

# EXHIBIT A

MICHAEL K. JEANES  
Clerk of the Superior Court  
By Ana James, Deputy  
Date 02/12/2016 Time 16:54:18

Description	Amount
CASE# CV2016-090506	
CIVIL NEW COMPLAINT	319.00
TOTAL AMOUNT	319.00
Receipt# 25050451	

Peter Strojnik, State Bar No. 6464  
**STROJNIK P.C.**  
7373 E Doubletree Ranch, Suite B-165  
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Case Specific Email Address:  
1639N40thStreet@aadi.org

Attorneys for Plaintiff

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

ADVOCATES FOR AMERICAN  
DISABLED INDIVIDUALS, LLC, and  
David Ritzenthaler, dealing with Plaintiff's  
sole and separate claim,

Plaintiff,

vs.

1639 40TH STREET LLC

Defendant.

Case No: CV2016-090506

**VERIFIED COMPLAINT**

(Civil Rights)

and

**REQUEST FOR TRIAL BY JURY**

Plaintiff alleges:

**PARTIES**

1. Plaintiff, David Ritzenthaler, currently resides in Scottsdale, Arizona. Plaintiff is and, at all times relevant hereto, has been legally disabled. Plaintiff is recognized by the State of Arizona as a member of a protected class under §§41-1492 et seq. and its implementing regulations, R10-3-401 et seq. ("AzDA") and by the United States Congress under 42 U.S.C. § 12102(2); the regulations implementing at 28 CFR §§ 36.101 et seq. ("ADA") and therefore has the right of equal access to commercial facilities. Plaintiff's right(s) as a member of the protected class have been violated.



1 has adopted, and is following, an institutional policy that will, in fact, cause Defendant  
2 to remain in compliance with the law.

3 6. According to 510-3-404, all places of public accommodations and  
4 commercial facilities must comply with the 2010 Standards (as defined in R-10-3-401(1))  
5 and the provisions of 28 CFR 36.101 through 36.104, 36.201 through 36.206, 36.208,  
6 36.211, 36.301 through 36.311, and 36.507.

7 7. In compliance with R10-3-405(H)(1), Plaintiff's address is c/o Peter Strojnik,  
8 Plaintiff's attorney, 7373 E. Doubletree Ranch, Suite B-165, Scottsdale, AZ 85258.

### 9 REAL PARTY IN INTEREST

10 8. Plaintiff is the real party in interest pursuant to ARCP Rule 17(a) (" a party  
11 authorized by statute may sue in that person's own name") and A.R.S. § 41-1492.08 (C)  
12 ("A person may file a civil action in superior court not later than two years after the  
13 occurrence or the termination of an alleged discriminatory public accommodation  
14 practice...")

### 15 ALLEGATIONS COMMON TO ALL COUNTS

16 9. Plaintiff has a State issued handicapped license plate and or placard  
17 granting Plaintiff the right to park in properly designated handicapped parking spaces.

18 10. On or about 12/12/2015, Plaintiff became aware that there were insufficient  
19 handicapped parking spaces, insufficient designation or signage and or insufficient  
20 disbursement of such parking spaces in order to provide the "shortest accessible route  
21 from parking to an entrance", specifically but not limited to violation of the 2010 ADA  
22 Standards of Accessibility Design 502.6 in that it fails to include a sign with the  
23 International Symbol of Accessibility complying with 703.7.2.1, and violation of the  
24 2010 ADA Standards of Accessibility Design §§216.5 and 502.6 in that it fails to identify  
25 van parking spaces by the designation "van accessible". Therefore, Plaintiff and others  
26 similarly situated are not permitted equal access.

27 11. Plaintiff attaches US Department of Justice Business Brief relating to  
28 restriping of parking lots, Exhibit 1, and US Department of Justice ADA Design Guide 1  
as Exhibit 2 in order to aid non-compliant commercial facilities with compliance.

1           12. Plaintiff has actual knowledge of at least one barrier related to Plaintiff's  
2 disability as alleged in the preceding paragraph. Consequently, Plaintiff and others  
3 similarly situated are currently deterred from visiting Defendant's Commercial Facility  
4 by this accessibility barrier. Therefore, Plaintiff has suffered an injury-in-fact for the  
5 purpose of standing to bring this action. Upon information and belief, there are other  
6 potential violations and barriers to entry that will be discovered and disclosed during the  
7 discovery and disclosure process.

8           13. Without the presence of adequate handicapped parking spaces, sufficient  
9 designation or signage and or sufficient disbursement of such parking spaces, Plaintiff's  
10 disability prevents Plaintiff and other disabled persons from equal enjoyment of the  
11 Defendant's Commercial Facility.

12           14. Plaintiff and other disabled persons have the right be able to visit  
13 Defendant's Commercial Facility in the future, for business, pleasure, medical treatment  
14 or other commercial purposes and utilize Defendant's Commercial Facility with adequate  
15 parking, sufficient designation or signage and sufficient disbursement of such parking  
16 spaces for the disabled, and remedies of other existing AzDA and ADA violations.

17           15. As a result of Defendant's non-compliance with the AzDA and the ADA,  
18 Plaintiff will avoid and not visit Defendant's Commercial Facility in the future unless  
19 and until all AzDA and ADA violations have been cured.

20           16. The existence of barriers deters Plaintiff and other disabled persons from  
21 conducting business or returning to Defendant's Commercial Facility. Upon information  
22 and belief, other disabled persons are also deterred from visiting there or otherwise  
23 precluded from frequenting Defendant's Commercial Facility due to its non-compliance  
24 with the AzDA and the ADA

25           17. As a result of Defendant's non-compliance with the AzDA and the ADA,  
26 Plaintiff and others similarly situated, unlike persons without disabilities, are denied  
27 equal access.

28           18. Upon information and belief, though Defendant may have centralized  
policies regarding the management and operating of its Commercial Facility, Defendant

1 does not have a plan or policy that is reasonably calculated to make its entire facility fully  
2 accessible to and independently usable by, disabled individuals.

3 19. Plaintiff's agents verified that Defendant's Commercial Facility lacks the  
4 mandatory elements required by the 2010 Standards to make it fully accessible to and  
5 independently usable by disabled people.

6 20. As a disabled person, Plaintiff has a keen interest in whether commercial  
7 facilities are fully accessible to, and independently usable by, the disabled, specifically  
8 including an interest in ensuring that parking spaces comply with the 2010 Standards.

9 21. Plaintiff, or an agent of Plaintiff, intends to return to Defendant's  
10 Commercial Facility to ascertain whether it remains in violation of the AzDA and the  
11 ADA.

12 22. Plaintiff and other disabled persons have been injured by Defendant's  
13 discriminatory practices and failure to remove architectural barriers. These injuries  
14 include being deterred from using Defendant's facilities due to the inaccessibility and or  
15 insufficient designation of appropriate parking.

16 23. Without injunctive relief, Plaintiff and other disabled persons will continue  
17 to be unable to independently use Defendant's Commercial Facility under the ADA.

18 24. Plaintiff shall seek to amend the Verified Complaint upon further  
19 inspection of Defendant premises for the purpose of alleging additional violations, if any.

20 **COUNT ONE**  
21 **(Violation of AzDA and ADA and Negligent Compliance)**

22 25. Plaintiff incorporates all allegations heretofore set forth.

23 26. Defendant has discriminated against Plaintiff and other disabled persons in  
24 that it has failed to make its Commercial Facility fully accessible to, and independently  
25 usable by, individuals who are disabled, in violation of AzDA, Article 8, Chapter 10 of  
26 Title 41 of the Arizona Revised Statutes, A.R.S. §§ 41-1492 *et seq.* and its implementing  
27 regulations, R10-3-401 *et seq.* and the ADA, Title III of the Americans with Disabilities  
28 Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations 28 CFR §§ 36.101 *et*  
*seq.*

1           27. Upon information and belief, Plaintiff alleges that Defendant attempted to  
2 comply with all laws including the AzDA and the ADA, but that his attempts were  
3 negligent and fell short of strict compliance. Defendant has a duty to Plaintiff and other  
4 disabled persons to comply with the AzDA and the ADA and to do so in a non-negligent  
5 manner. Defendant's negligence has caused harm and damage to Plaintiff.

6           28. Defendant has discriminated against Plaintiff and other disabled persons in  
7 that it has failed to remove architectural barriers to make its Commercial Facility fully  
8 accessible to, and independently usable by individuals who are disabled in violation of  
9 the AzDA and the ADA and, particularly, 42 U.S.C. §12182(b)(A)(iv) and Section 208.2  
10 of the 2010 Standards, as described above. Compliance with the requirements of section  
11 208.2 of the 2010 Standards would neither fundamentally alter the nature of Defendant's  
12 Commercial Facility nor result in an undue burden to Defendant.

13           29. Compliance with AzDA and the ADA is readily achievable by the  
14 Defendant due to the low costs. Readily achievable means that providing access is easily  
15 accomplishable without significant difficulty or expense.

16           30. Conversely, the cessation of compliance with the ADA law is also readily  
17 achievable by redrawing the parking spaces to its original configuration and or changing  
18 signage back to the same. Therefore, injunctive relief should issue irrespective of  
19 Defendant's potential voluntary cessation pursuant to the Supreme Court's  
20 announcement in *Friends of the Earth* case<sup>1</sup>.

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21 <sup>1</sup> *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 189, 120 S.Ct.  
22 693, 145 L.Ed.2d 610 (2000):

23           It is well settled that a defendant's voluntary cessation of a challenged  
24 practice does not deprive a federal court of its power to determine the legality  
25 of the practice. If it did, the courts would be compelled to leave the defendant  
26 free to return to his old ways. In accordance with this principle, the standard  
27 we have announced for determining whether a case has been mooted by the  
28 defendant's voluntary conduct is stringent: A case might become moot if  
subsequent events made it absolutely clear that the allegedly wrongful  
behavior could not reasonably be expected to recur. The heavy burden of  
persuading the court that the challenged conduct cannot reasonably be  
expected to start up again lies with the party asserting mootness.



1           31. Defendant's conduct is ongoing. Plaintiff invokes Plaintiff's statutory right  
2 to declaratory and injunctive relief, as well as costs and attorneys' fees, both pursuant to  
3 statute and pursuant to the Private Attorney General doctrine.

4           32. Without the requested injunctive relief, specifically including the request  
5 that the Court retain jurisdiction of this matter for a period to be determined after the  
6 Defendant certifies that it is fully in compliance with the mandatory requirements of the  
7 AzDA and ADA that are discussed above, Defendant's non-compliance with the AzDA  
8 and ADA' mandatory requirements may be or are likely to recur.

9           WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 10           a. A Declaratory Judgment that, at the commencement of this action,  
11 Defendant was in violation of the specific requirements of AzDA and the  
12 ADA described above, and the relevant implementing regulations of the  
13 AzDA and the ADA, in that Defendant took no action that was reasonably  
14 calculated to ensure that its Commercial Facility was fully accessible to,  
15 and independently usable by, disabled individuals;
- 16           b. Irrespective of Defendants "voluntary cessation" of the ADA violation, if  
17 applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2)  
18 requiring Defendant to comply with Sections 208.2 of the 2010 Standards,  
19 and which further directs that the Court shall retain jurisdiction for a period  
20 to be determined after Defendant certifies that its Location is fully in  
21 compliance with the relevant requirements of the ADA to ensure that  
22 Defendant has adopted and is following an institutional policy that will in  
23 fact cause Defendant to remain fully in compliance with the law;
- 24           c. Irrespective of Defendants "voluntary cessation" of the ADA violation, if  
25 applicable, payment of costs of suit, expenses and attorney's fees;
- 26           d. Irrespective of Defendants "voluntary cessation" of the AzDA and ADA  
27 violation, if applicable, payment of attorneys' fees pursuant to 42 U.S.C. §  
28 12205, 28 CFR § 36.505 and other principles of law and equity and in



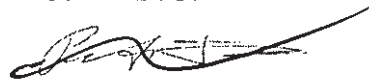
- 1 compliance with the “prevailing party” and “material alteration” of the  
2 parties’ relationship doctrines<sup>2</sup> in an amount no less than \$5,000.00; and,  
3 e. Order closure of the Defendant’s Commercial Facility until Defendant has  
4 fully complied with the ADA; and  
5 f. A finding that Defendant’s attempts to comply with the AzDA and the  
6 ADA were negligent, causing damage; and  
7 g. Damages pursuant to A.R.S. §41-1492.09(B); and  
8 h. The provision of whatever other relief the Court deems just, equitable and  
9 appropriate.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial on issues triable by a jury.

12 RESPECTFULLY SUBMITTED this Thursday, February 4, 2016.

13 **STROJNIK P.C.**

14 

15 Peter Strojnik (6464)  
16 7373 E. Doubletree Ranch, Suite B-165  
17 Scottsdale, AZ 85258  
18 Attorneys for Plaintiff

19 **VERIFICATION COMPLIANT WITH R10-3-405**

20 I declare under penalty of perjury that the foregoing is true and correct.

21 DATED this Thursday, February 4, 2016.

22 /s/ David Ritzenthaler

23 Electronic Signature Authorized  
24 David Ritzenthaler  
25  
26

27 <sup>2</sup> As applicable to ADA cases, see *Coppi v. City of Dana Point*, Case No. SACV 11-1813 JGB (RNBx)  
28 (February, 2015)

# EXHIBIT B

Description	Amount
CASE# CV2016-011220	
CIVIL NEW COMPLAINT	319.00
TOTAL AMOUNT	319.00
Receipt# 25408140	

1 Peter Strojnik, State Bar No. 6464  
2 **STROJNIK P.C.**  
3 1 EAST WASHINGTON STREET, SUITE 500  
4 PHOENIX, AZ 85004  
5 (774) 768-2234  
6 Attorney for Plaintiff  
7 Case Specific Email Address:  
8 7000EMAINST@aid.org

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 **ADVOCATES FOR INDIVIDUALS**  
12 **WITH DISABILITIES FOUNDATION,**  
13 **INC., a charitable non-profit foundation,**

14 **Plaintiff,**

15 **vs.**

16 **SUNBRELLA PROPERTIES LTD;**

17 **Defendant.**

Case No: **CV2016-011220**

**VERIFIED COMPLAINT**

18 Plaintiff alleges:

19 **PARTIES**

- 20 1. Plaintiff, Advocates for Individuals with Disabilities Foundation, Inc.  
21 (“Foundation”) is a non-profit charitable foundation and performs the functions of  
22 a traditional association representing individuals with disabilities. See  
23 [www.aid.org](http://www.aid.org).  
24 2. Defendant, SUNBRELLA PROPERTIES LTD, owns and/or operates a business  
25 located at 7000 E MAIN ST SCOTTSDALE AZ 85251 which is a place of Public  
26 Accommodation pursuant to 42 U.S.C. § 12181(7).

27 **INTRODUCTION**

- 28 3. Plaintiff brings this action against Defendant, alleging violations of Title III of the  
Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., (the “ADA”) and its

1 implementing regulations and A.R.S. Title 41, Chapter 9, Article 8, §§41-1492 et  
2 seq. and its implementing regulations, R10-3-401 et seq. (the “AzDA”)

3 4. Plaintiff is a charitable non-profit foundation. Plaintiff is known to have past,  
4 present and future relationships or associations with individuals with disabilities as  
5 defined in 28 CFR § 36.205. In connection with 28 CFR §36.205, and generally  
6 relating to third-party standing, Plaintiff alleges:

7 a. Plaintiff has a close relationship with former, current and future disabled  
8 individuals who are directly protected by the ADA as discrete and insular  
9 minorities. *See, e.g., [www.aid.org](http://www.aid.org).*

10 b. Plaintiff’s association with former, current and future disabled individuals  
11 arises from Plaintiff’s charitable acts of giving to the disabled community,  
12 which are interests that are germane to the association’s purpose.

13 c. Plaintiff’s close relationship to the third party disabled individuals is such  
14 that third party disabled individuals cannot be reasonably expected to  
15 properly frame the issues and present them with the necessary adversarial  
16 zeal to the Court. Third party disabled individuals are hindered to litigate by  
17 virtue of their status as minors and/or their lack of mobility and/or financial  
18 resources.

19 d. David Ritzenthaler is a member of the Foundation by virtue of being  
20 President, Director and Chairman and suffers from disability as this term is  
21 defined in A.R.S. §41-1492(6) and interpreted pursuant to A.R.S. §41-  
22 1492.12.

23 e. Because only injunctive and declaratory relief is requested, participation in  
24 the action by individual disabled individuals is not required.

25 5. Plaintiff brings this civil rights action against Defendant for failing to design,  
26 construct, and/or own or operate Public Accommodations that are fully accessible  
27 to, and independently usable by, individuals with disabilities. Plaintiff seeks a  
28 declaration that Defendant’s Public Accommodation violates federal and state law  
and an injunction requiring Defendant to install means of access in compliance  
with ADA requirements so that their facility is fully accessible to, and independent

1 usable by, individuals with disabilities. Plaintiff further requests that, given  
2 Defendant's historical failure to comply with the ADA's mandate, the Court retain  
3 jurisdiction of this matter for a period to be determined to ensure that Defendant  
4 comes into compliance with the relevant requirements of the ADA and AzDA, and  
5 to ensure that Defendant has adopted and is following an institutional policy that  
6 will, in fact, cause Defendant to remain in compliance with the law.

- 7 6. In compliance with R10-3-405(H)(1), Plaintiff's address is 40 North Central  
8 Avenue, Suite 1400, Phoenix, Arizona 85004

### 9 JURISDICTION AND VENUE

- 10 7. This Court has original jurisdiction over the AzDA claims by virtue of A.R.S. §§ 12-  
11 123 and 41-1492.8 and concurrent jurisdiction over the ADA claims by virtue of  
12 A.R.S. § 12-123 and Article 6, Section 14(1) of the Arizona Constitution gives the  
13 superior court original jurisdiction of "[c]ases and proceedings in which exclusive  
14 jurisdiction is not vested by law in another court."

### 15 THE ADA AND ITS IMPLEMENTING REGULATIONS

- 16 8. On July 26, 1990, President George H.W. Bush signed into law the ADA, a  
17 comprehensive civil rights law prohibiting discrimination on the basis of  
18 disability.
- 19 9. The ADA broadly protects the rights of individuals with disabilities in  
20 employment, access to State and local government services, places of Public  
21 Accommodation, transportation, and other important areas of American life.
- 22 10. Title III of the ADA prohibits discrimination in the activities of places of Public  
23 Accommodation and requires places of Public Accommodation to comply with  
24 ADA standards and to be readily accessible, and independently usable by,  
25 individuals with disabilities. 42 U.S.C. §§ 12181-89.
- 26 11. Title III states, inter alia, that "[i]t shall be discriminatory to afford an individual  
27 or class of individuals, on the basis of a disability . . . with the opportunity to  
28 participate in or benefit from a good, service, facility, privilege, advantage, or  
accommodation that is not equal to that afforded to other individuals." See 42  
U.S.C. §12182(b)(1)(A)(ii). In addition, §12182(b)(1)(A)(iii) and

1 §12182(b)(1)(B)] are intended to prohibit exclusion and segregation of individuals  
2 with disabilities and the denial of equal opportunities enjoyed by others, based on,  
3 among other things, presumptions, patronizing attitudes, fears, and stereotypes  
4 about individuals with disabilities. 28 C.F.R. pt. 36, app. C (2011).

5 12. On July 26, 1991, the Department of Justice (“DOJ”) issued rules implementing  
6 Title III of the ADA, which are codified at 28 CFR Part 36.

7 13. Appendix A of the 1991 Title III regulations (republished as Appendix D to 28  
8 CFR part 36) contains the ADA standards for Accessible Design (1991 Standards),  
9 which were based upon the Americans with Disabilities Act Accessibility  
10 Guidelines (1991 ADAAG) published by the Access Board on the same date.

11 14. In 1994, the Access Board began the process of updating the 1991 ADAAG by  
12 establishing a committee composed of members of the design and construction  
13 industries, the building code community, and State and local governmental  
14 entities, as well as individuals with disabilities.

15 15. In 1999, based largely on the report and recommendations of the advisory  
16 committee, the Access Board issued a notice of proposed rulemaking to update  
17 and revise its ADA and ABA Accessibility Guidelines.

18 16. The Access Board issued final publication of revisions to the 1991 ADAAG on  
19 July 23, 2004 (“2004 ADAAG”).

20 17. On September 30, 2004, the DOJ issued an advanced notice of proposed  
21 rulemaking to begin the process of adopting the 2004 ADAAG.

22 18. On June 17, 2008, the DOJ published a notice of proposed rulemaking covering  
23 Title III of the ADA.

24 19. The long-contemplated revisions to the 1991 ADAAG culminated with the DOJ’s  
25 issuance of The 2010 Standards for Accessible Design (“2010 Standards”). The  
26 DOJ published the Final Rule detailing the 2010 Standards on September 15,  
27 2010. The 2010 Standards consist of the 2004 ADAAG and the requirements  
28 contained in subpart D of 28 CFR part 36.

**THE AzDA AND ITS IMPLEMENTING REGULATIONS**

1 20. The AzDA and its implementing regulations, §§41-1492 et seq. and R10-3-401 et  
2 seq. provide similar prohibitions and remedies to the ADA and its implementing  
3 regulations.

4 **ALLEGATIONS COMMON TO ALL COUNTS**

5 21. Pursuant to CFR 36-302(1)(ii) and otherwise, on or about 5/6/2016, Plaintiff, who  
6 is known to have a relationship or association with individuals with disabilities  
7 and directed by David Ritzenthaler, an individual with disabilities, conducted an  
8 investigation of Defendant's Public Accommodation for purposes of ascertaining  
9 whether it complies with the ADA and AzDA. Plaintiff's investigation confirmed  
10 that Defendant's Public Accommodation was not accessible to individuals with  
11 disabilities in the following particulars:

- 12 1. Violation of the 2010 ADA Standards of Accessibility Design §§216.5 and  
13 502.6 in that it fails to identify van parking spaces by the designation "van  
14 accessible"

15 Plaintiff has actual knowledge of at least one barrier related to third party disabled  
16 individuals as indicated in the preceding allegation. Therefore, third party  
17 individuals with disabilities, including current and future members of the  
18 association are currently deterred from visiting Defendant's Public  
19 Accommodation by accessibility barrier(s).

20 22. Without the presence of adequate and or accessible parking spaces, sufficient  
21 designation or signage and or sufficient disbursement of such parking spaces, third  
22 party individuals with disabilities, including members of the Foundation, are  
23 prevented from equal enjoyment of the Defendant's Public Accommodation.

24 23. As a result of Defendant's non-compliance with the AzDA and the ADA, third  
25 party individuals with disabilities, including members of the Foundation, are  
26 deterred from visiting Defendant's Public Accommodation in the future unless and  
27 until all AzDA and ADA violations have been cured.

28 24. The existence of barriers deters third party individuals with disabilities, including  
members of the Foundation, from conducting business or returning to Defendant's  
Public Accommodation.



- 1 25. As a result of Defendant's non-compliance with the ADA and AzDA, third party  
2 disabled individuals, including members of the Foundation, unlike persons  
3 without disabilities, are denied equal access.
- 4 26. Plaintiff verified that Defendant's Public Accommodation lacks the mandatory  
5 elements required by the 2010 Standards to make their facility fully accessible to  
6 and independently usable by individuals with disabilities, including members of  
7 the Foundation.
- 8 27. Plaintiff has a keen interest in whether Public Accommodations are fully  
9 accessible to, and independently usable by, individuals with disabilities, including  
10 members of the Foundation, specifically including an interest in ensuring that  
11 parking spaces comply with the 2010 Standards.
- 12 28. Third party disabled individuals have been injured by Defendant's discriminatory  
13 practices and failure to remove architectural barriers to equal access. These  
14 injuries include being deterred from using Defendant's facilities due to the  
15 inaccessibility and/or insufficient designation of appropriate parking .
- 16 29. Without injunctive relief, Plaintiff and individuals with disabilities, including  
17 members of the Foundation, will continue to be denied equal access and unable to  
18 independently use Defendant's Public Accommodation under ADA and AzDA.

19 **COUNT ONE**

20 **(Violation of Title III of ADA and Title 41 of AzDA)**

- 21 30. Plaintiff incorporates all allegations heretofore set forth.
- 22 31. Defendant has discriminated against third party individuals with disabilities,  
23 including members of the Foundation, in that it has failed to make its Public  
24 Accommodation fully accessible to, and independently usable by, individuals who  
25 are disabled in violation of AzDA, Article 8, Chapter 10 of Title 41 of the Arizona  
26 Revised Statutes, A.R.S. §§ 41-1492 *et seq.* and its implementing regulations,  
27 R10-3-401 *et seq.* and the ADA, Title III of the Americans with Disabilities Act,  
28 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations 28 CFR §§ 36.101  
*et seq.*

1 32. Defendant has discriminated against third party individuals with disabilities,  
2 including members of the Foundation, in that it has failed to remove architectural  
3 barriers to make its Public Accommodation fully accessible to, and independently  
4 usable by individuals who are disabled in violation of the AzDA and the ADA  
5 and, particularly, 42 U.S.C. §12182(b)(A)(iv) and Section 208.2 of the 2010  
6 Standards, as described above. Compliance with the requirements of section 208.2  
7 of the 2010 Standards would neither fundamentally alter the nature of Defendant's  
8 Public Accommodation nor result in an undue burden to Defendant.

9 33. Compliance with AzDA and the ADA is readily achievable by the Defendant due  
10 to the low costs. Readily achievable means that providing access is easily  
11 accomplishable without significant difficulty or expense .

12 34. Conversely, the cessation of compliance with the ADA law is also readily  
13 achievable by redrawing the parking spaces to its original configuration and or  
14 changing signage back to the same. Therefore, injunctive relief should issue  
15 irrespective of Defendant's potential voluntary cessation pursuant to the Supreme  
16 Court's announcement in *Friends of the Earth* case.<sup>1</sup>

17 35. Defendant's conduct is ongoing, Plaintiff invokes Plaintiff's statutory right to  
18 declaratory and injunctive relief, as well as costs and attorneys' fees, both pursuant  
19 to statute and pursuant to the Private Attorney General doctrine .

20 36. Without the requested injunctive relief, specifically including the request that the  
21 Court retain jurisdiction of this matter for a period to be determined after the  
22 Defendant certifies that it is fully in compliance with the mandatory requirements

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23 <sup>1</sup> *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 189, 120 S.Ct.  
24 693, 145 L.Ed.2d 610 (2000):

25 It is well settled that a defendant's voluntary cessation of a challenged practice does not  
26 deprive a federal court of its power to determine the legality of the practice. If it did, the  
27 courts would be compelled to leave the defendant free to return to his old ways. In  
28 accordance with this principle, the standard we have announced for determining whether a  
case has been mooted by the defendant's voluntary conduct is stringent: A case might  
become moot if subsequent events made it absolutely clear that the allegedly wrongful  
behavior could not reasonably be expected to recur. The heavy burden of persuading the  
court that the challenged conduct cannot reasonably be expected to start up again lies with  
the party asserting mootness.

1 of the AzDA and ADA that are discussed above, Defendant's non-compliance  
2 with the AzDA and ADA's mandatory requirements may be or are likely to recur.

3 **COUNT TWO**  
4 **(Violation A.R.S. Title 41, Chapter 9, Article 8, §§41-1492 et seq. AND**  
5 **Implementing Regulations)**

6 37. Plaintiff realleges all allegations heretofore set forth.

7 38. Plaintiff and third party individuals with disabilities, including members of the  
8 Foundation, have been damaged and injured by the Defendant's non-compliance  
9 with the AzDA.

10 39. Pursuant to A.R.S. § 41-1492.08, and §41-1492.09, Plaintiff has the right to  
11 enforce the AzDA by the issuance of injunctive relief.

12 40. Pursuant to A.R.S. § 41-1492.08, Plaintiff is entitled to preventive and mandatory  
13 relief.

14 41. Mandatory relief includes relief mandated by A.R.S. § 41-1492.09 obligating the  
15 Office of the Attorney General to take actions specified therein.

16 42. Pursuant to A.R.S. § 41-1492.09(B)(2), Plaintiff is further entitled to such other  
17 relief as the Court considers appropriate, including monetary damages in an  
18 amount to be proven at trial, but in no event less than \$5,000.00.

19 43. Pursuant to A.R.S. § 41-1492.09(F), Plaintiff is entitled to attorney's fees and costs  
20 in an amount proven but in no event less than \$5,000.00.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

23 a. A Declaratory Judgment that at the commencement of this action Defendant  
24 was in violation of the specific requirements of Title III of the ADA described  
25 above, and the relevant implementing regulations of the ADA, in that  
26 Defendant took no action that was reasonably calculated to ensure that its  
27 Public Accommodation was fully accessible to, and independently usable by,  
28 individuals with disabilities;

b. Irrespective of Defendants "voluntary cessation" of the ADA violation, if  
applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) and

1 28 CFR § 36.504(a), which directs Defendant to take all steps necessary to  
2 bring its Public Accommodation into full compliance with the requirements  
3 set forth in the ADA and its implementing regulations, so that the facility is  
4 fully accessible to, and independently usable by, individuals with disabilities,  
5 including members of the Foundation, specifically Sections 208.2 of the 2010  
6 Standards, and which further directs that the Court shall retain jurisdiction  
7 for a period to be determined after Defendant certifies that its facility is fully  
8 in compliance with the relevant requirements of the ADA to ensure that  
9 Defendant has adopted and is following an institutional policy that will in  
fact cause Defendant to remain fully in compliance with the law;

- 10 c. Irrespective of Defendant's "voluntary cessation" of the ADA violation, if  
11 applicable, payment of costs of suit, expenses of suit and attorney's fees;
- 12 d. Order closure of the Defendant's place of Public Accommodation until  
13 Defendant has fully complied with the ADA and AzDA;
- 14 e. A Declaratory Judgment that at the commencement of this action Defendant  
15 was in violation of the specific requirements of AzDA;
- 16 f. Irrespective of Defendant's "voluntary cessation" of the ADA violation, if  
17 applicable, a permanent injunction pursuant to AzDA which directs  
18 Defendant to take all steps necessary to bring its facility into full compliance  
19 with the requirements set forth in the AzDA, and its implementing  
20 regulations, so that the facility is fully accessible to, and independently  
21 usable by individuals with disabilities, including members of the Foundation,  
22 specifically including ensuring parking spaces comply with the 2010  
23 Standards as required by law, and which further directs that the Court shall  
24 retain jurisdiction for a period to be determined after Defendant certifies that  
25 its facility is fully in compliance with the relevant requirements of the AzDA  
26 to ensure that Defendant has adopted and is following an institutional policy  
that will in fact cause Defendant to remain fully in compliance with the law;
- 27 g. For damages authorized by § 41-1492.09(B)(2) in an amount no less than  
28 \$5,000.00;

- 1 h. Irrespective of Defendants “voluntary cessation” of the ADA violation, if  
2 applicable, payment of attorneys’ fees pursuant to 42 U.S.C. § 12205, 28  
3 CFR § 36.505 and A.R.S. § 41-1492.09(F) and other principles of law and  
4 equity and in compliance with the “prevailing party” and “material  
5 alteration” of the parties’ relationship doctrines<sup>2</sup> in an amount no less than  
6 \$5,000.00; and,  
7 i. The provision of whatever other relief the Court deems just, equitable and  
8 appropriate.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Rule 38 of the Arizona Rules of Civil Procedure, Plaintiff  
10 hereby demands a jury trial on issues triable by a jury.

11 **RESPECTFULLY SUBMITTED** this Monday, July 25, 2016.

12 **STROJNIK P.C.**

13 /s/ Peter Strojnik  
14 Peter Strojnik (6464)  
15 Attorney for Plaintiff

16 **VERIFICATION COMPLIANT WITH R10-3-405**

17 I declare under penalty of perjury that the foregoing is true and correct.

18 DATED this Monday, July 25, 2016.

19 /s/ David Ritzenthaler

20 By: David Ritzenthaler, Director  
21 Advocates for Individuals with  
22 Disabilities Foundation, Inc.

23  
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27 <sup>2</sup> As applicable to ADA cases, see *Coppi v. City of Dana Point*, Case No. SACV 11-1813 JGB (RNBx)  
28 (February, 2015)

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EXHIBIT 1



**Americans with Disabilities Act**

**ADA Business BRIEF:**

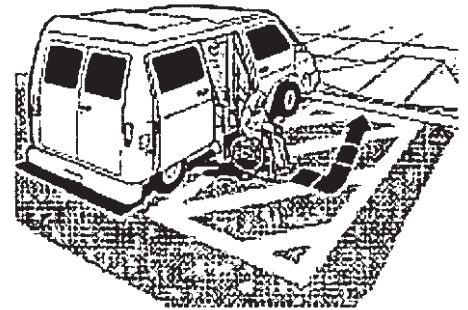
**Restriping Parking Lots**

**Accessible Parking Spaces**

When a business restripes a parking lot, it must provide accessible parking spaces as required by the ADA Standards for Accessible Design.

