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

8 ANN.M. MALONE, DANIEL BOYD,
 9 WILLIAM BUIVIDAS, BRIAN A.
 MILLER, and DONNA RAE NEILL,
 10 taxpayers and residents of the City of
 Phoenix, Arizona,

11 Plaintiffs,

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 13 v.

14 PHOENIX POLICE PENSION BOARD; ED
 ZUERCHER, in his official capacity as
 15 Chairperson of the Phoenix Police Pension
 Board; TROY HILLMAN, STAN HOOVER,
 16 WENDY LARSEN and GAYLE STARR, all in
 their official capacity as
 17 members of the Phoenix Police Pension
 Board; and JACK F. HARRIS, Chief of
 18 Police of the Phoenix Police Department,

19 Defendants.
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Case No.

VERIFIED COMPLAINT

(Injunctive Relief; Declaratory Judgment)

21 Plaintiffs bring this action pursuant to A.R.S. §35-212 to cease the illegal payment of
 22 pension benefits to Phoenix Police Department Chief of Police Jack F. Harris in violation of
 23 A.R.S. §38-849.D. For their complaint against the Defendants, Plaintiffs allege as follows:
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GENERAL ALLEGATIONS

1. The court has jurisdiction over the subject matter of this Complaint pursuant to A.R.S. § 12-123 and Ariz. Const., Art. 6, §18.

2. This Court has personal jurisdiction over the named defendants in accordance with the substantive law of the State of Arizona, the Arizona Rules of Civil Procedure, and the Constitutions of the State of Arizona and the United States of America.

3. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

4. The minimum jurisdictional amount established for filing an action in the Superior Court of the State of Arizona is satisfied.

PARTIES

5. Plaintiff Ann M. Malone is a taxpayer and resident of the City of Phoenix, Arizona.

6. Plaintiff Daniel Boyd is a taxpayer and resident of the City of Phoenix, Arizona. Plaintiff Boyd also is an active duty police officer with the Phoenix Police Department and an employee of the City of Phoenix. Plaintiff Boyd regularly makes contributions through his employer, the City of Phoenix, to the Public Safety Personnel Retirement System, a pension system established by law for municipal and state public safety personnel in the State of Arizona ("PSPRS"). Plaintiff Boyd's employer also regularly makes contributions to the PSPRS for the benefit of Plaintiff Boyd. Plaintiff Boyd expects to receive pension benefits from the PSPRS when he retires from the Phoenix Police

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2 Department. Consequently, Plaintiff Boyd's rights, status, and legal relations are affected by
3 the construction of A.R.S. § 38-849.D as applied to Chief Harris.

4 7. Plaintiff William Buividas is a taxpayer and resident of the City of Phoenix,
5 Arizona. Plaintiff Buividas also is an active duty police officer with the Phoenix Police
6 Department and an employee of the City of Phoenix. Plaintiff Buividas regularly makes
7 contributions through his employer, the City of Phoenix, to the PSPRS. Plaintiff Buividas'
8 employer also regularly makes contributions to the PSPRS for the benefit of Plaintiff
9 Buividas. Plaintiff Buividas expects to receive pension benefits from the PSPRS when he
10 retires from the Phoenix Police Department. Consequently, Plaintiff Buividas' rights, status,
11 and legal relations are affected by the construction of A.R.S. § 38-849.D as applied to Chief
12 Harris.
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15 8. Plaintiff Brian A. Miller is a taxpayer and resident of the City of Phoenix.
16 Plaintiff Miller is a retired police officer with the Phoenix Police Department and a former
17 employee of the City of Phoenix. Plaintiff Miller started receiving pension benefits from the
18 PRPSR upon his retirement. Plaintiff Miller expects to continue to receive pension benefits
19 from the PSPRS for the remainder of his life, and, consequently, Plaintiff Miller's rights,
20 status, and legal relations are affected by the construction of A.R.S. § 38-849.D as applied to
21 Chief Harris.
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23 9. Plaintiff Donna Rae Neill is a taxpayer and resident of the City of Phoenix.
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2 10. Defendant Phoenix Police Pension Board is a five-member local board
3 authorized by the law to oversee participation in the PSPRS by the Phoenix Police
4 Department and Phoenix Police Department officers and other eligible employees. The
5 Phoenix Police Pension Board has authority to decide all questions of eligibility and to
6 determine the amount, manner, and time of payment of any benefits paid to members under
7 the PSPRS, among other powers.
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9 11. Defendant Ed Zuercher is the Chairperson of Defendant Phoenix Police
10 Pension Board. Defendant Zuercher is being sued in his official capacity.

