

1 Jonathan Riches (025712)
Scott Day Freeman (19784)
2 Parker Jackson (037844)
3 **Scharf-Norton Center for Constitutional Litigation at the**
4 **GOLDWATER INSTITUTE**
500 E. Coronado Rd.
4 Phoenix, Arizona 85004
(602) 462-5000
5 litigation@goldwaterinstitute.org

6 *Attorneys for Plaintiff*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 BARRY GOLDWATER INSTITUTE FOR
PUBLIC POLICY RESEARCH,

10 Plaintiff,

11 vs.

12 CITY OF PHOENIX, a municipal
corporation; JEFF BARTON, in his official
13 capacity as City Manager for the City of
Phoenix; DENISE ARCHIBALD, in her
14 official capacity as City Clerk for the City of
Phoenix; and SHEREE RUCKER, in her
15 official capacity as Human Resources
Officer, Custodian of Records for the City of
16 Phoenix,

17 Defendants,

Case No.

**VERIFIED COMPLAINT FOR
STATUTORY SPECIAL ACTION
AND INJUNCTIVE RELIEF**

and

**APPLICATION FOR ORDER TO
SHOW CAUSE**

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20 **INTRODUCTION**

21 1. Public access to information about the operations of government is essential
22 to a free society and necessary so that citizens can hold government officials accountable.

23 *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351 ¶ 33 (App. 2001). When the
24 government and its officials engage in the public's business and spend the public's
25 money, the public has a right to records regarding those activities. A.R.S. § 39-121.01.

26 2. This action is about the City of Phoenix ("City") withholding records about
27 publicly funded proposals and discussions between the City and a government labor union
28 regarding the provision of police services in the City. Plaintiff seeks to stop the City and

1 its named officials from continuing to deny Plaintiff access to these public records under
2 Arizona Public Records Law (A.R.S. Title 39).

3 **PARTIES, JURISDICTION, AND VENUE**

4 3. Plaintiff Barry Goldwater Institute for Public Policy Research (“Goldwater
5 Institute” or the “Institute”) is a nonprofit research, public policy, and public interest
6 litigation center in Phoenix, Arizona.

7 4. Defendant City of Phoenix is a municipal corporation organized under the
8 laws of the State of Arizona. Defendant City of Phoenix is a “public body” within the
9 meaning of A.R.S. § 39-121.01(A)(2).

10 5. Defendant Jeff Barton is the City Manager for the City of Phoenix and is
11 charged with “the proper administration of all affairs of the City.” Phoenix City Charter
12 Ch. III § 2(A). He is sued in his official capacity only. Defendant Barton is an “officer”
13 within the meaning of A.R.S. § 39-121.01(A)(1).

14 6. Defendant Denise Archibald is the City Clerk for the City of Phoenix and is
15 charged with responding to public records requests. She is sued in her official capacity
16 only.

17 7. Defendant Sheree Rucker is a Human Resources Officer for the City of
18 Phoenix and is a designated custodian of City records. She is sued in her official capacity
19 only.

20 8. Jurisdiction over this action and its claims is provided by A.R.S. §§ 39-
21 121.02 and 12-123, and Rule 4, Ariz. R. P. for Spec. Actions.

22 9. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b), Ariz. R. P. for
23 Spec. Actions.

24 **FACTS**

25 10. The meet and confer process between the City of Phoenix and various labor
26 unions is designed to produce memoranda of understanding (“MOU”) that outline the
27 terms and conditions of employment for City employees and become binding upon final
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1 ratification by the City Council. Phoenix City Code §§ 2-210(11)–(12); 2-215; 2-218(F)–
2 (G).

3 11. The Phoenix Law Enforcement Association (“PLEA”) is the authorized
4 meet and confer representative for Phoenix police officers below the rank of Sergeant.

5 12. As an authorized labor representative, the City must periodically negotiate
6 the terms of an MOU with PLEA.

7 13. Memoranda of understanding between the City and PLEA include crucial
8 issues of public importance, including how police services will be provided and funded
9 within the City.

10 14. The MOU between the City and PLEA also outline terms of compensation
11 and other conditions of employment that are funded by taxpayers.