In addition, businesses or privately owned facilities that provide goods or services to the public have a continuing ADA obligation to remove barriers to access in existing parking lots when it is readily achievable to do so. Because restriping is relatively inexpensive, it is readily achievable in most cases.

This ADA Business Brief provides key information about how to create accessible car and van spaces and how many spaces to provide when parking lots are restriped.



One of eight accessible parking spaces, but always at least one, must be van accessible.

**Accessible Parking Spaces for Cars**

Accessible parking spaces for cars have at least a 60-inch-wide access aisle located adjacent to the designated parking space. The access aisle is just wide enough to permit a person using a wheelchair to enter or exit the car. These parking spaces are identified with a sign and located on level ground.

**Van-Accessible Parking Spaces**

Van-accessible parking spaces are the same as accessible parking spaces for cars except for three features needed for vans:

- a wider access aisle (96") to accommodate a wheelchair lift;
- vertical clearance to accommodate van height at the van parking space, the adjacent access aisle, and on the vehicular route to and from the van-accessible space, and
- an additional sign that identifies the parking spaces as "van accessible."

**Minimum Number of Accessible Parking Spaces**  
 ADA Standards for Accessible Design 4.1.2 (5)

Total Number of Parking Spaces Provided (per lot)	Total Minimum Number of Accessible Parking Spaces (60" & 96" aisles)	Van-Accessible Parking Spaces with min. 96" wide access aisle	Accessible Parking Spaces with min. 60" wide access aisle
<b>Column A</b>			
1 to 25	1	1	0
26 to 50	2	1	1
51 to 75	3	1	2
76 to 100	4	1	3
101 to 150	5	1	4
151 to 200	6	1	5
201 to 300	7	1	6
301 to 400	8	1	7
401 to 500	9	2	7
501 to 1000	2% of total parking provided in each lot	1/8 of Column A*	7/8 of Column A**
1001 and over	20 plus 1 for each 100 over 1000.	1/8 of Column A*	7/8 of Column A**

\* one out of every 8 accessible spaces

\*\* 7 out of every 8 accessible parking spaces



## Location

Accessible parking spaces must be located on the shortest accessible route of travel to an accessible facility entrance. Where buildings have multiple accessible entrances with adjacent parking, the accessible parking spaces must be dispersed and located closest to the accessible entrances.

When accessible parking spaces are added in an existing parking lot, locate the spaces on the most level ground close to the accessible entrance. An accessible route must always be provided from the accessible parking to the accessible entrance. An accessible route never has curbs or stairs, must be at least 3-foot wide, and has a firm, stable, slip-resistant surface. The slope along the accessible route should not be greater than 1:12 in the direction of travel.

Accessible parking spaces may be clustered in one or more lots if equivalent or greater accessibility is provided in terms of distance from the accessible entrance, parking fees, and convenience. Van-accessible parking spaces located in parking garages may be clustered on one floor (to accommodate the 98-inch minimum vertical height requirement).

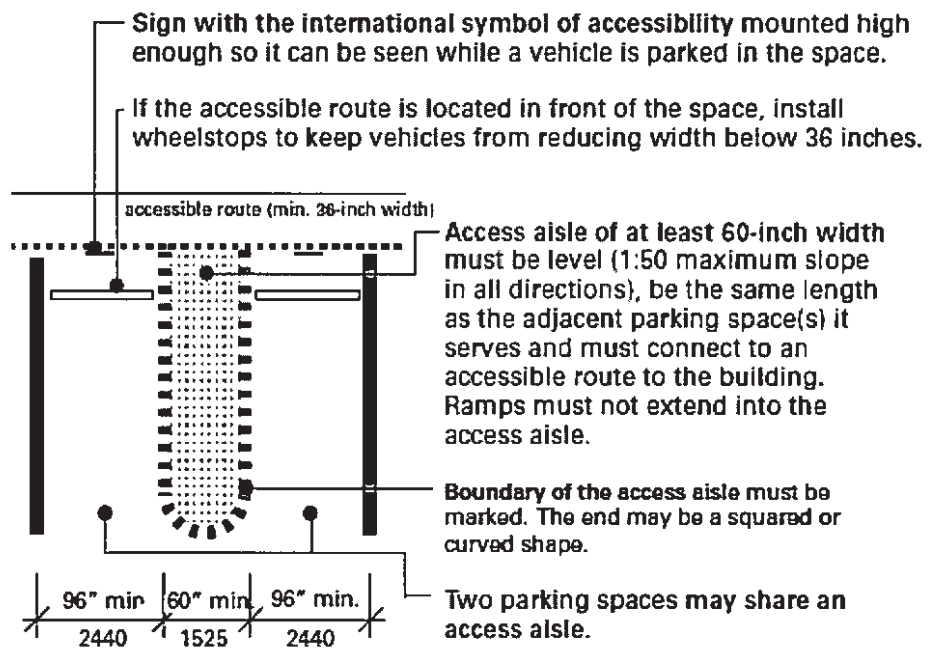
## Free Technical Assistance

Answers to technical and general questions about restriping parking lots or other ADA requirements are available by telephone on weekdays. You may also order the ADA Standards for Accessible Design and other ADA publications, including regulations for private businesses, at any time day or night. Information about ADA-related IRS tax credits and deductions is also available from the ADA Information Line.

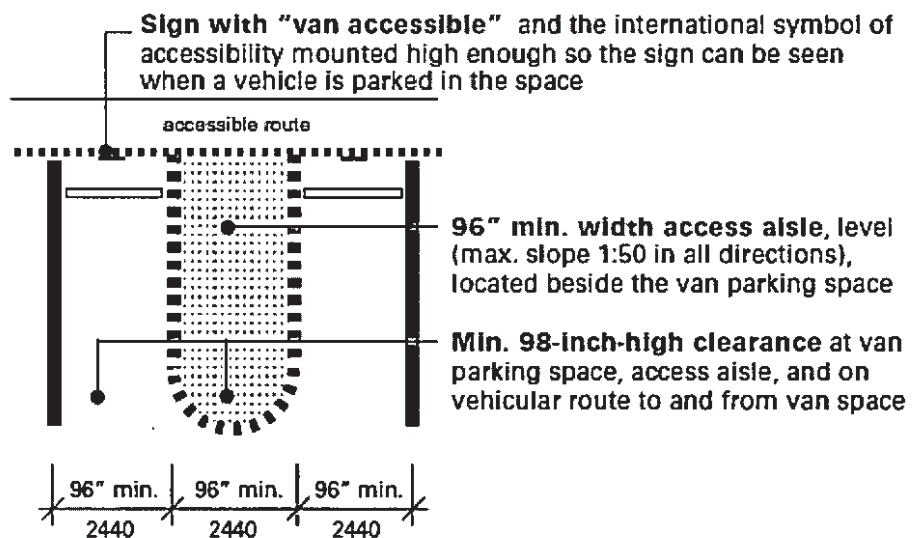
Department of Justice  
ADA Information Line

800-514-0301 (voice)  
800-514-0383 (TTY)

## Features of Accessible Parking Spaces for Cars



## Three Additional Features for Van-Accessible Parking Spaces



## ADA Website and ADA Business Connection

You may also view or download ADA information on the Department's ADA website at any time. The site provides access to the ADA Business Connection and the ADA design standards, ADA regulations, ADA policy letters, technical assistance materials, and general ADA information. It also provides links to other Federal agencies, and updates on new ADA requirements and enforcement efforts. [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm)

## Reference:

ADA Standards for Accessible Design (28 CFR Part 36):  
§ 4.1.6 Alterations; § 4.1.2 Accessible Sites and Exterior Facilities: New Construction; § 4.6.1 Parking and Passenger Loading Zones, and  
§ 4.3 Accessible Route.

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EXHIBIT 2



Americans with Disabilities Act

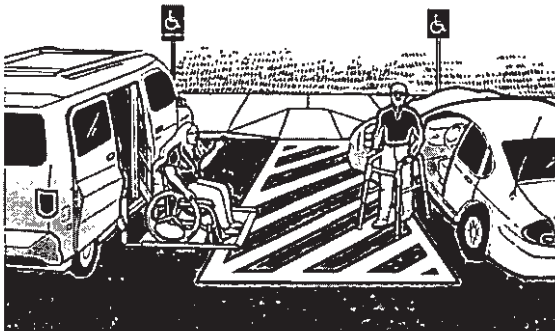
**ADA Compliance BRIEF:**  
**Restriping Parking Spaces**

**Accessible Parking Spaces**

When a business or State or local government restripes parking spaces in a parking lot or parking structure (parking facilities), it must provide accessible parking spaces as required by the 2010 ADA Standards for Accessible Design (2010 Standards).

In addition, businesses or privately owned facilities that provide goods or services to the public have a continuing ADA obligation to remove barriers to access in existing parking facilities when it is readily achievable to do so. Because restriping is relatively inexpensive, it is readily achievable in most cases. State and local government facilities also have an ongoing ADA obligation to make their programs accessible, which can require providing accessible parking.

This compliance brief provides information about the features of accessible car and van parking spaces and how many accessible spaces are required when parking facilities are restriped.



**One of six accessible parking spaces, but always at least one, must be van-accessible.**

The required number of accessible parking spaces must be calculated separately for each parking facility, not calculated based on the total number of parking spaces provided on a site. One of six (or fraction of six) accessible parking spaces, but always at least one, must be van accessible.

Parking for hospital outpatient facilities, rehabilitation facilities, outpatient physical therapy facilities or residential facilities have substantially different requirements for accessibility (see 2010 Standards 208.2).

Minimum Number of Accessible Parking Spaces 2010 Standards (208.2)		
Total Number of Parking Spaces Provided in Parking Facility (per facility)	(Column A) Minimum Number of Accessible Parking Spaces (car and van)	Minimum Number of Van-Accessible Parking Spaces (1 of six accessible spaces)
1 to 25	1	1
26 to 50	2	1
51 to 75	3	1
76 to 100	4	1
101 to 150	5	1
151 to 200	6	1
201 to 300	7	2
301 to 400	8	2
401 to 500	9	2
500 to 1000	2% of total parking provided in each lot or structure	1/6 of Column A*
1001 and over	20 plus 1 for each 100 over 1000	1/6 of Column A*

\*one out of every 6 accessible spaces

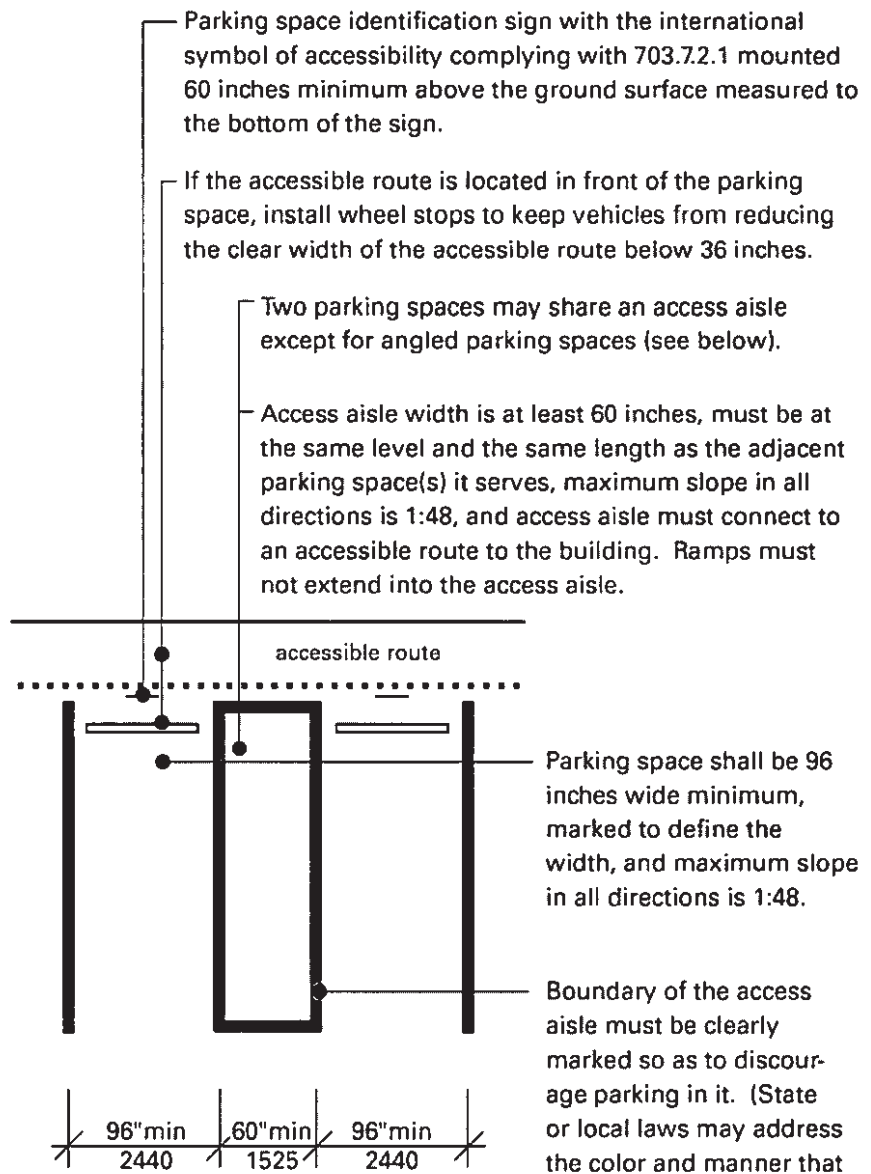
## Location

Accessible parking spaces must be located on the shortest accessible route of travel to an accessible facility entrance. Where buildings have multiple accessible entrances with adjacent parking, the accessible parking spaces must be dispersed and located closest to the accessible entrances.

When accessible parking spaces are added in an existing parking lot or structure, locate the spaces on the most level ground close to the accessible entrance. An accessible route must always be provided from the accessible parking to the accessible entrance. An accessible route never has curbs or stairs, must be at least 3 feet wide, and has a firm, stable, slip-resistant surface. The slope along the accessible route should not be greater than 1:12 in the direction of travel.

Accessible parking spaces may be clustered in one or more facilities if equivalent or greater accessibility is provided in terms of distance from the accessible entrance, parking fees, and convenience. Van-accessible parking spaces located in parking garages may be clustered on one floor (to accommodate the 98-inch minimum vertical height requirement).

## Features of Accessible Parking Spaces



### Accessible Parking Spaces with 60-inch Minimum Width Access Aisle for Cars

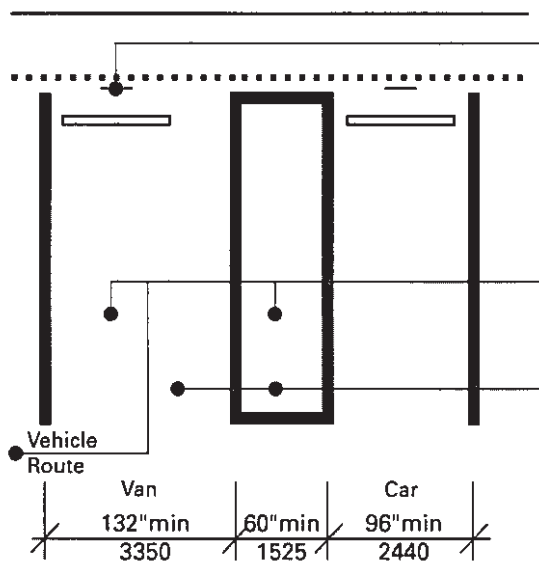
#### Additional Notes:

Where parking spaces are marked with lines, width measurements of parking spaces and access aisles are to centerlines, except for the end space which may include the full width of the line.

Access aisles may be located on either side of the parking space except for angled van parking spaces which must have access aisles located on the passenger side of the parking spaces.

## Additional Features of Van-Accessible Parking Spaces

Van-accessible parking spaces incorporate the features of accessible parking spaces on the previous page and require the following additional features: a "van accessible" designation on the sign; different widths for the van parking space or the access aisle; and at least 98 inches of vertical clearance for the van parking space, access aisle, and vehicular route to and from the van-accessible space. The first image below shows a van-accessible space with a 60-inch minimum width access aisle. The second image shows a van-accessible space with a 96-inch minimum width access aisle. Both configurations are permitted and requirements for van-accessible signage and vertical clearance apply to both configurations.

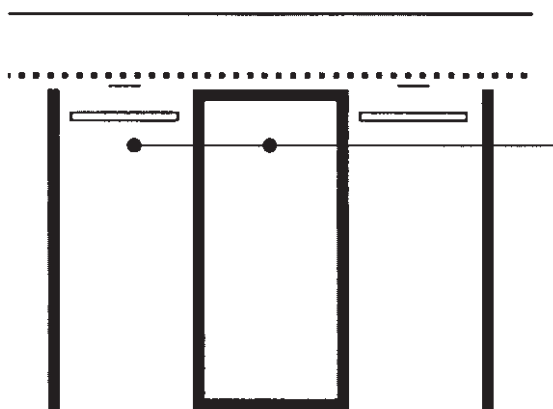


**Van-Accessible Parking Space with 60-inch Minimum Width Access Aisle**

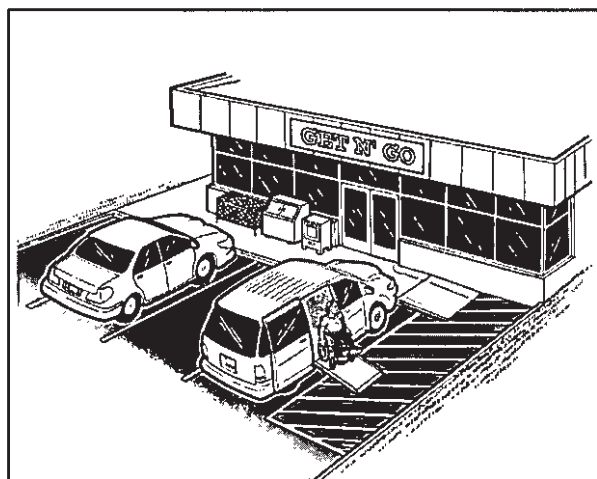
Parking space identification sign with the international symbol of accessibility and designation, "van accessible." Note, where four or fewer parking spaces are provided on a site, a sign identifying the accessible space, which must be van-accessible, is not required.

Vertical clearance of 98 inches minimum to accommodate van height at the vehicle parking space, the adjacent access aisle, and on the vehicular route to and from the van-accessible space.

Van parking space must be 132 inches wide minimum with an adjacent 60-inch wide minimum access aisle. A van parking space of 96 inches wide minimum with an adjacent 96-inch wide minimum access aisle is also permitted (see below).



**Van-Accessible Parking Space with 96-inch Minimum Width Access Aisle**



Where four or fewer parking spaces are provided on a site, signage identifying the van-accessible parking space is not required.

# EXHIBIT C

MICHAEL K. JEANES  
Clerk of the Superior Court  
By Fidelia Boll, Deputy  
Date 06/09/2016 Time 09:45:15

Description	Amount
CASE# CV2016-006769	
CIVIL NEW COMPLAINT	319.00
TOTAL AMOUNT	319.00
Receipt# 25295607	

1 Peter Strojnik, State Bar No. 6464  
2 **STROJNIK P.C.**  
3 1 EAST WASHINGTON STREET, SUITE 500  
4 PHOENIX, AZ 85004  
5 (774) 768-2234  
6 Attorney for Plaintiff  
7 Case Specific Email Address:  
8 1955WUNIVERSITYDR@aadi.org  
9 www.aid.org

7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF ARIZONA**

9 ADVOCATES FOR INDIVIDUALS  
10 WITH DISABILITIES FOUNDATION,  
11 INC., a charitable non-profit foundation,

Case No: CV2016-006769

12 Plaintiff,

**VERIFIED COMPLAINT**

13 vs.

14 CIRCLE K STORES INC;

15 Defendant.

16 Plaintiff alleges:

17 **PARTIES**

- 18 1. Plaintiff, Advocates for Individuals with Disabilities Foundation, Inc.  
19 (“Foundation”) is a non-profit charitable foundation. See [www.aid.org](http://www.aid.org).  
20 2. Defendant, CIRCLE K STORES INC, owns and/or operates a business located at  
21 1955 W UNIVERSITY DR MESA AZ 85201 which is a place of public  
22 accommodation pursuant to 42 U.S.C. § 12181(7)(A) which offers public lodging  
23 services.

24 **INTRODUCTION**

- 25 3. Plaintiff brings this action against Defendant, alleging violations of Title III of the  
26 Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., (the “ADA”) and its  
27  
28



1 implementing regulations and A.R.S. Title 41, Chapter 9, Article 8, §§41-1492 et  
2 seq. and its implementing regulations, R10-3-401 et seq. (the "AzDA")

3 4. Plaintiff is a charitable non-profit foundation. Plaintiff is known to have past,  
4 present and future relationships or associations with individuals with disabilities as  
5 defined in 28 CFR § 36.205. In connection with 28 CFR §36.205, and generally  
6 relating to third-party standing, Plaintiff alleges:

7 a. Plaintiff has a close relationship with former, current and future disabled  
8 individuals who are directly protected by the ADA as discrete and insular  
9 minorities. *See, e.g., [www.aid.org](http://www.aid.org).*

10 b. Plaintiff's association with former, current and future disabled individuals  
11 arises from Plaintiff's charitable acts of giving to the disabled community,  
12 which are interests that are germane to the association's purpose.

13 c. Plaintiff's close relationship to the third party disabled individuals is such  
14 that a third party disabled individuals cannot be reasonably expected to  
15 properly frame the issues and present them with the necessary adversarial  
16 zeal to the Court. Third party disabled individuals are hindered to litigate by  
17 virtue of their status as minors and/or their lack of mobility and/or financial  
18 resources.

19 d. Because only injunctive and declaratory relief is requested, participation in  
20 the action by individual disabled individuals is not required.

21 5. Plaintiff brings this civil rights action against Defendant for failing to design,  
22 construct, and/or own or operate public accommodations that are fully accessible  
23 to, and independently usable by, disabled people. Plaintiff seeks a declaration that  
24 Defendant's public accommodation violates federal law and an injunction  
25 requiring Defendant to install means of access in compliance with ADA  
26 requirements so that their facility is fully accessible to, and independent usable by,  
27 disabled individuals. Plaintiff further requests that, given Defendant's historical  
28 failure to comply with the ADA's mandate, the Court retain jurisdiction of this  
matter for a period to be determined to ensure that Defendant comes into  
compliance with the relevant requirements of the ADA, and to ensure that

1 Defendant has adopted and is following an institutional policy that will, in fact,  
2 cause Defendant to remain in compliance with the law.

3 6. In compliance with R10-3-405(H)(1), Plaintiff's address is 40 North Central  
4 Avenue, Suite 1400, Phoenix, Arizona 85004

5 **JURISDICTION AND VENUE**

6 7. Jurisdiction in this Court is proper pursuant to 28 U.S.C. §§ 1331 and 42 U.S.C. §  
7 12188.

8 8. Plaintiff's claims asserted herein arose in this judicial district and Defendant does  
9 substantial business in this judicial district.

10 9. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and (c) in that  
11 this is the judicial district in which a substantial part of the acts and omissions  
12 giving rise to the claims occurred.

13 **THE ADA AND ITS IMPLEMENTING REGULATIONS**

14 10. On July 26, 1990, President George H.W. Bush signed into law the ADA, a  
15 comprehensive civil rights law prohibiting discrimination on the basis of  
16 disability.

17 11. The ADA broadly protects the rights of individuals with disabilities in  
18 employment, access to State and local government services, places of public  
19 accommodation, transportation, and other important areas of American life.

20 12. Title III of the ADA prohibits discrimination in the activities of places of public  
21 accommodation and requires places of public accommodation to comply with  
22 ADA standards and to be readily accessible, and independently usable by,  
23 individuals with disabilities. 42 U.S.C. §§ 12181-89.

24 13. Title III states, inter alia, that "[i]t shall be discriminatory to afford an individual  
25 or class of individuals, on the basis of a disability . . . with the opportunity to  
26 participate in or benefit from a good, service, facility, privilege, advantage, or  
27 accommodation that is not equal to that afforded to other individuals." See 42  
28 U.S.C. §12182(b)(1)(A)(ii). In addition, §12182(b)(1)(A)(iii) and  
§12182(b)(1)(B)] are intended to prohibit exclusion and segregation of individuals  
with disabilities and the denial of equal opportunities enjoyed by others, based on,

1 among other things, presumptions, patronizing attitudes, fears, and stereotypes  
2 about individuals with disabilities. 28 C.F.R. pt. 36, app. C (2011).

3 14. On July 26, 1991, the Department of Justice (“DOJ”) issued rules implementing  
4 Title III of the ADA, which are codified at 28 CFR Part 36.

5 15. Appendix A of the 1991 Title III regulations (republished as Appendix D to 28  
6 CFR part 36) contains the ADA standards for Accessible Design (1991 Standards),  
7 which were based upon the Americans with Disabilities Act Accessibility  
8 Guidelines (1991 ADAAG) published by the Access Board on the same date.

9 16. In 1994, the Access Board began the process of updating the 1991 ADAAG by  
10 establishing a committee composed of members of the design and construction  
11 industries, the building code community, and State and local governmental  
12 entities, as well as individuals with disabilities.

13 17. In 1999, based largely on the report and recommendations of the advisory  
14 committee, the Access Board issued a notice of proposed rulemaking to update  
15 and revise its ADA and ABA Accessibility Guidelines.

16 18. The Access Board issued final publication of revisions to the 1991 ADAAG on  
17 July 23, 2004 (“2004 ADAAG”).

18 19. On September 30, 2004, the DOJ issued an advanced notice of proposed  
19 rulemaking to begin the process of adopting the 2004 ADAAG.

20 20. On June 17, 2008, the DOJ published a notice of proposed rulemaking covering  
21 Title III of the ADA.

22 21. The long-contemplated revisions to the 1991 ADAAG culminated with the DOJ’s  
23 issuance of The 2010 Standards for Accessible Design (“2010 Standards”). The  
24 DOJ published the Final Rule detailing the 2010 Standards on September 15,  
25 2010. The 2010 Standards consist of the 2004 ADAAG and the requirements  
26 contained in subpart D of 28 CFR part 36.

### 27 **THE AzDA AND ITS IMPLEMENTING REGULATIONS**

28 22. The AzDA and its implementing regulations, §§41-1492 et seq. and R10-3-401 et  
seq. provide similar prohibitions and remedies to the ADA and its implementing  
regulations.

**ALLEGATIONS COMMON TO ALL COUNTS**

1  
2 23. Pursuant to CFR 36-302(1)(ii) and otherwise, on or about 3/17/2016, Plaintiff,  
3 who is known to have a relationship or association with individuals with  
4 disabilities, conducted an investigation into Defendant's public accommodation  
5 for purposes of ascertaining whether it complies with the ADA. Plaintiff's  
6 investigation confirmed that Defendant's public accommodation was not  
7 accessible to individuals with disabilities in the following particulars:

- 8 1. Violation of the 2010 ADA Standards of Accessibility Design §§216.5 and  
9 502.6 in that it fails to identify van parking spaces by the designation "van  
10 accessible" and or fails to maintain the minimum height of 60 inches (1525 mm)  
11 above the finish floor

12 Plaintiff has actual knowledge of at least one barrier related to third party disabled  
13 individuals as indicated in the preceding allegation. Therefore, third party  
14 individuals with disabilities are currently deterred from visiting Defendant's  
15 public accommodation by accessibility barrier(s). Upon information and belief,  
16 there are other potential violations and barriers to entry that will be discovered and  
17 disclosed during the discovery and disclosure process.

18 24. Without the presence of adequate handicapped parking spaces, sufficient  
19 designation or signage and or sufficient disbursement of such parking spaces, third  
20 party individuals with disabilities are prevented from equal enjoyment of the  
21 Defendant's Public Accommodation.

22 25. As a result of Defendant's non-compliance with the AzDA and the ADA, third  
23 party individuals with disabilities will avoid and not visit Defendant's Public  
24 Accommodation in the future unless and until all AzDA and ADA violations have  
25 been cured.

26 26. The existence of barriers deters third party individuals with disabilities from  
27 conducting business or returning to Defendant's Public Accommodation. Upon  
28 information and belief, other disabled persons are also deterred from visiting there  
or otherwise precluded from frequenting Defendant's Public Accommodation due  
to its non-compliance with the AzDA and the ADA .

1 27. As a result of Defendant's non-compliance with the ADA, third party disabled  
2 individuals, unlike persons without disabilities, are denied equal access.

3 28. Upon information and belief, though Defendant may have centralized policies  
4 regarding the management and operating of its hotel, Defendant does not have a  
5 plan or policy that is reasonably calculated to make its entire facility fully  
6 accessible to and independently usable by, disabled people.

7 29. Plaintiff verified that Defendant's Public Accommodation lacks the mandatory  
8 elements required by the 2010 Standards to make their facility fully accessible to  
9 and independently usable by disabled people.

10 30. Plaintiff has a keen interest in whether public accommodations are fully accessible  
11 to, and independently usable by, individuals with disabilities, specifically  
12 including an interest in ensuring that parking spaces comply with the 2010  
13 Standards.

14 31. Third party disabled individuals have been injured by Defendant's discriminatory  
15 practices and failure to remove architectural barriers to equal access. These  
16 injuries include being deterred from using Defendant's facilities due to the  
17 inaccessibility and/or insufficient designation of appropriate parking .

18 32. Without injunctive relief, Plaintiff and others will continue to be unable to  
19 independently use Defendant's Public Accommodation under ADA and AzDA.

20 **COUNT ONE**  
21 **(Violation of Title III of ADA)**

22 33. Plaintiff incorporates all allegations heretofore set forth.

23 34. Defendant has discriminated against third party disabled individuals and others in  
24 that it has failed to make its public accommodation fully accessible to, and  
25 independently usable by, individuals who are disabled in violation of AzDA,  
26 Article 8, Chapter 10 of Title 41 of the Arizona Revised Statutes, A.R.S. §§ 41-  
27 1492 *et seq.* and its implementing regulations, R10-3-401 *et seq.* and the ADA,  
28 Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and  
its implementing regulations 28 CFR §§ 36.101 *et seq.*

1 35. Defendant has discriminated against third party disabled individuals in that it has  
2 failed to remove architectural barriers to make its Public Accommodation fully  
3 accessible to, and independently usable by individuals who are disabled in  
4 violation of the AzDA and the ADA and, particularly, 42 U.S.C. §12182(b)(A)(iv)  
5 and Section 208.2 of the 2010 Standards, as described above. Compliance with the  
6 requirements of section 208.2 of the 2010 Standards would neither fundamentally  
7 alter the nature of Defendant's Public Accommodation nor result in an undue  
8 burden to Defendant.

9 36. Compliance with AzDA and the ADA is readily achievable by the Defendant due  
10 to the low costs. Readily achievable means that providing access is easily  
11 accomplishable without significant difficulty or expense .

12 37. Conversely, the cessation of compliance with the ADA law is also readily  
13 achievable by redrawing the parking spaces to its original configuration and or  
14 changing signage back to the same. Therefore, injunctive relief should issue  
15 irrespective of Defendant's potential voluntary cessation pursuant to the Supreme  
16 Court's announcement in *Friends of the Earth* case<sup>1</sup>.

17 38. Defendant's conduct is ongoing, Plaintiff invokes Plaintiff's statutory right to  
18 declaratory and injunctive relief, as well as costs and attorneys' fees, both pursuant  
19 to statute and pursuant to the Private Attorney General doctrine .

20 39. Without the requested injunctive relief, specifically including the request that the  
21 Court retain jurisdiction of this matter for a period to be determined after the  
22 Defendant certifies that it is fully in compliance with the mandatory requirements

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23 <sup>1</sup> *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 189, 120 S.Ct.  
24 693, 145 L.Ed.2d 610 (2000):

25 It is well settled that a defendant's voluntary cessation of a challenged practice does not  
26 deprive a federal court of its power to determine the legality of the practice. If it did, the  
27 courts would be compelled to leave the defendant free to return to his old ways. In  
28 accordance with this principle, the standard we have announced for determining whether a  
case has been mooted by the defendant's voluntary conduct is stringent: A case might  
become moot if subsequent events made it absolutely clear that the allegedly wrongful  
behavior could not reasonably be expected to recur. The heavy burden of persuading the  
court that the challenged conduct cannot reasonably be expected to start up again lies with  
the party asserting mootness.

