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

CHEATHEM, et al.

Plaintiffs,

vs.

DICICCIO, et al.

Defendants.

Case No. CV2011-021634

MOTION TO INTERVENE

(Assigned to: *Honorable Katherine Cooper*)

(Oral Argument Requested)

Proposed Interveners Thomas Cox, Victor Escoto, Richard V. Hartson, Vivian Reque, and David K. Wilson ("Proposed Interveners"), by counsel and pursuant to Rule 24 of the Arizona Rules of Civil Procedure, hereby move to intervene in this action as a matter of right or, in the alternative, by permission. As grounds therefore, Proposed Interveners state as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

Proposed Interveners are line officers of the Phoenix Police Department ("PPD"). Plaintiffs, who claim to be taxpayers and residents of the City of Phoenix ("the City"), challenge the 2012-14 Memorandum of Understanding ("MOU") entered in by and between the City and its police officers, as negotiated by the officers' authorized representative, the Phoenix Law Enforcement Association ("PLEA"). In their Amended Complaint, Plaintiffs assert that certain release time provisions bargained for and paid to the City's police officers as an essential part of the officers' compensation under the 2012-14 MOU violate the Gift Clause provision in Arizona's Constitution. Plaintiffs ask the Court to declare the entire agreement to be unconstitutional and to "preliminarily and permanently enjoin [the MOU's] further effect." In short, Plaintiffs seek to void Proposed Interveners' employment contract with the City. Proposed Interveners thus have a direct, immediate, and compelling interest in the outcome of this litigation such that they should be allowed to participate in the lawsuit in order to protect their rights. In the alternative, they should be granted permission to intervene to defend their substantial interest in their employment contract.

II. Factual and Procedural Background.

On December 7, 2011, Plaintiffs filed suit against the City of Phoenix, the individual members of the Phoenix City Council, and PLEA challenging the 2010-12 MOU between the City and the employees of Unit 4.¹ Plaintiffs contended that the inclusion of certain release time provisions in the 2010-12 MOU violated the Gift Clause provision of the Arizona Constitution, Ariz. Const., Art. 9, § 7 because they allegedly were an unlawful subsidy to PLEA.

¹ Unit 4 refers to the line officers of the PPD only. It does not include police sergeants or lieutenants or other police supervisors, command staff, or civilian employees.

1 Proposed Intervenors are employed as active duty police officers of the PPD.
2 Some are members of PLEA; others are not. Some have utilized PLEA's representation
3 in grievance meetings and before Use of Force and Disciplinary Review Boards, as well
4 as in other employment related matters. Some have served as PLEA representatives;
5 others have neither utilized PLEA's representation nor served as representatives. All of
6 them believe it is important for line officers like themselves to have an authorized
7 representative that is available to assist them in employment matters, and, as a result,
8 agreed to have a portion of their total compensation paid to them in release time to be
9 utilized by their authorized representative instead of being paid to them in the form of
10 higher wages or other benefits.

11 Following an evidentiary hearing on May 25, 2012, the Court entered a
12 preliminary injunction enjoining the challenged release time provisions. On June 30,
13 2012, however, the 2010-12 MOU expired and a new MOU for the two year period
14 from 2012-14 took effect. Consequently, the preliminary injunction entered by the
15 Court following the May 25, 2012 hearing was rendered null and void.

16 In order to avoid the obvious conclusion that their lawsuit was moot, on or about
17 June 28, 2012, Plaintiffs filed a motion to amend their Complaint to challenge the 2012-
18 14 MOU instead of the 2010-12 MOU. They also filed a renewed application for a
19 preliminary injunction on or about that same date.

20 The 2012-14 MOU differs from the 2010-12 MOU in several important ways.
21 For example, the 2012-14 MOU makes it crystal clear that the challenged release time is
22 bargained for compensation paid by the City to its police officers as an element of the
23 officers' total compensation, not simply a "gift" to PLEA. The 2012-14 MOU states, in
24 relevant part:

25 The City and the Association have negotiated six full time
26 release positions, and release hours, as an efficient and

1 readily available point of contact for addressing labor
2 management concerns. . . . The cost to the City for these
3 release positions, including all benefits, has been charged as
4 part of the total compensation contained in this agreement in
5 lieu of wages and benefits.

