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**IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

JENNIFER WRIGHT, *et. al.*,

Plaintiffs,

vs.

GREGORY J. STANTON, in his official capacity as  
Mayor of the City of Phoenix; *et. al.*,

Defendants.

Case No. CV2013-010915

**PLAINTIFFS' RESPONSE  
TO DEFENDANTS'  
MOTION TO DISMISS**

*Hon. John Rea*

**(Oral Argument Requested)**

Plaintiffs Jennifer Wright, Eric Wnuck, and Jim Jochim, who are Phoenix taxpayers ("Taxpayers"), hereby respond to Defendants' Motion to Dismiss. Defendants City of Phoenix, Gregory Stanton, Bill Gates, Thelda Williams, Jim Waring, Tom Simplot, Daniel Valenzuela, Sal Diciccio, Michael Nowakowski, Michael Johnson, and David Cavazos ("City") are obligated to comply with state law when determining the amount of, approving, and funding pension payments to Phoenix Police Department Sergeants and Lieutenants. They have failed to do so. Defendants' Motion to Dismiss is wrong in both fact and law.

For the reasons set forth below, Taxpayers respectfully request that Defendants' Motion to Dismiss be DENIED. This Response is supported by the following Memorandum of Points and Authorities and pleadings and matters of record filed with the Court, all of which are incorporated by reference.

**MEMORANDUM OF POINTS AND AUTHORITIES**

## **I. Preliminary Statement**

On August 15, 2013, Taxpayers filed a Complaint to end a practice perpetrated by Defendants that allows Phoenix Police Department Sergeants and Lieutenants to artificially inflate their pension payments in clear violation of state law. Defendants now seek to dismiss Taxpayers' Complaint for failure to state a claim, failure to join an indispensable party, and lack of standing. (Defs.' Mot. 2). On October 8, 2013, Taxpayers filed an Amended Complaint, adding the City of Phoenix Police Pension Board and the Public Safety Personnel Retirement System ("PSPRS") as additional defendants. (FAC).

The City's Motion to Dismiss shows a fundamental misunderstanding about the manner in which pension payments for Phoenix Police Department Sergeants and Lieutenants are determined, approved, and funded. The thrust of the City's argument is that the City lacks the authority to make binding pension calculation classifications (Defs.' Mot. 3), claiming instead that the Public Safety Personnel Retirement System ("PSPRS") and its Board of Trustees determine what salary components do or do not count as pensionable compensation (*Id.*). The City, therefore, argues that PSPRS is an indispensable party. The City further contends that Taxpayers lack standing because the City "does not make pension payments in a fashion that gives rise to a claim of direct taxpayer injury. . . ." (*Id.*).

The City is incorrect, as a matter of fact and law, on all counts. The City determines which items of compensation are pensionable for City employees who participate in PSPRS. Additionally, the local City of Phoenix Police Pension Board has the explicit statutory authority "to determine the amount, manner, and time of payment of any benefits under [PSPRS]" to Phoenix Police Department Sergeants and Lieutenants. ARIZ. REV. STAT. § 38-847(D)(1). It is, therefore, the City of Phoenix and its local pension board that determines and approves pension payments for Phoenix Police Department Sergeants and Lieutenants and reports that information to PSPRS, not the other way around.<sup>1</sup> Although PSPRS is not an indispensable party, Taxpayers

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<sup>1</sup> A declaration of PSPRS Administrator, James Hacking, describing the manner in which pension payments are determined, approved, and funded for Phoenix Police Department

joined PSPRS and the Phoenix Police Pension Board as defendants in Taxpayers' Amended Complaint. (FAC). Additionally, Taxpayers have clear standing in this case because the City directly funds pension payments through taxpayer contributions to the Phoenix Police Department's separate account in PSPRS. When unlawful payments are permitted and approved by the City there is a direct expenditure of taxpayer funds.