1 of the AzDA and ADA that are discussed above, Defendant's non-compliance  
2 with the AzDA and ADA' mandatory requirements may be or are likely to recur.

3 **COUNT TWO**  
4 **(Violation A.R.S. Title 41, Chapter 9, Article 8, §§41-1492 et seq. AND**  
5 **Implementing Regulations)**

6 40. Plaintiff realleges all allegations heretofore set forth.

7 41. Plaintiff has been damaged and injured by the Defendant's non-compliance with  
8 the AzDA.

9 42. Pursuant to A.R.S. § 41-1492.08, and §41-1492.09, plaintiff has the right to  
10 enforce the AzDA by the issuance of injunctive relief.

11 43. Pursuant to A.R.S. § 41-1492.08, Plaintiff is entitled to preventive and mandatory  
12 relief.

13 44. Mandatory relief includes relief mandated by A.R.S. § 41-1492.09 obligating the  
14 Office of the Attorney General to take actions specified therein.

15 45. Pursuant to A.R.S. § 41-1492.09(B)(2), Plaintiff is further entitled to such other  
16 relief as the Court considers appropriate, including monetary damages in an  
17 amount to be proven at trial, but in no event less than \$5,000.00.

18 46. Pursuant to A.R.S. § 41-1492.09(F), Plaintiff is entitled to attorney's fees and costs  
19 in an amount proven but in no event less than \$5,000.00.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 22 a. A Declaratory Judgment that at the commencement of this action Defendant  
23 was in violation of the specific requirements of Title III of the ADA described  
24 above, and the relevant implementing regulations of the ADA, in that  
25 Defendant took no action that was reasonably calculated to ensure that its  
26 Public Accommodation was fully accessible to, and independently usable by,  
27 individuals with disabilities ;  
28 b. Irrespective of Defendants "voluntary cessation" of the ADA violation, if  
applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) and  
28 CFR § 36.504(a) which directs Defendant to take all steps necessary to



1 bring its public accommodation into full compliance with the requirements  
2 set forth in the ADA and its implementing regulations, so that the facility is  
3 fully accessible to, and independently usable by, disabled individuals,  
4 specifically Sections 208.2 of the 2010 Standards, and which further directs  
5 that the Court shall retain jurisdiction for a period to be determined after  
6 Defendant certifies that its facility is fully in compliance with the relevant  
7 requirements of the ADA to ensure that Defendant has adopted and is  
8 following an institutional policy that will in fact cause Defendant to remain  
9 fully in compliance with the law;

- 10 c. Irrespective of Defendants "voluntary cessation" of the ADA violation, if  
11 applicable, payment of costs of suit, expenses of suit and attorney's fees;
- 12 d. Order closure of the Defendant's place of public accommodation until  
13 Defendant has fully complied with the ADA and AzDA;
- 14 e. A Declaratory Judgment that at the commencement of this action Defendant  
15 was in violation of the specific requirements of AzDA;
- 16 f. Irrespective of Defendants "voluntary cessation" of the ADA violation, if  
17 applicable, a permanent injunction pursuant to AzDA which directs  
18 Defendant to take all steps necessary to bring its facility into full compliance  
19 with the requirements set forth in the AzDA, and its implementing  
20 regulations, so that the facility is fully accessible to, and independently  
21 usable by, disabled individuals, specifically including ensuring parking  
22 spaces comply with the 2010 standards as required by law, and which further  
23 directs that the Court shall retain jurisdiction for a period to be determined  
24 after Defendant certifies that its facility is fully in compliance with the  
25 relevant requirements of the AzDA to ensure that Defendant has adopted and  
26 is following an institutional policy that will in fact cause Defendant to remain  
27 fully in compliance with the law;
- 28 g. For damages authorized by § 41-1492.09(B)(2) in an amount no less than  
\$5,000.00;

- 1 h. Irrespective of Defendants “voluntary cessation” of the ADA violation, if  
2 applicable, payment of attorneys’ fees pursuant to 42 U.S.C. § 12205, 28  
3 CFR § 36.505 and A.R.S. § 41-1492.09(F) and other principles of law and  
4 equity and in compliance with the “prevailing party” and “material  
5 alteration” of the parties’ relationship doctrines<sup>2</sup> in an amount no less than  
6 \$5,000.00; and,  
7 i. The provision of whatever other relief the Court deems just, equitable and  
8 appropriate.

9 **DEMAND FOR JURY TRIAL**

10 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff  
11 hereby demands a jury trial on issues triable by a jury.

12 RESPECTFULLY SUBMITTED this Friday, June 3, 2016.

13 **STROJNIK P.C.**

14 

15 Peter Strojnik (6464)  
16 Attorneys for Plaintiff

17 **VERIFICATION COMPLIANT WITH R10-3-405**

18 I declare under penalty of perjury that the foregoing is true and correct.

19 DATED this Friday, June 3, 2016.

20 /s/ *Fabian Zazueta*

21 By: Fabian Zazueta, Authorized Agent  
22 Advocates for Individuals with  
23 Disabilities Foundation, Inc.  
24  
25  
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27 <sup>2</sup> As applicable to ADA cases, see *Coppi v. City of Dana Point*, Case No. SACV 11-1813 JGB (RNBx)  
28 (February, 2015)

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EXHIBIT 1



Americans with Disabilities Act

# ADA Business BRIEF:

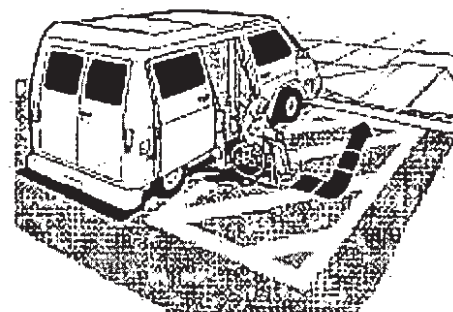
## Restriping Parking Lots

### Accessible Parking Spaces

When a business restripes a parking lot, it must provide accessible parking spaces as required by the ADA Standards for Accessible Design.

In addition, businesses or privately owned facilities that provide goods or services to the public have a continuing ADA obligation to remove barriers to access in existing parking lots when it is readily achievable to do so. Because restriping is relatively inexpensive, it is readily achievable in most cases.

This ADA Business Brief provides key information about how to create accessible car and van spaces and how many spaces to provide when parking lots are restriped.



One of eight accessible parking spaces, but always at least one, must be van accessible.

### Accessible Parking Spaces for Cars

Accessible parking spaces for cars have at least a 60-inch-wide access aisle located adjacent to the designated parking space. The access aisle is just wide enough to permit a person using a wheelchair to enter or exit the car. These parking spaces are identified with a sign and located on level ground.

### Van-Accessible Parking Spaces

Van-accessible parking spaces are the same as accessible parking spaces for cars except for three features needed for vans:

- a wider access aisle (96") to accommodate a wheelchair lift;
- vertical clearance to accommodate van height at the van parking space, the adjacent access aisle, and on the vehicular route to and from the van-accessible space, and
- an additional sign that identifies the parking spaces as "van accessible."

Minimum Number of Accessible Parking Spaces  
 ADA Standards for Accessible Design 4.1.2 (5)

Total Number of Parking Spaces Provided (per lot)	Total Minimum Number of Accessible Parking Spaces (60" & 96" aisles)	Van-Accessible Parking Spaces with min. 96" wide access aisle	Accessible Parking Spaces with min. 60" wide access aisle
	Column A		
1 to 25	1	1	0
26 to 50	2	1	1
51 to 75	3	1	2
76 to 100	4	1	3
101 to 150	5	1	4
151 to 200	6	1	5
201 to 300	7	1	6
301 to 400	8	1	7
401 to 500	9	2	7
501 to 1000	2% of total parking provided in each lot	1/8 of Column A*	7/8 of Column A**
1001 and over	20 plus 1 for each 100 over 1000	1/8 of Column A*	7/8 of Column A**

\* one out of every 8 accessible spaces

\*\* 7 out of every 8 accessible parking spaces

## Location

Accessible parking spaces must be located on the shortest accessible route of travel to an accessible facility entrance. Where buildings have multiple accessible entrances with adjacent parking, the accessible parking spaces must be dispersed and located closest to the accessible entrances.

When accessible parking spaces are added in an existing parking lot, locate the spaces on the most level ground close to the accessible entrance. An accessible route must always be provided from the accessible parking to the accessible entrance. An accessible route never has curbs or stairs, must be at least 3-foot wide, and has a firm, stable, slip-resistant surface. The slope along the accessible route should not be greater than 1:12 in the direction of travel.

Accessible parking spaces may be clustered in one or more lots if equivalent or greater accessibility is provided in terms of distance from the accessible entrance, parking fees, and convenience. Van-accessible parking spaces located in parking garages may be clustered on one floor (to accommodate the 98-inch minimum vertical height requirement).

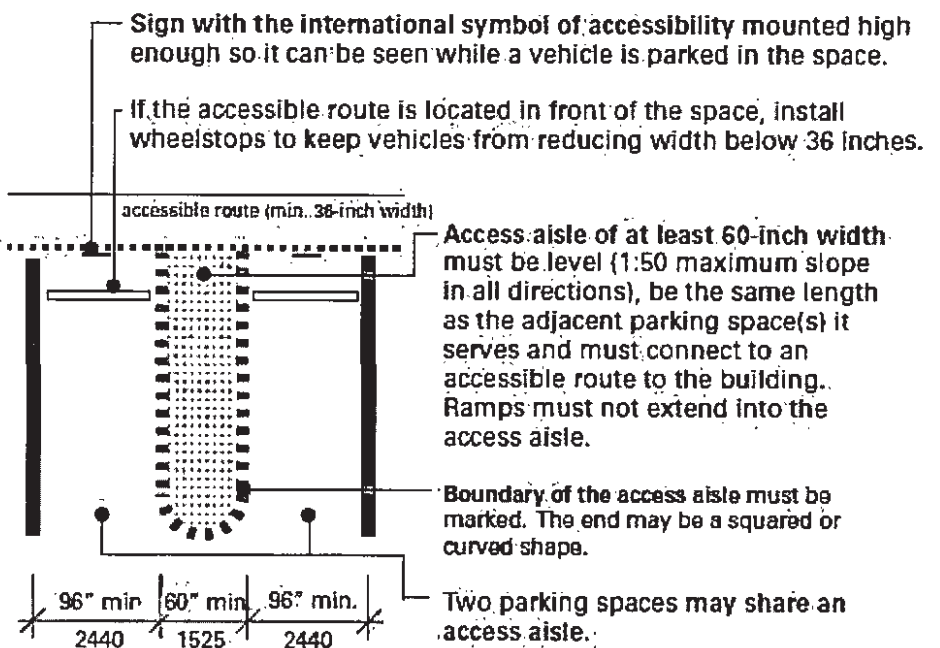
## Free Technical Assistance

Answers to technical and general questions about restriping parking lots or other ADA requirements are available by telephone on weekdays. You may also order the ADA Standards for Accessible Design and other ADA publications, including regulations for private businesses, at any time day or night. Information about ADA-related IRS tax credits and deductions is also available from the ADA Information Line:

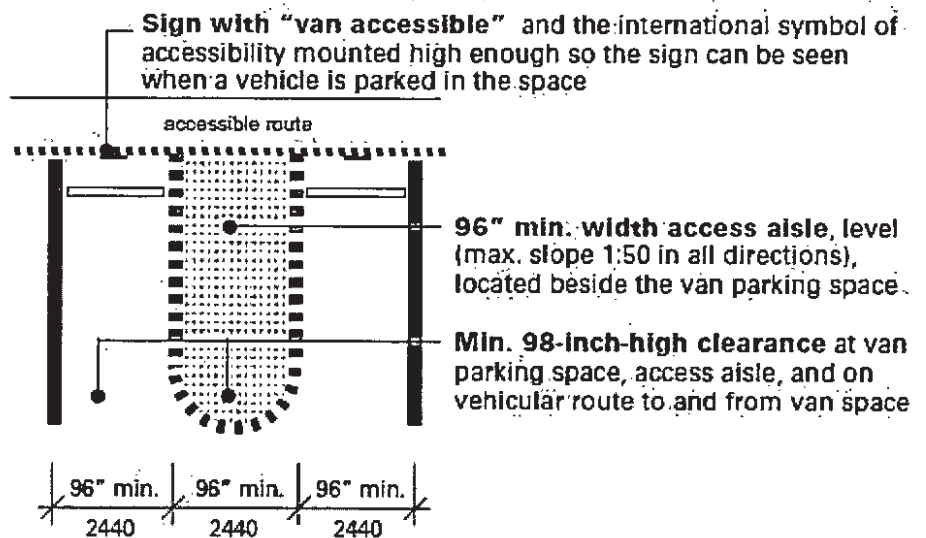
Department of Justice  
ADA Information Line

800-514-0301 (voice)  
800-514-0383 (TTY)

## Features of Accessible Parking Spaces for Cars



## Three Additional Features for Van-Accessible Parking Spaces



## ADA Website and ADA Business Connection

You may also view or download ADA information on the Department's ADA website at any time. The site provides access to the ADA Business Connection and the ADA design standards, ADA regulations, ADA policy letters, technical assistance materials, and general ADA information. It also provides links to other Federal agencies, and updates on new ADA requirements and enforcement efforts. [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm)

## Reference:

ADA Standards for Accessible Design (28 CFR Part 36):  
§ 4.1.6 Alterations; § 4.1.2 Accessible Sites and Exterior Facilities: New Construction; § 4.6.1 Parking and Passenger Loading Zones, and § 4.3 Accessible Route.

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EXHIBIT 2



# ADA Design Guide

# 1

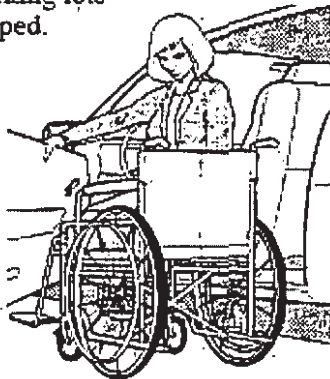
## Restriping Parking Lots

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When a business, State or local government agency, or other covered entity restripes a parking lot, it must provide accessible parking spaces as required by the ADA Standards for Accessible Design. Failure to do so would violate the ADA.

In addition, businesses or privately owned facilities that provide goods or services to the public have a continuing ADA obligation to remove barriers to access in existing parking lots when it is readily achievable to do so. Because restriping is relatively inexpensive, it is readily achievable in most cases.

This ADA Design Guide provides key information about how to create accessible car and van spaces and how many spaces to provide when parking lots are restriped.



### Accessible

#### Parking Spaces for Cars

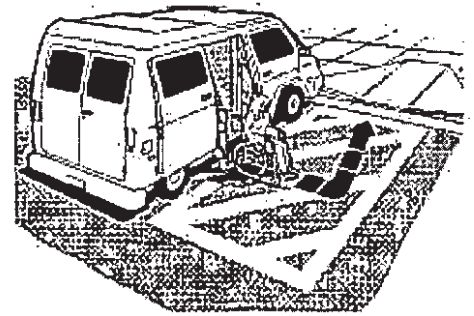
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\* one out of every 8 accessible spaces

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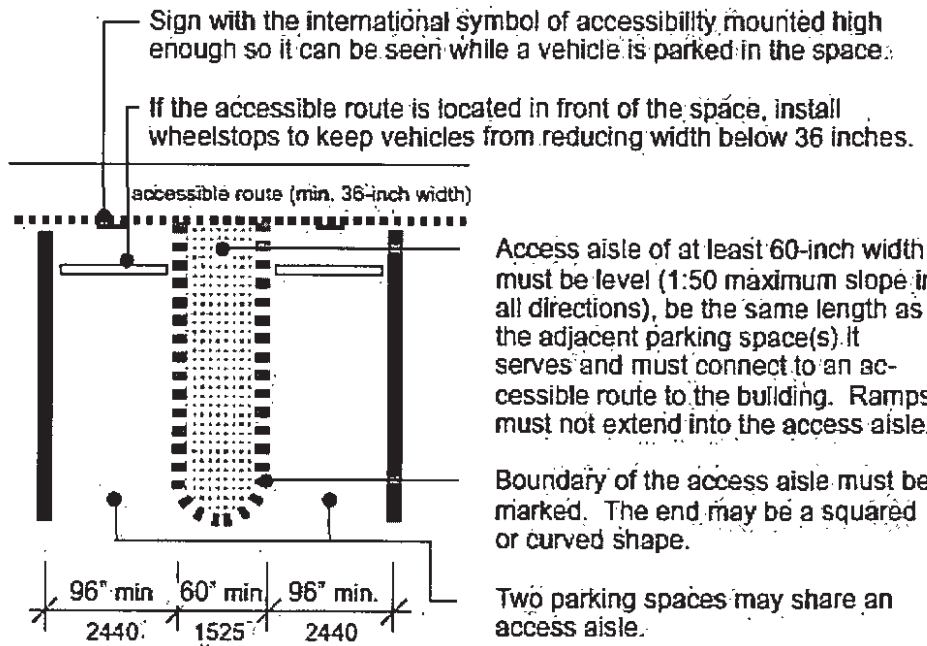
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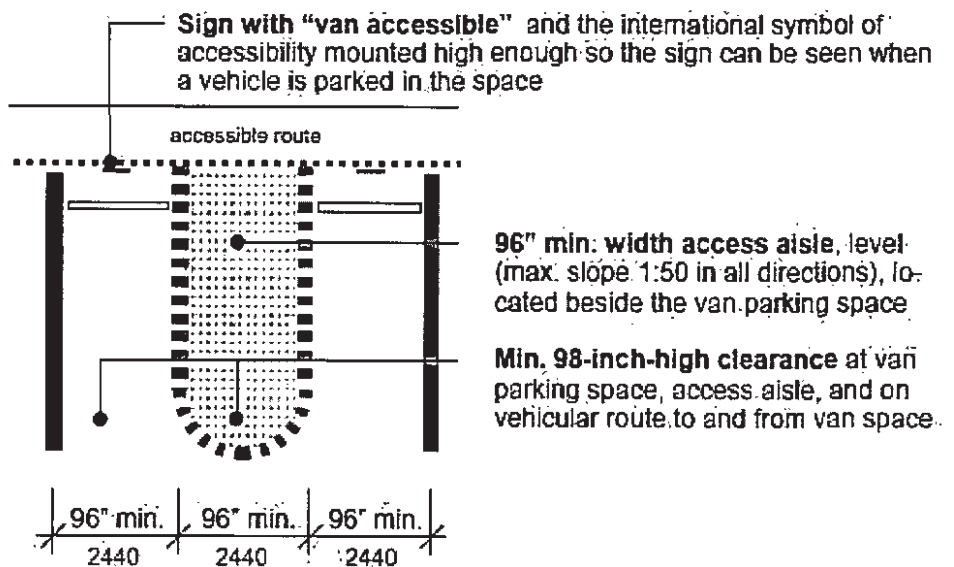
Department of Justice  
**ADA Information Line**

800-514-0301 (voice)  
800-514-0383 (tty)

## Features of Accessible Parking Spaces for Cars



## Three Additional Features for Van-Accessible Parking Spaces



## Internet

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## Reference:

ADA Standards for Accessible Design (28 CFR Part 36):

- § 4.1.6 Alterations;
- § 4.1.2 Accessible Sites and Exterior Facilities: New Construction, and
- § 4.1.6 Parking and Passenger Loading Zones.



# EXHIBIT D

1 NOTICE OF CHANGE OF ADDRESS;  
Peter Strojnik, State Bar No. 6464  
2 **STROJNIK, P.C.**  
3 40 North Central Avenue  
Suite 1400  
4 Phoenix, AZ 85004  
5 Telephone: (602) 524-6602  
4521ejensenstreet@aadi.org  
6 Attorneys for Plaintiff

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

9  
10 ADVOCATES FOR AMERICAN  
DISABLED INDIVIDUALS, LLC  
11 and DAVID RITZENHALER,

12 Plaintiffs,

13  
14 vs.

15 GEMINI BUSINESS PARK

16 Defendant.  
17

Case No: CV 2016-090503

**PLAINTIFF’S RESPONSE TO  
DEFENDANT’S MOTION TO DISMISS  
AND REQUEST FOR SANCTIONS;  
NOTICE OF CHANGE OF ADDRESS**

Oral Argument Requested

Honorable David Talamante

18  
19 **INTRODUCTION**

20 Plaintiffs are civil rights claimants. Their primary intent in filing civil rights actions  
21 is to ensure ADA and AzDA compliance and to provide financial and charitable aid to the  
22 handicapped community. *See* www.aid.org.

23 Much of Defendant’s Motion is devoted to its displeasure with Plaintiffs’ status as  
24 civil rights plaintiffs. Plaintiff are, indeed, proudly “committed individual[s who] bring  
25 serial litigation advancing the time when public accommodations will be compliant with  
26 the ADA”. *See Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1061-62 (9th Cir.2007)  
27 (per curiam):

28 **For the ADA to yield its promise of equal access for the disabled, it may  
indeed be necessary and desirable for committed individuals to bring**



1 Defendant, rather Defendant’s counsel, seeks sanctions against the Plaintiff and  
2 counsel by dredging up a 2011 sanctions order by the State Bar of Arizona. Counsel is  
3 fully remorseful for the errors made in 2011 caused by his extreme medical condition. Yet,  
4 in a similar ad hominem attack on counsel in a different case, Honorable John Rea  
5 admonished counsel against such unseemly practice:

6 **With respect to Defendant’s Motion to Admonish Counsel,**

7 **The Court is regularly informed of all disciplinary proceedings against all lawyers.**  
8 **Therefore, the Court does not need to be informed of such actions. This Court takes a negative**  
9 **view of the use of such information in a case unless such information is directly relevant to the**  
10 **issues of the case.**

11 Exhibit 1. Likewise, one who has been cautioned by other attorneys to cease  
12 soliciting clients off the *www.maricopa.gov* website, see, e.g. Exhibit 2<sup>1</sup>, and who violates  
13 28CFR§36.206<sup>2</sup>, should exercise extreme caution when mounting such attacks.

### 14 **SCOPE OF MOTION AND RESPONSE**

15 Defendant brings his Motion only on Federal ADA standing grounds. Defendant  
16 does not bring its Motion based on the Arizona version of the Americans with Disabilities  
17 Act (AzDA) which provides, in relevant part, that “any person” may bring an AzDA action  
18 to enforce compliance. *See* A.R.S. §41-1492.08<sup>3</sup>.

19  
20  
21  
22  
23 <sup>1</sup> Counsel has been advised that these letters are sent out en masse.

24 <sup>2</sup> See Addendum

25 <sup>3</sup> [41-1492.08. Enforcement](#)

26 A. Any person who believes that any covered person or entity has engaged in, or that there are  
27 reasonable grounds to believe that any covered person or entity is about to engage in, any act or  
28 practice prohibited by sections 41-1492.01 through 41-1492.05 or that any covered entity has not  
performed an act required by this article and its implementing rules may institute a civil action for  
preventive or mandatory relief, including an application for a permanent or temporary injunction,  
restraining order or other order.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. Plaintiff Enjoys both Federal Standing and State Real Party in Interest Status.**

3 As indicated, Defendant does not challenge Plaintiff’s real party in interest status  
4 under AzDA, *see* A.R.S. §41-1492.08 and, therefore, the matter is not addressed further.

5 Defendant’s argument begins with the proposition that Plaintiff did not suffer  
6 “injury in fact” for the purposes of Federal ADA. *See* Motion at 2:16 – 3:18. Defendant  
7 does not consider, however, that in ADA litigation, standing is conferred in one of two  
8 alternative ways: “[E]ither by demonstrating deterrence, or by demonstrating injury-in-  
9 fact coupled with an intent to return to a noncompliant facility” (emphasis supplied).  
10 *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 943, 950 (9th Cir., 2011) (en banc)  
11 Thus, the question of the “intent to return” is relevant to the “injury-in-fact coupled with  
12 intent to return” method of proving standing; but it is utterly irrelevant to the deterrence  
13 method of proof.

14 The “deterrence” method of establishing standing is based on the “futility” statute,  
15 42 U.S.C. §12188(a)(1), as interpreted by the 9<sup>th</sup> Circuit Court of appeals in *Pickern v.*  
16 *Holiday Foods*, 293 F.3d 1133, 1135 (9<sup>th</sup> Cir 2002) where the Court stated:

17 We hold that when a plaintiff who is disabled within the meaning of the ADA  
18 has *actual* knowledge of illegal barriers at a public accommodation to which  
19 he or she desires access, that plaintiff need not engage in the "futile gesture"  
20 of attempting to gain access in order to show actual injury during the  
21 limitations period. **When such a plaintiff seeks injunctive relief against an  
ongoing violation, he or she is not barred from seeking relief ... by lack  
of standing.** (Emphasis supplied)

22 **2. Plaintiff Properly Alleged “Actual Knowledge” of violation Referenced in  
Pickern**

23 Defendant argues, “[n]owhere in Plaintiffs’ complaint do they allege *actual*  
24 knowledge [of the barriers]” (Emphasis in original). *See* Motion at 3:24-25. This is  
25 factually incorrect. At ¶ 12, Plaintiff allege:

1           **12. Plaintiff has actual knowledge** of at least one barrier<sup>4</sup> related to  
2 Plaintiff's disability as alleged in the preceding paragraph. Consequently,  
3 Plaintiff and others similarly situated are currently deterred from visiting  
4 Defendant's Commercial Facility by this accessibility barrier. Therefore,  
5 Plaintiff has suffered an injury-in-fact for the of standing to bring this action.  
6 Upon information and belief, there are other potential violations and barriers  
7 to entry that will be discovered and disclosed during the discovery and  
8 disclosure process. (Emphasis and footnote added.)

### 3. Credibility of Allegations

7           Defendants question Plaintiff's "intent to return". It is worthy of note that the  
8 "intent to return" element of standing is only relevant in proving standing through "injury  
9 in fact"; it is completely irrelevant under the *Pickern* deterrence / futility standard.  
10

11           Plaintiff acknowledges the difference between a jurisdictional attack based on the  
12 allegations of the Complaint and the "factual attack" on standing based on extraneous  
13 information. With respect to the former, "[f]or purposes of ruling on a motion to dismiss  
14 for want of standing, both the trial and reviewing courts must accept as true all material  
15 allegations of the complaint and must construe the complaint in favor of the complaining  
16 party." *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011) (quoting *Warth v.*  
17 *Seldin*, 422 U.S. 490, 501 (1975)). With respect to the latter, the court may look beyond  
18 the complaint. *See White v. Lee*, 227 F.3rd 1214, 1242-43 (9th Cir. 2000); *see*  
19 *also Augustine v. U.S.*, 704 F.2d 1074, 1077 (9th Cir. 1983) (holding that a district court  
20 is free to hear evidence regarding jurisdiction).

21           With respect to the "injury in fact" method of proving standing, the question here  
22 may be more clearly framed as Plaintiff's *legitimate* intent to return in light of his multiple  
23 current and prior lawsuits. This issue was discussed favorably in *D'Lil v. Best Western*  
24 *Encina Lodge & Suites*, 538 F.3d 1031 (9th Cir., 2008)

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25  
26  
27 <sup>4</sup> The reference to "at least one barrier" is based on *Doran v. 7-Eleven*, 524 F.3d 1034 9<sup>th</sup> Cir.  
28 (2008) holding that a plaintiff need only allege one instance of ADA violation to achieve standing,  
but is permitted to then challenge other ADA violations found in the course of discovery.

1           There, the trial court held a hearing regarding Plaintiff's legitimate intent to return.  
2 The Court of Appeals described the hearing as follows, 58 F.3d at 1034-35:

3           The "only question" with which the district court was concerned at the  
4 hearing was whether D'Lil had a "legitimate intent to return" to the Best  
5 Western Encina at the time that the complaint was filed. After hearing D'Lil's  
6 testimony and receiving additional briefing from the parties, the district court  
7 found that D'Lil failed to provide evidence of her intent to return "as of  
8 December 2002." The court also expressed skepticism that D'Lil would be  
9 able to establish standing even if she had provided such evidence, noting  
10 concerns about the credibility of D'Lil's professed desire to return in light of  
11 her involvement in multiple prior ADA suits. Accordingly, the district court  
12 concluded that D'Lil failed to meet her burden of establishing Article III  
13 standing, and that the court therefore lacked jurisdiction over her attorney's  
14 fees motion. D'Lil subsequently filed motions for a new trial and to renew  
15 her pending motion for attorney's fees. The district court denied D'Lil's  
16 motions and imposed sanctions. This appeal followed.

17           The Court of Appeals rejected District court's reasoning, stating: 58 F.3d at 1400

18           The attempted use of past litigation to prevent a litigant from pursuing a valid  
19 claim in federal court warrants our most careful scrutiny. *See, e.g., Outley v.*  
20 *City of New York*, 837 F.2d 587, 592 (2d Cir. 1988). This is particularly true  
21 in the ADA context where, as we recently explained, the law's provision for  
22 injunctive relief only "removes the incentive for most disabled persons who  
23 are injured by inaccessible places of public accommodation to bring suit....  
24 As a result, most ADA suits are brought by a small number of private  
25 plaintiffs who view themselves as champions of the disabled.... For the ADA  
26 to yield its promise of equal access for the disabled, it may indeed be  
27 necessary and desirable for committed individuals to bring serial litigation  
28 advancing the time when public accommodations will be compliant with the  
ADA." *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1062 (9th  
Cir.2007) (citing Samuel R. Bagnestos, *The Perversity of Limited Civil  
Rights Remedies: The Case of "Abusive" ADA Litigation*, 54 U.C.L.A.  
L.Rev. 1, 5 (2006)). Accordingly, we must be particularly cautious about  
affirming credibility determinations that rely on a plaintiff's past ADA  
litigation.

          Here, the district court relied on D'Lil's prior ADA suits to question the  
sincerity of her intent to return to the Best Western Encina. The court noted  
that D'Lil had not returned to six hotels that she sued during a 2002 trip to  
Redding, California and found it implausible that a plaintiff with  
approximately sixty prior ADA suits sincerely "intends to return to nearly  
every place she sues." The record contains no evidence of whether those



1 places had been made accessible, such that D'Lil could have safely returned  
2 if she so wished. Moreover, whether or not D'Lil visited the hotels in Redding  
3 says little about her intent to visit the Best Western Encina, considering that  
4 D'Lil identified specific reasons — including the presence of the Marshes  
5 and expected future work in Solvang — for returning to Santa Barbara. The  
6 district court's speculation about the plausibility of D'Lil's intent to return to  
7 each place of public accommodation that she sued is further undermined by  
8 evidence of D'Lil's extensive and frequent travel throughout the state,  
9 buttressing her claim that she would again have occasion to patronize the  
10 establishments she sued if they were made accessible. Although we afford  
11 great deference to a district court's credibility assessments, on this record we  
12 cannot agree that D'Lil's past ADA litigation was properly used to impugn  
13 her credibility. Accordingly, because the district court focused on D'Lil's  
14 history of ADA litigation as a basis for questioning the sincerity of her intent  
15 to return to the Best Western Encina, we reject its purported adverse  
16 credibility determination.

17 The Court of Appeals then remanded the matter to the District Court for  
18 consideration of her application for attorney's fees. Therefore, as in *D'Lil*, Defendant's  
19 argument on this point is unavailing.

#### 20 **4. Intertwining Credibility and Factual Issues Prevent Dismissal of the Federal 21 ADA.**

22 The courts will refrain from resolving factual issues where "the jurisdictional issue  
23 and substantive issues are so intertwined that the question of jurisdiction is dependent on  
24 resolution of the factual issues going to the merits." *Augustine v. U.S.*, 704 F.2d 1074,  
25 1077 (9th Cir. 1983). The Court stated:

26 In ruling on a challenge to subject matter jurisdiction, the district court is  
27 ordinarily free to hear evidence regarding jurisdiction and to rule on that issue  
28 prior to trial, resolving factual disputes where necessary. See *Thornhill  
Publishing Co. v. General Telephone Corp.*, 594 F.2d 730, 733 (9th  
Cir.1979). In such circumstances, "[n]o presumptive truthfulness attaches to  
plaintiff's allegations, and the existence of disputed material facts will not  
preclude the trial court from evaluating for itself the merits of jurisdictional  
claims." *Thornhill*, 594 F.2d at 733. However, where the jurisdictional issue  
and substantive issues are so intertwined that the question of jurisdiction is  
dependent on the resolution of factual issues going to the merits, the  
jurisdictional determination should await a determination of the relevant  
facts on either a motion going to the merits or at trial. *Thornhill*, 594 F.2d at  
733-35; Wright & Miller Sec. 1350, at 558.



