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12 **IN THE UNITED STATES DISTRICT COURT**
 13 **FOR THE DISTRICT OF ARIZONA**

14 DANIEL ARTHUR GUTENKAUF,
 15 Plaintiff,
 16 v.
 17 CITY OF TEMPE, et al.,
 18 Defendants.

No. CV 10-2129-PHX-FJM

ANSWER

19 Defendants Thomas and Rose Ann Ryff, Charles and Deborah Meyer, David and
 20 Jaqueline McAllister, Mary Jo Barsetti and David Nerland, P. Ben Arredondo and
 21 Ruthann Albrighton-Arredondo, Shelly Seyler, and Louraine C. Arkfeld for their Answer
 22 to Plaintiff's First Amended Complaint ("Complaint") hereby admit, deny and
 23 affirmatively allege as follows:

24 **I. JURISDICTION**

25 1. Defendants admit the allegations contained in paragraph 1 of the Complaint.

26 **II. VENUE**

27 2. Defendants admit the allegations contained in paragraph 2 of the Complaint.

28 **III. THE PARTIES**

3. Defendants admit the allegations contained in paragraphs 3, 7, 13, 15, 21,
 and 23 of the Complaint.

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1 11. Defendants admit the allegations contained in paragraphs 74 through 80 of
2 the Complaint.

3 12. Defendants deny the allegations contained in paragraph 81 of the
4 Complaint.

5 13. Defendants admit the allegations contained in paragraphs 82 through 86 of
6 the Complaint.

7 14. Answering paragraph 87 of the Complaint, Defendants affirmatively allege
8 that the loyalty oath signed Defendant McAllister and the other defendants fully complies
9 with Arizona law. Defendants further assert that Plaintiff has no standing to assert that the
10 loyalty oath does not comply with Arizona law.

11 15. Answering paragraphs 88 and 89 of the Complaint, Defendants
12 affirmatively allege that the statutes referenced therein speak for themselves and need no
13 interpretation by Plaintiff.

14 16. Defendants are without sufficient knowledge or information to form a belief
15 as to the truth or falsity of the allegations contained in paragraph 90 of the Complaint and
16 hereby demand strict proof thereof.

17 17. Defendants admit the allegations contained in paragraphs 91 through 93 of
18 the Complaint.

19 18. Defendants deny the allegations contained in paragraphs 94 and 95 of the
20 Complaint.

21 19. Defendants admit the allegations contained in paragraphs 96 through 99 of
22 the Complaint.

23 20. Defendants are without sufficient knowledge or information to form a belief
24 as to the truth or falsity of the allegations contained in paragraph 100 of the Complaint
25 and hereby demand strict proof thereof.

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1 **IV. CLAIM FOR RELIEF**

2 **CAUSE OF ACTION #1: DEPRIVATION**
3 **OF RIGHTS UNDER COLOR OF STATE LAW**

4 **COUNT I**

5 21. Defendants through this reference re-assert their admissions, denials, and
6 affirmative allegations above as if specifically set forth herein.

7 22. Answering paragraphs 102 and 103 of the Complaint, Defendants
8 affirmatively allege that the superior court's minute entry speaks for itself and
9 interpretation by Plaintiff is necessary.

10 23. The remaining paragraphs contained in Count I of the Complaint are
11 directed at defendants other than responding Defendants, therefore, no response is
12 necessary. To the extent that the Court deems a response is necessary, Defendants deny
13 said allegations and demand strict proof thereof.

14 **COUNT II**

15 24. Defendants through this reference re-assert their admissions, denials, and
16 affirmative allegations above as if specifically set forth herein.

17 25. The remaining paragraphs contained in Count II of the Complaint are
18 directed at defendants other than responding Defendants, therefore, no response is
19 necessary. To the extent that the Court deems a response is necessary, Defendants deny
20 said allegations and demand strict proof thereof.

21 **COUNT III**

22 26. Defendants through this reference re-assert their admissions, denials, and
23 affirmative allegations above as if specifically set forth herein.

24 27. The remaining paragraphs contained in Count III of the Complaint are
25 directed at defendants other than responding Defendants, therefore, no response is
26 necessary. To the extent that the Court deems a response is necessary, Defendants deny
27 said allegations and demand strict proof thereof.