## **II. Legal Analysis**

### **A. Taxpayers Have Stated a Claim to Enjoin the City from Approving Pension Benefits that Violate of State Law**

Plaintiffs have stated a claim upon which relief can be granted. When resolving a Rule 12(b)(6) motion to dismiss, "Arizona courts look only to the pleading itself and consider the well-pled allegations contained therein. Courts must also assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, 189 P.3d 344, 346 (2008). As a general rule, "motions to dismiss for failure to state a claim are not favored under Arizona law." *Sensing v. Harris*, 217 Ariz. 261, 262 172 P.3d 856, 857 (App. 2007). "[A] complaint need merely set forth a short and plain statement showing the plaintiff is entitled to relief in order to survive a motion to dismiss." *Mobilisa, Inc. v. Doe*, 217 Ariz. 103, 111, 170 P.3d 712, 720 (App. 2007). The court must deny a motion to dismiss "unless certain that plaintiffs can prove no set of facts which will entitle them to relief upon their stated claims." *Gatecliff v. Great Republic Life Ins. Co.*, 154 Ariz. 502, 508, 744 P.2d 29, 35 (App. 1987). Taxpayers' Amended Complaint sets forth well-pled factual allegations showing that they are entitled to relief.

The City was obligated to comply with state law when it entered into a Memorandum of Agreement ("MOA") with the Phoenix Police Sergeants and Lieutenants Association ("PPSLA") regarding compensation, including what items count as pensionable compensation. (FAC ¶¶ 40, 45, 49); (Hacking Decl. ¶¶ 17, 23, 33). The City's "meet and confer" ordinance

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Sergeants and Lieutenants is attached as **Exhibit A** and incorporated by reference. (Hacking Decl.)

“obligate[s] the City, public employees, and their representatives, *acting within the framework of the law*, to enter into discussions with affirmative willingness to resolve grievances and disputes relating to wages, hours and working conditions.” PHOENIX, ARIZ., CODE § 2-209 (emphasis added). Moreover, “the results of agreements between the employer and the employees will be drafted into written memoranda of understanding.” *Id.* The MOA between the City and PPSLA, therefore, provides the legal framework under which wages and salary, including what components of compensation count as pensionable salary, for Phoenix Police Department Sergeants and Lieutenants are determined. *See* PHOENIX, ARIZ., CODE § 2-209; MOA, Preamble; (Hacking Decl. ¶ 23). Once the MOA is signed, it creates a legally binding obligation on the part of Defendants. PHOENIX, ARIZ., CODE § 2-209.

The clear purpose and effect of the provisions of the MOA regarding payment in lieu of vacation, payment for unused sick leave and compensatory time, and payment for other fringe benefits is to circumvent the plain language of state statute. MOA, §§ 3-1D, 3-2(D)(1), 3-4(B)(5), 5-5(L), 5-5(M)(1); ARIZ. REV. STAT. § 38-842(12). Compensation for members of PSPRS “does not include, for purposes of computing retirement benefits, payment for unused sick leave, payment in lieu of vacation, payment for unused compensatory time or payment for any fringe benefit.” ARIZ. REV. STAT. § 38-842(12). Because pensionable salary for members of PSPRS is based on the highest three years of salary preceding retirement (“Final Average Salary”), and because members are eligible to retire at 20 years of service, the plain effect of those provisions is to authorize Phoenix Police Department Sergeants and Lieutenants to include items of compensation in their pensions that are prohibited under state law. *Id.* at §§ 38-842(7), 38-842(32)(A). For example, §5-4(L) of the MOA permits Phoenix Police Department Sergeants and Lieutenants who have “accrued maximum vacation carryover, with *seventeen years of service in PSPRS*” to receive payment of salary in lieu of vacation leave for a *three-year period*. MOA § 5-4(L) (emphasis added). Since this compensation benefit is only available after seventeen years of service and only is in effect for three years, the intent and consequence of this provision, and the other provisions at issue, is to allow specific payments

for Phoenix Police Sergeants and Lieutenants to be classified as pensionable salary.