* * *

6 The cost to the City of these release hours, including fringe
7 (sic), has been charged as part of the total compensation
8 contained in this agreement in lieu of wages and benefits.

9 2012-14 MOU at Section 1 3(B) and 1 3(B)(3). Thus, under the 2012-14 MOU, release
10 time is treated no differently than any of the other elements of compensation paid by the
11 City to its police officers, including base wages, career enhancement pay, overtime pay,
12 shift differential pay, standby pay, longevity pay, vacation and sick leave, pension
13 benefits, medical, dental, long term disability insurance and other insurance benefits,
14 and a uniform allowance, among others.

15 In addition, in the course of negotiating the 2012-14 MOU, which has a total
16 dollar value of approximately \$330 million per year,² the City determined that the total
17 cost of the release time paid by the City to its line officers is approximately \$846,000.
18 As there are 2,647 authorized positions in Unit 4, the value of this release time per
19 officer is approximately \$319.61 per year.³ The 2012-14 MOU was ratified in April
20 2012. It took effect on July 1, 2012.

21 ² This figure is based on the City's 2012-13 Wage and Benefit Projections as of January 31, 2012 and
22 assumes a total of 2,647 authorized Unit 4 positions.

23 ³ For comparison purposes, the following is an itemization of cost projections for various other items of
24 compensation paid by the City to its line officers per year:

25	Base Wages:	\$69,555 per officer (\$184,112,000 ÷ 2,647)
26	Career Enhancement:	\$6,557 per officer (\$17,358,000 ÷ 2,647)
	Overtime Pay:	\$2,885 per officer (\$7,637,000 ÷ 2,647)
	Shift Differential Pay:	\$578 per officer (\$1,530,000 ÷ 2,647)
	Standby Pay:	\$492 per officer (\$1,302,000 ÷ 2,647)
	Longevity Pay:	\$1,192 per officer (\$3,156,000 ÷ 2,647)
	Non Accrued Vacation/Sick Leave:	\$866 per officer (\$2,292,000 ÷ 2,647)
	Pension:	\$22,767 per officer (\$60,265,000 ÷ 2,647)

On July 19, 2012, the Court granted Plaintiffs' motion to amend. Although Plaintiffs' renewed application for a preliminary injunction seeks to enjoin the release time provisions of the 2012-14 MOU only, Plaintiffs' Amended Complaint challenges the 2012-14 MOU in its entirety: "For their relief, Plaintiffs request that this Court ... [d]eclare that MOU (sic) is unconstitutional and preliminarily and permanently enjoin its further effect." Amended Complaint for Declaratory and Injunctive Relief at 9. In short, Plaintiffs are asking the Court to void Proposed Interveners' entire employment agreement with the City.

III. Argument.

A. Standards Governing Motions to Intervene.

A person or entity may intervene as a matter of right or with the permission of the Court. Both types of intervention are governed by Rule 24 of the Arizona Rules of Civil Procedure. Rule 24 "is remedial and should be construed liberally in order to assist parties seeking to obtain justice in protecting their rights." *Dowling v. Stapley*, 221 Ariz. 251, 270 (App. 2009); *See also* *Id.* at 272. Whether seeking to intervene as a matter of right or by permission, the person or entity seeking to intervene must apply for intervention in a timely manner. "The timeliness requirement is a flexible one and ascertaining its existence is normally left to the sound discretion of the trial court." *Weaver v. Synthes, Ltd.*, 162 Ariz. 442, 446 (App. 1989). "The most important consideration in deciding whether a motion [to intervene] is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case." *Id.* (internal quotations and citations omitted).

