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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES**

CITY OF BEND, an Oregon municipal corporation,

Plaintiff,

v.

MICHAEL SATCHER and CENTRAL OREGON PEACEKEEPERS, an Oregon public benefit corporation,

Defendants.

Case No. 21CV10298

DEFENDANTS’ ANSWER AND COUNTERCLAIM
(Declaratory Relief)

NOT SUBJECT TO MANDATORY ARBITRATION

Amount Claimed: \$0

Defendants, Michael Satcher and Central Oregon Peacekeepers, respond to Plaintiff’s complaint as follows:

Introduction

Central Oregon Peacekeepers (“Peacekeepers”) is a public benefit nonprofit run by volunteers in Bend, Oregon, and the surrounding areas. Its volunteers work to create and promote safe spaces for activists who stand in support of justice, equity, and inclusion for Black, Brown, Indigenous, and other people of color. To that end, the Peacekeepers’ work includes researching

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1 governmental actors and entities to identify and, where appropriate, expose biases against their
2 political and social views. Defendant Michael Satcher (“Satcher”) is an active volunteer with the
3 Peacekeepers.

4 After right-wing counter protesters clashed with racial justice advocates, like the
5 Peacekeepers, at Pilot Butte Park on October 3, 2020, the Peacekeepers saw the Bend Police
6 Department (“BPD”) officers who were on the scene treating the counter protesters with kid
7 gloves while, at the same time, using extraordinarily brutal measures against the racial justice
8 advocates. Curious about the issue, the Peacekeepers submitted a public records request designed
9 to investigate BPD’s disparity in treatment. What they encountered, however, was yet more
10 apparent viewpoint discrimination, this time from the Bend City Attorney’s Office.

11 1.

12 Defendants admit the allegation in paragraph 1.

13 2.

14 Defendants admit the allegation in paragraph 2.

15 3.

16 Defendants admit the allegations in paragraph 3.

17 4.

18 Defendants admit the allegations in paragraph 4.

19 5.

20 Defendants admit the allegations in paragraph 5.

21 6.

22 Defendants admit the allegations in paragraph 6.

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7.

Defendants admit that Satcher submitted the request on his and the Peacekeepers' behalf. They further admit that they contended the Peacekeepers were a "partnership, firm, or association," in accordance with those terms' use in the Oregon Public Records Act. Defendants admit that the Peacekeepers were not incorporated as a nonprofit or registered to do business in the State of Oregon on January 19, 2021, when they submitted the public records request, but they deny that the Oregon Public Records Act required them to be. Defendants deny all remaining allegations in paragraph 7.

8.

Defendants' public records request speaks for itself. The City's attempt to characterize, describe, summarize, or paraphrase that correspondence is argumentative and does not require a response. To the extent a response is required, Defendants deny the City's characterization, description, summarization, and attempt to paraphrase. Defendants deny all remaining allegations in paragraph 8.

9.

Defendants admit that they sought a complete waiver of fees associated with their public records request. The text of their request for a public interest fee waiver speaks for itself. The City's attempt to characterize, describe, summarize, or paraphrase those requests is argumentative and does not require a response. To the extent a response is required, Defendants deny the City's characterization, description, summarization, and attempt to paraphrase. Defendants deny all remaining allegations in paragraph 9.

10.

Defendants admit that the records they requested would benefit the general public, in part, by answering outstanding questions related to BPD's and the City's treatment of racial

1 justice advocates versus right-wing counter-protesters at the October 3rd demonstrations at
2 Pilot Butte Park. Defendants deny all remaining allegations in paragraph 10.

3 11.

4 Defendants deny the allegations in paragraph 11.

5 12.

6
7 Defendants admit that Plaintiff corresponded with them on February 3, 2021, asking
8 Defendants to narrow the scope of their public records request. The text of that
9 correspondence speaks for itself. The City's attempt to characterize, describe, summarize, or
10 paraphrase that correspondence is argumentative and does not require a response. To the
11 extent a response is required, Defendants deny the City's characterization, description,
12 summarization, and attempt to paraphrase. Defendants deny all remaining allegations in
13 paragraph 12.

14 13.