Courts throughout the United States have struck down similar efforts by municipalities that passed ordinances or entered memoranda of understanding allowing public employees to increase pension benefits by exchanging leave and other benefits for additional salary. For example, in *Chancellor v. Department of Retirement Systems*, the Washington Court of Appeals invalidated a city ordinance that allowed employees to exchange vacation leave for a cash equivalency because the ordinance violated state pension law permitting only “basic salary” in pensionable pay. 103 Wash.App. 336, 103 P.3d 164 (2000). Similarly, in *Matter of Davies v. New York State & Local Police and Fireman Retirement System*, the New York Appellate Division upheld the Comptroller’s determination that a provision in the collective bargaining agreement between the police and the city which permitted exchange of sick leave credits for additional salary was invalid under state retirement law. 259 A.D.2d 912, 913, 686 N.Y.S.2d 882, 883 (1999). The court wrote that the sick leave exchange program “was nothing more than an attempt to circumvent the prohibition contained in [state retirement law] against using accumulated sick leave credits in calculating an applicant’s final average salary.” *Id.*

The Defendants argue that “the MOA does not classify any payment for unused benefits as ‘compensation’ for pension calculation purposes.” (Defs.’ Mot. 4). Because the provisions at issue provide legal authority and effect for pensionable payments that are impermissible under state law, the provisions are unlawful, regardless of how they are “classified.” Although the MOA does not specifically label the provisions at issue as “pensionable” payments, as Defendants appear to assert is necessary (Defs.’ Mot. 4-5), the plain legal effect is that any payment made under these provisions will count as pensionable salary. Therefore, the court must look to the substance of the transaction rather than what the parties label it. *See generally, Seargeant v. Smith*, 63 Ariz. 466, 472, 163 P.2d 680, 682 (1945) (“The court will look to and construe the transaction by its substance and effect, rather than its form. . . .”); *Merryweather v. Pendleton*, 90 Ariz. 219, 230, 367 P.2d 251, 258 (1961) (citing “universally applicable rule that equity looks to the substance rather than the form. Equity will go behind the form of a

transaction to impose liability against evasion by a concealment of the instrument's true character."); *Johnson v. Nychyk*, 21 Ariz.App. 186, 188, 517 P.2d 1079, 1081 (1974) (Finding that form is not controlling; "the court will look to the substance of the circumstances and not the labels placed on them by the parties."). The City can no more make an agreement which allows City employees to convert pay that is not pensionable under state law to pensionable pay than it can include a provision in the MOA that permits Phoenix Police Department members to cease paying state income tax by not "classifying" or labeling their salary as income.

The City also argues that "Defendants do not have legal authority to make such any [*sic*] binding pension computation classification under the MOA or Arizona law." (Defs.' Mot. 5). In fact, in the text of the MOA itself the City specifically classifies which payments are not pensionable. *See* MOA, § 3-4(B)(4) ("The payments described in numbers 1 through 3 above are not considered Final Average Salary for purposes of pension calculations."). Either the City does have the "legal authority" to make "binding pension compensation classification[s] under the MOA" or it does not. Of course, since the MOA itself specifically classifies certain payments as not pensionable, this clearly refutes the City's assertion that the City lacks the authority to make such classifications in the MOA. Additionally, and revealingly, the City has refused to include provisions in memoranda of understanding with other labor unions when those provisions violate state law. *See, e.g., American Federation of State, County, and Municipal Employees, AFL-CIO, Local 2348 v. City of Phoenix*, 213 Ariz. 358, 360, 142 P.3d 234, 236 (App. 2006) (The City of Phoenix maintained that requiring non-union employees to pay "fair share" of union expenses would violate state statute and City refused to include a "fair share" provision in memorandum of understanding between the City and the union.)

