants in contempt and assessing
15 appropriate remedies.” (Doc. 703 at 7). “[A]ggrieved party,” however, is an undefined
16 term and not helpful to determine who may seek relief under the Court’s injunction. The
17 Court finds that a more appropriate term—which comports with both the Court’s Order,
18 (Doc. 703), and injunction, (Doc. 724)—is that an “aggrieved person” may move this
19 Court for a contempt order. As discussed supra, the Court’s authority to award injunctive
20 relief is derived from the AFHA, and the injunction itself contains language taken
21 directly from the statute. (Doc. 703 at 6; A.R.S. § 41-1491.35). It follows that that an
22 “aggrieved person,” defined by the AFHA, A.R.S. § 41-1491 (1), (9) (2014), is permitted

23 ⁵ This finding is supported by the text of the injunction itself, which mandates that
24 Defendants refrain from discriminating on the basis of religion “in connection with the
25 sale or rental of a dwelling.” (Doc. 724 at 2). This exact language is found in the AFHA.
26 A.R.S. § 41-1491.14 (2014). The injunction also precludes Defendants from “coerc[ing],
27 intimidat[ing], threaten[ing], interfer[ing] with, or retaliat[ing] against any person” who
28 “has asserted rights, or encouraged others to assert their rights, protected by the federal
Fair Housing Act or the Arizona Fair Housing Act.” (Doc. 724 at 2).

1 to seek relief.

2 The AFHA defines an “aggrieved person” as “any person who either . . . [c]laims
3 to have been injured by a discriminatory housing practice,” or who “[b]elieves that he
4 will be injured by a discriminatory housing practice that is about to occur.” A.R.S. § 41-
5 1491 (1). The base term “person” is defined as “one or more individuals, corporations,
6 partnerships, associations, labor organizations, legal representatives, mutual companies,
7 joint stock companies, trusts, unincorporated organizations, trustees, receivers,
8 fiduciaries, banks, credit unions and financial institutions.” A.R.S. § 41-1491 (9). The
9 term, as its definition suggests, is to be read broadly. See *City of Tempe v. State*, 351 P.3d
10 367, 371 (Ariz. Ct. App. 2015) (citation omitted) (noting that the Arizona “legislature
11 adopted the AFHA with the intent to undertake vigorous steps to provide equal
12 opportunity in housing”). The injunction mentions the term “person” on several
13 occasions, and does not refer more generally to “entities,” such as UEP. (See Doc. 724 at
14 6-7). This is immaterial. The term person must be read in light of the AFHA, which,
15 expressly includes “trusts.” A.R.S. § 41-1491.14. Read together, a trust that has “been
16 injured by a discriminatory housing practice” may file a civil action to “obtain
17 appropriate relief.” A.R.S. § 41-1491.31 (A).

18 “A permanent injunction must be carefully crafted,” and “[t]he scope of the
19 injunction should be coterminous with the infringement.” *MGM Studios, Inc. v. Grokster*,
20 *Ltd.*, 518 F. Supp. 2d 1197, 1226 (C.D. Cal. 2007) (citation omitted); see also *Waldman*
21 *Pub. Corp. v. Landoll, Inc.*, 43 F.3d 775, 785 (2d Cir. 1994) (noting that “[i]njunctive
22 relief should be narrowly tailored to fit specific legal violations”). Injunctive relief
23 “should be no more burdensome to the defendant than necessary to provide complete
24 relief to the plaintiffs.” *United States v. AMC Entm’t, Inc.*, 549 F.3d 760, 775 (9th Cir.
25 2008) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). But the terms that
26 comprise the injunction must be read in light of the definitions set forth in the AFHA.
27 The Court finds that nothing precludes UEP from moving the Court for relief on the basis
28 of its status as a trust.