Medical:	\$10,515 per officer (\$27,834,000 ÷ 2,647)
Dental:	\$867 per officer (\$2,294,000 ÷ 2,647)
Long Term Disability:	\$304 per officer (\$806,000 ÷ 2,647)
Uniform Allowance:	\$1,420 per officer (\$3,759,000 ÷ 2,647)

1 In order to intervene as a matter of right under Rule 24(a), the applicant must
2 have an interest relating to the subject of the action and be so situated that the
3 disposition of the action may, as a practical matter, impair or impede the applicant's
4 ability to protect that interest, unless the applicant's interest is adequately represented by
5 existing parties. *Weaver*, 162 Ariz. at 446; Ariz. R. Civ. P. 24(a). The interest of the
6 proposed intervenor must be "a direct and immediate interest in the case, so that the
7 judgment to be rendered would have a direct and legal effect upon his rights, and not
8 merely a possible and contingent equitable effect." *Id.* at 447, *quoting Miller v. City of*
9 *Phoenix*, 51 Ariz. 254, 263 (1938). It "must be based on a right which belongs to the
10 proposed intervenor rather than to an existing party." *Id.* (internal quotations and
11 citations omitted).

12 For purposes of permissive intervention under Rule 24(b), an applicant "does not
13 even have to be a person who would have been a proper party at the beginning of the
14 suit." *Dowling*, 221 Ariz. at 272 (internal quotations omitted). Anyone may be
15 permitted to intervene in an action: (1) when a statute confers a conditional right to
16 intervene; or (2) when an applicant's claim or defense and the main action have a
17 question of law or fact in common. *Id.* In considering motions to intervene by
18 permission, "courts consider a number of factors such as the nature and extent of the
19 [proposed] intervenor's interest, his or her standing to raise relevant issues, legal
20 positions the [proposed] intervenor seeks to raise, and those positions' probable relation
21 to the merits of the case." *Id.*

22 B. The Motion is Timely.

23 Whether analyzed as intervention as a matter of right or permissive intervention,
24 Proposed Intervenor's motion is timely. Plaintiffs only sought leave to amend their
25 Complaint to challenge the 2012-14 MOU on June 28, 2012. Plaintiffs' Amended
26 Complaint effectively asserts an entirely new claim because it challenges the new 2012-

1 14 MOU, which only went into effect on July 1, 2012. The Court only granted
2 Plaintiffs' motion on July 19, 2012. The City and PLEA only filed answers to the
3 Amended Complaint on August 10, 2012 and August 13, 2012, respectively.
4 Consequently, intervention is timely. No delay whatsoever, much less any prejudicial
5 delay, will result from Proposed Interveners' participation in what essentially constitutes
6 an entirely new lawsuit.

7 C. Proposed Interveners are Entitled to Participate as a Matter of Right.

8 Proposed Interveners have a direct and immediate interest in the outcome of this
9 litigation because Plaintiffs are challenging the validity of Proposed Interveners'
10 employment contract with the City. Proposed Interveners and their fellow line officers,
11 not PLEA, are the real parties in interest in this litigation. While PLEA is the
12 authorized representative of Proposed Interveners and the other officers of Unit 4 and
13 may have negotiated the MOU on behalf of Proposed Interveners and the other
14 employees of Unit 4, Proposed Interveners and their fellow line officers were the
15 principals in these negotiations with the City. PLEA was only their agent. It is the
16 contractual rights of Proposed Interveners and the other officers of Unit 4 that are at
17 stake, not the rights of PLEA.