Not only does the City make classifications regarding pensionable payments in its MOA with PPSLA, the City, and not the pension system, also determines which components of salary are pensionable as a matter of payment procedures and accounting. Specifically, the City and the Phoenix Police Department assign "earning codes" to different types of compensation and designate which of these payment types are pensionable. (FAC ¶ 41); (Hacking Decl. ¶ 23).

The City then withholds employee pension contributions and makes employer pension contributions to PSPRS based on items the City determines constitute pensionable salary. (FAC ¶ 41); (Hacking Decl. ¶¶ 11, 13-16); *See* ARIZ. REV. STAT. § 38-843.

Finally, Defendants argue, “the determination of whether the pay for unused benefits constitutes ‘compensation’ for purposes of calculating benefits is the sole responsibility of [PSPRS] and the [PSPRS] Board. . . .” (Defs.’ Mot. 5). As described, *supra*, the City initially determines what salary components are pensionable in its MOA with PPSLA as well as in its pay and accounting procedures. As described, *infra*, the Phoenix Police Pension Board, not PSPRS, approves the final pension amount. *See* ARIZ. REV. STAT. § 38-847(D)(1).

**B. Taxpayers Have Joined all Necessary Parties**

Defendants argue that Taxpayers’ claim should be dismissed under Rule 12(b)(7) because Taxpayers did not join an indispensable party under Rule 19(a). (Defs.’ Mot. 5-6). On October 8, 2013, Taxpayers filed an Amended Complaint that joined both PSPRS and the local Phoenix Police Pension Board as defendants in this case. (FAC 1). While Taxpayers do not concede that PSPRS is indispensable under Rule 19, Taxpayers believe all necessary parties are now included in this action and that Defendants’ objection under 12(b)(7) is mooted.

In an apparent effort to redirect the spotlight of liability away from the City, however, Defendants inaccurately portray the manner in which pension payments are determined and approved for members of PSPRS, including Phoenix Police Department Sergeants and Lieutenants. Specifically, in arguing that PSPRS is an indispensable party, the City asserts, “Defendants do not have the authority or the ability to determine whether pay for unused benefits constitutes [pensionable] compensation. Instead, the power to calculate and administer pension benefits is statutorily delegated to [PSPRS] and the [PSPRS] Board [of Trustees].” (Defs.’ Mot. 6). This is patently false. (Hacking Decl. ¶¶ 21-26, 31, 33). As described, *supra*, the City classifies which components of compensation are pensionable, and then creates a legally binding obligation in the City’s MOA with PPSLA. The City then withholds and makes pension contributions to PSPRS based on components of compensation the City determined

constitutes pensionable salary. (FAC ¶ 41); (Hacking Decl. ¶¶ 14-17).

Additionally, the Phoenix Police Pension Board, not PSPRS, has the statutory authority to approve specific pension payments for Phoenix Police Department Sergeants and Lieutenants. The Phoenix Police Pension Board is a five member board composed of three persons appointed by the City and two Phoenix Police Department members elected by Phoenix Police Department employees. ARIZ. REV. STAT. § 38-847(A)(1). The Phoenix Police Pension Board has the authority to “determine the amount, manner and time of payment of all benefits under the system [PSPRS].” *Id.* at (D)(1). The City provides salary information, including payments the City has determined constitute pensionable salary, to the Phoenix Police Pension Board. (FAC ¶¶ 41-42). The role of PSPRS and the Phoenix Police Pension Board notwithstanding, the City must ensure that it properly classifies and reports pension payments and makes pension contributions for Phoenix Police Department Sergeants and Lieutenants in compliance with state law. (FAC ¶¶ 40, 45) (Hacking Decl. ¶¶ 17, 23, 31, 33).