1 \*\*\*

2 In ruling on a challenge to subject matter jurisdiction, the district court is  
3 ordinarily free to hear evidence regarding jurisdiction and to rule on that issue  
4 prior to trial, resolving factual disputes where necessary. See  
5 *Thornhill Publishing Co. v. General Telephone Corp.*, 594 F.2d 730, 733  
6 (9th Cir.1979). In such circumstances, "[n]o presumptive  
7 truthfulness attaches to plaintiff's allegations, and the existence of disputed  
8 material facts will not preclude the trial court from evaluating for itself the  
9 merits of jurisdictional claims." *Thornhill*, 594 F.2d at 733. However, where  
10 the jurisdictional issue and substantive issues are so intertwined that the  
11 question of jurisdiction is dependent on the resolution of factual issues going  
12 to the merits, the jurisdictional determination should await a determination  
13 of the relevant facts on either a motion going to the merits or at trial.  
14 *Thornhill*, 594 F.2d at 733-35; Wright & Miller Sec. 1350, at 558

15 And in *Roberts v. Corrothers*, 812 F.2d 1173, 1177, (C.A.9 (Cal.), 1987), the 9<sup>th</sup>  
16 Circuit explained *Thornhill* even further:

17 Ordinarily, where a jurisdictional issue is separable from the merits of a case,  
18 the court may determine jurisdiction by the standards of a Rule 12(b)(1)  
19 motion to dismiss for lack of jurisdiction. In such a situation, the district court  
20 is:

21 free to hear evidence regarding jurisdiction and to rule on that  
22 issue prior to trial, resolving factual disputes where necessary.  
23 In such circumstances, "[n]o presumptive truthfulness attaches  
24 to plaintiff's allegations, and the existence of disputed material  
25 facts will not preclude the trial court from evaluating for itself  
26 the merits of jurisdictional claims."

27 *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir.1983) (quoting  
28 *Thornhill Publishing Co. v. General Telephone & Electronics Corp.*, 594  
F.2d 730, 733 (9th Cir.1979)).

Here, the "injury in fact" method of standing and the factual question of "intent to return" are inseparably intertwined. Plaintiff's "intent to return" is premised on the very fact giving rise to his cause of action for injunctive relief: Non-compliance with the ADA. Plaintiff must prove at trial on the merits that the Defendant's place of public accommodation was non-compliant with the ADA and that this is the very reason why he will not visit there *and* why injunctive relief is necessary. Were it any other way, then *any*

1 ADA case would be subject to dismissal on the thinnest of reeds – Defendant’s claim that  
2 Plaintiff’s intent to return is illegitimate.

3 **5. Alternatively, Plaintiff Requests an evidentiary hearing to determine the**  
4 **legitimacy of his intent to return.**

5 While the entire discussion of “injury in fact” is irrelevant to “deterrence” standing,  
6 Plaintiff is entitled to an evidentiary hearing regarding the legitimacy of his intent to  
7 return. *Thornhill, Augustine, D’Lil*. In the event the Court rejects Plaintiffs’ argument,  
8 Plaintiffs request that the question of this legitimacy be set for an evidentiary hearing on  
9 the matter.

10 **6. Request for Sanctions is Inappropriate**

11 ADA and AzDA provide for strict liability on the part of public accommodations  
12 that fails to comply with the 2010 Standards. “[T]he standard of full and equal enjoyment  
13 established by the ADA is often a matter of inches”. *Chapman v. Pier 1 Imports (U.S.)*  
14 *Inc.*, 631 F.3d 939, 945-46 (9th Cir., 2011) Here, Plaintiffs conducted a thorough due  
15 diligence investigation of the Defendant’s place of public accommodation and found it to  
16 be non-ADA and non-AzDA compliant. Prior to filing suite, Plaintiffs conducted such  
17 investigation and prepared a litigation investigation report. See Exhibit 3.

18 As indicated above, Defense counsel solicits clients through mass mailing to  
19 defendants who have not requested it. *See* Exhibit 2. Any threat of sanctions either against  
20 the Plaintiffs or against counsel is a clear and indisputable violation of 28CFR36.206. *See*  
21 *Addendum*. In his solicitation letter, counsel suggest that he will file a Motion to Dismiss  
22 without having any information about the case, not knowing the facts and not being  
23 cognizant of the ADA and AzDA standing issues. On these facts, the request for sanctions  
24 is indeed deplorable. If any sanctions are to be imposed, they should be imposed for  
25 Defendant’s failure to familiarize itself with the law, for making disparaging comments  
26 about attorneys, for misrepresenting the contents of the verified complaint and for  
27 complete lack of knowledge of the factual issues in the matter.

28 **CONCLUSION AND PRAYER FOR RELIEF**

For the foregoing reasons Plaintiff requests that Defendant’s Motion be denied in  
its entirety and that Plaintiff be awarded costs and attorney’s fees in defending against it.

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Alternatively, Plaintiff requests leave to amend and/or evidentiary hearing on issues raised.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of April, 2016.

**STROJNIK, P.C.**  
  
*/s/ Peter Strojnik*  
40 North Central Avenue  
Suite 1400  
Phoenix, AZ 85004  
Attorneys for Plaintiff

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**ADDENDUM**

**§ 36.206 Retaliation or coercion.**

- (a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.
  
- (b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.
  
- (c) Illustrations of conduct prohibited by this section include, but are not limited to:
  - (1) Coercing an individual to deny or limit the benefits, services, or advantages to which he or she is entitled under the Act or this part;
  
  - (2) Threatening, intimidating, or interfering with an individual with a disability who is seeking to obtain or use the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation;
  
  - (3) Intimidating or threatening any person because that person is assisting or encouraging an individual or group entitled to claim the rights granted or protected by the Act or this part to exercise those rights; or
  
  - (4) Retaliating against any person because that person has participated in any investigation or action to enforce the Act or this part.

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# EXHIBIT E

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3 1 East Washington Street Suite 500  
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6 Lead Attorney for Plaintiffs

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14 In-house Attorney for Plaintiffs

11 **UNITED STATES DISTRICT COURT**

12 **STATE OF ARIZONA**

14 **ADVOCATES FOR INDIVIDUALS WITH**  
15 **DISABILITIES FOUNDATION, INC. A**  
16 **NON-PROFIT CHARITABLE**  
17 **FOUNDATION ,**  
18 **Plaintiff,**  
19 **vs.**  
20 **CIRCLE K PROPERTIES INC.,**  
21 **Defendant**

Case No.: cv-16-02358-PHX-SPL

**PLAINTIFF’S RESPONSE TO  
DEFENDANT’S MOTION  
TO DISMISS**

**(Assigned to Honorable Steven P. Logan)**

**(Oral Argument Requested)**

22 Plaintiff Advocates for Individuals with Disabilities Foundation Inc.  
23 (“AID”), by and through undersigned counsel, respectfully requests that this Court deny  
24 Defendant Circle K Properties Inc. (“Defendant”) Motion to Dismiss. In addition to its  
25 Response to Defendant’s Motion to Dismiss (“Response”), AID moves the Court for  
26 leave to amend its Verified Complaint pursuant to Fed.R.Civ.P. 15(a)(1)(B) to include  
27 Plaintiff David Ritzenthaler a member of AID. Per the Amended Complaint, AID has  
28

1 associational standing to sue on behalf of its members who would otherwise have  
2 standing to sue on their own behalf.

3  
4 The following Memorandum of Points and Authorities support AID's Response.

5  
6 Dated this 9<sup>th</sup> day of September 2016.

7  
8 /s/ Peter Strojnik

9 Peter Strojnik

10 STROJNIK PC

11 Lead Attorney for Plaintiffs

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 AID is a civil rights claimant. Its primary intent in filing civil rights actions is to  
15 provide financial and charitable aid to individuals with disabilities and to ensure  
16 compliance with the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq., (the  
17 "ADA") and A.R.S. Title 41, Chapter 9, Article 8, §§ 41-1492 et seq.(the "AzDA"). See  
18 www.aid.org. Despite backlash from law-breaking landowners, AID whole-heartedly  
19 believes that its work and mission serves the disabled, one of the most disenfranchised  
20 and oftentimes forgotten communities in the country. AID strongly feels that its work not  
21 only serves the disabled individuals that are associated with the organization, but also  
22 disabled individuals throughout Arizona.

23 AID is a "committed [organization who] bring[s] serial litigation advancing the  
24 time when public accommodations will be compliant with the ADA". See *Molski v.*  
25 *Evergreen Dynasty Corp.*, 500 F.3d 1047, 1061-62 (9th Cir.2007) (per curiam):  
26  
27  
28



1           **For the ADA to yield its promise of equal access for the disabled, it may indeed**  
2           **be necessary and desirable for committed individuals to bring serial litigation**  
3           **advancing the time when public accommodations will be compliant with the**  
4           **ADA.** (Emphasis supplied.)

5           While the 9th Circuit has encouraged civil rights plaintiffs to file serial lawsuits in  
6           order to advance the time when public accommodations will “yield its promise of equal  
7           access for the disabled”, *Molski*, some offending business prefer to fight instead of  
8           comply. Judge Holland had this to say in denying a Motion for Summary Judgment in a  
9           similar case:

10                           If defendant and its counsel could put aside the feeling that plaintiff is the “bad  
11                           guy” here, the parties should be able to resolve this case as have some 120 other,  
12                           similarly situated defendants. Nevertheless, plaintiff and defendant have every  
13                           right to commit further resources to this case.

14           *See Brooke v. Tucson Hotel Group, No 4:15-cv-0422-HRH*, (D. Ariz. 2016) at Doc  
15           23. Nonetheless, Defendant brings the current Motion based on AID’s (alleged) lack of  
16           standing. As mentioned, AID moves this court to amend its Verified Complaint to include  
17           David Ritzenthaler, a member of AID. Should this Court find that Complaint, as drafted,  
18           fails to confer standing on Plaintiff, the inclusion of said declaration would cure  
19           associational standing defects.  
20

21                           In compliance with Ariz.L.R.Civ. 15.1(a) and Fed.R.Civ.P. 15(a)(2), AID’s  
22           Amended Complaint is attached to this Response as “Exhibit 1.”  
23

## 24           **II. STANDING**

### 25                           **a. AID’s Member Declaration Supports Standing**

26                           This case should not be dismissed for lack of standing because AID has several  
27           members/principals who are disabled individuals or have family members who are  
28

1 disabled with mobility impairments. These members include, but are not limited to David  
2 Ritzenthaler. These persons reside in the greater Phoenix area, are all motorists who travel  
3 on the Valley's streets and they have lawful disability parking permits for their vehicles.  
4

5 The subject property, located at 3589 East Baseline Road in Gilbert, Arizona ("the  
6 Property"), is a gas station. The Property is located less than .5 miles away from US-60  
7 (i.e. Superstition freeway,) a national highway. US-60 connects the East Valley to the rest  
8 of the Greater-Phoenix area and is used by thousands of individuals each day. The  
9 Property does not have proper van-accessible signage. The lack of signage is a deterrent  
10 to Mr. Ritzenthaler and other members of AID's use of the Property, because it renders it  
11 more difficult for individuals to identify which, if any, parking spots are designated for  
12 disabled use and which, if any, parking spots have the correct measurements needed for a  
13 wheelchair to enter and exit the vehicle. Members of AID would like to and intend to use  
14 the Property and the accommodations there, but the lack of necessary signage is a deterrent  
15 and barrier to them and their access.  
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19 Plaintiff wishes to file for leave of the Court to amend the Complaint to  
20 allege the foregoing. In *United Union of Roofers, Waterproofers, & Allied Trades No. 40*  
21 *v. Ins. Corp. of Am.*, 919 F.2d 1398, 1402 (9th Cir. 1990), the Ninth Circuit found that the  
22 denial of leave to amend to cure "standing deficiencies" related to associational standing  
23 was an abuse of discretion. "Often a plaintiff will be able to amend its complaint to cure  
24 standing deficienc[i]es." *Id.* At 1402-03. That Court continued that "to deny any  
25 amending of the complaint places too high a premium on artful pleading and would be  
26 contrary to the provisions and purpose of Fed.R.Civ.P. 15." *Id.* In *Northstar Fin. Advisors*  
27  
28

1 *Inc. v. Schwab Investments*, the Ninth Circuit likewise found that “parties may cure  
2 standing deficiencies through supplemental pleadings” (under Rule 15(d)). *Northstar Fin.*  
3 *Advisors Inc. v. Schwab Investments*, 779 F.3d 1036, 1044 (9th Cir.)<sup>1</sup>. Similarly, “when  
4 a plaintiff files a complaint in federal court and then voluntarily amends the complaint,  
5 courts look to the amended complaint to determine jurisdiction.” *Id.* (quoting *Rockwell*  
6 *Int'l Corp. v. United States*, 549 U.S. 457, 473–74, 127 S.Ct. 1397, 167 L.Ed.2d 190  
7 (2007)).  
8  
9

10 In light of the relevant case law discussed above, with its Amended Complaint,  
11 AID will have standing to file an action against Defendant seeking to enjoin Defendant’s  
12 violations of the ADA. Below, AID will discuss its opposition to the arguments made in  
13 Defendant’s Motion under the assumption that this Court will provide leave to amend  
14 the Complaint.  
15  
16

#### 17 **a. AID Has Associational Standing**

18 Defendant’s Motion argues that AID lacks standing to bring a claim for association  
19 discrimination. Doc. 7, 9:14-15. The lead case discussing general associational standing  
20 is *Hunt v. Washington Apple Advertising Commission*. In its decision, the court held that  
21 an association has standing to sue on behalf of its members when its members would  
22 otherwise have standing to sue in their own right; the interests it seeks to protect are  
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27 <sup>1</sup>*As amended on denial of reh'g and reh'g en banc* (Apr. 28, 2015), *cert. denied*, 136 S. Ct. 240, 193 L. Ed. 2d 133  
28 (2015).

1 germane to the organization's purpose; and neither the claim asserted or the relief  
2 requested requires participation of individual members in the law suit. *Hunt v. Washington*  
3 *Apple Advertising Commission*, 432 U.S. 333 (1977).  
4

5 **i. AID's Members Have Standing to Sue in Their Own Right**

6 **1. AID's Members Are Deterred From Using the Property**

7 Looking to the *Amended* Complaint along with relevant case law and statutes, AID's  
8 members easily have standing to sue in their own right.  
9

10 Defendant's Motion refers to the most recent 9<sup>th</sup> circuit case dealing with standing  
11 and ADA violations in particular- *Chapman v. Pier One Imports*. In *Chapman*, the court  
12 held that ADA plaintiffs could establish standing "either by demonstrating deterrence, or  
13 by injury-in-fact coupled with an intent to return to a non-compliant facility" (emphasis  
14 added). *Chapman v. Pier One Imports (U.S.), Inc.*, 631 F.3d 939, 944 (9<sup>th</sup> Cir. 2011); Doc  
15 7, 5:3-13.  
16  
17

18 Defendant quotes *Chapman* by stating that "a disabled individual suffers a  
19 cognizable injury if he is deterred from visiting a noncompliant public accommodation  
20 because he has encountered barriers related to his disability there." Doc 7, 5:17-19  
21 (quoting *Chapman v. Pier One Imports (U.S.), Inc.*, 631 F.3d 939, 949 (9<sup>th</sup> Cir. 2011)).  
22 However, and perhaps purposefully, Defendant omitted important dicta in *Chapman*,  
23 which states:  
24  
25

26 [O]nce a disabled individual has encountered or **become aware** of alleged ADA  
27 violations that deter his patronage of or otherwise interfere with his access to a  
28 place of public accommodation, **he has already suffered an injury in fact . . .**  
**under Article III.**

1           *Chapman v. Pier 1 Imps. (U.S.), Inc.*, 631 F.3d 939, 947 (9th Cir. 2011). Members  
2 of AID, including Mr. Ritzenthaler, travel throughout the Gilbert-Mesa area, additional  
3 members travel in motor vehicles that must park in a van-accessible parking spot, and  
4 individual members, including Mr. Ritzenthaler became aware that the parking lot at the  
5 Property does not have proper van-accessible signage. Under *Chapman*, members of AID  
6 have suffered an injury-in-fact *once they became aware* that there was inaccessible  
7 parking and were then deterred from utilizing the Property.  
8

9  
10           If individual members were to sue individually, they would clearly have standing  
11 under *Chapman*. Additional members have standing under well-established case law  
12 concerning 3<sup>rd</sup>-party standing under the ADA. For an in-depth analysis of said cases, the  
13 Court may refer to Defendant's own Motion on this issue. See Doc. 7, 10:5-19.  
14

15           **2. A Party Need Not Allege That She Suffered an Injury-in-Fact Coupled**  
16           **with an Intent to Return to Have Standing**

17           As mentioned above and stated in *Chapman*, a plaintiff need not prove that they  
18 were deterred from visiting an accommodation **and** suffered an injury-in-fact coupled  
19 with an intent to return. One or the other will suffice for a plaintiff to have standing under  
20 the ADA.  
21

22           Further, under a common-sense approach, in the context of personal services, it is  
23 unlikely that anyone would engage the services of a provider again after the provider had  
24 engaged in blatant discrimination, as the victim can attempt to use a different provider for  
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1 those services.<sup>2</sup> To require a plaintiff to allege that he or she would return to the place  
2 where they were discriminated against solely to have standing, therefore, “makes no  
3 sense.”<sup>3</sup> Also, under a public policy-driven approach, requiring a plaintiff to prove a likely  
4 (and seemingly “numerous”) return just to have standing “allow[s] an alleged wrongdoer  
5 to evade the court’s jurisdiction *so long as he does not injure the same person twice*”<sup>4</sup>  
6 (emphasis added). If this were a case about racial discrimination or gender discrimination,  
7 a court would most likely not require a minority or female plaintiff to continue working  
8 for less wages, for example, or voluntarily subject himself or herself to repeated  
9 discrimination just to have standing to bring their cause of action.  
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13 Defendant’s Motion *absurdly and shockingly* suggests that AID and disabled  
14 individuals may very well be able to access the property, “if they actually tried to do so.”  
15 Doc 7, 7:24-26. If the Defendant is implying that disabled individuals should run the risk  
16 of injuring themselves by “attempting” to access places of public accommodation that  
17 plainly do not have legally-required accommodations ensuring safe access for the  
18 disabled, that idea is not well-taken by AID and its members and should not be well-taken  
19 by this Court either.  
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25 <sup>2</sup> Elizabeth Keadle Markey, *The ADA’s Last Stand?: Standing and the Americans with Disabilities Act*, 71 Fordham  
26 L. Rev. 185 (2002)(citing Ruth Colker, *ADA Title III: A Fragile Compromise*, 21 Berkeley J. Emp. & Lab. L. 377,  
27 398 (2000). (Discussing the differences between the Civil Rights Act and the ADA). Keadle also references author  
28 Matthew Diller, *Judicial Backlash, the ADA, and the Civil Rights Model*, 21 Berkeley J. Emp. & Lab. L. 19,31-47  
(2000) for an even further discussion regarding advantages and disadvantages of modeling the ADA upon civil  
rights statutes

<sup>3</sup> *Id.*, supra note 7, at 398.

<sup>4</sup> Parr v. Waianae L & L, Inc., Civil No. 97-01177, 2000, U.S. Dist. LEXIS 7373, at \*43 (D. Haw. May, 16,  
2000)(quoting Indep. Living Res. V. Or. Arena Corp., 982 F.Supp. 698, 762 (D. Or. 1997)).

1           Regardless, even though a party need not allege that she has “an intent to return”  
2 under *Chapman*, AID member would like to and intend to use the Property, but the barriers  
3 alleged in her Declaration deter them from doing so.  
4

5           **ii. The Interests AID Seeks to Protect Are Germane to the Organization’s**  
6           **Purpose.**

7           As mentioned before, AID is a civil rights organization. Its primary intent in filing  
8 civil rights actions is to ensure ADA and AzDA compliance and to provide financial and  
9 charitable aid to individuals with disabilities. Part of AID’s charitable arm is to be the  
10 voice of the disabled who would otherwise not be heard. AID takes a strong position that  
11 an organization has more resources to fight for the rights of the disabled than perhaps the  
12 individuals themselves who may not have the time, means, or courage to litigate on their  
13 own.  
14

15           Case law has also recognized the importance of associations and organizations that  
16 act on behalf of others. The doctrine of associational standing recognizes that the primary  
17 reason people join an organization is often to create an “effective vehicle for vindicating  
18 interests that they share with others.” *United Food and Commercial Workers Union Local*  
19 *751 v. Brown Group, Inc.*, 517 U.S. 544, 134 L. Ed. 2d 758, 116 S. Ct. 1529 (1996).  
20  
21 Allowing AID to vindicate the rights of its members will advance the interests of not only  
22 other members or AID, but also the disabled community at large.  
23

24           **iii. Neither the Claim Asserted Nor the Relief Requested Requires Participation**  
25           **of Individual Members In The Law Suit.**

26           While the first two requirements of associational standing are constitutionally  
27 rooted, the third is merely prudential. See *United Food & Commercial Workers Union*  
28



1 *Local 751 v. Brown Group*, 517 U.S. 544, 555, 116 S. Ct. 1529, 134 L. Ed. 2d 758 (1996)  
2 (first requirement “can only be seen as itself an Article III necessity for an association’s  
3 representative suit,” second requirement is complementary to first, but third requirement  
4 is not constitutional necessity); *Association of Am. Physicians & Surgs. v. Texas Med. Bd.*,  
5 627 F.3d 547, 550 (5th Cir. 2010) (first two prongs address constitutional requirements;  
6 third is solely prudential).  
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8

9 In *Hunt*, the court held “So long as this can be established, and so long as the nature  
10 of the claim and of the relief sought does not make the individual participation of each  
11 injured party indispensable to proper resolution of the cause, the association may be an  
12 appropriate representative of its members, entitled to invoke the court's jurisdiction.” 422  
13 U.S., at 511, 95 S.Ct., at 2212. *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S.  
14 at 342 (quoting *Warth v. Seldin*, 422 U.S. 490, 512, 95 S. Ct. 2197, 2212, 45 L. Ed. 2d  
15 343 (1975).  
16  
17

18 The *Hunt* Court further explains:  
19

20 (W)hether an association has standing to invoke the court's remedial powers on  
21 behalf of its members depends in substantial measure on the nature of the relief  
22 sought. If in a proper case the association seeks a declaration, injunction, or some  
23 other form of prospective relief, it can reasonably be supposed that the remedy, if  
24 granted, will inure to the benefit of those members of the association actually  
25 injured. Indeed, in all cases in which we have expressly recognized standing in  
26 associations to represent their members, the relief sought has been of this kind.

27 *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333 at 343, 97 S. Ct.  
28 2434 at 2441 (quoting *Warth v. Seldin*, 422 U.S. 490 at 512, 95 S. Ct. 2197 at 2212). AID  
seeks declaratory relief and an injunction on behalf of its members in the instant case. See

1 Doc. 1, 8:20-28, 9:1-8, 9:13-25. It does not seek damages on behalf of its members, for  
2 example, which would require its members to actively participate in the suit to enable the  
3 court to determine how much damages should be awarded to each individual member. Via  
4 declaration, the Court can easily discern the injuries alleged without further participation  
5 of its individual members.  
6

### 7 **III. AID HAS STATED A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

8

9 Defendant's Motion asserts that Plaintiff's claim must be denied for failure to  
10 state a claim. Doc. 7, 12:4. Defendant argues that Plaintiff (AID) does not articulate how  
11 the alleged violation of the 2010 standards relate to physical disability of prevent  
12 disabled individuals from accessing the property.  
13

14 Defendant cites to Supreme Court case *Bell Atlantic Corp. v. Twombly* as one of  
15 its authorities regarding adequate pleadings and grounds for motions to dismiss for  
16 failure to state a claim. Doc 7, 12:6-8. In *Bell*, the court held that the complaint " must  
17 give the defendant fair notice of what the.... Claim is and the grounds upon which it  
18 rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Factual allegations must be  
19 enough to raise a right to relief above the speculative level. *Id.*  
20  
21

22 The alleged violation does in fact relate to a physical disability far above a  
23 speculative level. AID is bringing claims on behalf of its members, individuals with  
24 disabilities. Members have state-issued placards that allow them to legally park in  
25 handicapped parking spaces. In order for members to enter and exit their vehicles *safely*,  
26 there must (and should) be adequate and legally-required designated parking at places  
27 utilized by the public and AID's members.  
28

1 Signs that indicate whether there is handicapped parking is the best way for  
2 individuals, including AID's members, to assess whether there are adequate parking  
3 accommodations, whether those parking spaces are marked with signage indicating that  
4 the parking space is "van-accessible," and whether individual may safely enter and exit  
5 the vehicle. **If individuals with disabilities become aware that there is no van**  
6 **accessible parking, they may be unable to use the public accommodation, even if they**  
7 **would like to.** At this point, the members of AID, including Mr. Ritzenthaler have  
8 suffered a legally cognizable injury under the ADA, AzDA, and controlling case law.  
9 Therefore, Mr. Ritzenthaler and AID members do have a claim upon which relief can be  
10 granted if they were to sue on their own right. As a result, AID has associational standing  
11 to bring the claims alleged in the Amended Complaint on behalf of Mr. Ritzenthaler as  
12 discussed in this Response.  
13  
14  
15

16 The facts in AID's Amended Complaint do in fact give rise to the causes of action  
17 it alleges and creates associational standing for AID to bring forth those claims. The  
18 specifics and finite details of the case are to be hashed out in discovery, just as they are in  
19 every other civil action. The Defendant was given proper notice of what claims it will be  
20 defending in this action and what relief AID is seeking from the Defendant based on its  
21 claims. Dismissal of this case at this stage of the litigation is premature. As such, the Court  
22 should deny Defendant's Motion.  
23  
24  
25

#### 26 **IV. CONCLUSION**

27 This Court should allow AID to amend its Verified Complaint to include its  
28 member, David Ritzenthaler. The relevant case law states that courts should grant leave

1 to amend complaints if it would cure issues of standing. The current case should be no  
2 different.

3  
4 Assuming that the Court will properly allow AID to amend its Complaint, AID will  
5 have associational standing and this court will have jurisdiction over its claims. AID's  
6 members, including David Ritzenthaler, have standing to sue in their own individual  
7 capacity because they were deterred from using the Property because the Property did not  
8 have adequate van-accessible signage. The injury relates to members directly as well as  
9 by way of 3<sup>rd</sup> party standing. The interests AID seeks to protect are germane to its interests  
10 as an organization - proving charitable resources to disabled individuals and vindicating  
11 the rights of its members and the disabled community over all. Lastly, David  
12 Ritzenthaler's individual participation in the suit is not necessary because AID seeks  
13 injunctive and declaratory relief.  
14  
15

16  
17 The Court must deny Defendant's Motion, because AID *does* state a claim in its  
18 Amended Complaint upon which relief may be granted. With the contents of the Amended  
19 Complaint, the Defendant is aware of the claims that give rise to the action, the laws that  
20 the claims are based upon, and the relief that AID is seeking.  
21  
22

23 **RESPECTFULLY SUBMITTED** this 9<sup>th</sup> day of September 2016.  
24  
25

26 /s/ Peter Strojnik  
27 Peter Strojnik  
28 **STROJNIK PC**  
Lead Counsel for Plaintiffs

1 **ORIGINAL** filed this 9<sup>th</sup> day of September 2016  
2 with **COPIES** sent to opposing counsel by way  
3 of PACR's notification system, by email, and  
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# EXHIBIT F

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11 **UNITED STATES DISTRICT COURT**  
12  
13 **DISTRICT OF ARIZONA**

15 Advocates for Individuals with Disabilities  
16 LLC, et al.,

16 Plaintiff,

18 vs.

19 MidFirst Bank.,

20 Defendant.

Case No: CV-16-01969-PHX-NVW

**PLAINTIFF’S MOTION TO  
REMAND**

**(Assigned to the Hon. Neil Wake)**

21 Plaintiff Advocates for Individuals with Disabilities Foundation, LLC (“AID”)  
22 respectfully requests that this court decline jurisdiction in this matter and remand  
23 Plaintiff’s causes of action to State Court.  
24

25  
26 **I. AID has Standing in Arizona State Court**  
27  
28

1           While the Americans with Disabilities Act’s (“ADA”) purpose is sweeping, “to  
2 invoke the jurisdiction of the federal courts, a disabled individual claiming discrimination  
3 must satisfy the case or controversy requirement of Article III by demonstrating his  
4 standing to sue at each stage of the litigation. *Chapman v. Pier 1 Imps. (U.S.), Inc.*, 631  
5 F.3d 939, 946 (9th Cir. 2011) *citing* U.S. Const. art. III.

7           However, “the constraints of Article III [of the United States Constitution] do not  
8 apply to state courts,” *Mayer Unified Sch. Dist. v. Winkleman*, 220 Ariz. 378, 388, 207  
9 P.3d 631, 641 (Ct. App. 2008) *citing* *Asarco Inc. v. Kadish*, 490 U.S. 605, 617 (1989).  
10 State courts are not bound by the limitations of a case or controversy or other federal  
11 rules of justiciability even when they address issues of federal law. Arizona, specifically,  
12 has no counterpart to the federal “case or controversy” requirement. “[T]he question of  
13 standing in Arizona is not a constitutional mandate since we have no counterpart to the  
14 ‘case or controversy’ requirement of the federal constitution.” *Armory Park*  
15 *Neighborhood Ass’n v. Episcopal Cmty. Servs.*, 148 Ariz. 1, 6, 712 P.2d 914, 919 (1985)  
16 *citing* *State v. B Bar Enterprises*, 133 Ariz. 99, 649 P.2d 978 (1982). Plaintiff brought  
17 claims in State Court, as is its right. Its attorneys analyzed standing for purposes of the  
18 forum in which the action was filed.

22           In addition to the key standing differences between Federal Courts and Arizona  
23 State Courts, Arizona’s counterpart to the federal ADA, A.R.S. 41-1492 (“AZDA”),  
24 greatly enlarges the field of parties who may assert a civil action for violation of the ADA.  
25 Under the civil enforcement section of the AZDA “Any person who believes” a violation  
26 of the state statute has occurred “may institute a civil action.” The state legislation does  
27 not require a person with a disability to engage in a civil action. Plaintiff, in this action,  
28



1 satisfies the standard of any person who believes a violation of the requirements of the  
2 AZDA has occurred. While this Court does not have jurisdiction over the claims at issue  
3 under the *Chapman* and Article III analysis, Arizona State Courts will have jurisdiction  
4 to hear the controversies. Arizona state courts do not impose the requirements of Article  
5 III and Arizona state statute specifically grants parties like Plaintiff the right to file civil  
6 actions just like the present action.  
7

## 8 **II. Remand is Appropriate Even After Dismissal**

9  
10 While remand without any action of dismissal is appropriate, even if this Court  
11 elected to dismiss Plaintiff's claims, remand is still required by law because remand is the  
12 proper response to dismissal for lack of subject matter jurisdiction. 28 U.S.C. §1447(c).  
13 The only opportunity for this court to dismiss without remand is in an instance "where  
14 there is absolute certainty that remand would prove futile." *Bell v. City of Kellogg*, 922  
15 F.2d 1418, 1425 (9<sup>th</sup> Cir. 1991). As shown above, there is not just uncertainty concerning  
16 futility, but a strong likelihood that Plaintiff's claims will survive any jurisdiction  
17 challenge in Arizona State Courts.  
18

19  
20 Furthermore, this Court should remand all causes of action including Federal ADA  
21 claims and State AZDA claims. State Courts have concurrent jurisdiction to hear the  
22 claims. *Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 821 (1990). Due to flexible  
23 state standing requirements, even if this court believes dismissal is appropriate, remand of  
24 all claims to state court where Plaintiff originally filed is the appropriate action.  
25

## 26 **III. Conclusion**

1 Plaintiff, after conducting jurisdictional analysis, filed its claims in state court.  
2 While Defendant has given notice of removal, this Court lacks subject matter jurisdiction  
3 and should therefore remand this case back to Arizona state court.  
4

5  
6  
7  
8 RESPECTFULLY SUBMITTED this 2nd day of November, 2016.  
9

10 **STROJNIK P.C.**

11 

12 \_\_\_\_\_  
13 Peter Strojnik, Esq.  
14 Attorney for Plaintiff

15 **ADVOCATES FOR INDIVIDUALS WITH DISABILITIES**

16  
17 /s/ Fabian Zazueta  
18 Fabian Zazueta  
19 Attorney for Plaintiffs

20  
21  
22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on November 2nd 2016, I electronically transmitted the  
24 attached document using the CM/ECF system for filing, and which will be sent  
25 electronically to all registered participants as identified on the Notice of Electronic Filing,  
and paper copies will be sent to those indicated as non-registered participants.