12 15. When the City negotiates an MOU with PLEA, City personnel conducting
13 the negotiations on behalf of the City are paid government salaries funded by taxpayers.

14 16. When the City engages in meet and confer negotiations with PLEA, the City
15 is acting on behalf of Phoenix residents.

16 17. When the City engages in meet and confer negotiations with PLEA, the City
17 negotiates on behalf of Phoenix residents.

18 18. When the City negotiates an MOU with PLEA, PLEA representatives
19 conducting the negotiations on behalf of PLEA are paid government salaries funded by
20 taxpayers.

21 19. Phoenix City Code Section 2-218(B) requires public-sector unions to
22 “submit their proposed memorandum of understanding in writing to the City ... and [to]
23 file a copy thereof with the City Clerk as a public record” on or before December 1 in any
24 year in which meet and confer bargaining begins.

25 20. Under City Code, the City must then provide a union an opportunity to
26 make a presentation regarding the union’s proposal at a City Council meeting conducted
27 on or before December 8. *Id.* § 2-218(C).

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1 21. At the subsequent City Council meeting following the union’s presentation
2 of its draft MOU, the City Council is required to “provide on its agenda an opportunity for
3 public comment on the proposals of the authorized employee organization.” *Id.* § 2-
4 218(D).

5 22. The City must submit and file a written response to the proposals on or
6 before January 5. *Id.* § 2-218(E).

7 23. If a final agreement is not reached by March 1, Section 2-219 of the City
8 Code outlines various procedures to resolve any impasses.

9 24. In 2020, PLEA submitted a draft memorandum of understanding (“MOU”)
10 for July 2021–July 2023 pursuant to City law. Exhibit 1 is an accurate copy of PLEA’s
11 draft MOU for 2021–2023.

12 25. The MOU currently in effect between the City and PLEA provides that it
13 “shall remain in full force and effect beginning with the first regular pay period
14 commencing in July 2021, up to the beginning of the first regular pay period commencing
15 in July 2023.” 2021–2023 MOU § 6-6(A). Exhibit 2 is an accurate copy of the ratified
16 2021–2023 MOU.

17 26. With the current MOU expiring in 2023, the City and PLEA were
18 authorized to begin negotiating another MOU in 2022.

19 27. Before December 1, 2022, however, PLEA refused to submit a draft MOU
20 for the upcoming period beginning July 2023. Instead, it merely submitted a letter to the
21 City expressing an “intent to engage in wage and benefit negotiations beginning January
22 of 2023.” Exhibit 3 is an accurate copy of PLEA’s Letter of Intent to Negotiate.

23 28. PLEA did not make a presentation regarding any proposal at the City
24 Council’s December 7, 2022 meeting. At that meeting, Phoenix Mayor Kate Gallego said
25 that “on December 14th, the public will have the opportunity to comment on the proposals
26 from labor organizations.” It appears Agenda Item # 20 containing the letter of intent to
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1 negotiate, was accepted unanimously by the City Council, 8–0. Exhibit 4 is an accurate
2 copy of the Results from the December 7 meeting.¹

3 29. On December 14, 2022, the City met and purported to take public comment
4 on PLEA’s non-existent proposals. Several speakers objected to the lack of transparency
5 and the inability to provide meaningful public comment without seeing the union’s
6 proposals.²

7 30. In response to a question from Councilmember Carlos Garcia, Assistant
8 City Manager Lori Bays admitted that Section 2-218 of the City Code required that PLEA
9 submit a proposed MOU by no later than December 1, 2022, and acknowledged that
10 because the unions chose to submit letters of intent to negotiate rather than the required
11 draft MOUs, “we do not have any MOUs to share with the public today to comment on.”
12 She elaborated, “The intent of the City Code is for each of the groups to present their
13 MOU at this point in the process today. However, they have elected not to do so.”

14 31. Councilmember Laura Pastor subsequently observed that “obviously, people
15 are providing ‘public comment,’ but they can’t provide public comment [be]cause an
16 MOU has not been submitted,” and then inquired about the timeline for unions to submit a
17 proposed MOU “so that there could be public comment.”