**C. Taxpayers Have Standing Because Taxpayers Directly Finance the City’s Unlawful Pension Payments**

Plaintiff taxpayers have standing because they directly fund unlawful pension payments for Phoenix Police Department Sergeants and Lieutenants. The Arizona Supreme Court has long-recognized that taxpayers may challenge legislative acts that unlawfully expend public money. *Ethington v. Wright*, 66 Ariz. 382, 386, 189 P.2d 209, 212 (1948) (“It is now the almost universal rule that taxpayers of a municipality may enjoin the illegal expenditure of municipal funds.”). Arizona courts have regularly conferred broad taxpayer standing when municipal taxpayers challenge legislative acts or public contracts that violate state law or the Arizona Constitution. *Secrist v. Diedrich*, 6 Ariz.App 102, 104, 430 P.2d 448, 450 (App. 1967) (school district taxpayers have standing to challenge expenditure of public funds that violated state law); *Turken v. Gordon*, 220 Ariz. 456, 461, 207 P.3d 709, 714 (App. 2008), *rev’d on other grounds*, 223 Ariz. 342, 224 P.3d 158 (2010) (finding standing where Phoenix taxpayers brought action against city to enjoin payments to private developer that violated the Arizona Constitution).



“The right to maintain such suits is based upon the taxpayers’ equitable ownership of such funds and their liability to replenish the public treasury for the deficiency which would be caused by the misappropriation.” *Ethington*, 66 Ariz. at 386, 189 P.2d at 212. Taxpayers will have standing to challenge unlawful government expenditures if taxpayers can show a direct expenditure of funds generated through taxation or an increased levy of tax. *See Dail v. Phoenix*, 128 Ariz. 199, 202, 624 P.2d 877, 880 (App. 1980).

The City challenges Taxpayers’ standing because “[p]laintiffs cannot be harmed by the City’s ‘payment of pension benefits under [the] MOA’ because the City does not make the actual pension payments. [PSPRS] does.” (Defs.’ Mot. 7). Moreover, the City contends, “payments of pension benefits are made from a general fund that combines the contributions of all participating employers and is then invested by the [PSPRS] Board [of Trustees].” (Defs.’ Mot. 8). Once again the City fundamentally misunderstands or inaccurately portrays the manner in which pension payments for Phoenix Police Department Sergeants and Lieutenants are made and financed.

Payments to Phoenix Police Department Sergeants and Lieutenants in PRPRS are made from a Phoenix-only fund that is funded entirely and exclusively by Phoenix taxpayers and City employees. (FAC ¶ 23-24, 26-30); (Hacking Decl. ¶¶ 7, 10-16); ARIZ. REV. STAT. § 38-843. Each employer in PSPRS, including the Phoenix Police Department, has a separate account in PSPRS to which contributions are made and from which pension payments are drawn. (FAC ¶¶ 23, 26); (Hacking Decl. ¶¶ 7, 10-16); ARIZ. REV. STAT. § 38-843. Although monies from employee and employer contributions are pooled for investment purposes, benefit payments are not shared by all employers in the system; instead, benefit payments are paid exclusively from each employer’s separate account in PSPRS. (FAC ¶ 23); (Hacking Decl. ¶ 12). Therefore, every time a Phoenix Police Department Sergeant or Lieutenant receives a pension check, that check has been funded directly by Phoenix taxpayers. PSPRS is a trustee of Phoenix’s fund that administratively “cuts the check” from the Phoenix Police Department’s separate account in PSPRS. (FAC ¶ 44); (Hacking Decl. ¶ 32); ARIZ. REV. STAT. § 38-848. The fact that PSPRS

authorizes payments from the City's separate account in PSPRS does not remove the right of Phoenix Taxpayers to ensure their tax dollars are lawfully spent.

Moreover, employer contributions rates are different for each employer in PSPRS, including the Phoenix Police Department, and change every fiscal year based on actuarial valuation. (FAC ¶ 27); (Hacking Decl. ¶ 14). If pension payments are increased through unlawful expenditures, the City's contribution rate to PSPRS will also increase. (FAC ¶¶ 27-29); (Hacking Decl. ¶¶ 15-16). Since the City's contributions to PSPRS are generated through taxation on Phoenix residents, Taxpayers are directly harmed when the City's contributions increase as a result of additional, unlawful expenditures.

