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10 Attorneys for Defendants

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF MARICOPA**

13 BARRY GOLDWATER INSTITUTE
14 FOR PUBLIC POLICY RESEARCH,

15 Plaintiff,

16 vs.

17 CITY OF PHOENIX, a municipal
18 corporation; JEFF BARTON, in his
19 official capacity as City Manager for the
20 City of Phoenix; DENISE ARCHIBALD,
21 in her official capacity as City Clerk for
22 the City of Phoenix; and SHEREE
23 RUCKER, in her official capacity as
24 Human Resources Officer, Custodian of
25 Records for the City of Phoenix,

26 Defendants.

Case No. CV2023-003250

**DEFENDANTS' ANSWER TO
PLAINTIFF'S VERIFIED
COMPLAINT FOR STATUTORY
SPECIAL ACTION AND
INJUNCTIVE RELIEF**

**(Assigned to The Honorable Danielle
Viola)**

27 The City of Phoenix, Jeff Barton, Denise Archibald, and Sheree Rucker
28 (collectively "City" or "Defendants"), by and through their undersigned counsel, for their
Answer to Plaintiffs' Verified Complaint (the "Complaint"), respond, allege and answer
as follows:

1 1. Defendants lack sufficient knowledge or information to form a belief as to
2 the truth of the allegations in this paragraph.

3 2. Defendants lack sufficient knowledge or information to form a belief as to
4 the truth of the allegations in this paragraph.

5 3. Based on information and belief, Defendants admit that Plaintiff is a
6 nonprofit research, public policy, and public interest litigation center in Phoenix,
7 Arizona.

8 4. Admit.

9 5. Admit.

10 6. Admit.

11 7. Defendants admit that Sheree Rucker is a Human Resources Officer for the
12 City of Phoenix who is sued in her official capacity only. Defendants deny the remaining
13 allegations in this paragraph, but affirmatively state that Ms. Rucker is employed in the
14 Phoenix HR Connection Center, which is a designated custodian of City HR records.

15 8. Admit.

16 9. Admit.

17 10. Defendants admit that the City of Phoenix meet and confer ordinance
18 establishes a bargaining process between the City and the authorized representatives for
19 recognized units, which is intended to culminate in the parties entering into a
20 memorandum of understanding (“MOU”) that sets forth certain terms and conditions of
21 employment for unit members. Defendants further admit that MOUs become binding
22 upon approval by the City Council.

23 11. Admit.

24 12. Defendants admit that the City is required to engage in the meet and confer
25 process with authorized employee organizations, including Phoenix Law Enforcement
26 Association (“PLEA”), in accordance with the timetable set forth in the meet and confer
27

1 ordinance, and that the process is intended to culminate in an MOU.

2 13. Defendants lack sufficient knowledge or information to form a belief as to
3 the truth of the allegations in this paragraph.

4 14. Admit.

5 15. Admit.

6 16. Defendants lack sufficient knowledge or information to form a belief as to
7 the truth of the allegations in this paragraph.

8 17. Defendants lack sufficient knowledge or information to form a belief as to
9 the truth of the allegations in this paragraph.

10 18. Defendants deny the allegations in this paragraph.

11 19. Defendants admit the allegations in this paragraph, except that the cited
12 requirement applies to authorized employee organizations, not “public-sector unions.”

13 20. Defendants admit the allegations in this paragraph, except that the cited
14 provision applies to authorized employee organizations, not “public-sector unions.”

15 21. Defendants admit the allegations in this paragraph, except that the cited
16 requirement refers to authorized employee organizations, not “public-sector unions.”

17 22. Admit.

18 23. Admit.

19 24. Defendants admit that in 2020, PLEA provided the City with a draft MOU
20 for 2021-2023, a copy of which is attached as Exhibit 1 to the Verified Complaint.

21 Defendants lack sufficient knowledge or information to form a belief as to the truth of the
22 remaining allegations in this paragraph.

23 25. Admit.

24 26. Admit.