18 Moreover, to the extent that Plaintiffs might claim that they only challenge the
19 release time and not the 2012-14 MOU as a whole, which would be contrary to
20 Plaintiffs' own Amended Complaint, Proposed Interveners and their fellow line officers
21 are the recipients, if not the direct owners, of this release time. As the 2012-14 MOU
22 makes clear, Proposed Interveners and the other officers of Unit 4 elected to receive the
23 challenged release time as compensation for their labor and other employment
24 concessions and in lieu of higher wages and other benefits. They negotiated this release
25 time with the City to help them protect their rights and interests not only with respect to
26 labor management relations with the City, but also with respect to the unique challenges

1 and hazards they face as law enforcement officers. The fact that the release time is used
2 by PLEA is irrelevant. If the line officers of Unit 4 were to decertify PLEA as their
3 authorized representative and replace PLEA with another entity, the release time
4 negotiated under the 2012-14 MOU would be available to the new authorized
5 representative to use in protecting the officers' rights in labor management relations
6 with the City.⁴ The release time belongs to Proposed Interveners and their fellow line
7 officers, not to PLEA. Consequently, as line officers of Unit 4, Proposed Interveners'
8 interest in protecting the release time provisions contained in the 2012-14 MOU is
9 direct, immediate, and obvious.

10 Of course, the judgment that this Court ultimately renders will undoubtedly have
11 a direct and legal effect upon Proposed Interveners' rights under their employment
12 contract with the City. If the Court declares the 2012-14 MOU unconstitutional and
13 "permanently enjoins its further effect," as Plaintiffs ask, Proposed Interveners will be
14 without an employment contract, as will all of the other line officers in Unit 4. Even if
15 the Court declares only the release time provisions of the 2012-14 MOU
16 unconstitutional and enjoins their further effect, any such judgment would deprive
17 Proposed Interveners of valuable, bargained for compensation to which they otherwise
18 would be entitled under their employment contract with the City. It also will limit their
19 ability to protect their rights and interests in labor management relations with the City
20 and the special challenges and hazards they face as law enforcement officers. Clearly,
21 the judgment that the Court ultimately enters in this litigation will not merely have a
22 "possible and contingent equitable effect" on Proposed Interveners, it will affect them in
23 a very real and direct manner. Consequently, both the directness and immediacy of
24

25 ⁴ In 2010-11, City of Maricopa police officers decertified their authorized representative, the City of
26 Maricopa Police Association, and replaced it with the Fraternal Order of Police. See "Fraternal Order of Police
wins union election" (February 4, 2011) available at <http://www.inmaricopa.com/Print/Article/9806>.

1 Proposed Interveners' interests and the effect of the Court's judgment on those direct and
2 immediate interests weigh heavily in favor of granting intervention as a matter of right.

3 Finally, it is not readily apparent that the existing parties will represent Proposed
4 Interveners' interests adequately. Given that Plaintiffs seek to void contractual
5 obligations that the City owes to Proposed Interveners and the other line officers, the
6 City may believe there is some advantage to be gained from not vigorously defending
7 the 2012-14 MOU and the release time provisions it contains. The City did not actively
8 litigate Plaintiffs' challenge to the 2010-12 MOU.

9 It also is not readily apparent that PLEA can adequately represent Proposed
10 Interveners' particular interests. In *Planned Parenthood Arizona, Inc. v. American Ass'n*
11 *of Pro Life Obstetricians & Gynecologists*, 227 Ariz. 262 (App. 2011) ("Planned
12 Parenthood"), the Court found that it was error to deny intervention to several entities
13 that sought to join state officials in defending the constitutionality of several new
14 statutory provisions regulating the performance of abortions. The Court noted that it
15 was the obligation of the state officials to represent the interests of all people in the
16 State of Arizona. "As a result," the Court noted, "the state might not give these
17 applicants' interest the kind of primacy that these applicants would." *Planned*
18 *Parenthood*, 227 Ariz. at 279 (internal quotations and citations omitted). Similarly,
19 PLEA represents the interests of all line officers of the PPD, some of whom may prefer
20 to renegotiate the current MOU in order to receive slightly higher wages or slightly
21 better benefits instead of the challenged release time. Proposed Interveners firmly
22 believe that the release time provisions are crucial to the ability of the line officers of
23 the PPD to maintain an effective working relationship with the City, and Proposed
24 Interveners will forcefully defend the release time provisions if allowed to intervene.
25 Because PLEA is obligated to represent the broader group of all line officers of the
26 PPD, however, PLEA might not give Proposed Interveners' interests the "kind of

1 primacy" that Proposed Interveners would if intervention were granted. *Id.*
2 Consequently, concern about the adequacy of representation also weighs in favor of
3 allowing intervention as a matter of right.