Ultimately, the City's inaccurate factual assertions are beside the point, because for purposes of a motion to dismiss, Taxpayers' factual allegations are taken as true. Especially given that the Phoenix Police Pension Board and PSPRS have been joined as parties, no question exists that Taxpayers have stated a cause of action for illegal expenditure of public funds that they have standing to prosecute. Moreover, Arizona's broad taxpayer standing rules, the City's unlawful classification of pensionable payments, and the City's direct financing of those payments, provide Phoenix Taxpayers clear standing in this case.

### **III. Conclusion**

For the foregoing reasons, Taxpayers respectfully request that Defendants' Motion to Dismiss and request for attorneys' fees be DENIED.

Respectfully submitted on this 10<sup>th</sup> Day of October, 2013.

/s/ Jonathan Riches  
Clint Bolick (021684)  
Jonathan Riches (025712)  
Taylor Earl (028179)  
*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

ORIGINAL E-FILED this 10<sup>th</sup> day of October, 2013, with a copy delivered via the ECF system to:

The Honorable John Rea  
Maricopa County Superior Court

Clerk of Court  
Maricopa County Superior Court  
201 West Jefferson Street  
Phoenix, AZ 85003

COPY of the foregoing E-MAILED and MAILED this 10<sup>th</sup> day of October, 2013 to:

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/s/ Jonathan Riches

**Exhibit A**

**Exhibit A**

**Scharf-Norton Center for Constitutional Litigation at the  
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**IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

JENNIFER WRIGHT; ERIC WNUCK; and JIM  
JOCHIM,

Plaintiffs,

vs.

GREGORY J. STANTON, in his official capacity as  
Mayor of the City of Phoenix; BILL GATES, in his  
official capacity as member of the Phoenix City  
Council and Vice Mayor; THELDA WILLIAMS, in  
her official capacity as member of the Phoenix City  
Council; JIM WARING, in his official capacity as  
member of the Phoenix City Council; TOM  
SIMPLOT, in his official capacity as member of the  
Phoenix City Council; DANIEL VALENZUELA, in  
his official capacity as member of the Phoenix City  
Council; SAL DICICCIO, in his official capacity as  
member of the Phoenix City Council; MICHAEL  
NOWAKOWSKI, in his official capacity as member  
of the Phoenix City Council; MICHAEL JOHNSON,  
in his official capacity as member of the Phoenix City  
Council; and DAVID CAVAZOS, in his official  
capacity as City Manager of the City of Phoenix;  
CITY OF PHOENIX; and PHOENIX POLICE  
SERGEANTS AND LIEUTENANTS  
ASSOCIATION.

Defendants.

Case No. CV2013-010915

**DECLARATION OF MR.  
JAMES HACKING, PSPRS  
ADMINISTRATOR**

*Hon. John Rea*

Pursuant to Arizona Rules of Civil Procedure 80(i), **Mr. James Hacking** declares

as follows:

1. I am the current Administrator of the Public Safety Personnel Retirement System (PSPRS) for the State of Arizona.
2. PSPRS is a retirement system for certain full-time peace officers and full-time firefighters in the State of Arizona.
3. I have served as Administrator of PSPRS since August 29, 2005.
4. As the Administrator of PSPRS, I have extensive first-hand knowledge of the organization and administration of PSPRS.
5. PSPRS is a “defined benefit plan,” which means benefits are determined by a statutory formula: Beneficiaries (or “members”) under the PSPRS system receive a pension based on their number of years of service and the highest three consecutive years of salary in the last twenty years of service preceding retirement.
6. PSPRS is also an “agent multiple-employer” retirement plan.
7. As an “agent multiple-employer” retirement plan, separate accounts are kept by each employer in PSPRS.
8. Employers are generally departments of cities and counties in Arizona.
9. At any given time, there are between 240-250 separate employers contributing to PSPRS.
10. The City of Phoenix Police Department is an employer in PSPRS.
11. Each individual employer, including the City of Phoenix, is alone responsible for financing the payment of pension benefits to its members from the employer’s separate account in PSPRS.