18 32. Ms. Bays responded, “[T]hat actually should have happened last week. The
19 groups chose not to submit actual MOUs and instead submitted those letters of intent. We
20 will not actually have a draft MOU to present to the Council until much later in the
21 process—April or May timeframe, depending on when negotiations conclude at the table,
22 to bring those contracts forward for your consideration.” She went on to explain that the
23 public would have an opportunity to comment only on the final MOU when presented to
24 the Council, and possibly once prior to that point if an impasse were to occur that would
25 have to be resolved in a public meeting.

26 ¹ As of the drafting of this complaint, the City has not finalized or published formal
27 meeting minutes from the December 7 or December 14 City Council meetings. As
28 indicated on the Results form, Ex.4, the minutes will supersede the Results form once
finalized and approved.

² See <https://www.youtube.com/watch?v=9VCAwm6HvZY>.

1 33. On January 3, 2023, the City’s Assistant Human Resources Director for
2 Labor Relations, Jason Perkiser, sent a letter to PLEA President Darrell Kriplean
3 acknowledging receipt of the union’s letter of intent to negotiate. Exhibit 5 is an accurate
4 copy of the January 3 letter. Mr. Perkiser wrote,

5 Although your letter does not fulfill the Union’s obligation under the Meet
6 and Confer Ordinance, this letter serves as the City of Phoenix’s response in
7 compliance with City Code § 2-218(E). The expectation is that PLEA will
8 fully comply with the Phoenix City Code in all future negotiations.

9 The City is looking forward to working cooperatively with you during the
10 upcoming negotiation process.

11 34. On information and belief, meet and confer negotiations began some time
12 shortly after the January 3 letter was sent.

13 35. Because PLEA refused to provide a draft MOU, and because the City did
14 not require PLEA to provide a draft MOU, the public was deprived of the opportunity to
15 see any draft MOU or MOU proposal, or to comment on any draft or proposal before the
16 commencement of meet and confer negotiations between the City and PLEA.

17 36. On December 19, 2022, the Goldwater Institute sent a public records request
18 to the Phoenix City Clerk requesting copies of: [1] “[a]ll draft Memoranda of
19 Understanding (‘MOUs’)” between the City and PLEA contemplated for the fiscal year(s)
20 beginning July 1, 2023; [2] “[a]ll proposals for MOUs currently being negotiated—or set
21 to be negotiated per City Code Section 2-218” between those parties for the same time
22 period, and [3] “[a]ny communications to or from City officials regarding PLEA’s failure
23 to submit a draft MOU for the fiscal year(s) beginning July 1, 2023.” Exhibit 6 is an
24 accurate copy of the December 19 request.

25 37. On January 5, 2023, the City’s Public Records Specialist, Jonathon Neitzel,
26 produced a single document responsive to the third request—the January 3 letter. *See Ex.*
27 *5.*

28 38. Mr. Neitzel also asserted:

 For items 1 and 2, any working drafts of MOUs and any proposals submitted
 during negotiations are not disclosable until filed with the City Clerk’s office.
 Until filing, these documents are intended as working material to establish a

1 mutually agreed upon product between the bargaining unit and the City: the
2 final MOU that is available after filing with the City Clerk's office.

3 Exhibit 7 is an accurate copy of Mr. Neitzel's email response.

4 39. Later that day, the Institute replied, pointing out that no specific exception to
5 Arizona's Public Records Law had been asserted by the City and that it was the City's
6 burden to establish an exception. The Institute requested clarification as to which legally
7 recognized exception to disclosure the City claimed for the records in question, as well as
8 an index of the withheld records and the reasons for withholding, pursuant to A.R.S. § 39-
9 121.01(D)(2). Exhibit 8 is an accurate copy of the Institute's January 5 email reply.

10 40. On January 13, 2023, the City sent the Institute a "Certificate of No Record"
11 covering the first two requests. Mr. Neitzel said that "the negotiations process is still in its
12 initial stages and we don't have any drafts of MOUs or proposals on file to give at this
13 moment in time." Exhibit 9 is an accurate copy of Mr. Neitzel's January 13 email and the
14 certificate.