26 /s/ Sydney Rogers  
27  
28

# EXHIBIT G

2016 WL 5436810

Only the Westlaw citation is currently available.

United States District Court,  
D. Arizona.

Advocates for Individuals With Disabilities  
LLC and David Ritzenthaler, Plaintiffs,

v.

WSA Properties LLC, Defendant.

No. CV-16-02375-PHX-DGC

|  
Signed 09/28/2016

|  
Filed 09/29/2016

### Synopsis

**Background:** Organization that advocated for individuals with disabilities, and member, brought action in state court against business, alleging violations of the Americans with Disabilities Act (ADA) and state disabilities laws. Following removal, plaintiffs were required to show cause why the case should not be dismissed for lack of standing.

**Holdings:** The District Court, David G. Campbell, J., held that:

[1] organization's allegations were insufficient to plead Article III organizational standing;

[2] allegations by member were insufficient to plead injury in fact; and

[3] remand was warranted.

Ordered accordingly.

### Attorneys and Law Firms

Fabian Zazueta, Advocates for Individuals with Disabilities, Peter Strojnik, Strojnik Firm LLC, Phoenix, AZ, for Plaintiffs.

Don Carl Fletcher, Lake & Cobb PLC, Tempe, AZ, for Defendant.

### ORDER

David G. Campbell, United States District Judge

\*1 Plaintiffs Advocates for Individuals with Disabilities (“AID”) and David Ritzenthaler filed a complaint against Defendant WSA Properties LLC in Maricopa County Superior Court. Doc. 1. The complaint alleges violations of both federal and state disabilities law, and Plaintiffs seek declaratory, injunctive, and monetary relief. *Id.* at 17-18. On July 15, 2016, Defendant removed the case to this Court, asserting that the Court has subject matter jurisdiction over Plaintiffs' federal claims. Doc. 1. On August 15, 2016, the Court issued an order requiring Plaintiffs to show cause why this case should not be dismissed for lack of standing (“Order”). Doc. 13. After receiving an extension of time, Plaintiffs responded. Doc. 24. For the reasons that follow, the Court finds that Plaintiffs lack standing to pursue their claims in this Court. Because the standing analysis for state court differs from federal analysis, the Court will remand this case to state court.

### I. Background.

Attorneys Peter Strojnik and Fabian Zazueta have filed numerous claims against local businesses alleging violations of the Americans with Disabilities Act (“ADA”) and similar state statutes. Since March 2016, 162 of their cases have been filed in or removed to this Court.<sup>1</sup> These cases all appear to assert identical allegations—that the defendant business (the nature of which usually is not identified in the complaint) has violated the ADA by having inadequate signage or parking spaces for disabled persons.

Concerned about these very general allegations, the Court entered an order on August 15, 2016, requiring Plaintiffs to show why this case should not be dismissed for lack of standing. The Court noted:

Plaintiff [AID] makes no allegations in the complaint regarding its status, nature, or interest in this case. Plaintiff David Ritzenthaler alleges that he is legally disabled, that he has a state-issued handicapped license plate, and that, on or about March

15, 2016, he “became aware” that there were insufficient handicapped parking spaces and signage at Defendant’s place of business. Plaintiff does not allege that he personally visited Defendant’s business, but alleges that he will avoid visiting the business in the future unless it comes into compliance with the ADA.

Doc. 13 (citations omitted). Because these general allegations failed to show that Plaintiffs have “concrete and particularized” injuries that affect them “in a personal and individual way,” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 & n. 1, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), the Court ordered Plaintiffs to file a memorandum showing standing by August 29, 2016. Instead, Plaintiffs filed a notice of settlement on August 26, 2016, and asked the Court to vacate the Order. Doc. 15. The Court declined, noting that this case has not been dismissed and that Plaintiffs have many other cases before the undersigned judge that present the same standing concerns. Doc. 18. The Court directed Plaintiffs to respond as ordered on August 29, 2016.

\*2 Plaintiffs instead filed a motion for an extension of time to respond, which the Court granted. Doc. 20. Plaintiffs filed their response to the Order on September 12, 2016. Doc. 24. Plaintiffs addressed AID’s associational standing, said nothing about Ritzenthaler’s standing, and stated that they intend to file an amended complaint or supplemental pleading. *Id.* No motion to amend or supplement has been filed. *Id.*

## II. Article III Standing.

“[T]o invoke the jurisdiction of the federal courts, a disabled individual claiming discrimination must satisfy the case or controversy requirement of Article III by demonstrating his standing to sue at each stage of the litigation.” *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir.2011) (en banc). “Federal courts are required *sua sponte* to examine jurisdictional issues such as standing.” *Id.* at 954 (quotation marks, citation, and brackets omitted). After reviewing Plaintiffs’ response to the Order, the Court finds that neither AID nor Ritzenthaler have Article III standing to pursue this suit.

### A. AID Does Not Have Article III Standing.

[1] An organization can bring suit on its own behalf or on behalf of its members. See *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 169, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). In its response to the Order, AID asserts that it has standing to sue on behalf of its members; it claims no independent injury as an organization. Doc. 24 at 1.

[2] The Supreme Court has established a three-part test for the standing of an organization to sue on behalf of its members:

An association has standing to bring suit on behalf of its members when its members would have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires individual members’ participation in the lawsuit.

*Friends of the Earth*, 528 U.S. at 169, 120 S.Ct. 693.<sup>2</sup>

[3] To show that at least one of its members has standing to sue in his or her own right, AID must show that the member has suffered an injury-in-fact. Furthermore, “an organization suing as representative [must] include at least one member with standing to present, in his or her own right, the claim (or the type of claim) pleaded by the association.” *United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 555, 116 S.Ct. 1529, 134 L.Ed.2d 758 (1996).

[4] The text of Plaintiffs’ response does not identify any members of AID, but a caption to one of its sections suggests that David Ritzenthaler is a member. Doc. 24 at 2. AID does nothing, however, to show that Ritzenthaler has suffered an injury-in-fact. Plaintiffs instead make a simple, conclusory assertion:

The lack of signage [at Defendant’s property] is a deterrent to disabled individuals’ (including members of AID who are identified and some not yet identified) use of the Lot, because it renders it more difficult

for them to identify which, if any parking spots are van accessible. Members of AID would like to, and intends to use the Lot, but the lack of van-accessible signage that is at least 60 inches above the ground is a deterrent and barrier to access.

*Id.* AID also asserts that it has unidentified members who are disabled or have disabled children, and who reside in the greater Phoenix area. *Id.* at 2. These members allegedly “travel on the Valley's streets” and “have lawful disability-parking plates or placards for their vehicles.” *Id.* AID provides no actual examples of such persons being deterred from using Defendant's public accommodation because it lacks a sign that is 60 inches above the ground. AID offers only conclusory assertions.

\*3 AID has not shown that it has organizational standing to pursue this action. The discussion below shows that Ritzenthaler does not have standing, and AID has not identified any other members who “would have standing to sue in their own right.” *Friends of the Earth*, 528 U.S. at 169, 120 S.Ct. 693; see also *Payne v. Chapel Hill N. Properties, LLC*, 947 F.Supp.2d 567, 577 (M.D.N.C.2013) (granting motion to dismiss for lack of standing when organization identified only one member in its complaint and was unable to show that she had standing to sue in her own right). AID may be an organization interested in enforcement of disability discrimination laws, but an undifferentiated interest in ensuring compliance with the law does not suffice. *Lujan*, 504 U.S. at 575, 112 S.Ct. 2130 (citing *United States v. Richardson*, 418 U.S. 166, 176–77, 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974)); see also *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 40, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976) (“an organization's abstract concern with a subject that could be affected by an adjudication does not substitute for the concrete injury required by” Article III).

#### **B. David Ritzenthaler Does Not Have Article III Standing.**

An individual plaintiff must satisfy three elements to establish Article III standing: (1) an injury-in-fact, (2) causation between the injury and the allegedly wrongful conduct, and (3) that the injury is likely to be redressed by a favorable decision from the court. *Lujan*, 504 U.S. at 560, 112 S.Ct. 2130. Plaintiffs have the burden of proving all three elements. *Id.* at 561, 112 S.Ct. 2130. Plaintiffs

correctly note that “[t]he Supreme Court has instructed us to take a broad view of constitutional standing in civil rights cases, especially where, as under the ADA, private enforcement suits are the primary method of obtaining compliance with the Act,” *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1039 (9th Cir.2008), but this does not relieve a plaintiff of his burden to show an injury-in-fact, see *Chapman*, 631 F.3d at 946.

#### **1. Injury-In-Fact.**

[5] [6] An injury-in-fact is “(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560, 112 S.Ct. 2130 (internal quotations and citations omitted). This includes a “requirement that a party seeking review must allege facts showing that he is himself adversely affected.” *Sierra Club v. Morton*, 405 U.S. 727, 740, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972). Additionally, to establish standing to seek injunctive relief, a party must show that he “is likely to suffer future injury” absent the requested injunction. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983).

[7] Ritzenthaler alleges that on a particular date he “became aware that there were” ADA violations at Defendant's business. Doc. 1 at 13 (emphasis added). The complaint alleges that Ritzenthaler has “actual knowledge of at least one barrier related to [his] disability[.]” *Id.* at 14. But the complaint does not allege how Ritzenthaler learned of the alleged barrier, whether he has ever visited Defendant's business, whether he lives or travels anywhere near the business, or even whether he patronizes businesses of the same type. The complaint does not even identify the nature of Defendant's business. *Id.* Instead, consistent with the boilerplate nature of the complaint and apparently to cover the waterfront, the complaint alleges that Plaintiff may visit the site “for business, pleasure, medical treatment or other commercial purposes.” *Id.* at 14. A photograph of Defendant's property attached to Plaintiffs' response suggests that the building houses an endocrinology medical practice. Doc. 24 at 6. The complaint does not allege that Ritzenthaler uses or needs an endocrinologist.<sup>3</sup>

\*4 Thus, this case squarely presents the question of whether Ritzenthaler must have personally visited Defendant's property to have standing to assert ADA



violations. This question was raised in the Court's Order (Doc. 13 at 4), but Plaintiffs chose not to address it. The Court can only conclude that Ritzenthaler has not visited Defendant's business and seeks to establish standing merely on the basis of his second-hand knowledge of barriers. This is consistent with other cases attorney Peter Strojnik has litigated. *See, e.g., Brooke v. Peterson*, — F.Supp.3d —, —, 2016 WL 2851440, at \*2 (C.D.Cal. May 13, 2016) (“Plaintiff never alleges or otherwise asserts that she has visited the hotels.”); *Brooke v. Kalthia Grp. Hotels*, No. 15CV1873–GPC(KSC), 2015 WL 7302736, at \*5 (S.D.Cal. Nov. 18, 2015) (Plaintiff called a hotel and learned it did not have a pool lift, but never visited the site). Although Plaintiffs' complete failure to address this issue has provided the Court with no assistance, the Court has reviewed relevant case law and concludes that Ritzenthaler cannot establish injury-in-fact.

In *Chapman*, the Ninth Circuit described the circumstances under which an ADA plaintiff experiences injury-in-fact:

Under the ADA, when a disabled person *encounters an accessibility barrier* violating its provisions, it is not necessary for standing purposes that the barrier completely preclude the plaintiff from entering or from using a facility in any way. Rather, the barrier need only interfere with the plaintiff's “full and equal enjoyment” of the facility. 42 U.S.C. § 12182(a).

\* \* \*

Of course, a “barrier” will only amount to such interference *if it affects the plaintiff's full and equal enjoyment of the facility* on account of his particular disability. Because the ADAAG establishes the technical standards required for “full and equal enjoyment,” if a barrier violating these standards relates to a plaintiff's disability, it will impair the plaintiff's full and equal access, which constitutes “discrimination” under the ADA. That discrimination satisfies the “injury-in-fact” element of *Lujan*. As we have held, once a disabled plaintiff *has encountered a barrier* violating the ADA, “that plaintiff will have a ‘personal stake in the outcome of the controversy’ so long as his or her suit is limited to barriers related to that person's particular disability.”

*Chapman*, 631 F.3d at 947 (emphasis added, footnote and some citations omitted).

[8] Under this language, an ADA plaintiff must actually encounter a barrier to experience injury-in-fact. Such a requirement comports with the Article III demand that a plaintiff's injury be “concrete and particularized,” “actual or imminent,” and not “hypothetical,” and that it “affect the plaintiff in a personal and individual way.” *Lujan*, 504 U.S. at 561 & n. 1, 112 S.Ct. 2130.

Although Plaintiffs' counsel declined to address the issue in this case, they have argued in other cases, and appear to assert in the complaint, that mere knowledge of a barrier is enough to satisfy the injury-in-fact requirement, even if the plaintiff has never personally encountered the barrier. *See Brooke v. Kalthia Grp. Hotels*, 2015 WL 7302736, at \*4–5. The Court does not agree. Under this theory, a disabled person in Arizona could learn of an architectural barrier at a facility in Tennessee which the person has never visited and never plans to visit, and yet would suffer an injury-in-fact by the mere knowledge. Such an injury, if it could be called an injury at all, would not be concrete, particularized, actual, or imminent. And even if the person firmly resolved that he would never visit the Tennessee facility because of the barrier, any future injury from the barrier would be purely hypothetical.

In other cases, Plaintiffs' counsel have looked to language from several Ninth Circuit cases to argue that mere knowledge of a barrier is sufficient for ADA standing. It is true that these cases contain language stating that a plaintiff has suffered injury when he has “personally encountered *or had personal knowledge*” of discriminatory barriers. *Doran*, 524 F.3d at 1041 (emphasis added). But the context of these statements makes clear that they do not confer standing on Ritzenthaler in this case.

\*5 For example, in *Doran v. 7–Eleven, Inc.*, the plaintiff actually visited a particular 7-Eleven store between 10 and 20 times, encountered discriminatory barriers, and was deterred from returning until the barriers were removed. *Id.* at 1037. The Ninth Circuit held that “Doran has suffered an injury that is concrete and particularized because he alleged in his amended complaint that he personally suffered discrimination as a result of the barriers in place during his visits to 7–Eleven and that those barriers have deterred him on at least four occasions from patronizing the store.” *Id.* at 1040. The Ninth Circuit explained that this actual injury “gets him inside the courthouse door and brings his Article III case forward

for our judicial evaluation.” *Id.* at 1041–42. The Ninth Circuit then had to decide “the scope of barriers that Doran may challenge.” *Id.* at 1041. Was he limited to barriers he personally had encountered, or could he also challenge barriers he learned about during discovery? The court held that the additional barriers could be included in the lawsuit:

it is entirely plausible that the reason he did not know the full scope of 7–Eleven's ADA violations when he filed his complaint is that the violations he did know about deterred him from conducting further first-hand investigation of the store's accessibility....[I]t would be ironic if not perverse to charge that the natural consequence of this deterrence, the inability to personally discover additional facts about the defendant's violations, would defeat that plaintiff's standing to challenge other violations at the same location that subsequently come to light.

*Id.* at 1042.

This holding makes practical sense. If a plaintiff has suffered an injury-in-fact by personally encountering a discriminatory barrier, he has standing to bring an ADA case in federal court. Once the case has been filed, it should address all barriers to the plaintiff's access that the defendant has erected. As the Ninth Circuit explained in *Chapman*, “an ADA plaintiff who has standing to sue because he has been discriminated against in one aspect of a public accommodation may, in one lawsuit, obtain an injunction to prevent impending discrimination throughout the accommodation.” 631 F.3d at 952. *Chapman* emphasized that this holding “in no way relieves plaintiffs from the constitutionally imposed burden of demonstrating an injury-in-fact and a sufficient likelihood of repeated harm.” *Id.* at 953.

The Court cannot conclude from cases like *Doran* or *Chapman* that a plaintiff suffers an injury-in-fact when he has never visited the defendant's property and merely learns of a barrier through another source. Ritzenthaler's unexplained knowledge of the alleged barriers in this case

has injured him no more than the Arizonan who learns of an architectural barrier in Tennessee, as discussed above.

Other Ninth Circuit cases are consistent with this conclusion. In *Pickern v. Holiday Quality Foods Inc.*, 293 F.3d 1133, 1138 (9th Cir.2002), the court found that the plaintiff had standing when he was deterred from returning to a Holiday Foods store in Paradise, California, which he had previously visited on several occasions. According to the court, “under the ADA, once a plaintiff has actually become aware of discriminatory conditions existing at a public accommodation, and is thereby deterred from visiting or patronizing that accommodation, the plaintiff has suffered an injury.” *Id.* at 1136–37. The plaintiff need not make the “futile gesture” of returning to the store again. *Id.* The court did not make clear what was necessary to show actual awareness, but it is clear that the plaintiff's awareness in *Pickern* came from personally encountering the barriers:

[Plaintiff] has visited Holiday's Paradise store in the past and states that he has actual knowledge of the barriers to access at that store. [Plaintiff] also states that he prefers to shop at Holiday markets and that he would shop at the Paradise market if it were accessible. This is sufficient to establish actual or imminent injury for purposes of standing.

*Id.* at 1138. As another court has observed, *Pickern* “did not hold that an ADA plaintiff has standing if she is deterred from visiting a noncompliant place of accommodation even if she has never visited the accommodation.” *Brooke v. Peterson*, 2016 WL 2851440, at \*4.

In *D'Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1034 (9th Cir.2008), the Ninth Circuit found that a plaintiff had standing when she visited a Santa Barbara hotel and encountered multiple barriers to access. According to the plaintiff, she had plans to return to Santa Barbara and desired to stay at the hotel. *Id.* at 1037. The court found that the plaintiff need not “engage in the ‘futile gesture’ of visiting or returning to an inaccessible place of public accommodation in order to satisfy the standing requirement.” *Id.* While the court referred to “visiting or returning,” it is noteworthy



that the facts of the case concerned an individual who had personally visited the public accommodation and encountered discriminatory barriers. The only question before the Ninth Circuit was whether the plaintiff had an intent to return sufficient to make her alleged injury “actual or imminent[.]” *Id.* at 1036. Because she did intend to return if the barriers were removed, the court found that she had standing. *Id.* at 1039.

Finally, the Court notes that the Central District of California recently addressed standing in a similar ADA case brought by Mr. Strojnik. See *Brooke v. Peterson*, — F.Supp.3d —, 2016 WL 2851440. The plaintiff in that case alleged that Best Western International violated the ADA by not having a lift in its pool and Jacuzzi. *Id.* at —, at \*1. The plaintiff had never visited the defendant's hotel, but instead alleged that she called the hotel and was told it was not equipped with a lift, which was then verified by her expert. *Id.* The court found this insufficient for standing:

Binding precedent supports that under any theory of standing, including the deterrent effect doctrine, an ADA plaintiff must have previously visited a noncompliant place of accommodation to have an injury-in-fact under Article III. Without ever visiting the hotels and encountering the barriers, Plaintiff's injury is not particularized and concrete. And without ever visiting the hotels and encountering the barriers, Plaintiff's injury is not actual or imminent. Whether the case law requires Plaintiff to encounter the barriers or if it is enough that Plaintiff have *personal, percipient knowledge* of the barriers doesn't matter here, as Plaintiff has never even visited the hotels. Accordingly, without a “particular and concrete” and an “actual or imminent” injury, Plaintiff lacks standing under Article III to bring her ADA claims.

*Id.* at —, at \*6 (emphasis in original, internal citations and quotations omitted).

Admittedly, *Pickern* and *D'Lil* do contain broad language that could be read to suggest that injury-in-fact occurs even when a plaintiff has never visited a facility, provided he would actually do so were he not deterred by discriminatory barriers. That was not the holding of *D'Lil* or *Pickern*, but even if such a broad reading were entertained, it would not help Ritzenthaler. As noted previously in this order, he provides no facts from which the Court can conclude that he has ever sought, for any reason, to visit Defendant's endocrinology office, or that he intends to do so in the future. The complaint does allege generally that “[t]he existence of barriers deters Plaintiff and other disabled persons from conducting business or returning to Defendant's Public Accommodation.” Doc. 1 at 14. It also alleges that “Plaintiff, or an agent of Plaintiff, intends to return to Defendant's Public Accommodation to ascertain whether it remains in violation of the AzDA and the ADA.” *Id.* at 15 (emphasis added). But these bare allegations, unsupported by any facts suggesting that Ritzenthaler himself intends to visit the property, are insufficient to satisfy even a broad reading of *D'Lil* and *Pickern*.

\*7 In determining whether a plaintiff's likelihood of visiting or returning to a facility is sufficient to confer standing, courts have examined factors such as “(1) the proximity of the place of public accommodation to plaintiff's residence, (2) plaintiff's past patronage of defendant's business, (3) the definitiveness of plaintiff's plans to return, and (4) the plaintiff's frequency of travel near defendant.” *Harris v. Del Taco, Inc.*, 396 F.Supp.2d 1107, 1113 (C.D.Cal.2005) (citation and quotation marks omitted). These factors were specifically identified in the Court's Order (Doc. 13 at 2-3), but Ritzenthaler did not address them in his response. Doc. 24.

The Court concludes that Ritzenthaler has failed to show injury-in-fact. He therefore lacks standing to pursue his claims in federal court.<sup>4</sup>

## 2. Other Defects in Plaintiffs' Complaint.

[9] The Ninth Circuit has also made clear that an ADA plaintiff must plead facts linking the defendant's discriminatory barriers to the plaintiff's injury. Merely listing ADA violations at the defendant's property “cannot substitute for the factual allegations required in

the complaint to satisfy Article III's requirement of an injury-in-fact." *Chapman*, 631 F.3d at 955. A plaintiff must identify "how any of the alleged violations threatens to deprive him of full and equal access due to his disability if he were to return," or "how any of them deter him from visiting the [defendant's facility] due to his disability." *Id.*

Plaintiffs' complaint does not even identify the specific barriers that allegedly exist at Defendant's premises. It instead alleges only a list of possibilities:

insufficient handicapped parking spaces, insufficient designation or signage and or insufficient disbursement of such parking spaces in order to provide the "shortest accessible route from parking to an entrance", specifically but not limited to parking spaces by the designation "van accessible" and or fails to maintain the minimum height of 60 inches (1525 mm) above the finish floor or ground surface measured to the bottom of the sign.

Doc. 1 at 13. By using the word "or" and the phrase "and or" in this description, the complaint fails to identify which ADA violations allegedly exist at Defendant's property. The complaint continues: "[w]ithout the presence of adequate handicapped parking spaces, sufficient designation or signage and or sufficient disbursement of such parking spaces, Plaintiff's disability prevents Plaintiff and other disabled persons from equal enjoyment of the Defendant's Public Accommodation." *Id.* at 14. Again, the disjunctive nature of this list fails to specify barriers that have injured Ritzenthaler. As in *Chapman*, the complaint "leaves the federal court to guess which, if any, of the alleged violations deprived him of the same full and equal access that a person who is not wheelchair bound would enjoy[.]" 631 F.3d at 955. Faced with this same defect in *Chapman*, the Ninth Circuit remanded with instructions to dismiss the complaint for lack of standing. The Court likewise concludes that Plaintiffs lack Article III standing.

### 3. The Importance of Standing in These Cases.

[10] Article III's injury-in-fact requirement is particularly relevant in this and related cases. As noted, Plaintiffs' counsel have more than 160 cases pending in this Court. They reportedly have filed more than a thousand similar cases in state court.<sup>5</sup> These filings all appear to

be based on the plaintiff's awareness of a barrier—an awareness apparently acquired when persons associated with Plaintiffs' counsel find non-compliant locations. The Court cannot conclude that this kind of mass-filing based on an agent's search for non-compliant properties constitutes the individual, particularized injury necessary for Article III standing. As already noted, a mere interest in ensuring compliance with anti-discrimination laws is not sufficient. *Lujan*, 504 U.S. at 575, 112 S.Ct. 2130.

### III. Leave to Amend or Supplement the Pleadings.

\*8 Plaintiffs' response states that they intend to amend or supplement their complaint, but they have not moved to amend despite the Court's clear notice that it plans to rule on their standing. Doc. 24 at 3-6. Plaintiffs also suggest that they may remove their federal ADA claims by amendment and then seek remand to state court. Indeed, one section of their response is titled "Remand is Also Appropriate." *Id.* at 5. Plaintiffs discuss a Ninth Circuit case in which the plaintiff eliminated federal claims and obtained a remand, and say this is "precisely what the Plaintiff and its counsel intend to do here." *Id.* at 6.

If Plaintiffs did seek to amend their complaint in response to the Order, the Court would deny the request. A district court may deny leave to amend when it finds "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962).

As already noted, Plaintiffs' counsel has more than 160 ADA cases pending in this Court and hundreds more in state court. Mr. Strojnik has brought similar complaints in other districts, and they too have lacked standing. See *Brooke v. Peterson*, — F.Supp.3d —, 2016 WL 2851440; *Brooke v. Kalthia Grp. Hotels*, 2015 WL 7302736. Indeed, Mr. Strojnik brought more than 90 cases in the Central District of California. *Brooke v. Peterson*, — F.Supp.3d at —, 2016 WL 2851440, at \*1.

The complaints in this Court appear to be boilerplate. Compare Doc. 1 with *Advocates for Individuals with Disabilities, LLC v. Home Depot USA Inc.*, Case 2:16-cv-01002-ROS, Doc. 1. The complaints make little effort to establish any real injury. *Id.* And Plaintiffs' counsel apparently follow their boilerplate complaints with a

demand that defendants each pay \$7,500 to settle. See *Ritzenthaler v. Stratis-Mesa Properties, LLC*, 16-CV-01718-ROS, Doc. 15-1 at 3-6. These practices suggest an abuse of the judicial system.

Plaintiffs' complaint in this case offers only conclusory statements about Plaintiffs' alleged injuries, with no factual support. These deficiencies were explicitly noted in the Court's Order. Doc. 13. And yet, despite four full weeks to prepare a response, Plaintiffs did not even discuss Ritzenthaler's standing and alleged no injury to AID. These are matters Plaintiffs' counsel should have considered carefully before filing these cases, and certainly before making settlement demands. See Fed. R. Civ. P. 11(b). There is no excuse for their inability to address them in response to the Order.<sup>6</sup>

But this is not the only indication that Plaintiffs' counsel are taking their judicial responsibilities lightly. In three other cases pending before the undersigned judge, Plaintiffs' counsel have failed to file timely Rule 26(f) reports despite a court order directing them to initiate the Rule 26(f) conference and file the report by a specific deadline. See CV-16-1025, CV-16-2375, CV-16-2595. The Court's staff has had to prompt Plaintiffs' counsel to comply with this most basic of obligations. Two days ago, the Court's staff was contacted four times in one day by staff members in Plaintiffs' counsel's office to address various points of confusion in pending cases. And this is only with respect to cases pending before this judge. The Court does not know how Plaintiffs' counsel believe in good faith that they can discharge their duties to courts and their clients in hundreds of pending cases.

\*9 Given this conduct and Plaintiffs' delay in providing any colorable response to the Court's standing concerns, the Court would deny Plaintiffs leave to amend on the basis of undue delay, bad faith, and dilatory motive. *Foman*, 371 U.S. at 182, 83 S.Ct. 227.

#### IV. Remand.

The removal statute provides that “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction [over a case removed from state court], the case shall be remanded.” 28 U.S.C.A. § 1447(c). This applies to cases that lack standing. *Polo v. Innoventions Int'l, LLC*, No. 14-55916, — F.3d —, —, 2016 WL 4394586, at \*3 (9th Cir. Aug. 18, 2016)

(“a removed case in which the plaintiff lacks Article III standing must be remanded to state court under § 1447(c)”).

The Ninth Circuit has suggested that remand may not be necessary where it would be futile, that is, where the plaintiff clearly would lack standing in state court as well. *Bell v. City of Kellogg*, 922 F.2d 1418, 1424 (9th Cir.1991). But the Supreme Court and Ninth Circuit have cast doubt on this possible course of action. The Supreme Court has noted that the literal words of § 1447(c), on their face, give no discretion to dismiss rather than remand an action. *Int'l Primate Prot. League v. Administrators of Tulane Educ. Fund*, 500 U.S. 72, 89, 111 S.Ct. 1700, 114 L.Ed.2d 134 (1991) (internal quotation omitted). The Ninth Circuit has also noted that “the *Bell* rule has been questioned, and may no longer be good law.” *Polo*, — F.3d at —, 2016 WL 4394586, at \*4; see also *Hill v. Vanderbilt Capital Advisors, LLC*, 702 F.3d 1220, 1226 (10th Cir.2012).

[11] [12] Even if the Court retains the ability to dismiss rather than remand, it would apply only where the court is “absolutely certain” that remand would be futile. *Bell*, 922 F.2d at 1425; *Maine Ass'n of Interdependent Neighborhoods v. Commissioner, Maine Dept. of Human Services*, 876 F.2d 1051, 1054 (1st Cir.1989). That is not the case here. The constraints of Article III “do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law.” *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617, 109 S.Ct. 2037, 104 L.Ed.2d 696 (1989). A plaintiff who fails to establish Article III standing to bring suit in federal court is not necessarily barred from pursuing the same suit in state court.

Unlike more rigid Article III requirements, Arizona law affords trial courts discretion when addressing standing:

We have previously determined that the question of standing in Arizona is not a constitutional mandate since we have no counterpart to the “case or controversy” requirement of the federal constitution. In addressing the question of standing, therefore, we are confronted only with questions of prudential or judicial restraint. We impose that restraint to insure that our courts

do not issue mere advisory opinions, that the case is not moot and that the issues will be fully developed by true adversaries. Our court of appeals has explained that these considerations require at a minimum that each party possess an interest in the outcome. Thus, the question of standing in Arizona cases such as this need not be determined by rigid adherence to the three-prong [federal test], although those factors may be considered.

*Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Arizona*, 148 Ariz. 1, 712 P.2d 914, 919 (1985) (internal citations omitted); see also *Bennett v. Brownlow*, 211 Ariz. 193, 119 P.3d 460, 462 (2005) (standing can be waived by Arizona courts in rare circumstances).

\*10 [13] Given the more flexible standing requirements of Arizona law, the Court cannot be “absolutely certain” that Plaintiffs lack standing in state court. *Bell*, 922 F.2d at 1425. As a result, the Court will remand rather than dismiss this case. In remanding, the Court will not

dismiss the federal ADA claims because state courts have concurrent jurisdiction over those claims and the state courts may decide Plaintiffs have sufficient standing to pursue them. See *Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 821, 110 S.Ct. 1566, 108 L.Ed.2d 834 (1990) (“we conclude that Congress did not divest the state courts of their concurrent authority to adjudicate [civil actions brought under Title VII of the Civil Rights Act of 1964]”); *Hapgood v. City of Warren*, 127 F.3d 490, 494 (6th Cir.1997) (“State courts have concurrent jurisdiction over ADA claims”); *Jones v. Illinois Cent. R. Co.*, 859 F.Supp. 1144, 1145 (N.D.Ill.1994) (interpreting *Yellow Freight*, “it necessarily follows that the state courts have concurrent jurisdiction over ADA claims as well”); *Krouse v. Am. Sterilizer Co.*, 872 F.Supp. 203, 205 (W.D.Pa.1994) (“it appears to be solidly established that state courts have concurrent jurisdiction over ADA cases”).

**IT IS ORDERED** that this action is remanded to Maricopa County Superior Court.

#### All Citations

--- F.Supp.3d ----, 2016 WL 5436810

#### Footnotes

- 1 Fifty-eight of these complaints have been brought on behalf of AID. The remaining complaints are brought on behalf of either Advocates for American Disabled Individuals LLC or Advocates for Individuals with Disabilities Foundation Incorporated.
- 2 Because the Court finds that AID has not identified any member with standing to sue in his or her own right, it need not consider the other prongs of this test.
- 3 The complaint alleges that Ritzenthaler's “agents” verified that Defendant's property was not ADA compliant. *Id.* at 14. It does not identify these agents, but the Court assumes they are ADA experts like those used by attorney Peter Strojnik in other ADA cases. See *Brooke v. Peterson*, — F.Supp.3d —, —, 2016 WL 2851440, at \*2 (C.D.Cal. May 13, 2016); *Brooke v. Kalthia Grp. Hotels*, No. 15CV1873–GPC(KSC), 2015 WL 7302736, at \*5 (S.D.Cal. Nov. 18, 2015).
- 4 The Court is aware of other cases within this district that have reached a different conclusion. See, e.g., *Brooke v. Airport Hotel, LLC*, No. 2:15–CV–1149–HRH, 2015 WL 5444286 (D.Ariz. Sept. 16, 2015). The Court respectfully disagrees with these decisions for the reasons set forth above.
- 5 See <http://kjzz.org/content/347212/group-targets-phoenix-area-businesses-flurry-ada-lawsuits> (last visited Sept. 27, 2016).
- 6 Apparently, Mr. Strojnik's failure to provide helpful input on ADA standing issues is not confined to this case. See *Brooke v. Peterson*, — F.Supp.3d at — – —, 2016 WL 2851440, at \*2–3.