1 The inquiry with respect to UEP’s standing continues, however. Colorado City
2 argues that UEP failed to allege that Colorado City “discriminated against it” or that
3 Colorado City “interfered with its enjoyment of a dwelling because of religion.” (Doc.
4 740 at 9 (emphasis in original)). The Court interprets this language to be an allegation
5 that UEP failed to establish sufficient injury-in-fact. Arizona courts have yet to expressly
6 declare what constitutes an injury-in-fact under the AFHA. But the “Arizona legislature
7 intended the AFHA to mirror the FHA,” and “cases interpreting the latter are persuasive
8 as to the interpretation of the former. *Cooke v. Town of Colorado City*, 10-CV-08105-
9 PCT-JAT, 2014 U.S. Dist. LEXIS 165557, at *14 (D. Ariz. Nov. 25, 2014) (citation
10 omitted). “The Supreme Court has long held that claims brought under the [federal Fair
11 Housing Act] are to be judged under a very liberal standing requirement.” *San Pedro
12 Hotel Co. v. City of Los Angeles*, 159 F.3d 470, 475 (9th Cir. 1998). “Unlike actions
13 brought under other provisions of civil rights law, the plaintiff need not allege that he or
14 she was a victim of discrimination.” *Id.* (citation omitted). “Rather, the sole requirement
15 for standing under the Act is the ‘Article III minima of injury[-]in[-]fact.’” *Id.* (quoting
16 *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982)). “To meet this requirement,
17 a plaintiff need only allege ‘that as a result of the defendant’s discriminatory conduct he
18 has suffered a distinct and palpable injury,’” and “any person harmed by discrimination,
19 whether or not the target of the discrimination, can sue to recover for his or her own
20 injury.” *Id.* (citations omitted).

21 UEP alleges it has suffered injury “because of its inability to deal with the
22 distribution and sale of individual lots to deserving beneficiaries because of the
23 application of the Colorado City [S]ubdivision [O]rdinance to its properties.” (Doc. 743
24 at 5). Thus, “in connection with the sale of dwellings,” UEP has been unable to act and
25 has suffered “economic damage because . . . compliance [with the Subdivision
26 Ordinance] . . . will render impossible the ability of [UEP] to sell and distribute
27 properties.” (*Id.* at 6). UEP has augmented its argument with declarations from
28 beneficiaries who reside on “lots” located on “larger parcel[s]” of land with other

1 individuals. (Doc. 743 at 18, 23, 28). These beneficiaries attest to being unable to own
2 their current properties, and must pay property taxes for the entire “larger parcel.” (Id. at
3 28). UEP’s allegations of injury-in-fact are scant. But the Court finds that UEP as
4 alleged—barely—that due to Colorado City’s discrimination against UEP on the basis of
5 religion, UEP cannot sell and allocate real property and residential housing causing it
6 economic injury. UEP has therefore demonstrated that it suffered a “concrete and
7 particularized injury giving [it] ‘a personal stake in the outcome of the controversy.’”
8 *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004) (citation
9 omitted); see also *Reid v. Johnson & Johnson*, 780 F.3d 952, 958 (9th Cir. 2015)
10 (acknowledging that an “economic injury-in-fact” is sufficient to satisfy Article III).

11 UEP is an “aggrieved person” that has suffered a “distinct and palpable injury”
12 and may move this Court for a contempt finding.⁶

13
14 **(B) The Effect of the Maricopa County Litigation**

15 As discussed above, Colorado City urges this Court to decline to consider UEP’s
16 requested relief because the same issue is also being litigated in the Maricopa County
17 case. (Doc. 740 at 10, 11). Colorado City cites no legal precedent for why this Court
18 should not consider this motion. See, for example, “Burford abstention,” *New Orleans*
19 *Pub. Serv., Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 361 (1989);
20 “Younger abstention,” *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 (1987); the “first to
21 file rule,” *Intuitive Surgical Inc. v. California Institute of Technology*, 2007 WL1150787,
22 at *2 (N.D. Cal. April 18, 2007); or any other abstention doctrine. UEP responded, also
23 citing no legal authority, and argued that due to this Court’s familiarity with these issues,
24 this Court should hear this motion notwithstanding the pending state court litigation.
25 Regardless of which abstention doctrine is being invoked by Colorado City, factually the

26
27
28

⁶ Having found that UEP has satisfied the requirement for individual standing
under the AFHA, the Court need not determine whether UEP has standing to assert the
legal rights of its beneficiaries.