12. In other words, although monies in PSPRS are pooled for investment purposes, benefit payments from PSPRS are not “shared” by all employers in the system; rather, benefits are paid by each employer from the employer’s separate account.

13. Apart from investment obligations and administration, neither the State or Arizona, nor PSPRS, is responsible for raising revenue for pension payments from PSPRS.

14. Additionally, employer contributions rates are different for each employer in the system and change every fiscal year based on actuarial valuation that is done for each employer’s employee group within the system.

15. If more or higher benefits are paid, the employer contribution rate will increase accordingly, to cover the liability associated with the higher benefit amounts.

16. Therefore, if the City of Phoenix Police Department has higher pension payments than anticipated, then the City of Phoenix’s contributions to PSPRS, generated through taxation on Phoenix residents or otherwise, will increase.

17. Each employer within PSPRS, including the City of Phoenix, have their own accountants, auditors, and legal counsel to ensure employee and employer contributions to PSPRS are consistent with state statute.

18. PSPRS does not generally audit employers, including the City of Phoenix or the Phoenix Police Department.

19. Each employer group in PSPRS has its own local board.

20. A “local board” is a five member board composed of three persons appointed by the employer and two persons who are elected by the employees of the

employer group.

21. Pursuant to A.R.S. § 38-847(D)(1), local boards within PSPRS have the duty to “decide all questions of eligibility and service credits, and to determine the amount, manner and time of payment of any benefits under the system.”

22. The City of Phoenix Police Pension Board is the local board for the Phoenix Police Department.

23. The City of Phoenix determines what items count as pensionable salary for Phoenix employees who participate in PSPRS.

24. PSPRS does not make determinations for any employer, including the City of Phoenix, regarding what items of compensation count as pensionable salary.

25. The City of Phoenix Police Pension Board approves pensionable salary and the specific pension amounts for each Phoenix Police Department employee under PSPRS.

26. The City of Phoenix Police Pension Board reports the pension amount it approves directly to PSPRS.

27. Attached as **Exhibit 1** is Form P11, which is used by all local boards, including the City of Phoenix Police Pension Board, to calculate and report the pension benefits for regular service retirements of their members to PSPRS.

28. Section A of **Exhibit 1** is where local boards, including the City of Phoenix Police Pension Board, enters pensionable compensation for their members.

29. Pensionable compensation as reported in Section A of **Exhibit 1** is reported to PSPRS directly by the local boards, including the City of Phoenix Police Pension



Board.

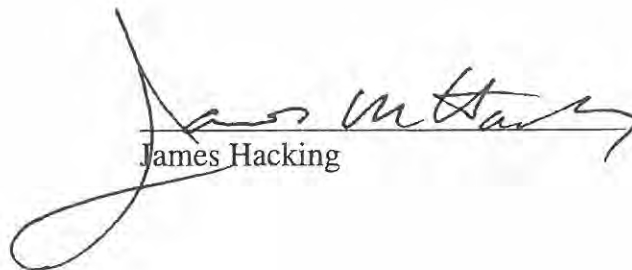
30. The pensionable compensation amounts reported by the local board, including the City of Phoenix Police Pension Board, is not itemized as to the components of compensation. Therefore, if an employer were to calculate a pension amount that included, for example, payment in lieu of vacation leave, PSPRS would not see that itemization on **Exhibit 1**.

31. PSPRS relies on each employer and its local board to report pensionable compensation consistent with a proper interpretation of state statute.

32. When PSPRS receives **Exhibit 1** from the employer, it records the pension amount listed and then issues a check to the identified beneficiary in the amount indicated by the employer from the employer's separate account in PSPRS.