15 41. On January 17, 2023, Mr. Neitzel clarified that "no drafts of the MOU or
16 proposals exist as of the date of the certificate." Exhibit 10 is an accurate copy of Mr.
17 Neitzel's January 17 email.

18 42. On January 20, 2023, the Institute submitted a renewed request for the same
19 materials it had requested on December 19, 2022. Exhibit 11 is an accurate copy of the
20 Institute's renewed request.

21 43. On February 3, 2023, Mr. Neitzel informed the Institute that the City denied
22 the public records requests for draft MOUs and MOU proposals for the following reason:

23 The City does not produce proposals exchanged during table discussions
24 when processing public records requests for materials related to negotiations
25 under the City's Meet and Confer or Meet and Discuss Ordinances. Releasing
26 those types of materials could create a chilling effect on the parties'
27 willingness to candidly engage with each other and it would hinder the
28 negotiations process.

29 Exhibit 12 is an accurate copy of Mr. Neitzel's February 3 email.

30 44. On February 8, 2023, the Institute sent a letter to Phoenix City Attorney
31 Julie Kriegh demanding production of the records, noting that the City had not asserted a

1 legally recognized exception to the public records law, and requesting a response within
2 one week. Exhibit 13 is an accurate copy of the Institute’s February 8 demand letter.

3 45. On February 17, 2023, Ms. Kriegh informed the Institute that she would be
4 meeting with the City Council in executive session on Tuesday, February 21, 2023, and
5 that she would provide a response to our demand letter by close of business on
6 Wednesday, February 22, 2023. Exhibit 14 is an accurate copy of Ms. Kriegh’s February
7 17 email.

8 46. After no response was received, the Institute reached out again on Thursday,
9 February 23, 2023. Exhibit 15 is an accurate copy of the Institute’s February 23 email.

10 47. Ms. Kreigh replied via email later that day and attached a letter to her reply.
11 Exhibit 16 is an accurate copy of Ms. Kriegh’s email and letter. In her letter, she
12 acknowledged receipt of the Institute’s February 8 letter discussing our requests. She then
13 stated:

14 When you submitted your initial request, the City did not have any responsive
15 documents to Request No. 1. As of this date, the City still has no documents
16 responsive to this request. Once a draft MOU between the City of Phoenix
and PLEA is finalized, it will be released to the public for review and
comment pursuant to the requirements of the City Code.

17 When you submitted your initial request, the City did not have any responsive
18 documents to Request No. 2. As of this date, the City does have documents
19 that are responsive to this request. However, the City is withholding all such
responsive documents during negotiations.

20 *Id.* After reciting the legally recognized exceptions to disclosure under Arizona law, she
21 asserted, “The City is withholding documents responsive to Request No. 2 because
22 disclosure of proposals exchanged during table discussions with any bargaining unit under
23 the City’s Meet and Confer Ordinance while those negotiations are ongoing would harm
24 the best interest of the City.” *Id.* She then quoted *Carlson v. Pima County*, 141 Ariz. 487,
25 491, 687 P.2d 1242, 1246 (1984) (citing *Mathews v. Pyle*, 75 Ariz. 76, 78–79, 251 P.2d
26 893, 895 (1952)):

27 While access and disclosure is the strong policy of the law, the law also
28 recognizes that an unlimited right of inspection might lead to substantial and
irreparable private or public harm; thus, where the countervailing interests of

1 confidentiality, privacy or the best interests of the state should be
2 appropriately invoked to prevent inspection, we hold that the officer or
3 custodian may refuse inspection.

4 Ex. 16. Ms. Kriegh then claimed:

5 Releasing these types of materials would create a chilling effect on the parties'
6 willingness to candidly engage with each other and would hinder the
7 negotiations process. While negotiations are proceeding, the City does all it
8 can to ensure the confidentiality of what happens at the bargaining meetings,
9 including entering into confidentiality agreements with each bargaining unit.
10 While the negotiations are proceeding, the City believes that the best interests
11 of the City protect it from disclosing any draft proposals discussed at the
12 bargaining table.