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1 **COUNT IV**

2 28. Defendants through this reference re-assert their admissions, denials, and
3 affirmative allegations above as if specifically set forth herein.

4 29. Defendants deny allegations 124 through 128 of the Complaint.

5 **COUNT V**

6 30. Defendants through this reference re-assert their admissions, denials, and
7 affirmative allegations above as if specifically set forth herein.

8 31. Defendants deny the allegations contained in paragraphs 130 through 134 of
9 the Complaint. Defendants further affirmatively allege that Defendant Mary Jo Barsetti,
10 as a judicial officer in a judicial proceeding, is cloaked with judicial immunity for any
11 actions taken in this matter.

12 **COUNT VI**

13 32. Defendants through this reference re-assert their admissions, denials, and
14 affirmative allegations above as if specifically set forth herein.

15 33. Defendants deny the allegations contained in paragraphs 136 through 142 of
16 the Complaint. Defendants further affirmatively allege that Defendant Mary Jo Barsetti,
17 as a judicial officer in a judicial proceeding, is cloaked with judicial immunity for any
18 actions taken in this matter.

19 **COUNT VII**

20 34. Defendants through this reference re-assert their admissions, denials, and
21 affirmative allegations above as if specifically set forth herein.

22 35. The remaining paragraphs contained in Count VII of the Complaint are
23 directed at defendants other than responding Defendants; therefore, no response is
24 necessary. To the extent that the Court deems a response is necessary, Defendants deny
25 said allegations and demand strict proof thereof.

26 **COUNT VIII**

27 36. Defendants through this reference re-assert their admissions, denials, and
28 affirmative allegations above as if specifically set forth herein.

CAUSE OF ACTION #2: CIVIL RICO

COUNT I

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2
3 44. Defendants through this reference re-assert their admissions, denials, and
4 affirmative allegations above as if specifically set forth herein.

5 45. Answering paragraph 242 of the Complaint, Defendants assert that the
6 referenced statutes speak for themselves and no interpretation by Plaintiff is necessary.

7 46. Paragraphs 243 through 246 are directed at defendants other than
8 responding Defendants; therefore, no response is necessary. To the extent the Court
9 deems a response is necessary, Defendants deny said allegations and demand strict proof
10 thereof.

11 47. Answering paragraph 247 of the Complaint, Defendants assert that the
12 referenced statute speaks for itself and no interpretation by Plaintiff is necessary.

13 48. Paragraphs 248 through 259 are directed at defendants other than
14 responding Defendants; therefore, no response is necessary. To the extent the Court
15 deems a response is necessary, Defendants deny said allegations and demand strict proof
16 thereof.

17 49. Defendants deny the allegations contained in paragraphs 260 through 268 of
18 the Complaint.

COUNT II

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20 50. Defendants through this reference re-assert their admissions, denials, and
21 affirmative allegations above as if specifically set forth herein.

22 51. Answering paragraph 270 of the Complaint, Defendants assert that the
23 referenced statute speaks for itself and no interpretation by Plaintiff is necessary.

24 52. Paragraphs 271 through 285 are directed at defendants other than
25 responding Defendants; therefore, no response is necessary. To the extent the Court
26 deems a response is necessary, Defendants deny said allegations and demand strict proof
27 thereof.
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1 53. Defendants deny the allegations contained in paragraph 286 of the
2 Complaint.

3 **COUNT III**

4 54. Defendants through this reference re-assert their admissions, denials, and
5 affirmative allegations above as if specifically set forth herein.

6 55. Answering paragraphs 288 and 289 of the Complaint, Defendants assert that
7 the referenced statutes speak for themselves and no interpretation by Plaintiff is necessary.

8 56. Defendants deny the allegations contained in paragraphs 290 through 296 of
9 the Complaint.

10 57. Paragraphs 297 and 298 are directed at defendants other than responding
11 Defendants; therefore, no response is necessary. To the extent the Court deems a response
12 is necessary, Defendants deny said allegations and demand strict proof thereof.