# EXHIBIT H

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

Advocates for Individuals with Disabilities,  
LLC, et al.,  
  
Plaintiffs,  
  
v.  
  
1548 Main, LLC,  
  
Defendant .

No. CV-16-02169-PHX-DJH  
**ORDER**

This matter is before the Court on Plaintiffs’ Motion to Dismiss Federal Claims with Prejudice and Motion to Remand to State Court (Doc. 9). Defendant has filed a Response (Doc. 10) and Plaintiffs have filed a Reply (Doc. 11). Also in the Reply, Plaintiffs have moved, in the alternative, to amend the complaint. Defendant filed a Response to Plaintiffs’ Motion to Amend Complaint (Doc. 12), after which it filed a Notice of Errata (Doc. 13) and attached a proposed Amended Response to Plaintiffs’ Motion to Amend Complaint. Plaintiffs subsequently filed a Response to Defendant’s Notice of Errata and Motion to Strike Portions of Defendant’s Amended Response (Doc. 17). Lastly, Defendants filed a Response to Plaintiffs’ Motion to Strike (Doc. 18).

**I. BACKGROUND**

This is one of the many cases in the District of Arizona in which Plaintiff Advocates for Individuals with Disabilities Foundation (“AID”) alleges that a local business has violated the Americans with Disabilities Act (“ADA”) and the Arizona counterpart (“AZDA”) by failing to provide adequate signage or parking spaces for



1 disabled persons. Since March 2016, more than 160 such cases have been filed in or  
2 removed to this district court. Approximately one thousand such cases have been filed in  
3 the Arizona state court.

4 Here, AID is named in the caption but the body of the Verified Complaint appears  
5 to contain the allegations of a singular plaintiff, David Ritzenthaler, who is sometimes  
6 named as a co-plaintiff in AID's cases. Moreover, only Mr. Ritzenthaler's signature  
7 appears at the end of the Verified Complaint. No signature on behalf of AID is provided  
8 and there is no assertion that Mr. Ritzenthaler is a member of AID who is acting on the  
9 organization's behalf.

10 Plaintiff Ritzenthaler allege that "Defendant's Public Accommodation has barriers  
11 of access to disabled individuals by virtue of inadequacy of handicapped parking spaces,  
12 insufficient designation or signage and or insufficient disbursement of such parking  
13 spaces, notwithstanding that such modifications are readily achievable." (Doc. 1-1 at 2).  
14 Ritzenthaler alleges that he suffers from a disability and has a state issued license plate or  
15 placard authorizing him to park in designated handicapped parking spaces. He alleges  
16 that on March 15, 2016, he "became aware" of Defendant's violations and has "actual  
17 knowledge of at least one barrier" related to his disability such that he and others  
18 similarly situated are deterred from visiting Defendant's business. (*Id.* at 2-4).  
19 Ritzenthaler further alleges that "[a]s a result of Defendant's non-compliance with the  
20 AZDA and the ADA, Plaintiff will avoid and not visit Defendant's Public  
21 Accommodation in the future unless and until all AZDA and ADA violations have been  
22 cured." (*Id.* at 4). He seeks declaratory relief, injunctive relief, monetary damages, and  
23 attorney's fees and costs.

## 24 **II. DISCUSSION**

25 Given the large number of similar cases filed by Plaintiffs, several other judges in  
26 this district have issued decisions on issues common to many of the cases. In the interest  
27 of maintaining consistency among rulings in similar cases within the district, this Court  
28 has reviewed several of the other judges' decisions and has considered them here to

1 decide the pending motions. In particular, in a very similar case brought by Plaintiffs  
2 AID and Mr. Ritzenthaler, District Judge Campbell wrote a thorough and well-reasoned  
3 decision addressing Plaintiffs' Article III standing. (CV-16-02375-PHX-DGC at Doc.  
4 27). Similarly, in CV-16-02413-PHX-GMS at Doc. 28, District Judge Snow wrote a  
5 comprehensive decision resolving a nearly identical motion to dismiss federal claims and  
6 remand to state court as the one before this Court. This Court finds the judges' analyses  
7 of the issues addressed in those orders persuasive and applies the same analyses here.

#### 8 **A. Standing**

9 “[T]o invoke the jurisdiction of the federal courts, a disabled individual claiming  
10 discrimination must satisfy the case or controversy requirement of Article III by  
11 demonstrating his standing to sue at each stage of the litigation.” *Chapman v. Pier 1*  
12 *Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9<sup>th</sup> Cir. 2011) (en banc). “Federal courts are  
13 required *sua sponte* to examine jurisdictional issues such as standing.” *Id.* at 954  
14 (citation, internal quotation marks and brackets omitted).

15 Although the parties did not address the issue of standing in their filings, the Court  
16 must satisfy itself that Plaintiffs have standing to maintain this action before proceeding.  
17 Because the complaint in this action is nearly identical to other complaints filed by  
18 Plaintiffs where the issue of standing was directly addressed by the parties, the Court has  
19 ample information to decide that issue as a preliminary matter. Indeed, comparing the  
20 Verified Complaint in this case with the Verified Complaint in Judge Campbell's case  
21 referenced above, the Complaints appear to be identical with the exception of a different  
22 defendant named in the caption and in paragraph two. (Compare Doc. 1-1 at 1-8 of this  
23 case with Doc. 1 at 11-18 of case no. CV 16-2375-PHX-DGC). Accordingly, because  
24 Judge Campbell's comprehensive analysis of Plaintiffs' standing is based on the exact  
25 same allegations presented in this case, the Court relies on it here.

26 Applying that analysis, this Court concludes that neither Plaintiff AID nor Plaintiff  
27 Ritzenthaler has standing under Article III to maintain this action. Regarding AID, an  
28 organization can bring an action on its own behalf or on behalf of its members. *See*



1 *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 169 (2000).  
2 “An association has standing to bring suit on behalf of its members when its members  
3 would have standing to sue in their own right, the interests at stake are germane to the  
4 organization’s purpose, and neither the claim asserted nor the relief requested requires  
5 individual members’ participation in the lawsuit.” *Id.*

6 As referenced above, AID alleges no independent injury as an organization. Thus,  
7 the only possible basis for AID to have standing is to have brought this action on behalf  
8 of its members. The Complaint, however, does not allege that the action is brought on  
9 behalf of any members of AID. In addition, no members of AID are identified in the  
10 Complaint. In the section of the Complaint that identifies the parties, only Mr.  
11 Ritzenthaler is identified as a plaintiff and he does not allege that he is a member of  
12 AID.<sup>1</sup> (Doc. 1-1 at 1). Nor does he allege membership in AID anywhere else in the body  
13 of the Complaint. Absent any allegations of independent harm to the organization, and  
14 absent any allegations that this action was brought on behalf of any members of AID, the  
15 Court finds that Plaintiff AID has failed to demonstrate organizational standing under  
16 Article III.

17 With regard to Plaintiff Ritzenthaler, an individual must satisfy three elements to  
18 establish Article III standing: (1) an injury-in-fact, (2) causation between the injury  
19 alleged and the allegedly wrongful conduct, and (3) that the injury is likely to be  
20 redressed by a favorable decision from the court. *Lujan v. Defenders of Wildlife*, 504  
21 U.S. 555, 560 (1992). Plaintiffs have the burden to establish all three elements. *Id.* at  
22 561. An injury-in-fact is “(a) concrete and particularized, and (b) actual or imminent, not  
23 conjectural or hypothetical.” *Id.* at 560 (internal quotations and citations omitted). This  
24 includes a “requirement that a party seeking review must allege facts showing that he is  
25 himself adversely affected.” *Sierra Club v. Morton*, 405 U.S. 727, 740 (1972).

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26  
27 <sup>1</sup> Even if the Complaint alleged that Mr. Ritzenthaler was a member of AID, the  
28 organization would not have standing. For the reasons discussed below, Ritzenthaler  
does not have standing to sue in his own right. Consequently, a required element for  
organizational standing would still be missing.

1 Like the Complaint in Judge Campbell’s case, and as noted above, Ritzenthaler  
2 here alleges that on March 15, 2016,<sup>2</sup> he “became aware” of Defendant’s violations and  
3 has “actual knowledge of at least one barrier” related to his disability such that he and  
4 others similarly situated are deterred from visiting Defendant’s business. (Doc. 1-1 at 2-  
5 4). But, as Judge Campbell explained, “the complaint does not allege how Ritzenthaler  
6 learned of the alleged barrier, whether he has ever visited Defendant’s business, whether  
7 he lives or travels anywhere near the business, or even whether he patronizes businesses  
8 of the same type.” (CV 16-2375-PHX-DGC, doc. 27 at 6). The same is true here.  
9 Indeed, Plaintiff fails to even identify the nature of Defendant’s business. Instead,  
10 Plaintiff merely alleges that he has the right to visit Defendant’s business “in the future,  
11 for business, pleasure, medical treatment or other commercial purposes....” (Doc. 1-1 at  
12 4).

13 In accordance with the thorough injury-in-fact analysis in Judge Campbell’s order,  
14 the Court here finds that Plaintiff Ritzenthaler’s allegations fail to establish the required  
15 injury-in-fact to confer standing under Article III. The Court finds that Plaintiff’s  
16 allegations, which fail to show he ever visited Defendant’s property and state that he  
17 learned of a barrier through another source, are insufficient to show Plaintiff suffered an  
18 injury-in-fact. Plaintiff therefore lacks standing to pursue his claims in federal court.

### 19 **B. Remand to State Court**

20 The constraints of Article III “do not apply to state courts, and accordingly the  
21 state courts are not bound by the limitations of a case or controversy or other federal rules  
22 of justiciability even when they address issues of federal law.” *ASARCO Inc. v. Kadish*,  
23 490 U.S. 605, 617 (1989). A plaintiff who fails to establish Article III standing to bring  
24 suit in federal court is not necessarily barred from pursuing the same suit in state court.

25 Unlike more rigid Article III requirements, Arizona law affords trial courts  
26 discretion when addressing standing:

27 \_\_\_\_\_  
28 <sup>2</sup> The same date is alleged in both this and Judge Campbell’s case.

1 We have previously determined that the question of standing in Arizona is  
2 not a constitutional mandate since we have no counterpart to the “case or  
3 controversy” requirement of the federal constitution. In addressing the  
4 question of standing, therefore, we are confronted only with questions of  
5 prudential or judicial restraint. We impose that restraint to insure that our  
6 courts do not issue mere advisory opinions, that the case is not moot and  
7 that the issues will be fully developed by true adversaries. Our court of  
8 appeals has explained that these considerations require at a minimum that  
9 each party possess an interest in the outcome. Thus, the question of  
10 standing in Arizona cases such as this need not be determined by rigid  
11 adherence to the three-prong [federal test], although those factors may be  
12 considered.

13 *Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs. in Arizona*, 712 P.2d 914,  
14 919 (Ariz. 1985) (internal citations omitted); *see also Bennett v. Brownlow*, 119 P.3d 460,  
15 462 (Ariz. 2005) (standing can be waived by Arizona courts in rare circumstances).

16 Given the more flexible standing requirements of Arizona law, the Court here  
17 cannot be “absolutely certain” that Plaintiffs lack standing in state court. *Bell*, 922 F.2d  
18 at 1425. As a result, the Court will remand rather than dismiss this case for lack of  
19 standing. In remanding, the Court will not dismiss the federal ADA claims because state  
20 courts have concurrent jurisdiction over those claims and the state courts may decide  
21 whether Plaintiffs have sufficient standing to pursue them. *See Yellow Freight Sys., Inc.*  
22 *v. Donnelly*, 494 U.S. 820, 821 (1990) (“we conclude that Congress did not divest the  
23 state courts of their concurrent authority to adjudicate [civil actions brought under Title  
24 VII of the Civil Rights Act of 1964]”); *Hapgood v. City of Warren*, 127 F.3d 490, 494  
25 (6th Cir. 1997) (“State courts have concurrent jurisdiction over ADA claims”); *Jones v.*  
26 *Illinois Cent. R. Co.*, 859 F. Supp. 1144, 1145 (N.D. Ill. 1994) (interpreting *Yellow*  
27 *Freight*, “it necessarily follows that the state courts have concurrent jurisdiction over  
28 ADA claims as well”); *Krouse v. Am. Sterilizer Co.*, 872 F. Supp. 203, 205 (W.D. Pa.  
1994) (“it appears to be solidly established that state courts have concurrent jurisdiction  
over ADA cases”).

### C. Leave to Amend

1 In the Reply, Plaintiffs request leave to amend “[i]n the event the Court finds  
2 cause to deny Plaintiffs’ Motion to Dismiss Federal Claims and Motion to Remand.”  
3 (Doc. 11 at 9). By essentially granting Plaintiffs’ request to remand, albeit not for the  
4 reasons they presented, Plaintiffs’ request for leave to amend is rendered moot.  
5 Moreover, Plaintiffs failed to comply with the Local Rules of Practice in seeking leave to  
6 amend. *See* LRCiv 15.1(a) (requiring a party who moves for leave to amend to attach a  
7 copy of the proposed amended pleading as an exhibit to the motion). For these reasons,  
8 the Court will not consider Plaintiffs’ request for leave to amend.

#### 9 **D. Fees Resulting from Removal**

10 Defendant has requested its reasonable fees and costs incurred in removing this  
11 matter to federal court. Defendant argues here that Plaintiffs induced it “to incur the  
12 expense of removal (both by representing they intended to pursue their ADA claim and  
13 by refusing to dismiss the federal claim when prompted), only to change course  
14 immediately after the expenses were incurred, rendering the expenses pure waste.” (Doc.  
15 10 at 5-6). Defendant explains that Plaintiffs could have dismissed their federal claim  
16 before the removal deadline to avoid any wasted removal fees and costs. According to  
17 Defendant, Plaintiffs instead represented that they intended to pursue their federal claims.  
18 Relying on that representation, Defendant removed the case to federal court. Soon  
19 thereafter, Plaintiffs filed their motion to dismiss the federal claims and remand the  
20 matter back to state court.

21 Plaintiffs argue in response that Defendant’s counsel engaged in “gamesmanship”  
22 by informing Plaintiffs’ counsel that any defendant he represented in these parking space  
23 cases would remove the case to federal court where a federal claim is alleged. Plaintiffs  
24 claim they are force to either stipulate to dismissal of the federal claims in state court or  
25 litigate the case in federal court, which they sought to avoid.

26 28 U.S.C. § 1447(c) provides in pertinent part that “[a]n order remanding the case  
27 [to the State court] may require payment of just costs and any actual expenses, including  
28 attorney fees, incurred as a result of the removal.” “[A]bsent unusual circumstances,

1 attorney's fees should not be awarded when the removing party has an objectively  
2 reasonable basis for removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 136  
3 (2005). A fee award under § 1447(c) "is left to the district court's discretion, with no  
4 heavy congressional thumb on either side of the scales..." *Id.* at 139. That discretion,  
5 however, is guided by certain legal standards. *Id.* "[T]he standard for awarding fees  
6 should turn on the reasonableness of the removal." *Id.* at 141. The test for "awarding  
7 fees under § 1447(c) should recognize the desire to deter removals sought for the purpose  
8 of prolonging litigation and imposing costs on the opposing party" while also recognizing  
9 that parties make strategic choices in litigation. *Id.* at 140.

10 Here, although Plaintiffs had the initial right to choose the forum in which to file  
11 their Complaint, Defendant had the right to remove this action to federal court in light of  
12 the federal ADA claim presented. Plaintiffs knew from correspondence with Defendant's  
13 counsel that Defendant would remove any case with a federal claim. If Plaintiffs wanted  
14 to stay in state court, they could have stipulated to dismissal of the federal claim and  
15 litigated the corresponding state court claim in state court. Instead, Plaintiffs informed  
16 Defendant's counsel that they intended to pursue their federal claim, thus exposing  
17 themselves to likely removal. When Defendant in fact removed the case, Plaintiffs  
18 promptly moved to dismiss the federal claim, despite their prior representation that they  
19 intended to pursue the federal claim, and remand the case to state court. Plaintiffs'  
20 actions caused Defendant to unnecessarily incur fees for the removal.

21 Under these circumstances, had the Court considered and granted Plaintiffs'  
22 Motion to Dismiss Federal Claims with Prejudice and Motion to Remand to State Court  
23 as requested, the Court would have also granted Defendant the fees it incurred for the  
24 time between the removal and the remand. Plaintiffs' actions as outlined above would  
25 have warranted an award of fees to Defendant. Here, however, the Court, *sua sponte*,  
26 raised the issue of standing and found that Plaintiffs lack standing to present their claims  
27 in federal court. Consequently, the Court finds it would be unjust to award fees to  
28 Defendant when, regardless of Plaintiffs' conduct in filing the motion to dismiss the

1 federal claim, the Court on its own determined that Plaintiffs have no standing. In other  
2 words, even if Plaintiffs had not filed their motion to dismiss and remand after  
3 representing to Defendant that they intended to pursue their federal claim, the Court  
4 would have remanded the matter anyway based on a lack of standing. For these reasons,  
5 Defendant is not entitled to its fees associated with the remand.

6 Accordingly,

7 **IT IS ORDERED** directing the Clerk of Court to remand this action back to  
8 Maricopa County Superior Court.

9 **IT IS FURTHER ORDERED** that Plaintiffs’ Motion to Dismiss Federal Claims  
10 with Prejudice and Motion to Remand to State Court (Doc. 9), Plaintiffs’ Alternative  
11 Motion to Amend Complaint (Doc. 11) and Plaintiffs’ Motion to Strike Portions of  
12 Defendant’s Amended Response (Doc. 17) are **DENIED** as moot.

13 **Dated** this 28th day of November, 2016.

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17 Honorable Diane J. Humetewa  
18 United States District Judge  
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1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Advocates for Individuals With Disabilities  
10 LLC and David Ritzenthaler,

11 Plaintiffs,

12 v.

13 WSA Properties LLC,

14 Defendant.

No. CV-16-02375-PHX-DGC

**ORDER**

15  
16 Plaintiffs Advocates for Individuals with Disabilities (“AID”) and David  
17 Ritzenthaler filed a complaint against Defendant WSA Properties LLC in Maricopa  
18 County Superior Court. Doc. 1. The complaint alleges violations of both federal and  
19 state disabilities law, and Plaintiffs seek declaratory, injunctive, and monetary relief. *Id.*  
20 at 17-18. On July 15, 2016, Defendant removed the case to this Court, asserting that the  
21 Court has subject matter jurisdiction over Plaintiffs’ federal claims. Doc. 1. On  
22 August 15, 2016, the Court issued an order requiring Plaintiffs to show cause why this  
23 case should not be dismissed for lack of standing (“Order”). Doc. 13. After receiving an  
24 extension of time, Plaintiffs responded. Doc. 24. For the reasons that follow, the Court  
25 finds that Plaintiffs lack standing to pursue their claims in this Court. Because the  
26 standing analysis for state court differs from federal analysis, the Court will remand this  
27 case to state court.  
28



1 **I. Background.**

2 Attorneys Peter Strojnik and Fabian Zazueta have filed numerous claims against  
3 local businesses alleging violations of the Americans with Disabilities Act (“ADA”) and  
4 similar state statutes. Since March 2016, 162 of their cases have been filed in or removed  
5 to this Court.<sup>1</sup> These cases all appear to assert identical allegations – that the defendant  
6 business (the nature of which usually is not identified in the complaint) has violated the  
7 ADA by having inadequate signage or parking spaces for disabled persons.

8 Concerned about these very general allegations, the Court entered an order on  
9 August 15, 2016, requiring Plaintiffs to show why this case should not be dismissed for  
10 lack of standing. The Court noted:

11 Plaintiff [AID] makes no allegations in the complaint regarding its  
12 status, nature, or interest in this case. Plaintiff David Ritzenthaler alleges  
13 that he is legally disabled, that he has a state-issued handicapped license  
14 plate, and that, on or about March 15, 2016, he “became aware” that there  
15 were insufficient handicapped parking spaces and signage at Defendant’s  
16 place of business. Plaintiff does not allege that he personally visited  
17 Defendant’s business, but alleges that he will avoid visiting the business in  
18 the future unless it comes into compliance with the ADA.

19 Doc. 13 (citations omitted). Because these general allegations failed to show that  
20 Plaintiffs have “concrete and particularized” injuries that affect them “in a personal and  
21 individual way,” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 & n.1 (1992), the  
22 Court ordered Plaintiffs to file a memorandum showing standing by August 29, 2016.  
23 Instead, Plaintiffs filed a notice of settlement on August 26, 2016, and asked the Court to  
24 vacate the Order. Doc. 15. The Court declined, noting that this case has not been  
25 dismissed and that Plaintiffs have many other cases before the undersigned judge that  
26 present the same standing concerns. Doc. 18. The Court directed Plaintiffs to respond as  
27 ordered on August 29, 2016.

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28 <sup>1</sup> Fifty-eight of these complaints have been brought on behalf of AID. The remaining complaints are brought on behalf of either Advocates for American Disabled Individuals LLC or Advocates for Individuals with Disabilities Foundation Incorporated.



1 Plaintiffs instead filed a motion for an extension of time to respond, which the  
 2 Court granted. Doc. 20. Plaintiffs filed their response to the Order on September 12,  
 3 2016. Doc. 24. Plaintiffs addressed AID’s associational standing, said nothing about  
 4 Ritzenthaler’s standing, and stated that they intend to file an amended complaint or  
 5 supplemental pleading. *Id.* No motion to amend or supplement has been filed. *Id.*

## 6 **II. Article III Standing.**

7 “[T]o invoke the jurisdiction of the federal courts, a disabled individual claiming  
 8 discrimination must satisfy the case or controversy requirement of Article III by  
 9 demonstrating his standing to sue at each stage of the litigation.” *Chapman v. Pier 1*  
 10 *Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (en banc). “Federal courts are  
 11 required *sua sponte* to examine jurisdictional issues such as standing.” *Id.* at 954  
 12 (quotation marks, citation, and brackets omitted). After reviewing Plaintiffs’ response to  
 13 the Order, the Court finds that neither AID nor Ritzenthaler have Article III standing to  
 14 pursue this suit.

### 15 **A. AID Does Not Have Article III Standing.**

16 An organization can bring suit on its own behalf or on behalf of its members. *See*  
 17 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 169 (2000).  
 18 In its response to the Order, AID asserts that it has standing to sue on behalf of its  
 19 members; it claims no independent injury as an organization. Doc. 24 at 1.

20 The Supreme Court has established a three-part test for the standing of an  
 21 organization to sue on behalf of its members:

22 An association has standing to bring suit on behalf of its members when its  
 23 members would have standing to sue in their own right, the interests at  
 24 stake are germane to the organization’s purpose, and neither the claim  
 25 asserted nor the relief requested requires individual members’ participation  
 in the lawsuit.

26 *Friends of the Earth*, 528 U.S. at 169.<sup>2</sup>

---

27  
 28 <sup>2</sup> Because the Court finds that AID has not identified any member with standing to  
 sue in his or her own right, it need not consider the other prongs of this test.

1 To show that at least one of its members has standing to sue in his or her own  
2 right, AID must show that the member has suffered an injury-in-fact. Furthermore, “an  
3 organization suing as representative [must] include at least one member with standing to  
4 present, in his or her own right, the claim (or the type of claim) pleaded by the  
5 association.” *United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*,  
6 517 U.S. 544, 555 (1996).

7 The text of Plaintiffs’ response does not identify any members of AID, but a  
8 caption to one of its sections suggests that David Ritzenthaler is a member. Doc. 24 at 2.  
9 AID does nothing, however, to show that Ritzenthaler has suffered an injury-in-fact.  
10 Plaintiffs instead make a simple, conclusory assertion:

11 The lack of signage [at Defendant’s property] is a deterrent to disabled  
12 individuals’ (including members of AID who are identified and some not  
13 yet identified) use of the Lot, because it renders it more difficult for them to  
14 identify which, if any parking spots are van accessible. Members of AID  
15 would like to, and intends to use the Lot, but the lack of van-accessible  
16 signage that is at least 60 inches above the ground is a deterrent and barrier  
17 to access.

18 *Id.* AID also asserts that it has unidentified members who are disabled or have disabled  
19 children, and who reside in the greater Phoenix area. *Id.* at 2. These members allegedly  
20 “travel on the Valley’s streets” and “have lawful disability-parking plates or placards for  
21 their vehicles.” *Id.* AID provides no actual examples of such persons being deterred  
22 from using Defendant’s public accommodation because it lacks a sign that is 60 inches  
23 above the ground. AID offers only conclusory assertions.

24 AID has not shown that it has organizational standing to pursue this action. The  
25 discussion below shows that Ritzenthaler does not have standing, and AID has not  
26 identified any other members who “would have standing to sue in their own right.”  
27 *Friends of the Earth*, 528 U.S. at 169; *see also Payne v. Chapel Hill N. Properties, LLC*,  
28 947 F. Supp. 2d 567, 577 (M.D.N.C. 2013) (granting motion to dismiss for lack of  
standing when organization identified only one member in its complaint and was unable  
to show that she had standing to sue in her own right). AID may be an organization

1 interested in enforcement of disability discrimination laws, but an undifferentiated  
2 interest in ensuring compliance with the law does not suffice. *Lujan*, 504 U.S. at 575  
3 (citing *United States v. Richardson*, 418 U.S. 166, 176-77 (1974)); *see also Simon v. E.*  
4 *Kentucky Welfare Rights Org.*, 426 U.S. 26, 40 (1976) (“an organization’s abstract  
5 concern with a subject that could be affected by an adjudication does not substitute for  
6 the concrete injury required by” Article III).

7 **B. David Ritzenthaler Does Not Have Article III Standing.**

8 An individual plaintiff must satisfy three elements to establish Article III standing:  
9 (1) an injury-in-fact, (2) causation between the injury and the allegedly wrongful conduct,  
10 and (3) that the injury is likely to be redressed by a favorable decision from the court.  
11 *Lujan*, 504 U.S. at 560. Plaintiffs have the burden of proving all three elements. *Id.* at  
12 561. Plaintiffs correctly note that “[t]he Supreme Court has instructed us to take a broad  
13 view of constitutional standing in civil rights cases, especially where, as under the ADA,  
14 private enforcement suits are the primary method of obtaining compliance with the Act,”  
15 *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1039 (9th Cir. 2008), but this does not relieve a  
16 plaintiff of his burden to show an injury-in-fact, *see Chapman*, 631 F.3d at 946.

17 **1. Injury-In-Fact.**

18 An injury-in-fact is “(a) concrete and particularized, and (b) actual or imminent,  
19 not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 (internal quotations and citations  
20 omitted). This includes a “requirement that a party seeking review must allege facts  
21 showing that he is himself adversely affected.” *Sierra Club v. Morton*, 405 U.S. 727, 740  
22 (1972). Additionally, to establish standing to seek injunctive relief, a party must show  
23 that he “is likely to suffer future injury” absent the requested injunction. *City of Los*  
24 *Angeles v. Lyons*, 461 U.S. 95, 105 (1983).

25 Ritzenthaler alleges that on a particular date he “*became aware* that there were”  
26 ADA violations at Defendant’s business. Doc. 1 at 13 (emphasis added). The complaint  
27 alleges that Ritzenthaler has “actual knowledge of at least one barrier related to [his]  
28 disability[.]” *Id.* at 14. But the complaint does not allege how Ritzenthaler learned of the

1 alleged barrier, whether he has ever visited Defendant's business, whether he lives or  
2 travels anywhere near the business, or even whether he patronizes businesses of the same  
3 type. The complaint does not even identify the nature of Defendant's business. *Id.*  
4 Instead, consistent with the boilerplate nature of the complaint and apparently to cover  
5 the waterfront, the complaint alleges that Plaintiff may visit the site "for business,  
6 pleasure, medical treatment or other commercial purposes." *Id.* at 14. A photograph of  
7 Defendant's property attached to Plaintiffs' response suggests that the building houses an  
8 endocrinology medical practice. Doc. 24 at 6. The complaint does not allege that  
9 Ritzenthaler uses or needs an endocrinologist.<sup>3</sup>

10 Thus, this case squarely presents the question of whether Ritzenthaler must have  
11 personally visited Defendant's property to have standing to assert ADA violations. This  
12 question was raised in the Court's Order (Doc. 13 at 4), but Plaintiffs chose not to address  
13 it. The Court can only conclude that Ritzenthaler has not visited Defendant's business  
14 and seeks to establish standing merely on the basis of his second-hand knowledge of  
15 barriers. This is consistent with other cases attorney Peter Strojnik has litigated. *See,*  
16 *e.g., Brooke v. Peterson*, --- F.Supp.3d ---, 2016 WL 2851440, at \*2 (C.D. Cal. May 13,  
17 2016) ("Plaintiff never alleges or otherwise asserts that she has visited the hotels.");  
18 *Brooke v. Kalthia Grp. Hotels*, No. 15CV1873-GPC(KSC), 2015 WL 7302736, at \*5  
19 (S.D. Cal. Nov. 18, 2015) (Plaintiff called a hotel and learned it did not have a pool lift,  
20 but never visited the site). Although Plaintiffs' complete failure to address this issue has  
21 provided the Court with no assistance, the Court has reviewed relevant case law and  
22 concludes that Ritzenthaler cannot establish injury-in-fact.

23 In *Chapman*, the Ninth Circuit described the circumstances under which an ADA  
24 plaintiff experiences injury-in-fact:

25 \_\_\_\_\_  
26 <sup>3</sup> The complaint alleges that Ritzenthaler's "agents" verified that Defendant's  
27 property was not ADA compliant. *Id.* at 14. It does not identify these agents, but the  
28 Court assumes they are ADA experts like those used by attorney Peter Strojnik in other  
ADA cases. *See Brooke v. Peterson*, --- F.Supp.3d ---, 2016 WL 2851440, at \*2 (C.D.  
Cal. May 13, 2016); *Brooke v. Kalthia Grp. Hotels*, No. 15CV1873-GPC(KSC), 2015  
WL 7302736, at \*5 (S.D. Cal. Nov. 18, 2015).

1 Under the ADA, when a disabled person *encounters an accessibility*  
2 *barrier* violating its provisions, it is not necessary for standing purposes  
3 that the barrier completely preclude the plaintiff from entering or from  
4 using a facility in any way. Rather, the barrier need only interfere with the  
5 plaintiff's "full and equal enjoyment" of the facility. 42 U.S.C. § 12182(a).

6 \* \* \*

7 Of course, a "barrier" will only amount to such interference *if it affects the*  
8 *plaintiff's full and equal enjoyment of the facility* on account of his  
9 particular disability. Because the ADAAG establishes the technical  
10 standards required for "full and equal enjoyment," if a barrier violating  
11 these standards relates to a plaintiff's disability, it will impair the plaintiff's  
12 full and equal access, which constitutes "discrimination" under the ADA.  
13 That discrimination satisfies the "injury-in-fact" element of *Lujan*. As we  
14 have held, once a disabled plaintiff *has encountered a barrier* violating the  
15 ADA, "that plaintiff will have a 'personal stake in the outcome of the  
16 controversy' so long as his or her suit is limited to barriers related to that  
17 person's particular disability."

18 *Chapman*, 631 F.3d at 947 (emphasis added, footnote and some citations omitted).

19 Under this language, an ADA plaintiff must actually encounter a barrier to  
20 experience injury-in-fact. Such a requirement comports with the Article III demand that  
21 a plaintiff's injury be "concrete and particularized," "actual or imminent," and not  
22 "hypothetical," and that it "affect the plaintiff in a personal and individual way." *Lujan*,  
23 504 U.S. at 561 & n. 1.