13 *Id.* Lastly, she cited additional caselaw:

14 A public body may designate a record as confidential when releasing the
15 record “would have an important and harmful effect on the duties of the
16 officials or agency in question” detrimental to the best interests of the state.
17 *Ariz. Bd. of Regents v. Phoenix Newspapers Inc.*, 167 Ariz. 254, 257-58, 806
18 P.2d 348, 351-52 (1991). A balancing act of countervailing interests is
19 appropriate in weighing the possible adverse impact of disclosure against the
20 public’s right to inspection. *Id.*

21 Ex. 16. One additional document relating to the Institute’s third request was also
22 produced, though it was already publicly available. *Id.*

23 48. Thus, the City has responsive records to the Institute’s Request Number 2
24 for, “[a]ll proposals for MOUs currently being negotiated—or set to be negotiated per
25 City Cide Section 2-218” for the next fiscal year (“MOU proposals”). *Id.*

26 49. Yet, the City claims records of the MOU proposals are exempt from
27 disclosure.

28 50. Also, in response to Request Number 1, the City indicated that, while it did
not have “draft Memoranda of Understanding (“MOUs”) between the City ... and PLEA”
in its possession as of February 23, 2023, such drafts would only be released by the City
once the agreement is “finalized.” *Id.*

51. Thus, the City appears to contend that records of MOU drafts responsive to
Request Number 1, once created, would also be exempt from disclosure prior to
“finaliz[ation].”

1 59. Publicly funded activities are “not meant to be clothed in secrecy, but to
2 be subject to open discussion and debate.” *Moorehead v. Arnold*, 130 Ariz. 503, 505
3 (App. 1981).

4 60. Records of MOU proposals and draft MOUs between the City and PLEA
5 are public records within the meaning of A.R.S. § 39-121.01.

6 61. Consequently, records of MOU proposals and draft MOUs between the City
7 and PLEA are “required to be kept ... [and] are presumed open to the public.” *Carlson*,
8 141 Ariz. at 491.

9 62. Arizona’s Public Records Law “evinces a clear policy favoring
10 disclosure.” *Id.* at 490.

11 63. Unless a specific statutory exemption applies, the City must disclose public
12 records, including records of MOU proposals and draft MOUs between the City and
13 PLEA. *Id.* at 490.

14 64. The City did not initially state a public records exemption in response to the
15 Institute’s records request.

16 65. The City eventually asserted that responsive records pertaining to draft
17 MOU proposals are being withheld under the “best interests of the state” exception.

18 66. The “best interests of the *state*” exception has been applied in records
19 disputes involving *cities*; nevertheless, “[d]iscretionary refusal to disclose based on the
20 best interests of the state is subject to judicial scrutiny.” *Hodai v. City of Tucson*, 239
21 Ariz. 34, 38 ¶ 7 (App. 2016) (citing *Carlson*, 141 Ariz. at 491).

22 67. “Th[e] ‘best interests of the state’ standard is not confined to the narrow
23 interest of either the official who holds the records or the agency he or she serves. It
24 includes the overall interests of the government and the people.” *Id.*, at 38 ¶ 7 (quoting
25 *Phoenix Newspapers*, 201 Ariz. at 348–49 ¶ 18).

26 68. “The government has the burden of specifically demonstrating how
27 production of documents would be detrimental to the best interests of the state.” *Id.*, at 38
28 ¶ 7 (citing *Cox Ariz. Publ’ns, Inc. v. Collins*, 175 Ariz. 11, 14 (1993)).

1 69. Once it is established that the documents at issue are public records, “the
2 court determines whether the government’s proffered explanation of public harm
3 outweighs the policy in favor of disclosure.” *Id.* at 39 ¶ 8 (citing *Carlson*, 141 Ariz. at
4 491; *Judicial Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 396 ¶ 10, 397 ¶¶ 17–18 (App.
5 2011)).

6 70. Where the interest in complete disclosure of public records competes with
7 another interest, “a practical alternative to the complete denial of access would be deleting
8 specific ... information.” *Carlson*, 141 Ariz. at 491.

9 71. A court’s *in camera* inspection of the records is appropriate for that purpose.
10 *Id.* The public officer is given authority in the first instance to deny the right of access to
11 public records that are privileged or confidential or detrimental to the state’s interests, but
12 “under no circumstances should his determination be final. It rests within the jurisdiction
13 of the courts of the state to determine these questions.” *Mathews*, 75 Ariz. at 81.