13 **COUNT IV**

14 58. Defendants through this reference re-assert their admissions, denials, and
15 affirmative allegations above as if specifically set forth herein.

16 59. Paragraphs 299 through 308 are directed at defendants other than
17 responding Defendants; therefore, no response is necessary. To the extent the Court
18 deems a response is necessary, Defendants deny said allegations and demand strict proof
19 thereof.

20 60. Answering paragraphs 309 through 339 of the Complaint, Defendants are
21 either without sufficient knowledge to admit or deny the allegations, or said allegations
22 are directed at defendants other than responding defendants. Therefore, Defendants deny
23 said allegations and demand strict proof thereof.

24 **CAUSE OF ACTION #3: ACTION**
25 **FOR DAMAGES DUE TO A CONSPIRACY**

26 61. Defendants through this reference re-assert their admissions, denials, and
27 affirmative allegations above as if specifically set forth herein.
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1 requests to the City of Tempe for copies of loyalty oaths of several City of Tempe
2 employees.

3 **DEMAND FOR INJUNCTIVE RELIEF**

4 72. Defendants through this reference re-assert their admissions, denials, and
5 affirmative allegations above as if specifically set forth herein.

6 73. Answering paragraphs 402 and 403 of the Complaint, Defendants deny that
7 injunctive relief is proper in this case.

8 **ADDENDUM: NEWLY DISCOVERED INFORMATION**

9 74. Defendants through this reference re-assert their admissions, denials, and
10 affirmative allegations above as if specifically set forth herein.

11 75. Defendants deny the allegations contained in paragraphs 405 through 414 of
12 the Complaint to the extent that they allege that Defendants violated Plaintiffs
13 constitutional rights or committed any other wrongdoing. Defendants further allege that
14 said paragraphs are directed at defendants other than responding Defendants; therefore, no
15 additional response from them is necessary. To the extent that the Court deems a greater
16 response is necessary, Defendants deny said allegations and demand strict proof thereof.

17 76. Defendants deny each and every allegation not specifically admitted herein.

18 **AFFIRMATIVE AND AVOIDANCE DEFENSES.**

19 77. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

20 78. Plaintiff lacks standing to bring the claims alleged in his Complaint.

21 79. Defendants did not violate Plaintiff's constitutional rights.

22 80. Defendants complied with state and federal law as it existed at the time.

23 81. Plaintiff suffered no harm as a result of Defendants' actions or inactions.

24 82. Plaintiff is not entitled to punitive damages against Defendants.

25 83. Defendants are protected from suit by Plaintiff by legislative immunity and/or
26 judicial immunity and/or qualified immunity.

27 84. The Court may lack subject matter jurisdiction.
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1 85. Defendants assert that Plaintiff compromised and settled his claim(s) for damages
2 he allegedly suffered herein when he filed his notice of claim with the City and the City
3 accepted the notice of claim for payment.

4 86. Defendants, by way of this Answer, hereby place Plaintiff on notice that they
5 preserve their right to defend this claim based on immunities set forth in state and federal
6 law and any affirmative defenses set forth in Rule 8(c), Fed.R.Civ.P.

7 **WHEREFORE**, Defendants respectfully request that Plaintiff receive nothing by
8 way of his Complaint and that Defendants be awarded their costs and fees as allowed for
9 under the law.

10 DATED this 1st day of March, 2011.

11 TEMPE CITY ATTORNEY'S OFFICE

12
13 /s/ Clarence E. Matherson, Jr.

14 Andrew B. Ching

15 Clarence E. Matherson, Jr.

16 Catherine M. Bowman

17 21 E. Sixth Street, Suite 201

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19 Tempe, Arizona 85280

20 Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and mailed a copy of same to:

Daniel Arthur Gutenkauf
1847 E. Apache Blvd., #41
Tempe, AZ 85281
Plaintiff

I further certify that on March 2, 2011, the attached document was hand-delivered to:

HONORABLE FREDERICK J. MARTONE
United States District Court
Sandra Day O'Connor U.S. Courthouse, Suite 526
401 W. Washington Street, SPC 62
Phoenix, AZ 85003

/s/ Erin Fillmore

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