15 Defendants admit that, on February 4, 2021, they responded to Plaintiff's request for
16 them to narrow the scope of their public records request. They also admit that they declined
17 to narrow the scope of their request, given that their request was already narrowly tailored to
18 seek records that would shed light on matters of public importance—*viz.*, BPD's disparate
19 policing tactics for racial justice advocates versus right-wing counter-protesters. The text of
20 Defendants' response speaks for itself. The City's attempt to characterize, describe,
21 summarize, or paraphrase Defendants' response is argumentative and does not require a
22 response. To the extent a response is required, Defendants deny the City's characterization,
23 description, summarization, and attempt to paraphrase. Defendants deny all remaining
allegations in paragraph 13.

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14.

Defendants admit that, on February 9, 2021, the City further communicated with Defendants about their public records request, purporting to offer a 25% fee reduction. The text of Plaintiff's letter speaks for itself. The City's attempt to characterize, describe, summarize, or paraphrase that letter is argumentative and does not require a response. To the extent a response is required, Defendants deny the City's characterization, description, summarization, and attempt to paraphrase. Defendants deny all remaining allegations in paragraph 14.

15.

Defendants admit that, on February 9, 2021, the Defendants responded to the City's supposed offer to reduce its fees by 25%. The text of Defendants' correspondence speaks for itself. The City's attempt to characterize, describe, summarize, or paraphrase that correspondence is argumentative and does not require a response. To the extent a response is required, Defendants deny the City's characterization, description, summarization, and attempt to paraphrase. Defendants deny all remaining allegations in paragraph 15.

16.

Defendants admit that there were further exchanges with the City about their public records request and request for a fee waiver. They further admit that, on February 19, 2021, they informed the City that its proposed fee waiver was arbitrary and capricious, because it was not a fee waiver at all. Instead, the City had charged a 100% markup on the hourly cost to review the records Defendants sought, as compared to the City's quoted hourly rate to someone who had submitted a public records request days earlier, but who was not outwardly associated with the Peacekeepers. The City's offer of a 25% fee reduction was therefore nothing but a mirage. The text of Defendants' correspondence with the City speaks for itself. The City's attempt to characterize, describe, summarize, or paraphrase that correspondence

1 is argumentative and does not require a response. To the extent a response is required,
2 Defendants deny the City’s characterization, description, summarization, and attempt to
3 paraphrase. Defendants deny all remaining allegations in paragraph 16.

4 17.

5 Defendants admit that Plaintiff sent an email to them on February 23, 2021. The City’s
6 email speaks for itself. The City’s attempt to characterize, describe, summarize, or
7 paraphrase that email is argumentative and does not require a response. To the extent a
8 response is required, Defendants deny the City’s characterization, description,
9 summarization, and attempt to paraphrase. Defendants deny all remaining allegations in
10 paragraph 17.

11 18.

12 Defendants admit that they emailed the City Recorder, copying the City Council, on
13 February 23, 2021. The text of Defendants’ email speaks for itself. The City’s attempt to
14 characterize, describe, summarize, or paraphrase that correspondence is argumentative and
15 does not require a response. To the extent a response is required, Defendants deny the City’s
16 characterization, description, summarization, and attempt to paraphrase. Defendants deny all
17 remaining allegations in paragraph 18.

18 19.

19 Defendants admit that they sent a message to the City Recorder and Bend City Council
20 on February 24, 2021, arguing that the City’s refusal to waive more than the “25% fee
21 reduction” was pretext for delaying the public records process, among other things. The text
22 of Defendants’ correspondence speaks for itself. The City’s attempt to characterize,
23 describe, summarize, or paraphrase that correspondence is argumentative and does not
require a response. To the extent a response is required, Defendants deny the City’s

1 characterization, description, summarization, and attempt to paraphrase. Defendants deny all
2 remaining allegations in paragraph 19.

3
4 20.

5 Defendants admit that, on February 25, 2021, the City purported to justify its supposed
6 “25% reduction in fees.” The text of the City’s correspondence with the Defendants speaks
7 for itself. The City’s attempt to characterize, describe, summarize, or paraphrase that
8 correspondence is argumentative and does not require a response. To the extent a response is
9 required, Defendants deny the City’s characterization, description, summarization, and
attempt to paraphrase. Defendants deny all remaining allegations in paragraph 20.

10 21.