1 Court must determine whether the same issues are being litigated.

2 On April 14, 2015, Colorado City moved this Court for declaratory relief with
3 respect to whether it has “authority under Arizona law to regulate subdivision issues
4 within its municipal borders.” (Doc. 725 at 1, 2). On May 27, 2015, the Court denied the
5 request, concluding that Colorado City’s “requested declaratory relief falls outside the
6 scope of th[e] injunction,” as “[d]eclaratory relief is not a remedy for failure to obey the
7 injunction, and the Court lacks jurisdiction in this case to consider [Colorado City’s]
8 requested relief.” (Doc. 734 at 2). On June 30, 2015, Colorado City responded by filing
9 suit in Maricopa County Superior Court, seeking declaratory relief “regarding whether it
10 has the authority under Arizona law to regulate subdivision issues by ordinance, and, in
11 the exercise of this authority, whether it can require the UEP Trust to comply with the
12 Land Division Ordinance for all property, whether partially improved or not.” (Doc. 740-
13 1 at 21). Thus, according to Colorado City, the state court will “determine Colorado
14 City’s intent in adopting its subdivision ordinance,” and “the circumstantial facts
15 surrounding Colorado City’s passage and application of the ordinance, and whether
16 Colorado City has fairly applied the ordinance to all applicants.” (Doc. 740 at 11 (internal
17 quotation marks omitted)).

18 The Court acknowledges that this is a close call factually. UEP has alleged,
19 generally, that via Colorado City’s Subdivision Ordinance, Colorado City is
20 discriminating against UEP and its beneficiaries on the basis of religion, in violation of
21 the Court’s injunction. (Doc. 738 738 at 5, 7-8). A reading of UEP’s motion does not
22 appear to challenge Colorado City’s authority to promulgate the Subdivision Ordinance,
23 or whether UEP would be required to adhere to such a municipal action. Rather, UEP has
24 alleged that Colorado City is relying on a previously enacted ordinance to discriminate on
25 the basis of religion “in connection with the sale or rental of a dwelling.”

26 Nonetheless, the Court is not prepared to grant—on the record before it—UEP’s
27 motion because the Court is not convinced that none of the abstention doctrines would
28 apply. Furthermore, with respect to the factual similarity of the two lawsuits, although

1 Colorado City seeks in state court “broad declaratory relief which goes . . . beyond the
2 bounds of the issues here,” (Doc. 743 at 8), the pending state matter may nonetheless
3 address the issues raised by UEP in its motion. The Court is aware of its decision to retain
4 jurisdiction over the case to “lessen the burden of remedying any future discrimination
5 vis-à-vis filing a new lawsuit,” and the need to scrutinize Colorado City’s future
6 behavior. But UEP asks the Court to grant “limited,” yet fairly robust discovery. And
7 UEP believes that with the aid of this discovery, it will be able to “present its entire case
8 to the Court within three (3) calendar days,” (Doc. 738 at 9), a substantial undertaking by
9 the parties and this Court. Based on the record before it, the Court is not convinced that
10 the on-going litigation in Maricopa County does not preempt the need for this Court to
11 initiate its own inquiry of Colorado City’s actions.


12 Accordingly, the Court will deny UEP’s motion, without prejudice. UEP is
13 permitted to re-urge that the Court hold an evidentiary hearing if UEP first establishes
14 that this Court is the proper forum to consider this dispute.

15
16 **III. Conclusion**

17 For the aforementioned reasons,

18 **IT IS ORDERED** that UEP’s motion for Order to Show Cause, (Doc. 738), is
19 **DENIED**, without prejudice.

20 **Dated this 16th day of February, 2016.**

21
22
23
24 
25 James A. Teilborg
26 Senior United States District Judge
27
28