14 72. The public has a significant interest in how police services are provided and
15 funded within the City.

16 73. Records of MOU proposals and draft MOUs between the City and PLEA
17 provide information about crucial official activities funded by City taxpayers.

18 74. There is no countervailing state interest that overcomes and outweighs the
19 presumption of disclosure for the requested records.

20 75. Countervailing interests must be considered on a case-by-case basis, not
21 only for each request but for each individual record. *Bolm v. Custodian of Records of*
22 *Tucson Police Dep’t*, 193 Ariz. 35, 40 ¶ 13 (App. 1998).

23 76. The government has the burden to “specifically demonstrate” how a
24 competing interest overcomes the presumption of disclosure. *Phoenix News., Inc. v. Ellis*,
25 215 Ariz. 268, 273 ¶ 22 (App. 2007) (quotation omitted). The probability of “specific,
26 material harm” must be shown. *Mitchell v. Superior Court*, 142 Ariz. 332, 335 (1984).
27 “[G]eneralized claims of broad state interest” are insufficient, and the Arizona Supreme
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1 Court has rejected using a blanket rule exempting categories of documents from
2 disclosure. *Cox Ariz. Publ'ns*, 175 Ariz. 11, 13–14.

3 77. The documents at issue in this matter are public records, and the
4 public is entitled to open access to them. The City must fulfill this request by
5 releasing all responsive records.

6 78. Through its Meet and Confer Ordinance, the City has already articulated
7 that the best interests of the “state,” which includes the interests of both the City and the
8 public, demand public access to draft MOUs and MOU proposals prior to the
9 commencement of meet and confer negotiations. Phoenix City Code § 2-218.
10 Furthermore, by violating and disregarding its own ordinances and processes for public
11 dissemination of information regarding the meet and confer process, the City has waived
12 any claim that purported ongoing negotiations should remain confidential.

13 79. No competing governmental interest warrants denying Plaintiff’s records
14 request. The City established a public process for entering MOUs with public-sector
15 unions. Having disregarded this process, the City cannot belatedly claim that it now has an
16 interest in keeping its communications with PLEA confidential that over-rides the strong
17 presumption of public disclosure, the objective of the statutory mandates for open access
18 to public records, and the expressed interests of the public articulated in City Code.

19 80. Clothing the meet and confer process in secrecy by withholding MOU
20 proposals from the public is not in the best interests of the “state.”

21 81. For these reasons, the City has violated Arizona’s Public Records Law and
22 the Goldwater Institute’s rights to access to these public records.

23 **DECLARATORY RELIEF ALLEGATIONS**

24 82. Plaintiff incorporates the allegations in the preceding paragraphs 1–81.

25 83. An actual and substantial controversy exists between Plaintiff and
26 Defendants as to their respective legal rights and duties. *See* A.R.S. § 12-1831.

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E. Order such additional relief as may be just and proper.

RESPECTFULLY SUBMITTED this 1st day of March, 2023.

GOLDWATER INSTITUTE

/s/ Parker Jackson
Jonathan Riches (025712)
Scott Day Freeman (19784)
Parker Jackson (037844)
Scharf-Norton Center for
Constitutional Litigation at the
GOLDWATER INSTITUTE
500 E. Coronado Rd.
Phoenix, Arizona 85004

Attorneys for Plaintiff

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Verification

Pursuant to Rule 80(i), Ariz. R. Civ. P., Jonathan Riches verifies under penalty of perjury that the foregoing is true and correct:

1. I am a full-time employee and General Counsel of Plaintiff Goldwater Institute.
2. I have read the foregoing Complaint and know the contents thereof.
3. The statements and matters alleged are true of my own personal knowledge, except as to those matters stated upon information and belief, and as to such matters, I reasonably believe them to be true.
4. I further attest that there is sufficient cause to grant Plaintiff the relief requested in the Complaint, and the Defendants should therefore be required to show cause as to why the relief requested should not be granted.

Dated this 1st day of March, 2023.

/s/ Jonathan Riches
Jonathan Riches