4 D. Permissive Intervention is Warranted As Well.

5 In the unlikely event that the Court does not allow intervention as a matter of
6 right, it should exercise its discretion to allow intervention by permission. The interests
7 Proposed Interveners seek to protect in intervening by permission are no different from
8 the interests they seek to protect by intervening as a matter of right: their direct,
9 immediate, and obviously substantial interests in their employment contract. Again,
10 Plaintiffs seek to void Proposed Interveners' employment contract in its entirety, a
11 contract that was approved by the City and ratified by its police officers. At a
12 minimum, Plaintiffs seek to void a portion of the bargained for compensation Proposed
13 Interveners are entitled to receive under the contract. Proposed Interveners' interests are
14 obviously relevant — indeed, they lie at the heart of Plaintiffs' lawsuit — and because
15 Plaintiffs seek to void all or at least a portion of Proposed Interveners' employment
16 contract with the City, Proposed Interveners obviously are well positioned to defend
17 their interests.

18 In addition, Proposed Interveners seek to intervene in order to forcefully
19 demonstrate that, not only are Plaintiffs wrong in asserting as a factual matter that the
20 release time provisions in the 2012-14 MOU are a "gift" to PLEA, but also that they are
21 wrong about the legal standards applicable to Gift Clause challenges.

22 If allowed to intervene, Proposed Interveners would demonstrate that, contrary to
23 Plaintiffs' factual assertions, the release time provisions in the 2012-14 MOU are not a
24 benefit bestowed by the City on PLEA. Rather, and as Proposed Interveners
25 demonstrated above, the release time provisions are compensation paid by the City to its
26 line officers in lieu of other wages and benefits. As also demonstrated above, the

1 release time provisions perform an important function for the line officers of the PPD,
2 as they help the officers to protect their rights and interest with respect to labor
3 management relations with the City and the special challenges and hazards they face as
4 law enforcement officers. As employees who earn this release time every day they go
5 to work, Proposed Interveners are uniquely positioned to prove that Plaintiffs' portrayal
6 of the provisions as a mere perk for PLEA is fundamentally in error.

7 If allowed to intervene, Proposed Interveners also would demonstrate that
8 Plaintiffs' legal arguments are wrong as a matter of law. For example, nowhere in either
9 their Amended Complaint or in their Application for a Preliminary Injunction do
10 Plaintiffs mention the "significant deference" that courts owe to the judgments of
11 elected officials when considering Gift Clause challenges to public contracts. *See*
12 *Turken v. Gordon*, 223 Ariz. 342, 346 (2010); *Wistuber v. Paradise Valley Unified*
13 *School District*, 141 Ariz. 346, 349 (1984). In this regard, "[t]he primary determination
14 of whether a specific purpose constitutes a 'public purpose' is assigned to the political
15 branches of government, which are directly accountable to the public." *Turken* at 349.
16 It is "only in those rare cases in which the governmental body's discretion has been
17 'unquestionably abused' that the court will fail to find a valid public purpose in a public
18 contract. *Id.* (citing *City of Glendale v. White*, 67 Ariz. 231, 237 (1948)). Plaintiffs
19 completely ignore both the "significant deference" that is to be afforded to the City
20 Council and the requirement that Plaintiffs plead and prove that the City Council
21 "unquestionably abused" its discretion in entering into the 2012-14 MOU.

22 Also ignored by Plaintiffs is the requirement that, in order to be an impermissible
23 gift or subsidy, the consideration paid by a public entity must be "grossly
24 disproportionate" to the value received in return:

25 When a public entity purchases something from a private
26 entity, the most objective and reliable way to determine

1 whether the private party has received a forbidden subsidy is
2 to compare the public expenditure to what the government
3 receives under the contract. When government payment is
grossly disproportionate to what is received in return, the
payment violates the Gift Clause.