11 12. Defendant Troy Hillman is a member of Defendant Phoenix Police Pension
12 Board. Defendant Hillman is being sued in his official capacity.

13 13. Defendant Stan Hoover is a member of Defendant Phoenix Police Pension
14 Board. Defendant Hoover is being sued in his official capacity.

15 14. Defendant Wendy Larsen is a member of Defendant Phoenix Police Pension
16 Board. Defendant Larsen is being sued in her official capacity.

17 15. Defendant Gayle Starr is a member of Defendant Phoenix Police Pension
18 Board. Defendant Starr is being sued in her official capacity.
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20 16. Defendant Jack F. Harris is the Chief of Police of the Phoenix Police
21 Department.
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2 **STATEMENT OF FACTS**

3 17. The PSPRS is a special retirement system created by the state legislature for
4 certain full-time certified police officers and full-time fire fighters in the State of Arizona.
5 The PSPRS was created by the state legislature to provide a uniform, consistent, and
6 equitable statewide retirement program to public safety personnel who are regularly assigned
7 to hazardous duty of the type expected of police officers and fire fighters. The PSPRS is
8 designed to meet the special needs of personnel engaged in hazardous duty situations.
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10 18. The PSPRS is a government retirement plan qualified under §401(a) of the
11 Internal Revenue Code. It is a "defined benefit plan," which means that the pension benefits
12 received by a participant are determined by a formula, not by the amount of money in a
13 participant's individual account.
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15 19. In addition, the PSPRS is a multiple-employer retirement plan. Separate
16 accounts are kept for each employer participating in the system, but monies are pooled for
17 investment purposes. Benefit payments are not shared by all employers in the system, but are
18 paid from an employer's separate account. A total of two hundred twenty-nine (229) Arizona
19 public employers participate in the PSPRS.
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21 20. Monies contributed by employees and employers to the PSPRS are deposited in
22 a fund managed, overseen, and invested by the PSPRS Fund Manager, a state agency
23 composed of five members appointed by the Governor.
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2 21. Each employer that participates in the PSPRS is required to establish a local
3 board that is responsible for deciding questions of eligibility and service credits, determining
4 the amount, manner, and time of payments of any benefits, prescribing procedures to be
5 followed by claimants in filing applications for benefits, and determining the right of any
6 claimant to benefits, among other powers.
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8 22. The Phoenix Police Department participates in the PSPRS. The local board
9 that oversees participation in the PSPRS for the Phoenix Police Department is the Phoenix
10 Police Pension Board.

11 23. The Code of the City of Phoenix expressly requires that there be a Chief of
12 Police and expressly sets forth the duties and authority of the Chief of Police. The duties and
13 authority of the Chief of Police of the City of Phoenix are set forth at §§ 2-37 and 2-199 of
14 the Code of the City of Phoenix.
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16 24. Defendant Harris became Chief of Police of the Phoenix Police Department in
17 July 2004 after serving on the Phoenix Police Department for a substantial number of years.
18 As an officer of the Phoenix Police Department, Chief Harris was eligible to participate in
19 and did participate in the PSPRS.
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21 25. Chief Harris retired from his position as Chief of Police of the Phoenix Police
22 Department on or about January 19, 2007.

23 26. After a period of approximately two (2) weeks, Chief Harris was reemployed
24 by the City of Phoenix as its "Public Safety Manager." As Public Safety Manager, however,
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2 Chief Harris continues to serve as Chief of Police. He wears the uniform of the Chief of
3 Police, calls himself the Chief of Police, and performs all of the same duties and exercises all
4 of the same authority that he performed and exercised before his retirement. Chief Harris
5 also physically occupies the same office at Police Headquarters that he occupied before his
6 retirement.
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8 27. According to the organizational chart of the Phoenix Police Department posted
9 on the City of Phoenix's website, Chief Harris is the head of the Phoenix Police Department.
10 Harris is identified on the organizational chart as "Public Safety Manager/Police Chief Jack
11 F. Harris."
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13 28. In May 2009, City of Phoenix City Manager Frank Fairbanks officially
14 confirmed that Chief Harris is the Chief of Police of the Phoenix Police Department.
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16 29. Despite being reemployed as Chief of Police after his retirement on or about
17 January 19, 2007, the Phoenix Police Pension Board authorized the payment of pension
18 benefits to Chief Harris. Chief Harris began receiving pension benefits from the PSPRS
19 shortly after his retirement on or about January 19, 2007, and he continues to receive pension
20 benefits from the PSPRS up to the present. On information and belief, the value of these
21 pension benefits is approximately \$90,000 per year.
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23 30. On August 27, 2009, Plaintiffs sent a written request to the Attorney General
24 asking that an action be brought under A.R.S. § 35-212 to enjoin the illegal payment of
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pension benefits to Chief Harris. A true and correct copy of Plaintiffs' written request to the Attorney General is attached hereto and incorporated herein as Exhibit 1.

