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Attorneys for Plaintiff Judicial Watch, Inc.

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 JUDICIAL WATCH, INC.,

12 Plaintiff,

13 v.

14 CITY OF PHOENIX, a municipal
15 corporation of the State of Arizona,

16 Defendant.

Case No. CV2010 052443

17 **COMPLAINT**
(Statutory Special Action)

18 Plaintiff Judicial Watch, Inc. brings this special action against Defendant City of
19 Phoenix to compel compliance with the Arizona Public Records Law, A.R.S. § 39-121 *et*
20 *seq.* As grounds therefor, Plaintiff alleges as follows:

21 **PARTIES, JURISDICTION, AND VENUE**

22 1. Plaintiff Judicial Watch, Inc. (“Judicial Watch”) is a non-profit, educational
23 foundation that seeks to promote integrity, transparency, and accountability in government
24 and fidelity to the rule of law. In furtherance of its public interest mission, Judicial Watch
25 regularly requests access to the public records of federal, state, and local government
26 agencies, entities, and offices, and disseminates its findings to the public.

27 2. Defendant City of Phoenix (“Defendant”) is a municipal corporation
28 organized under the laws of the State of Arizona and a “Public body” as defined in A.R.S.

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§ 39-121.01.

3. The Court has jurisdiction over this action pursuant to A.R.S. § 39-121.02 and Rule 4(a) of Arizona Rules of Procedure for Special Actions.

4. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b) of Arizona Rules of Procedure for Special Actions.

STATEMENT OF FACTS

5. On or before June 25, 2010, Phoenix Police Chief Jack Harris prepared and/or signed a declaration to be submitted on behalf of the United States of America in the matter captioned *United States of America v. State of Arizona*, Case No. 2:10-cv-01413-SRB (D. Ariz.).

6. On July 6, 2010, the United States of America attached the Declaration of Phoenix Police Chief Jack Harris (“Harris Declaration”) as Exhibit 10 to its motion for a preliminary injunction in *United States of America v. State of Arizona*.

7. On July 13, 2010, via electronic mail and certified mail, Judicial Watch requested that the Phoenix Police Department provide access to records and communications concerning or relating to the preparation or submission of the Harris Declaration.

8. Judicial Watch specifically sought copies of the following public records:

1. Any and all records concerning or relating to the preparation or submission of the Declaration of Phoenix Police Chief Jack Harris, dated June 25, 2010, in the matter captioned *United States of America v. State of Arizona*, Case No. 2:10-cv-01413-SRB (D. District of Arizona (hereinafter “Harris Declaration”).
2. Any and all communications by or between any representative or official of the Phoenix Police Department, including but not limited to Police Chief Jack Harris, and any representative or officials of the United States government, including, but not limited to representatives, officials, or attorneys at the U.S. Department of Justice, concerning or relating to the preparation or submission of the Harris Declaration.

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3. Any and all communications by or between any representative or official of the Phoenix Police Department, including, but not limited to Police Chief Jack Harris, and any of the following individuals or entities concerning or relating to the preparation or submission of the Harris Declaration:

- a. Mayor Phil Gordon;
- b. The Office of the Mayor;
- c. City Manager David Cavalos;
- d. The City Manager's Office;
- e. Any member of the Phoenix City Council; or
- f. The City Council Office.

9. According to electronic mail read receipts, the Phoenix Police Department received Judicial Watch's request on that same day, July 13, 2010.

10. Pursuant to A.R.S. § 39-121.01(D)(1), the Phoenix Police Department was required to promptly furnish responsive records.

11. As of the date of this Special Action, the Phoenix Police Department has neither acknowledged nor responded to Judicial Watch's request. The Phoenix Police Department has failed to produce any records responsive to Judicial Watch's request or demonstrate that responsive records are exempt from production. Nor has the Phoenix Police Department indicated whether or when any responsive records will be produced. In sum, the Phoenix Police Department continues to deny Judicial Watch access to the requested records. A.R.S. § 39-121.01(E).

COUNT 1

**(Violation of Arizona Public Records Law –
Failure to Produce or Provide Access)**

12. Plaintiff re-alleges paragraphs 1 through 11 as if fully stated herein.

13. Defendant has violated Arizona Public Records Law by failing to provide access to the requested records.

14. Plaintiff is being irreparably harmed by reason of Defendant's violation of Arizona Public Records Law, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the requirements of the Arizona Public Records


1 Law.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff respectfully prays that the Court: (1) issue an order
4 compelling Defendant to immediately provide access to the requested public record; (2)
5 award damages, costs, and attorney's fees pursuant to A.R.S. § 39-121.02 and Rule 4(g)
6 of Arizona Rules of Procedure for Special Actions; and (3) grant Plaintiff such other relief
7 as the Court deems just and proper.

8 DATED this 4th day of August, 2010.

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