4 *Turken*, 223 Ariz. at 348; see also *id.* at 351 ("The Constitution requires that the
5 consideration received by the City not be grossly disproportionate to the amount paid to
6 the private entity.") (emphasis original). Plaintiffs completely misconstrue the "gross
7 disproportionality" required by *Turken*. They incorrectly assert that "[c]ities must
8 receive direct public benefits of roughly proportionate value in exchange for their
9 expenditure of public funds on goods and services." Amended Complaint at 1141. That
10 simply is not a correct reading of the plain language of *Turken*.

11 Finally, if allowed to intervene, Proposed Interveners would also demonstrate
12 that Plaintiffs err as a matter of law in their application of the "proportionality" element
13 of their Gift Clause analysis. Plaintiffs completely ignore the ample consideration
14 provided to the City by Proposed Interveners and their fellow line officers in exchange
15 for the release provisions and other elements of compensation contained in the 2012-14
16 MOU. In entering into the 2012-14 MOU, the City secured the services of the officers
17 for a term of two years (along with a valuable pledge of non interruption of those
18 services) in exchange for a package of compensation worth approximately \$330 million.
19 Included in the officers' compensation package are wages, benefits, and release time,
20 among other components. Instead of addressing the substantial value provided by
21 Proposed Interveners and their fellow officers to the City under the 2012-14 MOU,
22 Plaintiffs focus on the purported lack of any consideration provided by PLEA. As
23 Proposed Interveners have demonstrated, however, Proposed Interveners and the other
24 officers in Unit 4 are the principals of PLEA and PLEA is their agent. The officers have
25 ratified the employment contract negotiated for them by PLEA. Consequently, the
26 relevant consideration is the consideration supplied by Proposed Interveners and their

1 fellow officers, not by PLEA. To the extent PLEA is entitled to any benefit under the
2 2012-14 MOU, it is only in its capacity as the authorized representative of Proposed
3 Interveners and the other officers in Unit 4. Plaintiffs err as a matter of law by not
4 recognizing the proper parties to the 2012-14 MOU — the City and the officers of Unit
5 4 — and the consideration provided by those parties.

6 In sum, if allowed to participate in this litigation, Proposed Interveners would
7 raise multiple factual and legal issues that are directly relevant to Plaintiffs' claims and
8 have substantial bearing on the merit of those claims. Moreover, Proposed Interveners
9 would do so in order to protect their direct, immediate, and important interests in the
10 continuation of their employment contract with the City, which Plaintiffs seek to void in
11 whole or in part. Proposed Interveners' Motion is timely and will not result in any delay
12 at all, much less any prejudicial delay. They should thus be granted intervention by
13 permission, if not by right.

14 **IV. Conclusion.**

15 For the foregoing reasons, Proposed Interveners respectfully request that their
16 Motion to Intervene be granted. A proposed Answer to the Amended Complaint is
17 attached hereto as Exhibit 1.
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...

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1 RESPECTFULLY SUBMITTED this 13th day of September, 2012.

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3
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17 ORIGINAL of the foregoing e-filed
18 via AZTurboCourt this 13 day of
19 September, 2012 and emailed via same to:

20 The Honorable Katherine Cooper
21 Maricopa County Superior Court

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23 13 day of September, 2012 to:

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EXHIBIT “1”

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

CHEATHAM, et al)	Case No. CV2011-021634
)	
Plaintiffs,)	[PROPOSED] INTERVENERS'
)	ANSWER TO AMENDED
vs.)	COMPLAINT
)	
DICICCIO, et al.)	(Assigned to: <i>Honorable Katherine Cooper</i>)
)	
Defendants.)	
)	

COME NOW Interveners Thomas Cox, Victor Escoto, Richard V. Hartson, Vivian Reque, and David K. Wilson, and for their Answer to Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief, admit, deny, and aver as follows:

RESPONSE TO INTRODUCTION

1. Interveners are without sufficient knowledge or information to form a belief as to the truth or validity of the allegations in paragraph 1 and therefore deny same. Interveners deny that their employment contract with the City of Phoenix contains any "subsidies," whether legal or illegal.