24 Although Plaintiffs' counsel declined to address the issue in this case, they have  
25 argued in other cases, and appear to assert in the complaint, that mere knowledge of a  
26 barrier is enough to satisfy the injury-in-fact requirement, even if the plaintiff has never  
27 personally encountered the barrier. *See Brooke v. Kalthia Grp. Hotels*, 2015 WL  
28 7302736, at \*4-5. The Court does not agree. Under this theory, a disabled person in  
Arizona could learn of an architectural barrier at a facility in Tennessee which the person  
has never visited and never plans to visit, and yet would suffer an injury-in-fact by the  
mere knowledge. Such an injury, if it could be called an injury at all, would not be  
concrete, particularized, actual, or imminent. And even if the person firmly resolved that

1 he would never visit the Tennessee facility because of the barrier, any future injury from  
2 the barrier would be purely hypothetical.

3 In other cases, Plaintiffs' counsel have looked to language from several Ninth  
4 Circuit cases to argue that mere knowledge of a barrier is sufficient for ADA standing. It  
5 is true that these cases contain language stating that a plaintiff has suffered injury when  
6 he has "personally encountered *or had personal knowledge*" of discriminatory barriers.  
7 *Doran*, 524 F.3d at 1041 (emphasis added). But the context of these statements makes  
8 clear that they do not confer standing on Ritzenthaler in this case.

9 For example, in *Doran v. 7-Eleven, Inc.*, the plaintiff actually visited a particular  
10 7-Eleven store between 10 and 20 times, encountered discriminatory barriers, and was  
11 deterred from returning until the barriers were removed. *Id.* at 1037. The Ninth Circuit  
12 held that "Doran has suffered an injury that is concrete and particularized because he  
13 alleged in his amended complaint that he personally suffered discrimination as a result of  
14 the barriers in place during his visits to 7-Eleven and that those barriers have deterred  
15 him on at least four occasions from patronizing the store." *Id.* at 1040. The Ninth Circuit  
16 explained that this actual injury "gets him inside the courthouse door and brings his  
17 Article III case forward for our judicial evaluation." *Id.* 1041-42. The Ninth Circuit then  
18 had to decide "the scope of barriers that Doran may challenge." *Id.* at 1041. Was he  
19 limited to barriers he personally had encountered, or could he also challenge barriers he  
20 learned about during discovery? The court held that the additional barriers could be  
21 included in the lawsuit:

22 it is entirely plausible that the reason he did not know the full scope of 7-  
23 Eleven's ADA violations when he filed his complaint is that the violations  
24 he did know about deterred him from conducting further first-hand  
25 investigation of the store's accessibility. . . . [I]t would be ironic if not  
26 perverse to charge that the natural consequence of this deterrence, the  
27 inability to personally discover additional facts about the defendant's  
28 violations, would defeat that plaintiff's standing to challenge other  
violations at the same location that subsequently come to light.

*Id.* at 1042.



1 This holding makes practical sense. If a plaintiff has suffered an injury-in-fact by  
2 personally encountering a discriminatory barrier, he has standing to bring an ADA case in  
3 federal court. Once the case has been filed, it should address all barriers to the plaintiff's  
4 access that the defendant has erected. As the Ninth Circuit explained in *Chapman*, "an  
5 ADA plaintiff who has standing to sue because he has been discriminated against in one  
6 aspect of a public accommodation may, in one lawsuit, obtain an injunction to prevent  
7 impending discrimination throughout the accommodation." 631 F.3d at 952. *Chapman*  
8 emphasized that this holding "in no way relieves plaintiffs from the constitutionally  
9 imposed burden of demonstrating an injury-in-fact and a sufficient likelihood of repeated  
10 harm." *Id.* at 953.

11 The Court cannot conclude from cases like *Doran* or *Chapman* that a plaintiff  
12 suffers an injury-in-fact when he has never visited the defendant's property and merely  
13 learns of a barrier through another source. Ritzenthaler's unexplained knowledge of the  
14 alleged barriers in this case has injured him no more than the Arizonan who learns of an  
15 architectural barrier in Tennessee, as discussed above.

16 Other Ninth Circuit cases are consistent with this conclusion. In *Pickern v.*  
17 *Holiday Quality Foods Inc.*, 293 F.3d 1133, 1138 (9th Cir. 2002), the court found that the  
18 plaintiff had standing when he was deterred from returning to a Holiday Foods store in  
19 Paradise, California, which he had previously visited on several occasions. According to  
20 the court, "under the ADA, once a plaintiff has actually become aware of discriminatory  
21 conditions existing at a public accommodation, and is thereby deterred from visiting or  
22 patronizing that accommodation, the plaintiff has suffered an injury." *Id.* at 1136-37.  
23 The plaintiff need not make the "futile gesture" of returning to the store again. *Id.* The  
24 court did not make clear what was necessary to show actual awareness, but it is clear that  
25 the plaintiff's awareness in *Pickern* came from personally encountering the barriers:

26 [Plaintiff] has visited Holiday's Paradise store in the past and states that he  
27 has actual knowledge of the barriers to access at that store. [Plaintiff] also  
28 states that he prefers to shop at Holiday markets and that he would shop at  
the Paradise market if it were accessible. This is sufficient to establish

1 actual or imminent injury for purposes of standing.  
2 *Id.* at 1138. As another court has observed, *Pickern* “did not hold that an ADA plaintiff  
3 has standing if she is deterred from visiting a noncompliant place of accommodation even  
4 if she has never visited the accommodation.” *Brooke v. Peterson*, 2016 WL 2851440, at  
5 \*4.

6 In *D’Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1034 (9th Cir.  
7 2008), the Ninth Circuit found that a plaintiff had standing when she visited a Santa  
8 Barbara hotel and encountered multiple barriers to access. According to the plaintiff, she  
9 had plans to return to Santa Barbara and desired to stay at the hotel. *Id.* at 1037. The  
10 court found that the plaintiff need not “engage in the ‘futile gesture’ of visiting or  
11 returning to an inaccessible place of public accommodation in order to satisfy the  
12 standing requirement.” *Id.* While the court referred to “visiting or returning,” it is  
13 noteworthy that the facts of the case concerned an individual who had personally visited  
14 the public accommodation and encountered discriminatory barriers. The only question  
15 before the Ninth Circuit was whether the plaintiff had an intent to return sufficient to  
16 make her alleged injury “actual or imminent[.]” *Id.* at 1036. Because she did intend to  
17 return if the barriers were removed, the court found that she had standing. *Id.* at 1039.

18 Finally, the Court notes that the Central District of California recently addressed  
19 standing in a similar ADA case brought by Mr. Strojnik. *See Brooke v. Peterson*, 2016  
20 WL 2851440. The plaintiff in that case alleged that Best Western International violated  
21 the ADA by not having a lift in its pool and Jacuzzi. *Id.* at \*1. The plaintiff had never  
22 visited the defendant’s hotel, but instead alleged that she called the hotel and was told it  
23 was not equipped with a lift, which was then verified by her expert. *Id.* The court found  
24 this insufficient for standing:

25 Binding precedent supports that under any theory of standing, including the  
26 deterrent effect doctrine, an ADA plaintiff must have previously visited a  
27 noncompliant place of accommodation to have an injury-in-fact under  
28 Article III. Without ever visiting the hotels and encountering the barriers,  
Plaintiff’s injury is not particularized and concrete. And without ever  
visiting the hotels and encountering the barriers, Plaintiff’s injury is not



1 actual or imminent. Whether the case law requires Plaintiff to *encounter*  
2 the barriers or if it is enough that Plaintiff have *personal, percipient*  
3 *knowledge* of the barriers doesn't matter here, as Plaintiff has never even  
4 visited the hotels. Accordingly, without a "particular and concrete" and an  
5 "actual or imminent" injury, Plaintiff lacks standing under Article III to  
6 bring her ADA claims.

6 *Id.* at \*6 (emphasis in original, internal citations and quotations omitted).

7 Admittedly, *Pickern* and *D'Lil* do contain broad language that could be read to  
8 suggest that injury-in-fact occurs even when a plaintiff has never visited a facility,  
9 provided he would actually do so were he not deterred by discriminatory barriers. That  
10 was not the holding of *D'Lil* or *Pickern*, but even if such a broad reading were  
11 entertained, it would not help Ritzenthaler. As noted previously in this order, he provides  
12 no facts from which the Court can conclude that he has ever sought, for any reason, to  
13 visit Defendant's endocrinology office, or that he intends to do so in the future. The  
14 complaint does allege generally that "[t]he existence of barriers deters Plaintiff and other  
15 disabled persons from conducting business or returning to Defendant's Public  
16 Accommodation." Doc. 1 at 14. It also alleges that "Plaintiff, *or an agent of Plaintiff*,  
17 intends to return to Defendant's Public Accommodation to ascertain whether it remains in  
18 violation of the AzDA and the ADA." *Id.* at 15 (emphasis added). But these bare  
19 allegations, unsupported by any facts suggesting that Ritzenthaler himself intends to visit  
20 the property, are insufficient to satisfy even a broad reading of *D'Lil* and *Pickern*.

21 In determining whether a plaintiff's likelihood of visiting or returning to a facility  
22 is sufficient to confer standing, courts have examined factors such as "(1) the proximity  
23 of the place of public accommodation to plaintiff's residence, (2) plaintiff's past  
24 patronage of defendant's business, (3) the definitiveness of plaintiff's plans to return, and  
25 (4) the plaintiff's frequency of travel near defendant." *Harris v. Del Taco, Inc.*, 396 F.  
26 Supp. 2d 1107, 1113 (C.D. Cal. 2005) (citation and quotation marks omitted). These  
27 factors were specifically identified in the Court's Order (Doc. 13 at 2-3), but Ritzenthaler  
28 did not address them in his response. Doc. 24.

1 The Court concludes that Ritzenthaler has failed to show injury-in-fact. He  
2 therefore lacks standing to pursue his claims in federal court.<sup>4</sup>

### 3 2. Other Defects in Plaintiffs' Complaint.

4 The Ninth Circuit has also made clear that an ADA plaintiff must plead facts  
5 linking the defendant's discriminatory barriers to the plaintiff's injury. Merely listing  
6 ADA violations at the defendant's property "cannot substitute for the factual allegations  
7 required in the complaint to satisfy Article III's requirement of an injury-in-fact."  
8 *Chapman*, 631 F.3d at 955. A plaintiff must identify "how any of the alleged violations  
9 threatens to deprive him of full and equal access due to his disability if he were to  
10 return," or "how any of them deter him from visiting the [defendant's facility] due to his  
11 disability." *Id.*

12 Plaintiffs' complaint does not even identify the specific barriers that allegedly  
13 exist at Defendant's premises. It instead alleges only a list of possibilities:

14 insufficient handicapped parking spaces, insufficient designation or signage  
15 and or insufficient disbursement of such parking spaces in order to provide  
16 the "shortest accessible route from parking to an entrance", specifically but  
17 not limited to parking spaces by the designation "van accessible" and or  
18 fails to maintain the minimum height of 60 inches (1525 mm) above the  
finish floor or ground surface measured to the bottom of the sign.

19 Doc. 1 at 13. By using the word "or" and the phrase "and or" in this description, the  
20 complaint fails to identify which ADA violations allegedly exist at Defendant's property.  
21 The complaint continues: "[w]ithout the presence of adequate handicapped parking  
22 spaces, sufficient designation or signage and or sufficient disbursement of such parking  
23 spaces, Plaintiff's disability prevents Plaintiff and other disabled persons from equal  
24 enjoyment of the Defendant's Public Accommodation." *Id.* at 14. Again, the disjunctive  
25 nature of this list fails to specify barriers that have injured Ritzenthaler. As in *Chapman*,

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26  
27 <sup>4</sup> The Court is aware of other cases within this district that have reached a different  
28 conclusion. *See, e.g., Brooke v. Airport Hotel, LLC*, No. 2:15-CV-1149-HRH, 2015 WL  
5444286 (D. Ariz. Sept. 16, 2015). The Court respectfully disagrees with these decisions  
for the reasons set forth above.

1 the complaint “leaves the federal court to guess which, if any, of the alleged violations  
2 deprived him of the same full and equal access that a person who is not wheelchair bound  
3 would enjoy[.]” 631 F.3d at 955. Faced with this same defect in *Chapman*, the Ninth  
4 Circuit remanded with instructions to dismiss the complaint for lack of standing. The  
5 Court likewise concludes that Plaintiffs lack Article III standing.

### 6 **3. The Importance of Standing in These Cases.**

7 Article III’s injury-in-fact requirement is particularly relevant in this and related  
8 cases. As noted, Plaintiffs’ counsel have more than 160 cases pending in this Court.  
9 They reportedly have filed more than a thousand similar cases in state court.<sup>5</sup> These  
10 filings all appear to be based on the plaintiff’s awareness of a barrier – an awareness  
11 apparently acquired when persons associated with Plaintiffs’ counsel find non-compliant  
12 locations. The Court cannot conclude that this kind of mass-filing based on an agent’s  
13 search for non-compliant properties constitutes the individual, particularized injury  
14 necessary for Article III standing. As already noted, a mere interest in ensuring  
15 compliance with anti-discrimination laws is not sufficient. *Lujan*, 504 U.S. at 575.

### 16 **III. Leave to Amend or Supplement the Pleadings.**

17 Plaintiffs’ response states that they intend to amend or supplement their complaint,  
18 but they have not moved to amend despite the Court’s clear notice that it plans to rule on  
19 their standing. Doc. 24 at 3-6. Plaintiffs also suggest that they may remove their federal  
20 ADA claims by amendment and then seek remand to state court. Indeed, one section of  
21 their response is titled “Remand is Also Appropriate.” *Id.* at 5. Plaintiffs discuss a Ninth  
22 Circuit case in which the plaintiff eliminated federal claims and obtained a remand, and  
23 say this is “precisely what the Plaintiff and its counsel intend to do here.” *Id.* at 6.

24 If Plaintiffs did seek to amend their complaint in response to the Order, the Court  
25 would deny the request. A district court may deny leave to amend when it finds “undue  
26 delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure

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28 <sup>5</sup> See <http://kjzz.org/content/347212/group-targets-phoenix-area-businesses-flurry-ada-lawsuits> (last visited Sept. 27, 2016).

1 deficiencies by amendments previously allowed, undue prejudice to the opposing party  
2 by virtue of allowance of the amendment, futility of amendment, etc.” *Foman v. Davis*,  
3 371 U.S. 178, 182 (1962).

4 As already noted, Plaintiffs’ counsel has more than 160 ADA cases pending in this  
5 Court and hundreds more in state court. Mr. Strojnik has brought similar complaints in  
6 other districts, and they too have lacked standing. *See Brooke v. Peterson*, 2016 WL  
7 2851440; *Brooke v. Kalthia Grp. Hotels*, 2015 WL 7302736. Indeed, Mr. Strojnik  
8 brought more than 90 cases in the Central District of California. *Brooke v. Peterson*,  
9 2016 WL 2851440, at \*1.

10 The complaints in this Court appear to be boilerplate. *Compare* Doc. 1 with  
11 *Advocates for Individuals with Disabilities, LLC v. Home Depot USA Inc.*, Case 2:16-cv-  
12 01002-ROS, Doc. 1. The complaints make little effort to establish any real injury. *Id.*  
13 And Plaintiffs’ counsel apparently follow their boilerplate complaints with a demand that  
14 defendants each pay \$7,500 to settle. *See Ritzenthaler v. Stratis-Mesa Properties, LLC*,  
15 16-CV-01718-ROS, Doc. 15-1 at 3-6. These practices suggest an abuse of the judicial  
16 system.

17 Plaintiffs’ complaint in this case offers only conclusory statements about  
18 Plaintiffs’ alleged injuries, with no factual support. These deficiencies were explicitly  
19 noted in the Court’s Order. Doc. 13. And yet, despite four full weeks to prepare a  
20 response, Plaintiffs did not even discuss Ritzenthaler’s standing and alleged no injury to  
21 AID. These are matters Plaintiffs’ counsel should have considered carefully before filing  
22 these cases, and certainly before making settlement demands. *See* Fed. R. Civ. P. 11(b).  
23 There is no excuse for their inability to address them in response to the Order.<sup>6</sup>

24 But this is not the only indication that Plaintiffs’ counsel are taking their judicial  
25 responsibilities lightly. In three other cases pending before the undersigned judge,  
26 Plaintiffs’ counsel have failed to file timely Rule 26(f) reports despite a court order

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28 <sup>6</sup> Apparently, Mr. Strojnik’s failure to provide helpful input on ADA standing  
issues is not confined to this case. *See Brooke v. Peterson*, 2016 WL 2851440, at \*2-3.

1 directing them to initiate the Rule 26(f) conference and file the report by a specific  
2 deadline. *See* CV-16-1025, CV-16-2375, CV-16-2595. The Court’s staff has had to  
3 prompt Plaintiffs’ counsel to comply with this most basic of obligations. Two days ago,  
4 the Court’s staff was contacted four times in one day by staff members in Plaintiffs’  
5 counsel’s office to address various points of confusion in pending cases. And this is only  
6 with respect to cases pending before this judge. The Court does not know how Plaintiffs’  
7 counsel believe in good faith that they can discharge their duties to courts and their  
8 clients in hundreds of pending cases.

9         Given this conduct and Plaintiffs’ delay in providing any colorable response to the  
10 Court’s standing concerns, the Court would deny Plaintiffs leave to amend on the basis of  
11 undue delay, bad faith, and dilatory motive. *Foman*, 371 U.S. at 182.

#### 12 **IV. Remand.**

13         The removal statute provides that “[i]f at any time before final judgment it appears  
14 that the district court lacks subject matter jurisdiction [over a case removed from state  
15 court], the case shall be remanded.” 28 U.S.C.A. § 1447(c). This applies to cases that  
16 lack standing. *Polo v. Innoventions Int’l, LLC*, No. 14-55916, 2016 WL 4394586, at \*3  
17 (9th Cir. Aug. 18, 2016) (“a removed case in which the plaintiff lacks Article III standing  
18 must be remanded to state court under § 1447(c)”).

19         The Ninth Circuit has suggested that remand may not be necessary where it would  
20 be futile, that is, where the plaintiff clearly would lack standing in state court as well.  
21 *Bell v. City of Kellogg*, 922 F.2d 1418, 1424 (9th Cir. 1991). But the Supreme Court and  
22 Ninth Circuit have cast doubt on this possible course of action. The Supreme Court has  
23 noted that the literal words of § 1447(c), on their face, give no discretion to dismiss rather  
24 than remand an action. *Int’l Primate Prot. League v. Administrators of Tulane Educ.*  
25 *Fund*, 500 U.S. 72, 89 (1991) (internal quotation omitted). The Ninth Circuit has also  
26 noted that “the *Bell* rule has been questioned, and may no longer be good law.” *Polo*,  
27 2016 WL 4394586, at \*4; *see also Hill v. Vanderbilt Capital Advisors, LLC*, 702 F.3d  
28 1220, 1226 (10th Cir. 2012).

1 Even if the Court retains the ability to dismiss rather than remand, it would apply  
2 only where the court is “absolutely certain” that remand would be futile. *Bell*, 922 F.2d  
3 at 1425; *Maine*, 876 F.2d at 1054. That is not the case here. The constraints of Article  
4 III “do not apply to state courts, and accordingly the state courts are not bound by the  
5 limitations of a case or controversy or other federal rules of justiciability even when they  
6 address issues of federal law.” *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989). A  
7 plaintiff who fails to establish Article III standing to bring suit in federal court is not  
8 necessarily barred from pursuing the same suit in state court.

9 Unlike more rigid Article III requirements, Arizona law affords trial courts  
10 discretion when addressing standing:

11 We have previously determined that the question of standing in Arizona is  
12 not a constitutional mandate since we have no counterpart to the “case or  
13 controversy” requirement of the federal constitution. In addressing the  
14 question of standing, therefore, we are confronted only with questions of  
15 prudential or judicial restraint. We impose that restraint to insure that our  
16 courts do not issue mere advisory opinions, that the case is not moot and  
17 that the issues will be fully developed by true adversaries. Our court of  
18 appeals has explained that these considerations require at a minimum that  
19 each party possess an interest in the outcome. Thus, the question of  
20 standing in Arizona cases such as this need not be determined by rigid  
21 adherence to the three-prong [federal test], although those factors may be  
22 considered.

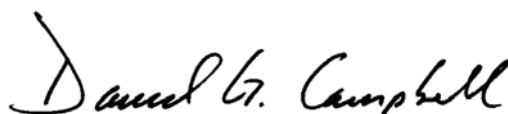
23 *Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs. in Arizona*, 712 P.2d 914,  
24 919 (Ariz. 1985) (internal citations omitted); *see also Bennett v. Brownlow*, 119 P.3d 460,  
25 462 (Ariz. 2005) (standing can be waived by Arizona courts in rare circumstances).

26 Given the more flexible standing requirements of Arizona law, the Court cannot  
27 be “absolutely certain” that Plaintiffs lack standing in state court. *Bell*, 922 F.2d at 1425.  
28 As a result, the Court will remand rather than dismiss this case. In remanding, the Court  
will not dismiss the federal ADA claims because state courts have concurrent jurisdiction  
over those claims and the state courts may decide Plaintiffs have sufficient standing to  
pursue them. *See Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 821 (1990) (“we

1 conclude that Congress did not divest the state courts of their concurrent authority to  
2 adjudicate [civil actions brought under Title VII of the Civil Rights Act of 1964]”);  
3 *Hapgood v. City of Warren*, 127 F.3d 490, 494 (6th Cir. 1997) (“State courts have  
4 concurrent jurisdiction over ADA claims”); *Jones v. Illinois Cent. R. Co.*, 859 F. Supp.  
5 1144, 1145 (N.D. Ill. 1994) (interpreting *Yellow Freight*, “it necessarily follows that the  
6 state courts have concurrent jurisdiction over ADA claims as well”); *Krouse v. Am.*  
7 *Sterilizer Co.*, 872 F. Supp. 203, 205 (W.D. Pa. 1994) (“it appears to be solidly  
8 established that state courts have concurrent jurisdiction over ADA cases”).

9 **IT IS ORDERED** that this action is remanded to Maricopa County Superior  
10 Court.

11 Dated this 28th day of September, 2016.

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16 David G. Campbell  
17 United States District Judge  
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1 adequate signage or parking spaces for disabled persons. Since March 2016, more than  
2 160 such cases have been filed in or removed to this district court. Approximately one  
3 thousand such cases have been filed in the Arizona state court.

4 Here, AID is named in the caption but the body of the Verified Complaint appears  
5 to contain the allegations of a singular plaintiff, David Ritzenthaler, who is sometimes  
6 named as a co-plaintiff in AID's cases. Moreover, only Mr. Ritzenthaler's signature  
7 appears at the end of the Verified Complaint. No signature on behalf of AID is provided  
8 and there is no assertion that Mr. Ritzenthaler is a member of AID who is acting on the  
9 organization's behalf.

10 Plaintiff Ritzenthaler alleges that "Defendant's Public Accommodation has  
11 barriers of access to disabled individuals by virtue of inadequacy of handicapped parking  
12 spaces, insufficient designation or signage and or insufficient disbursement of such  
13 parking spaces, notwithstanding that such modifications are readily achievable." (Doc. 1-  
14 1 at 4). Ritzenthaler alleges that he suffers from a disability and has a state issued license  
15 plate or placard authorizing him to park in designated handicapped parking spaces. He  
16 alleges that on March 15, 2016, he "became aware" of Defendant's violations and has  
17 "actual knowledge of at least one barrier" related to his disability such that he and others  
18 similarly situated are deterred from visiting Defendant's business. (*Id.* at 5-6).  
19 Ritzenthaler further alleges that "[a]s a result of Defendant's non-compliance with the  
20 AZDA and the ADA, Plaintiff will avoid and not visit Defendant's Public  
21 Accommodation in the future unless and until all AZDA and ADA violations have been  
22 cured." (*Id.* at 6). He seeks declaratory relief, injunctive relief, monetary damages, and  
23 attorney's fees and costs.

## 24 **II. DISCUSSION**

25 Given the large number of similar cases filed by Plaintiffs, several other judges in  
26 this district have issued decisions on issues common to many of the cases. In the interest  
27 of maintaining consistency among rulings in similar cases within the district, this Court  
28 has reviewed several of the other judges' decisions and has considered them here to

1 decide the pending motions. In particular, in a very similar case brought by Plaintiffs  
2 AID and Mr. Ritzenthaler, District Judge Campbell wrote a thorough and well-reasoned  
3 decision addressing Plaintiffs' Article III standing. (CV-16-02375-PHX-DGC at Doc.  
4 27). Similarly, in CV-16-02413-PHX-GMS at Doc. 28, District Judge Snow wrote a  
5 comprehensive decision resolving a nearly identical motion to dismiss federal claims and  
6 remand to state court as the one before this Court. Relying on the analyses in those cases,  
7 this Court recently issued its own Order (Doc. 20 in CV 16-2169-PHX-DJH) in a nearly  
8 identical case and in the same procedural posture as this case. Accordingly, as the  
9 following discussion reflects, the Court reaches the same result here.

#### 10 **A. Standing**

11 “[T]o invoke the jurisdiction of the federal courts, a disabled individual claiming  
12 discrimination must satisfy the case or controversy requirement of Article III by  
13 demonstrating his standing to sue at each stage of the litigation.” *Chapman v. Pier 1*  
14 *Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9<sup>th</sup> Cir. 2011) (en banc). “Federal courts are  
15 required *sua sponte* to examine jurisdictional issues such as standing.” *Id.* at 954  
16 (citation, internal quotation marks and brackets omitted).

17 Although the parties did not address the issue of standing in their filings, the Court  
18 must satisfy itself that Plaintiffs have standing to maintain this action before proceeding.  
19 Because the Complaint in this action is nearly identical to the Verified Complaint in the  
20 case recently decided by this Court, the same analysis applies here. (Compare Doc. 1-1  
21 at 3-10 of this case with Doc. 1-1 at 1-8 of case no. CV 16-2169-PHX-DJH).

22 Applying that analysis, this Court concludes that neither Plaintiff AID nor Plaintiff  
23 Ritzenthaler has standing under Article III to maintain this action. Regarding AID, an  
24 organization can bring an action on its own behalf or on behalf of its members. *See*  
25 *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 169 (2000).  
26 “An association has standing to bring suit on behalf of its members when its members  
27 would have standing to sue in their own right, the interests at stake are germane to the  
28 organization's purpose, and neither the claim asserted nor the relief requested requires

1 individual members' participation in the lawsuit." *Id.*

2 As referenced above, AID alleges no independent injury as an organization. Thus,  
3 the only possible basis for AID to have standing is to have brought this action on behalf  
4 of its members. The Complaint, however, does not allege that the action is brought on  
5 behalf of any members of AID. In addition, no members of AID are identified in the  
6 Complaint. In the section of the Complaint that identifies the parties, only Mr.  
7 Ritzenthaler is identified as a plaintiff and he does not allege that he is a member of  
8 AID.<sup>1</sup> (Doc. 1-1 at 3). Nor does he allege membership in AID anywhere else in the body  
9 of the Complaint. Absent any allegations of independent harm to the organization, and  
10 absent any allegations that this action was brought on behalf of any members of AID, the  
11 Court finds that Plaintiff AID has failed to demonstrate organizational standing under  
12 Article III.

13 With regard to Plaintiff Ritzenthaler, an individual must satisfy three elements to  
14 establish Article III standing: (1) an injury-in-fact, (2) causation between the injury  
15 alleged and the allegedly wrongful conduct, and (3) that the injury is likely to be  
16 redressed by a favorable decision from the court. *Lujan v. Defenders of Wildlife*, 504  
17 U.S. 555, 560 (1992). Plaintiffs have the burden to establish all three elements. *Id.* at  
18 561. An injury-in-fact is "(a) concrete and particularized, and (b) actual or imminent, not  
19 conjectural or hypothetical." *Id.* at 560 (internal quotations and citations omitted). This  
20 includes a "requirement that a party seeking review must allege facts showing that he is  
21 himself adversely affected." *Sierra Club v. Morton*, 405 U.S. 727, 740 (1972).

22 Like the Complaint in CV 16-2169-PHX-DJH, and as noted above, Ritzenthaler  
23 here alleges that on March 15, 2016,<sup>2</sup> he "became aware" of Defendant's violations and  
24 has "actual knowledge of at least one barrier" related to his disability such that he and

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25  
26 <sup>1</sup> Even if the Complaint alleged that Mr. Ritzenthaler was a member of AID, the  
27 organization would not have standing. For the reasons discussed below, Ritzenthaler  
28 does not have standing to sue in his own right. Consequently, a required element for  
organizational standing would still be missing.

<sup>2</sup> The same date is alleged in both cases.

1 others similarly situated are deterred from visiting Defendant’s business. (Doc. 1-1 at 2-  
2 4). But, as Judge Campbell explained in his recent order, “the complaint does not allege  
3 how Ritzenthaler learned of the alleged barrier, whether he has ever visited Defendant’s  
4 business, whether he lives or travels anywhere near the business, or even whether he  
5 patronizes businesses of the same type.” (CV 16-2375-PHX-DGC, doc. 27 at 6). The  
6 same is true here. Indeed, Plaintiff fails to even identify the nature of Defendant’s  
7 business. Instead, Plaintiff merely alleges that he has the right to visit Defendant’s  
8 business “in the future, for business, pleasure, medical treatment or other commercial  
9 purposes....” (Doc. 1-1 at 6).

10 Accordingly, in accordance with this Court’s Order in CV 16-2169-PHX-DJH,  
11 Plaintiff Ritzenthaler’s allegations fail to establish the required injury-in-fact to confer  
12 standing under Article III. The Court finds that Plaintiff’s allegations, which fail to show  
13 he ever visited Defendant’s property and state that he learned of a barrier through another  
14 source, are insufficient to show Plaintiff suffered an injury-in-fact. Plaintiff therefore  
15 lacks standing to pursue his claims in federal court.

### 16 **B. Remand to State Court**

17 The constraints of Article III “do not apply to state courts, and accordingly the  
18 state courts are not bound by the limitations of a case or controversy or other federal rules  
19 of justiciability even when they address issues of federal law.” *ASARCO Inc. v. Kadish*,  
20 490 U.S. 605, 617 (1989). A plaintiff who fails to establish Article III standing to bring  
21 suit in federal court is not necessarily barred from pursuing the same suit in state court.

22 Unlike more rigid Article III requirements, Arizona law affords trial courts  
23 discretion when addressing standing:

24 We have previously determined that the question of standing in Arizona is  
25 not a constitutional mandate since we have no counterpart to the “case or  
26 controversy” requirement of the federal constitution. In addressing the  
27 question of standing, therefore, we are confronted only with questions of  
28 prudential or judicial restraint. We impose that restraint to insure that our  
courts do not issue mere advisory opinions, that the case is not moot and  
that the issues will be fully developed by true adversaries. Our court of

1 appeals has explained that these considerations require at a minimum that  
2 each party possess an interest in the outcome. Thus, the question of  
3 standing in Arizona cases such as this need not be determined by rigid  
4 adherence to the three-prong [federal test], although those factors may be  
5 considered.

6 *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Arizona*, 712 P.2d 914,  
7 919 (Ariz. 1985) (internal citations omitted); *see also Bennett v. Brownlow*, 119 P.3d 460,  
8 462 (Ariz. 2005) (standing can be waived by Arizona courts in rare circumstances).

9 Given the more flexible standing requirements of Arizona law, the Court here  
10 cannot be “absolutely certain” that Plaintiffs lack standing in state court. *Bell*, 922 F.2d  
11 at 1425. As a result, the Court will remand rather than dismiss this case for lack of  
12 standing. In remanding, the Court will not dismiss the federal ADA claims because state  
13 courts have concurrent jurisdiction over those claims and the state courts may decide  
14 whether Plaintiffs have sufficient standing to pursue them. *See Yellow Freight Sys., Inc.*  
15 *v. Donnelly*, 494 U.S. 820, 821 (1990) (“we conclude that Congress did not divest the  
16 state courts of their concurrent authority to adjudicate [civil actions brought under Title  
17 VII of the Civil Rights Act of 1964]”); *Hapgood v. City of Warren*, 127 F.3d 490, 494  
18 (6th Cir. 1997) (“State courts have concurrent jurisdiction over ADA claims”); *Jones v.*  
19 *Illinois Cent. R. Co.*, 859 F. Supp. 1144, 1145 (N.D. Ill. 1994) (interpreting *Yellow*  
20 *Freight*, “it necessarily follows that the state courts have concurrent jurisdiction over  
21 ADA claims as well”); *Krouse v. Am. Sterilizer Co.*, 872 F. Supp. 203, 205 (W.D. Pa.  
22 1994) (“it appears to be solidly established that state courts have concurrent jurisdiction  
23 over ADA cases”).