33. It is the duty of employers in PSPRS, including the City of Phoenix, and local boards in PSPRS, including the City of Phoenix Police Pension Board, to determine the amount, manner, and time of payment of pension benefits, and to conclude that such payments comply with all applicable laws.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

  
James Hacking

Dated: October 7, 2013

# Exhibit 1

# Exhibit 1

**PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM**  
3010 E. Camelback Rd., Suite 200, Phoenix, Arizona 85016  
(602) 255-5575 FAX (602)296-2369 www.psprs.com  
**SERVICE RETIREMENT BENEFIT CALCULATIONS**  
A.R.S. Section 38-845

**FORM P11**  
08/12  
Page 1 of 1

**USE THIS PAGE FOR ALL SERVICE RETIREMENTS AND SURVIVING SPOUSE, GUARDIAN AND ELIGIBLE CHILD BENEFITS FOR DECEASED MEMBERS WHO WERE RECEIVING SERVICE RETIREMENTS**

|   |             |                               |               |
|---|-------------|-------------------------------|---------------|
| Member Name _____   |             | Employer _____                |               |
| BIRTH DATE: _____   |             | SOCIAL SECURITY NUMBER: _____ |               |
| PRIOR SERVICE   | From: _____ | Through: _____                | = _____ Years |
| Less Non-Credited Service   | From: _____ | Through: _____                | = _____ Years |
| SERVICE DATES   | From: _____ | Through: _____                | = _____ Years |
| LENGTH OF CREDITED SERVICE: _____   |             | Years _____                   | Days _____    |
| AMOUNT OF FINAL CONTRIBUTION TO PSPRS: \$ _____ for Pay Period Ending _____ |             |                               |               |

**A. COMPENSATION: List total compensation for the highest three consecutive years within the last twenty completed years of credited service (if periods of LWOP and/or Workers' Compensation are included, please indicate):**

| YEAR                | AMOUNT   | YEAR                | AMOUNT   |
|---------------------|----------|---------------------|----------|
| _____ through _____ | \$ _____ | _____ through _____ | \$ _____ |
| _____ through _____ | \$ _____ | _____ through _____ | \$ _____ |
| _____ through _____ | \$ _____ | _____ through _____ | \$ _____ |
| _____ through _____ | \$ _____ | _____ through _____ | \$ _____ |

**B. TOTAL AMOUNT of highest three consecutive Years:..... \$ \_\_\_\_\_**

**C. AVERAGE MONTHLY COMPENSATION - LINE B ÷ 36 months: ..... \$ \_\_\_\_\_**

**D. For retirement with 20 years of credited service but less than 25 years of credited service:**

1. Line C x 50%..... \$ \_\_\_\_\_
2. PLUS 2% of Line C for each year of credited service over 20 years..... \$ \_\_\_\_\_
3. TOTAL MONTHLY BENEFIT: ..... \$ \_\_\_\_\_

**E. For retirement with 25 or more years of credited service:**

1. Line C x 50%..... \$ \_\_\_\_\_
2. PLUS 2.5% of Line C for each year of credited service over 20 years (MAX - 12 years)..... \$ \_\_\_\_\_
3. TOTAL MONTHLY BENEFIT: ..... \$ \_\_\_\_\_

**F. For retirement with 20 years of service but less than 20 years of credited service:**

1. Line C x 50%..... \$ \_\_\_\_\_
2. MINUS 4% of Line F1 for each year of credited service under 20 years... \$ \_\_\_\_\_
3. TOTAL MONTHLY BENEFIT: ..... \$ \_\_\_\_\_

**G. Surviving Spouse or Guardian Benefit: 4/5 of Line D3, E3 or F3, whichever is applicable..... \$ \_\_\_\_\_**

**H. Eligible Child Benefit: 1/10 of Line D3, E3 or F3, whichever is applicable (MAX - 2 child shares)... \$ \_\_\_\_\_**

**CALCULATED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**PHONE NUMBER:** (     )     -     \_\_\_\_\_