31. On September 25, 2009, Donald E. Conrad, Chief Counsel of the Criminal Division of the Office of the Attorney General, sent a written response to Plaintiff's August 27, 2009 letter in which the Attorney General declined to initiate the requested action. A true and correct copy of the Office of the Attorney General's September 25, 2009 response is attached hereto and incorporated herein as Exhibit 2.

**FIRST CLAIM FOR RELIEF
(A.R.S. § 35-212)**

32. Plaintiffs incorporate paragraphs 1 through 31, and each of them as if they were set forth here in full.

33. Pursuant to A.R.S. § 38-849.D, if a retired member subsequently becomes reemployed in the same position from which the member retired, pension benefits shall not be paid to the member during the period of reemployment.

34. Chief Harris has been reemployed in the same position by the City of Phoenix from which he retired on or about January 19, 2007.

35. Chief Harris continues to receive pension benefits from the PSPRS despite the fact that he has since been reemployed by the City of Phoenix in the same position from which he retired on or about January 19, 2007.

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2 36. The pension benefits being paid to Chief Harris are illegal under A.R.S. § 38-
3 849.D.

4 37. A.R.S. § 35-212.A empowers the Attorney General to bring an action to enjoin
5 illegal payments of public monies, as well as to recover such monies illegally paid.

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7 38. The pension benefits being paid to Chief Harris are "public monies" as that
8 term is defined by A.R.S. § 35-212.B.

9 39. A.R.S. § 35-213.A empowers a taxpayer of the state to institute an action with
10 the same effect as if brought by the Attorney General as provided in A.R.S. § 35-212 if the
11 taxpayer makes a written request to the Attorney General to institute such an action and the
12 Attorney General fails to do so within sixty (60) days.

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14 40. More than sixty (60) days have elapsed since Plaintiffs Malone, Boyd,
15 Buividas, Miller, and Neill made their written request to the Attorney General to institute an
16 action to enjoin the illegal payment of pension benefits to Chief Harris, and the Attorney
17 General has failed to institute the requested action.

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20 **SECOND CLAIM FOR RELIEF**
(Declaratory Judgment - A.R.S. § 12-1831 et seq.)

21 41. Plaintiffs Boyd, Buividas, and Miller incorporate paragraphs 1 through 40, and
22 each of them, as if they were set forth in full.

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24 42. The rights, status, and legal relations of Plaintiffs Boyd, Buividas, and Miller
25 are affected by the construction of A.R.S. § 38-849.D as applied to Chief Harris.

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2 43. The rights of Plaintiffs Boyd, Buividas, and Miller to participate in and receive
3 pension benefits from the PPSR, presently and in the future, are being affected by the
4 continued payment of pension benefits to Chief Harris in violation of the provisions of
5 A.R.S. § 38-849.D.

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7 WHEREFORE, Plaintiffs Malone, Boyd, Buividas, Miller, and Neill respectfully
8 request that the Court:

9 A. Issue an order pursuant to A.R.S. §§ 35-212 and 35-213 enjoining Defendants
10 Phoenix Police Pension Board, Zuercher, Hillman, Hoover, Larsen, and Starr from paying
11 pension benefits to Defendant Harris under A.R.S. § 38-849.D, so long as Defendant Harris
12 continues to serve as Chief of Police of the Phoenix Police Department;

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14 B. Declare the rights, status and legal relations of Plaintiffs Boyd, Buividas, and
15 Miller under A.R.S. § 38-849.D pursuant to A.R.S. § 12-1831;

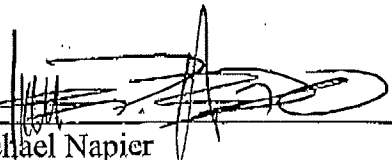
16 D. Issue an order directing all Defendants to reimburse the Plaintiffs Malone,
17 Boyd, Buividas, Miller, and Neill their costs and reasonable attorney's fees incurred in
18 instituting and prosecuting this action, not to exceed forty per cent of the amount recovered
19 or saved to the state pursuant to A.R.S. § 35-213.C and the private attorney general doctrine;
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21 and

22 E. Order any other and further relief as this Court deems just and proper.
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DATED this 28th day of October, 2009.

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