2. Interveners deny the allegations in the first two sentences of paragraph 2. Interveners are without sufficient knowledge or information to form a belief as to the truth or validity of the allegation in the third sentence of paragraph 2 regarding Plaintiffs' motivation and therefore deny same. The remaining portions of the third sentence constitute legal conclusions and statements of law that do not require a response. To the extent a response is required, Interveners deny same.

RESPONSE TO PARTIES, JURISDICTION, AND VENUE

3. Interveners are without sufficient knowledge or information to form a belief as to the truth or validity of the allegation in paragraph 3 and therefore deny same.

4. Interveners are without sufficient knowledge or information to form a belief as to the truth or validity of the allegation in paragraph 4 and therefore deny same.

5. Admit.

6. Admit.

7. Interveners deny that the Phoenix Law Enforcement Association ("PLEA") is a labor union. Interveners aver that PLEA is properly classified as a labor organization under section 501(c)(5) of the Internal Revenue Code. Interveners admit that PLEA is the authorized representative of all Phoenix police officers below the rank of Sergeant.

8. Paragraph 8 constitutes a legal conclusion or a statement of law that does not require a response. To the extent a response is required, Interveners deny same.

9. Paragraph 9 constitutes a legal conclusion or a statement of law that does not require a response. To the extent a response is required, Interveners deny same.

...

RESPONSE TO FACTS COMMON TO ALL CLAIMS

10. Interveners deny that the Phoenix Law Enforcement Association ("PLEA") is a labor union. Interveners aver that PLEA is properly classified as a labor organization under section 501(c)(5) of the Internal Revenue Code. Interveners admit that PLEA has a board of trustees, staff, and mission statement. Interveners deny the remaining allegations of Paragraph 10.

11. Admit.

12. Admit.

13. Interveners admit that the 2012 14 Memorandum of Understanding was approved by the City Council. Interveners are without sufficient knowledge or information to form a belief as to the truth or validity of the remaining allegations in paragraph 13 and therefore deny same.

14. Deny.

15. Interveners are without sufficient knowledge or information to form a belief as to the truth or validity of the allegations in paragraph 15 and therefore deny same.

16. Deny.

17. Deny.

18. Interveners are without sufficient knowledge or information to form a belief as to the truth or validity of the allegations in paragraph 18 and therefore deny same.

RESPONSE TO RELEASE TIME HOURS

19. Deny.

20. Deny.

1 21. The allegations in paragraph 21 refer to a written document, which speaks
2 for itself. Interveners deny that the allegations in paragraph 21 constitute a full, fair, or
3 accurate description or characterization of the document and therefore deny same.

4 22. The allegations in the first sentence of paragraph 22 refer to a written
5 document, which speaks for itself. Interveners deny that the allegations in the first
6 sentence of paragraph 22 constitute a full, fair, or accurate description or
7 characterization of the document and therefore deny same. Interveners deny the
8 remaining allegations in paragraph 22.

9 23. The allegations in paragraph 23 refer to a written document, which speaks
10 for itself. Interveners deny that the allegations in paragraph 23 constitute a full, fair, or
11 accurate description or characterization of the document and therefore deny same.

12 24. The allegations in paragraph 24 refer to a written document, which speaks
13 for itself. Interveners deny that the allegations in paragraph 24 constitute a full, fair, or
14 accurate description or characterization of the document and therefore deny same.

15 25. The allegations in paragraph 25 refer to a written document, which speaks
16 for itself. Interveners deny that the allegations in paragraph 25 constitute a full, fair, or
17 accurate description or characterization of the document and therefore deny same.