11 Defendants admit that they appealed the City’s decision to the District Attorney, in
12 accordance with the Oregon Public Records Law. Defendants deny all remaining allegations
13 in paragraph 21.

14 22.

15 Defendants admit the allegations in paragraph 22.

16 23.

17 Defendants admit the allegations in paragraph 23.

18 24.

19 Defendants admit the allegations in paragraph 24.

20 25.

21 Defendants admit the allegations in paragraph 25.
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26.

Defendants admit that the City filed a complaint for declaratory relief on March 17, 2021, naming Satcher as the only defendant. Defendants are without sufficient knowledge to admit or deny allegations regarding the City's beliefs or legal strategy, and on that basis deny the remaining allegations in paragraph 26.

27.

Defendants admit the allegations in paragraph 27.

28.

Defendants admit the allegations in paragraph 28.

29.

Defendants deny that the City's purported fee reduction was reasonable and authorized by state law and City policy. Defendants admit that they have received some documents responsive to their public records request. They also admit that they have not paid the City's stated fee for producing those records. Defendants are without sufficient knowledge to admit or deny the remaining allegations in paragraph 29, and on that basis deny them.

30.

Defendants deny the allegations in paragraph 30.

31.

Paragraph 31 is a prayer for relief and does not require a response. To the extent a response is required, Defendants deny the allegations in paragraph 23, including subsections (A) and (B).

1 **COUNTERCLAIMS**

2 32.

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4 On January 19, 2021, Defendants submitted a public record request to the City in
5 accordance with the City’s official policies.

6 33.

7 The City has, at all relevant times, been in possession of responsive public records.

8 34.

9
10 The City estimated that the fee for disclosing the public records Defendants requested
11 would be \$4,777.62. That fee estimate was based on the City’s estimate that it would take 62
12 hours of work to review potentially responsive records. The City told Defendants it would bill
13 them \$71.06 per hour to search police records and \$66.21 per hour to search emails.

14 35.

15 The fee estimate was not reasonably calculated to reimburse the City for the cost of
16 making the public records available.

17 36.

18 The fee estimate was based on an hourly rate that was approximately double the fee the
19 City had recently charged for a public records request submitted just days before, even though
20 the very same staff member was responsible for the work on both projects.

1 **Counterclaim:**

2 **Uniform Declaratory Judgments Act**

3 37.

4 Defendants reassert all responses as outlined in paragraphs 1-37 above and allege:

5
6 38.

7 Defendants made a lawful request for records, including certain public records, in compliance
8 with the Oregon Public Records Act.

9 39.

10 The City is in possession, custody, or control of non-exempt public records responsive to
11 Defendants' request.

12 40.

13 The City has had the capacity to disclose, at all times relevant to this action, non-exempt
14 records responsive to Defendants' requests, but has not disclosed all of those records to
15 defendants.

16 41.

17 Defendants have the right to copies of the City's responsive non-exempt public records
18 under ORS 192.314.
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42.

The City violated ORS 192.329 when it failed to provide the non-exempt responsive documents at a reasonable fee.

Attorneys' Fees

43.

Defendants are entitled to costs and reasonable attorneys' fees under ORS 192.431(3) if they prevail in this action.

Request for Relief

Defendants request that the Court:

- 1. Deny Plaintiff's claim for relief;
- 2. Issue an order declaring that the fees required by the City of Bend were excessive and unlawful;
- 3. Issue an order requiring that pursuant to the Oregon Public Records Act (ORS Chapter 192) the information requested by Defendants be released to Defendants by the City of Bend and/or any of its assigns including but not limited to any bureaus within the City of Bend;
- 4. Award Defendants their reasonable attorney fees and costs under ORS 192.431 and ORCP 68;

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- 1 5. Award Defendants the Prevailing Party Fee; and
2 6. Award other such relief this Court deems just and equitable.

3
4 DATED: April 21, 2021

s/ C. Rian Peck

Rian Peck (they/them) (OSB No. 144012)

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Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on **April 21, 2021**, I, Rian Peck, served the foregoing DEFENDANTS' ANSWER AND COUNTERCLAIM on Mary Winters, Counsel for the City of Bend, by email to mwinters@bendoregon.gov.

DATED: April 21, 2021

s/ C. Rian Peck
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