25 27. Defendants admit that PLEA submitted a letter of intent to engage in
26 negotiations on or about December 1, 2022, and that Exhibit 3 to the Verified Complaintf
27

1 is an accurate copy of the PLEA Letter. Defendants lack sufficient knowledge or
2 information to form a belief as to the truth of the remaining allegations in this paragraph.

3 28. Defendants admit the allegations in the first, second, and fourth sentences
4 of this paragraph. Defendants lack sufficient knowledge or information to form a belief as
5 to the truth of the remaining allegations in this paragraph.

6 29. Defendants admit that the City Council held a meeting on December 14,
7 2022, at which members of the public were permitted to comment on proposals by
8 authorized employee representatives. Defendants lack sufficient knowledge or
9 information to form a belief as to the truth of the remaining allegations in this paragraph.

10 30. Defendants admit that Assistant City Manager Lori Bays stated that the
11 City's meet and confer ordinance required the authorized employee organizations to
12 submit proposed MOUs by December 1, 2022; that she acknowledged that the authorized
13 employee organizations submitted letters of intent instead of proposed MOUs; and that
14 she responded to a question from Councilmember Carlos Garcia by stating: "The intent
15 of the City Code is for each of the groups to present their MOU at this point in the
16 process today. However, they have elected not to do so."

17 31. Admit.

18 32. Admit.

19 33. Admit.

20 34. Defendants deny the allegations in this paragraph.

21 35. Defendants lack sufficient knowledge or information to form a belief as to
22 the truth of the allegations in this paragraph.

23 36. Admit.

24 37. Admit, except that the referenced document is attached as Exhibit 7 to the
25 Verified Complaint (not Exhibit 5).

26 38. Admit.

monies from this state or any political subdivision of this state. Defendants further admit that A.R.S. § 39-121.01 states that the custodian of records shall promptly furnish copies of public records upon request. Defendants affirmatively state that there are several statutory and judicially-recognized exceptions to the requirement to produce public records.

55. Defendants admit that this paragraph correctly quotes *Griffis v. Pinal Cnty.*, 215 Ariz. 1 (Ariz. 2007). Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

56. Defendants deny the allegations in this paragraph.

57. Defendants deny the allegations in this paragraph.

58. Defendants admit that City negotiators are paid public employees of the City. Defendants deny the remaining allegations in this paragraph.

59. Defendants admit that this paragraph correctly quotes *Moorehead v. Arnold*, 130 Ariz. 503 (Ariz. Ct. App. 1981). Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

60. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

61. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

62. Defendants admit that this paragraph correctly quotes *Carlson v. Pima Cnty.*, 141 Ariz. 487 (Ariz. 1984), but affirmatively state that the documents requested in this matter are not subject to disclosure.

63. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

64. Defendants deny the allegations in this paragraph.

65. Defendants admit the allegations in this paragraph, except for the use of the

1 word “eventually.”

2 66. Defendants admit that this paragraph correctly quotes *Hodai v. City of*
3 *Tucson*, 239 Ariz. 34 (Ariz. Ct. App. 2016). Defendants lack sufficient knowledge or
4 information to form a belief as to the truth of the remaining allegations in this paragraph.

5 67. Defendants admit that this paragraph correctly quotes *Hodai v. City of*
6 *Tucson*, 239 Ariz. 34 (Ariz. Ct. App. 2016).

7 68. Defendants admit that this paragraph correctly quotes *Hodai v. City of*
8 *Tucson*, 239 Ariz. 34 (Ariz. Ct. App. 2016).

9 69. Defendants admit that this paragraph correctly quotes *Hodai v. City of*
10 *Tucson*, 239 Ariz. 34 (Ariz. Ct. App. 2016). Defendants lack sufficient knowledge or
11 information to form a belief as to the truth of the remaining allegations in this paragraph.

12 70. Defendants admit that this paragraph correctly quotes *Carlson v. Pima*
13 *Cnty.*, 141 Ariz. 487 (Ariz. 1984). Defendants lack sufficient knowledge or information
14 to form a belief as to the truth of the remaining allegations in this paragraph.