18 26. The allegations in paragraph 26 refer to a written document, which speaks
19 for itself. Interveners deny that the allegations in paragraph 26 constitute a full, fair, or
20 accurate description or characterization of the document and therefore deny same.

21 27. The allegations in the first sentence of paragraph 27 refer to a written
22 document, which speaks for itself. Interveners deny that the allegations in the first
23 sentence of paragraph 27 constitute a full, fair, or accurate description or
24 characterization of the document and therefore deny same. Intervenes deny the
25 allegation in the second sentence of paragraph 27.

26

1 28. The allegations in paragraph 28 refer to a written document, which speaks
2 for itself. Interveners deny that the allegations in paragraph 28 constitute a full, fair, or
3 accurate description or characterization of the document and therefore deny same.

4 29. The allegations in paragraph 29 refer to a written document, which speaks
5 for itself. Interveners deny that the allegations in paragraph 29 constitute a full, fair, or
6 accurate description or characterization of the document and therefore deny same.

7 **RESPONSE TO ACCOUNTABILITY FOR USE OF RELEASE TIME**

8 30. Deny.

9 31. Deny.

10 32. Deny.

11 33. Deny.

12 34. Deny.

13 **RESPONSE TO ADDITIONAL MOU NOTES**

14 35. Interveners are without sufficient knowledge or information to form a
15 belief as to the truth or validity of the allegations in paragraph 35 and therefore deny
16 same.

17 36. Paragraph 36 constitutes a legal conclusion or a statement of law that does
18 not require a response. To the extent a response is required, Interveners deny same.

19 **RESPONSE TO COUNT ONE – GIFT CLAUSE**

20 37. Interveners are without sufficient knowledge or information to form a
21 belief as to the truth or validity of the allegations in paragraph 37 and therefore deny
22 same.

23 38. Paragraph 38 constitutes a legal conclusion or a statement of law that does
24 not require a response. To the extent a response is required, Interveners deny same.

25 39. Paragraph 39 constitutes a legal conclusion or a statement of law that does
26 not require a response. To the extent a response is required, Interveners deny same.

40. Paragraph 40 constitutes a legal conclusion or a statement of law that does not require a response. To the extent a response is required, Interveners deny same.

41. Paragraph 41 constitutes legal conclusions or statements of law that do not require a response. To the extent a response is required, Interveners deny same.

42. Deny.

43. Deny.

44. Deny.

AFFIRMATIVE DEFENSES

45. As and for a separate defense and in the alternative, Interveners allege that Plaintiffs' Amended Complaint fails to state a claim upon which relief may be granted.

46. As and for a separate defense and in the alternative, Interveners allege that Plaintiffs' Amended Complaint fails to name the real parties in interest, which are all of the Unit 4 employees of the City of Phoenix, whose employment contract with the City Plaintiffs are seeking to void.

47. As and for a separate defense and in the alternative, Interveners allege that Plaintiffs' Amended Complaint is barred by the doctrine of laches.

48. Interveners reserve the right, pursuant to Rule 8, Ariz.R.Civ.P., to assert any and all additional affirmative defenses available to them as such additional affirmative defenses become known.

WHEREFORE, Interveners request that the Court take the following actions:

1. Dismiss Plaintiffs' Amended Complaint and every claim for relief contained therein with prejudice;

2. Enter judgment in favor of Defendants and Interveners and against Plaintiffs:

3. Award Interveners reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12 341 and 12 341.01; and

1 4. Grant such other and further relief as the Court deems just and proper.
2 RESPECTFULLY SUBMITTED this ____ day of September, 2012.

3 GOMEZ & PETITTI, P.C.
4

5 By _____
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18 ORIGINAL of the foregoing e-filed
19 via AZTurboCourt this ____ day of
20 September, 2012 and a copy e-mailed
21 via same to:

22 The Honorable Katherine Cooper
23 Maricopa County Superior Court

24 COPY of the foregoing mailed this
25 ____ day of September, 2012 to:

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14 By _____
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