15 71. Defendants admit that this paragraph correctly quotes *Mathews v. Pyle*, 75
16 Ariz. 76, 81 (Ariz. 1952). Defendants lack sufficient knowledge or information to form a
17 belief as to the truth of the remaining allegations in this paragraph.

18 72. Defendants lack sufficient knowledge or information to form a belief as to
19 the truth of the allegations in this paragraph.

20 73. Defendants lack sufficient knowledge or information to form a belief as to
21 the truth of the allegations in this paragraph.

22 74. Defendants deny the allegations in this paragraph.

23 75. Defendants admit that *Bolm v. Custodian of Recs. of Tucson Police Dep’t*,
24 193 Ariz. 35 (Ariz. Ct. App. 1998) states that the balancing test for the disclosure of
25 records must be applied on a case-by-case basis “to determine whether a particular record
26 should be released.”

1 76. Defendants admit that this paragraph correctly quotes the cited cases.
2 Defendants lack sufficient knowledge or information to form a belief as to the truth of the
3 remaining allegations in this paragraph.

4 77. Defendants deny the allegations in this paragraph.

5 78. Defendants admit that the City's meet and confer ordinance requires
6 authorized employee organizations to file a copy of their initial proposed MOU with the
7 City Clerk. Defendants further admit that the ordinance requires the City to file its
8 response to the initial proposed MOU with the City Clerk. Defendants deny the
9 remaining allegations in this paragraph.

10 79. Defendants deny the allegations in this paragraph.

11 80. Defendants lack sufficient knowledge or information to form a belief as to
12 the truth of the allegations in this paragraph.

13 81. Defendants deny the allegations in this paragraph.

14 82. Defendants incorporate their responses set forth in paragraphs 1 to 81.

15 83. Defendants lack sufficient knowledge or information to form a belief as to
16 the truth of the allegations in this paragraph.

17 84. Defendants lack sufficient knowledge or information to form a belief as to
18 the truth of the allegations in this paragraph.

19 85. Defendants lack sufficient knowledge or information to form a belief as to
20 the truth of the allegations in this paragraph.

21 86. Admit.

22 87. Defendants admit that the City Attorney provided the following response to
23 Plaintiff's request for all proposals for MOUs currently being negotiated: "When you
24 submitted your initial request, the City did not have any responsive documents to Request
25 No. 2. As of this date, the City does have documents that are responsive to this request.
26 However, the City is withholding all such responsive documents during negotiations."
27
28

1 Defendants deny all remaining allegations.

2 88. Defendants deny the allegations in this paragraph.

3 **AFFIRMATIVE DEFENSES**

4 The following affirmative defenses may apply to Plaintiff's Verified Complaint:
5 failure to state a claim, in whole or in part, upon which relief can be granted; Plaintiff's
6 claims are, or will be moot, during the pendency of this action; laches; and waiver.
7 Defendants reserve the right to assert additional affirmative defenses should they become
8 aware of additional defenses during the course of this action.

9 WHEREFORE, having fully answered Plaintiff's Verified Complaint, Defendants
10 respectfully request that the Court:

11 A. Dismiss Plaintiff's Verified Complaint with prejudice;

12 B. Award Defendants their attorneys' fees and costs incurred in connection
13 with this matter pursuant to any applicable statute, rule, or legal theory; and

14 C. Award such other and further relief that the Court deems just and
15 reasonable under the circumstances.

16 RESPECTFULLY SUBMITTED this 9th day of May 2023.

17 **PIERCE COLEMAN PLLC**

18 By: /s/ Stephen B. Coleman

19 Stephen B. Coleman

20 Jon M. Paladini

21 7730 E. Greenway Road, Suite 105

22 Scottsdale, AZ 85260

23 Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2023, I transmitted the attached document to the Clerk of the Superior Court’s Office for filing and caused a copy to be transmitted via electronic mail to the following:

Jonathan Riches
Scott Day Freeman
Parker Jackson
Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE
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Attorneys for Plaintiff

By: /s/ Mary Walker