### 24 **C. Leave to Amend**

25 In the Reply, Plaintiffs request leave to amend “[i]n the event the Court finds  
26 cause to deny Plaintiffs’ Motion to Dismiss Federal Claims and Motion to Remand.”  
27 (Doc. 10 at 9). By essentially granting Plaintiffs’ request to remand, albeit not for the  
28 reasons they presented, Plaintiffs’ request for leave to amend is rendered moot.  
Moreover, Plaintiffs failed to comply with the Local Rules of Practice in seeking leave to

1 amend. *See* LRCiv 15.1(a) (requiring a party who moves for leave to amend to attach a  
2 copy of the proposed amended pleading as an exhibit to the motion). For these reasons,  
3 the Court will not consider Plaintiffs' request for leave to amend.

#### 4 **D. Fees Resulting from Removal**

5 Defendant has requested its reasonable fees and costs incurred in removing this  
6 matter to federal court. Defendant argues here that Plaintiffs induced it "to incur the  
7 expense of removal (both by representing they intended to pursue their ADA claim and  
8 by refusing to dismiss the federal claim when prompted), only to change course  
9 immediately after the expenses were incurred, rendering the expenses pure waste." (Doc. 9  
10 at 6). Defendant explains that Plaintiffs could have dismissed their federal claim before  
11 the removal deadline to avoid any wasted removal fees and costs. According to  
12 Defendant, Plaintiffs instead represented that they intended to pursue their federal claims.  
13 Relying on that representation, Defendant removed the case to federal court. Soon  
14 thereafter, Plaintiffs filed their motion to dismiss the federal claims and remand the  
15 matter back to state court.

16 Plaintiffs argue in response that Defendant's counsel engaged in "gamesmanship"  
17 by informing Plaintiffs' counsel that any defendant he represented in these parking space  
18 cases would remove the case to federal court where a federal claim is alleged. Plaintiffs  
19 claim they are force to either stipulate to dismissal of the federal claims in state court or  
20 litigate the case in federal court, which they sought to avoid.

21 28 U.S.C. § 1447(c) provides in pertinent part that "[a]n order remanding the case  
22 [to the State court] may require payment of just costs and any actual expenses, including  
23 attorney fees, incurred as a result of the removal." "[A]bsent unusual circumstances,  
24 attorney's fees should not be awarded when the removing party has an objectively  
25 reasonable basis for removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 136  
26 (2005). A fee award under § 1447(c) "is left to the district court's discretion, with no  
27 heavy congressional thumb on either side of the scales..." *Id.* at 139. That discretion,  
28 however, is guided by certain legal standards. *Id.* "[T]he standard for awarding fees



1 should turn on the reasonableness of the removal.” *Id.* at 141. The test for “awarding  
2 fees under § 1447(c) should recognize the desire to deter removals sought for the purpose  
3 of prolonging litigation and imposing costs on the opposing party” while also recognizing  
4 that parties make strategic choices in litigation. *Id.* at 140.

5 Here, although Plaintiffs had the initial right to choose the forum in which to file  
6 their Complaint, Defendant had the right to remove this action to federal court in light of  
7 the federal ADA claim presented. Plaintiffs knew from correspondence with Defendant’s  
8 counsel that Defendant would remove any case with a federal claim. If Plaintiffs wanted  
9 to stay in state court, they could have stipulated to dismissal of the federal claim and  
10 litigated the corresponding state court claim in state court. Instead, Plaintiffs informed  
11 Defendant’s counsel that they intended to pursue their federal claim, thus exposing  
12 themselves to likely removal. When Defendant in fact removed the case, Plaintiffs  
13 promptly moved to dismiss the federal claim, despite their prior representation that they  
14 intended to pursue the federal claim, and remand the case to state court. Plaintiffs’  
15 actions caused Defendant to unnecessarily incur fees for the removal.

16 Under these circumstances, had the Court considered and granted Plaintiffs’  
17 Motion to Dismiss Federal Claims with Prejudice and Motion to Remand to State Court  
18 as requested, the Court would have also granted Defendant the fees it incurred for the  
19 time between the removal and the remand. Plaintiffs’ actions as outlined above would  
20 have warranted an award of fees to Defendant. Here, however, the Court, *sua sponte*,  
21 raised the issue of standing and found that Plaintiffs lack standing to present their claims  
22 in federal court. Consequently, the Court finds it would be unjust to award fees to  
23 Defendant when, despite Plaintiffs’ questionable conduct in filing the motion to dismiss  
24 the federal claim, the Court on its own determined that Plaintiffs have no standing. In  
25 other words, even if Plaintiffs had not filed their motion to dismiss and remand after  
26 representing to Defendant that they intended to pursue their federal claim, the Court  
27 would have remanded the matter anyway based on a lack of standing. For these reasons,  
28 Defendant is not entitled to its fees associated with the remand.

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Accordingly,

**IT IS ORDERED** directing the Clerk of Court to remand this action back to Maricopa County Superior Court.

**IT IS FURTHER ORDERED** that Plaintiffs’ Motion to Dismiss Federal Claims with Prejudice and Motion to Remand to State Court (Doc. 7), Plaintiffs’ Alternative Motion to Amend Complaint (Doc. 10) and Plaintiffs’ Motion to Strike Portions of Defendant’s Amended Response (Doc. 13) are **DENIED** as moot.

**Dated** this 29th day of November, 2016.

  
\_\_\_\_\_  
Honorable Diane J. Humetewa  
United States District Judge

1 NOT FOR PUBLICATION  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Advocates for Individuals with Disabilities  
10 Foundation Incorporated,

11 Plaintiff,

12 v.

13 Smith's Food & Drug Centers Incorporated,

14 Defendant.  
15

No. CV-16-02711-PHX-JJT

**ORDER**

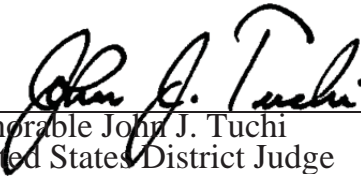
16 This Court has reviewed the Order in CV-16-2375-PHX-DGC concluding after  
17 exhaustive analysis that Plaintiff lacked standing under Article III of the Constitution of  
18 the United States to pursue their claims in federal court, and remanding to the Superior  
19 Court of Arizona in and for Maricopa County. Upon review and consideration of the  
20 pleadings in this matter, the Court concludes, upon the identical basis as Judge Campbell  
21 ruled in CV-16-2375, that Plaintiff here lacks Article III standing to pursue its claims in  
22 federal court.

23 IT IS THEREFORE ORDERED *sua sponte* remanding this case to Maricopa  
24 County Superior Court.

25 IT IS FURTHER ORDERED denying as moot Defendant's Motion to Consolidate  
26 Cases (Doc. 19).  
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1 IT IS FURTHER ORDERED vacating the Rule 16 Scheduling conference  
2 presently set in this matter for Monday, October 31, 2016. The Clerk of Court shall close  
3 this matter.

4 Dated this 28th day of October, 2016.

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7 Honorable John J. Tuchi  
8 United States District Judge  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Advocates for Individuals With Disabilities  
Foundation, Inc.,

Plaintiff,

v.

Smith’s Food & Drug Centers Incorporated,

Defendant.

No. CV-16-02706-PHX-DGC

**ORDER**

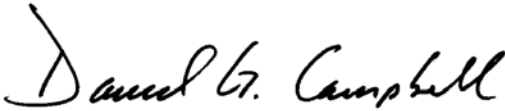
On August 15, 2016, the Court issued orders requiring Plaintiffs to show cause why *Advocates for Individuals with Disabilities Foundation, Inc. v. Greenfield Plaza, LLC*, CV16-2361-PHX-DGC (“Greenfield Plaza”), and *Advocates for Individuals with Disabilities, LLC, et al. v. WSA Properties, LLC*, CV16-2375-PHX-DGC (“WSA”), should not be dismissed for lack of standing. Before Plaintiffs filed their response in either case, the Court informed their counsel that “[s]everal cases with the same plaintiffs are pending before the Court, and the order to show cause is relevant to the Court’s *sua sponte* inquiry into standing in those cases.” CV16-2375, Doc. 18. Plaintiffs filed responses in Greenfield Plaza and WSA that were virtually identical. *Compare* Greenfield Plaza, Doc. 17 *with* WSA, Doc. 24.

“Federal courts are required *sua sponte* to examine jurisdictional issues such as standing.” *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954 (9th Cir. 2011) (en banc) (quotation marks, citation, and brackets omitted). The Court has reviewed the

1 complaint in this case and finds that it is substantially the same as the complaints in  
2 Greenfield Plaza and WSA. For the reasons set forth at length in the Court's  
3 September 28, 2016 order in WSA (CV16-2375, Doc. 27), the Court concludes that (a)  
4 Plaintiff lacks standing in this case, and (b) this case should be remanded to state court.

5 **IT IS ORDERED** that this action is remanded to Maricopa County Superior  
6 Court.

7 Dated this 29th day of September, 2016.

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12 David G. Campbell  
13 United States District Judge  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Advocates for Individuals With Disabilities  
10 LLC, *et al.*,

11 Plaintiffs,

12 v.

13 Smith's Food & Drug Centers Incorporated,

14 Defendant.  
15

No. CV-16-01586-PHX-JJT

**ORDER**

16 This Court has reviewed the Order in CV-16-2375-PHX-DGC concluding after  
17 exhaustive analysis that Plaintiff lacked standing under Article III of the Constitution of  
18 the United States to pursue their claims in federal court, and remanding to the Superior  
19 Court of Arizona in and for Maricopa County. Upon review and consideration of the  
20 pleadings in this matter, the Court concludes, upon the identical basis as Judge Campbell  
21 ruled in CV-16-2375, that Plaintiffs here lack Article III standing to pursue their claims  
22 in federal court.

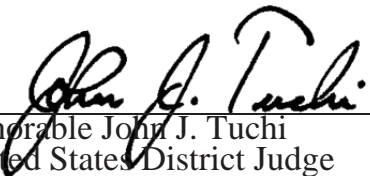
23 IT IS THEREFORE ORDERED *sua sponte* remanding this case to Maricopa  
24 County Superior Court.

25 IT IS FURTHER ORDERED denying as moot Defendant's Motion to Consolidate  
26 Cases (Doc. 20).  
27  
28



1 IT IS FURTHER ORDERED vacating the Rule 16 Scheduling conference  
2 presently set in this matter for Monday, October 31, 2016. The Clerk of Court shall close  
3 this matter.

4 Dated this 28th day of October, 2016.

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7 Honorable John J. Tuchi  
8 United States District Judge  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 Advocates for American Disabled  
Individuals LLC, et al.,

No. CV-16-02141-PHX-GMS

10 Plaintiffs,

**ORDER**

11 v.

12 Price Company,

13 Defendant.  
14

15 On September 1, 2016, this Court issued an Order for the Plaintiffs to Show Cause  
16 as to why this case should not be dismissed for lack of standing. (Doc. 20.) For the  
17 following reasons, the Court remands the case to state court.

18 **BACKGROUND**

19 Defendant Price Company (“Costco”) had signs noting which handicapped  
20 parking spots were “van accessible.” (Doc. 23 at 2.) However, these signs were posted  
21 lower than 60 inches above the ground. (Doc. 22 at 2.) Therefore, the signs were not in  
22 compliance with the Americans with Disabilities Act (“ADA”). (*Id.*) The Plaintiffs claim  
23 that the lower signage made it more difficult to identify which parking spots were van  
24 accessible. (*Id.*) On September 14, Costco replaced the defective signs with signs located  
25 more than 60 inches off of the ground. (Doc. 23 at 10.)

26 Plaintiff Advocates for American Disabled Individuals (“Advocates”) does not  
27 make any allegations in the complaint regarding the nature of its interest in this  
28 proceeding. (Doc. 1.) In Plaintiff’s Response to the Order to Show Cause, Advocates

1 alleges that it has “several members/principals who are disabled individuals with mobility  
2 impairments,” including Ms. Shannon Puckett and Mr. David Ritzenthaler. (Doc. 22 at 1-  
3 2.) However, Advocates has yet to allege facts supporting the assertion that either Ms.  
4 Shannon Puckett or Mr. David Ritzenthaler qualifies as a member of its organization.  
5 (Doc. 1-2, Doc. 22.)

6 Plaintiff David Ritzenthaler is a legally disabled individual with a state issued  
7 handicapped license plate. (Doc. 1-2 at 3.) Mr. Ritzenthaler does not allege that he ever  
8 visited the Defendant’s parking lot. (Doc. 1-2.) Rather, he alleges that he “became aware”  
9 that its parking lot signage violated the Americans with Disabilities Act (ADA)  
10 requirements. (Doc. 1-2 at 1.) Likewise, Ms. Shannon Puckett alleges that at some point  
11 before September 8, 2016, she was informed that Costco’s signage was defective. (Doc.  
12 22-1 at 12.) It is unclear whether Ms. Puckett ever personally encountered the defective  
13 signage. There is a photograph of a receipt from a visit to the Defendant’s store attached  
14 as an exhibit to the Plaintiff’s Reply in Support of the Response to the Order to Show  
15 Cause. (Doc. 24-1 at 2.) However, the photograph of the receipt is not accompanied by  
16 any information that verifies that it belongs to Ms. Puckett or that the signs were  
17 defective at the time of the trip. (*Id.*) It is photographed in front of her statement claiming  
18 that “she has been informed” of defective signage at the Defendant’s parking lot. (*Id.*)

19 The Plaintiffs’ complaint follows the same format as countless other claims filed  
20 by the Plaintiffs’ counsel, Mr. Peter Strojnik. There are no specific fact allegations  
21 regarding the Defendant’s signs in the complaint itself. (Doc. 1-2 at 16.) The vague  
22 nature of the complaint led the court to issue an Order to Show Cause as to why the  
23 complaint should not be dismissed for lack of standing, as no injury to the Plaintiffs is  
24 apparent on the face of the complaint. (Doc. 1-2.)

## 25 DISCUSSION

### 26 I. The Plaintiff Does Not Have Standing to Pursue this Case.

27 “To invoke the jurisdiction of the federal courts, a disabled individual claiming  
28 discrimination must satisfy the case or controversy requirement of Article III by

1 demonstrating his standing to sue at each stage of litigation.” *Chapman v. Pier 1 Imports*  
2 *(U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (en banc). After reviewing Plaintiff’s  
3 response to the Order to Show Cause, hearing oral arguments, and reviewing the  
4 supplemental briefings, the Court concludes that neither Advocates nor Mr. Ritzenthaler  
5 has standing to pursue this suit.

6 To assert standing under Article III, a plaintiff must illustrate three elements: 1) an  
7 injury-in-fact, 2) causation between the injury and the allegedly wrongful conduct, and 3)  
8 the injury is likely redressable by the court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–  
9 561 (1992). The burden is on the plaintiff to establish that standing exists. *See id.* at 561  
10 (“The party invoking federal jurisdiction bears the burden of establishing these  
11 elements.”).

12 **A. David Ritzenthaler Cannot Pursue this Suit Because He Did Not**  
13 **Suffer an Injury-in-Fact.**

14 An injury-in-fact must be “(a) concrete and particularized and (b) actual or  
15 imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 (internal citations and  
16 quotations omitted). To show particularity, the “party seeking review must allege facts  
17 showing that he is himself adversely affected.” *Sierra Club v. Morton*, 405 U.S. 727, 740  
18 (1972). To be concrete, an injury must be “real, and not abstract.” *Spokeo, Inc. v. Robins*,  
19 136 S. Ct. 1540, 1549 (2016) (internal quotations and citations omitted).

20 The ADA provides a means for disabled individuals to vindicate their right to  
21 frequent a business with “the full and equal enjoyment” of its facilities. 42 U.S.C.  
22 § 12182(a). The statute provides that if an individual is denied that right, he is entitled to  
23 injunctive relief. 42 U.S.C. § 12188(a). However, “Article III standing requires a concrete  
24 injury even in the context of a statutory violation.” *Spokeo*, 136 S. Ct. at 1544.

25 In ADA cases, a plaintiff experiences a concrete injury-in-fact when “a disabled  
26 person *encounters an accessibility barrier* violating its provisions.” *Chapman v. Pier 1*  
27 *Imports (U.S.) Inc.*, 631 F.3d 939, 947 (9th Cir. 2011) (emphasis added). The barrier does  
28 not need to completely hinder the plaintiff’s ability to enter or use the facility, but it must

1 “interfere with the plaintiff’s ‘full and equal enjoyment’ of the facility.” *Id.* (quoting 42  
2 U.S.C. § 12182(a)).

3 Mr. Ritzenthaler cannot assert standing in this case because he never suffered an  
4 injury-in-fact. Nothing in Mr. Ritzenthaler’s complaint or subsequent pleadings alleges  
5 that Mr. Ritzenthaler personally encountered the barrier in question. (Doc. 1-2.) The  
6 complaint merely alleges that “Plaintiff has actual knowledge of at least one barrier  
7 related to third party disabled individuals” on the Defendant’s property. (*Id.* at 12.)

8 Contrary to Mr. Ritzenthaler’s assertions, mere knowledge of the Defendant’s lack  
9 of signage is insufficient to show injury-in-fact. In *Pickern v. Holiday Quality Foods Inc.*,  
10 the Ninth Circuit found that a plaintiff who had visited the defendant’s grocery store in  
11 the past had standing to bring an ADA claim based on the barriers he personally  
12 encountered as well as the barriers that he did not have the chance to encounter during his  
13 visit. 293 F.3d 1133, 1138 (9th Cir. 2002). That case did not involve a situation where, as  
14 here, the plaintiff never frequented the defendant’s establishment prior to filing suit. *Id.*

15 **B. Advocates Cannot Assert Standing on Behalf of Ms. Shannon**  
16 **Puckett or Mr. David Ritzenthaler.**

17 Nonprofit organizations may file lawsuits on behalf of their members even if they  
18 do not have members in the traditional sense. *See Sierra Ass’n for Env’t v. F.E.R.C.*, 744  
19 F.2d 661, 662 (9th Cir. 1984) (allowing a California corporation to file suit as an  
20 unincorporated association due to the presence of federal question jurisdiction). However,  
21 in these situations, a nonprofit must still allege sufficient facts to show that a purported  
22 member “possess[es] many indicia of membership—enough to satisfy the purposes that  
23 undergird the concept of associational standing: that the organization is sufficiently  
24 identified with and subject to the influence of those it seeks to represent as to have a  
25 personal stake in the outcome of the controversy.” *Oregon Advocacy Ctr. v. Mink*, 322  
26 F.3d 1101, 1111 (9th Cir. 2003) (internal quotations and citations omitted).

27 The Supreme Court provided examples of relevant “indicia of membership” in  
28 *Hunt. Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 344–45 (1977).

1 Key factors include whether the proposed constituency maintained control over who was  
2 elected to leadership of the association, if the proposed constituency was the only group  
3 that could serve on the leadership board, and whether the proposed constituency financed  
4 the association's activities (including litigation). *Id.* The analysis turns on whether the  
5 association "provides the means by which they express their collective views and protect  
6 their collective interests." *Id.*

7 Mr. Ritzenthaler and Advocates' complaint does not mention Advocates or a  
8 single purported member of Advocates by name. (Doc. 1-2.) In fact, Advocates' basis for  
9 injury remained unknown to the Court until it asserted associational standing through Mr.  
10 Ritzenthaler and Ms. Puckett in its Response to the Order to Show Cause. (Doc. 22 at 1.)  
11 The Response alleges that both individuals live in the Phoenix area, are motorists, and  
12 have disability-parking plates. (Doc. 22 at 2.) It does not allege that any of the indicia of  
13 membership listed above are present. (Doc. 22.)

14 Likewise, the supplemental briefing is devoid of any facts that could lead the  
15 Court to find that Mr. Ritzenthaler or Ms. Puckett is a member of Advocates. (Doc. 27.)  
16 The fact that Advocates "exists primarily to advance the purposes of the ADA through  
17 serial litigation," (Doc. 27 at 5), cannot support a finding of any indicia of membership.  
18 Additionally, Ms. Puckett's bare assertion that she is a member of Advocates is  
19 insufficient to support a finding "that the organization is sufficiently identified with and  
20 subject to the influence of those it seeks to represent as to have a personal stake in the  
21 outcome of the controversy." *Oregon Advocacy Ctr.*, 322 F.3d at 1111 (internal  
22 quotations and citations omitted).

23 Advocates had several opportunities to assert facts supporting that Ms. Puckett or  
24 Mr. Ritzenthaler are members of Advocates. Advocates' complete failure to assert any  
25 such facts despite these opportunities leads the Court to assume that no such facts exist.  
26 Therefore, Advocates cannot assert that it has associational standing to pursue this suit.

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## 1       **II.     Leave to Amend or Supplement the Pleadings**

2           Advocates' Response to the Order to Show Cause states that the "Plaintiff wishes  
3 to file for leave to amend the Complaint or file a Rule 15(d) supplemental pleading."  
4 (Doc. 22 at 3.) As of this moment, Advocates has not yet filed any such motion for leave.  
5 If Advocates did, this request would be denied.

6           A district court is permitted to deny leave to amend the pleadings when it finds  
7 "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to  
8 cure deficiencies by amendments previously allowed, undue prejudice to the opposing  
9 party by virtue of allowance of the amendment, futility of the amendment, etc." *Foman v.*  
10 *Davis*, 371 U.S. 178, 182 (1962).

11           Mr. Strojnik, Advocates' and Mr. Ritzenthaler's counsel, has more than 160 ADA  
12 cases currently pending in this Court, and his litigation tactics suggest an abuse of the  
13 court system. The complaints are largely identical. None of the complaints contain any  
14 specific factual allegations. (Doc. 1-2.) Instead, they each contain the same boilerplate  
15 language and assert vague, conclusory allegations. (*Id.*) Counsel relies on the use of  
16 clauses such as "and/or" to ensure that the form complaint may be used in multiple  
17 situations. (Doc. 1-2 at 3.) Counsel's decision to flood the court system with these  
18 vaguely worded form complaints rather than taking the time to fully develop their  
19 pleadings is incredibly concerning to the Court.

20           Furthermore, the Court allowed Advocates and Mr. Ritzenthaler several  
21 opportunities to supplement their allegations to show standing. Counsel had no less than  
22 three opportunities—in addition to the original complaint—to present facts that could  
23 establish standing. Therefore, any request to amend or file any additional supplemental  
24 pleadings will be denied.

## 25       **III.     Remand to State Court is the Proper Cure**

26           The removal statute instructs that "[i]f at any time before final judgment it appears  
27 that the district court lacks subject matter jurisdiction, the case shall be remanded." 28  
28 U.S.C. § 1447(c). The Ninth Circuit has implied that where a plaintiff would lack



1 standing in state court as well, a district court may dismiss the entire suit without remand.  
2 *See Bell v. City of Kellogg*, 922 F.2d 1418, 1424–25 (9th Cir. 1991) (“Where the remand  
3 to state court would be futile, however, the desire to have state courts resolve state law  
4 issues is lacking. We do not believe Congress intended to ignore the interest of efficient  
5 use of judicial resources.”) However, this should be applied only “where there is absolute  
6 certainty that remand would prove futile.” *Id.* at 1425 (internal citations and quotations  
7 omitted).

8 Arizona law does not impose the same standing requirements on parties that the  
9 federal Constitution does. *Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs. in*  
10 *Ariz.*, 148 Ariz. 1, 6, 712 P.2d 914, 919 (1985). Arizona’s standing doctrine requires only  
11 that “each party possess an interest in the outcome” to avoid issuing “mere advisory  
12 opinions.” *Id.* Arizona has held that standing can be waived entirely in certain  
13 circumstances. *See Bennett v. Brownlow*, 211 Ariz. 193, 196, 119 P.3d 460, 463 (2005)  
14 (noting that “[w]aiver of the standing requirement is the exception, not the rule.”).

15 Due to Arizona’s flexible standing doctrine, the Court cannot say that there is  
16 “absolute certainty” that Mr. Ritzenthaler’s or Advocates’ claims would be dismissed if  
17 they were remanded to state court. *Bell*, 922 F.2d at 1425. Therefore, remand to the state  
18 court is the appropriate action in this case. Furthermore, the Court will not dismiss the  
19 federal claims on remand because the state courts have concurrent jurisdiction to hear the  
20 claims. *See Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 821 (1990) (“[W]e  
21 conclude that Congress did not divest the state courts of their concurrent authority to  
22 adjudicate federal claims.”).

### 23 CONCLUSION

24 The Plaintiffs cannot assert that any individual suffered an injury-in-fact, and thus  
25 they lack the requisite standing to pursue this claim in federal court. Because there is a  
26 chance that these claims will be heard in state court, remand is the appropriate remedy.

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

Advocates for Individuals with Disabilities  
Foundation Incorporated,

Plaintiff,

v.

P.L. Tatum LLC,

Defendant.

No. CV-16-02708-PHX-SRB

**ORDER**

This Court concurs ruling with the in CV16-2375-PHX-DGC that Plaintiff lacks standing in this case;

IT IS ORDERED remanding this case to the Maricopa County Superior Court.

Dated this 7th day of October, 2016.



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Susan R. Bolton  
United States District Judge

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

Advocates for Individuals With Disabilities  
Foundation, Inc.,  
  
Plaintiff,  
  
v.  
  
Greenfield Plaza, LLC,  
  
Defendant.

No. CV-16-02361-PHX-DGC  
**ORDER**

On August 15, 2016, the Court issued orders requiring Plaintiffs to show cause why this case and *Advocates for Individuals with Disabilities, LLC, et al. v. WSA Properties, LLC*, CV16-2375-PHX-DGC (“WSA case”) should not be dismissed for lack of standing. *See* Doc. 8. Before Plaintiffs filed their response in the WSA case, the Court informed them that “[s]everal cases with the same plaintiffs are pending before the Court, and the order to show cause is relevant to the Court’s *sua sponte* inquiry into standing in those cases.” CV16-2375, Doc. 18. Plaintiffs filed a response in the WSA case that is virtually identical to the response in this case. *Compare* Doc. 17 with WSA case Doc. 24.

For the reasons set forth at length in the Court’s September 28, 2016 order in the WSA case (CV16-2375, Doc. 27), the Court concludes that (a) Plaintiff lacks standing in this case, and (b) this case should be remanded to state court. The Court is aware of the proposed amendment in this case (Doc. 19), but it would not make this case meaningfully

1 different from the complaint in the WSA case. Indeed, it would simply add the same  
2 individual plaintiff who has already appeared in the WSA case, and the same general  
3 allegations of standing that the Court has found plainly insufficient in that case.

4 **IT IS ORDERED** that this action is remanded to Maricopa County Superior  
5 Court.

6 Dated this 29th day of September, 2016.

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11 David G. Campbell  
12 United States District Judge  
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**IN THE UNITED STATES DISTRICT COURT**

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**FOR THE DISTRICT OF ARIZONA**

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9 Advocates for Individuals with Disabilities  
Foundation Incorporated,

No. CV-16-02413-PHX-GMS

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Plaintiff,

**ORDER**

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v.

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13 Golden Rule Properties LLC,

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14 Defendant.

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15 On August 25, 2016, this Court issued an Order for the Plaintiffs to Show Cause  
16 as to why this case should not be dismissed for lack of standing. (Doc. 22.) For the  
17 following reasons, the Court remands the case to state court, awards fees to the Defendant  
18 pursuant to 18 U.S.C. § 1447, and issues sanctions against the Plaintiff’s counsel  
19 pursuant to 28 U.S.C. § 1927.

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**BACKGROUND**

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21 Plaintiff Advocates for Individuals with Disabilities (“AID”) is a non-profit  
22 charitable organization that advocates for disabled individuals. It is represented by  
23 attorneys Peter Strojnik and Fabian Zazueta, who also make the decisions on behalf of  
24 the client. Part of AID’s strategy involves filing law suits against local businesses that  
25 violate the Americans with Disabilities Act (“ADA”) and similar state statutes. To date,  
26 162 of these claims have been filed in or removed to this Court, and approximately one  
27 thousand of such claims have been filed in state court. Each claim’s complaint contains  
28 the same general language alleging that the local business violated the ADA by having

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1 inadequate signage or parking spaces for disabled individuals.

2 AID filed a complaint against Defendant Golden Rule Properties LLC (“Golden  
3 Rule”) on June 9, 2016 in Maricopa County Superior Court. (Doc.1.) The complaint  
4 stated that Defendant Golden Rule’s parking lot failed to comply with the ADA and the  
5 Arizona Disability Act because it failed to “identify car parking spaces by the designation  
6 ‘van accessible’ and or fails to maintain the minimum height of 60 inches” above the  
7 floor. (Doc. 1, Ex. 1 at 5.)

8 The complaint does not allege that any disabled individual encountered the  
9 Defendant’s defective signage. Rather, it asserts that “Plaintiff, who is known to have a  
10 relationship or association with individuals with disabilities,” (Doc. 1, Ex. 1 at 5),  
11 investigated the Defendant’s business and found that it “was not accessible to persons  
12 with disabilities.” (*Id.*) Because these general allegations do not illustrate that AID has a  
13 “concrete and particularized” injury that affects it “in a personal and individual way,” the  
14 Court ordered AID to show cause why this case should not be dismissed for lack of  
15 standing.

16 Furthermore, AID’s pre- and post- removal conduct demonstrates an attempt to  
17 increase the costs of litigation to maximize Defendants desire to settle the suit due to the  
18 cost of defense. Because Golden Rule’s counsel had represented other defendants in  
19 cases brought by the Plaintiff and had defendants dismiss the federal claim immediately  
20 upon removal to federal court to require remand of the remaining state law disability  
21 claim to state court, Golden Rule reached out to AID and its counsel to determine their  
22 intent to proceed with the federal claim prior to initiating the removal process. (Doc. 22  
23 at 13.) Defense counsel suggested a willingness to stipulate to a dismissal of the federal  
24 court claim to avoid the incurred expense and time of removal, dismissal and remand.  
25 AID assured Golden Rule and its counsel that it intended to proceed with the federal  
26 claim. (*Id.*) Yet immediately following removal, AID moved to dismiss the federal claim.  
27 (*Id.*) In light of these events, the Court also ordered AID to show cause why AID should  
28 not bear the costs of removal and why its counsel should not be sanctioned for their



1 actions pursuant to 28 U.S.C. § 1927.

2 **DISCUSSION**

3 **I. Plaintiff Lacks Article III Standing, and Thus This Case is Remanded to**  
4 **State Court.**

5 “To invoke the jurisdiction of the federal courts, a disabled individual claiming  
6 discrimination must satisfy the case or controversy requirement of Article III by  
7 demonstrating his standing to sue at each stage of litigation.” *Chapman v. Pier 1 Imports*  
8 *(U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (en banc). After reviewing Plaintiff’s  
9 response to the Order to Show Cause, hearing oral arguments, and reviewing the  
10 supplemental briefings, the Court finds that AID does not have standing to pursue this  
11 suit.

12 An association may sue on behalf of one of its injured members if “(a) its  
13 members would otherwise have standing to sue in their own right; (b) the interests it  
14 seeks to protect are germane to the organization's purpose; and (c) neither the claim  
15 asserted nor the relief requested requires the participation of individual members in the  
16 lawsuit.” *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). This  
17 analysis also applies to situations where the organization does not have traditional  
18 “members,” provided that the purported constituency “possess[es] all of the indicia of  
19 membership” in an organization. *Id.* at 344.

20 **A. Plaintiff does not Allege Sufficient Facts to Assert that Either Ms.**  
21 **Puckett or Mr. Ritzenthaler is a Member of AID.**

22 Nonprofit corporations may file lawsuits on behalf of their members even if it  
23 does not have members in the traditional sense. *See Sierra Ass'n for Env't v. F.E.R.C.*,  
24 744 F.2d 661, 662 (9th Cir. 1984) (allowing a California corporation to file suit as an  
25 unincorporated association due to the presence of federal question jurisdiction). However,  
26 in these situations, a nonprofit must still allege sufficient facts to show that a purported  
27 member “possess[es] many indicia of membership—enough to satisfy the purposes that  
28 undergird the concept of associational standing: that the organization is sufficiently

1 identified with and subject to the influence of those it seeks to represent as to have a  
2 personal stake in the outcome of the controversy.” *Oregon Advocacy Ctr. v. Mink*, 322  
3 F.3d 1101, 1111 (9th Cir. 2003) (internal quotations and citations omitted).

4 The Supreme Court provided examples of relevant “indicia of membership” in  
5 *Hunt*. 432 U.S. at 344–45. Key factors include whether the proposed constituency  
6 maintained control over who was elected to leadership of the association, if the proposed  
7 constituency was the only group that could service on the leadership board, and whether  
8 the proposed constituency financed the association’s activities (including litigation). *Id.*  
9 The analysis turns on whether the association “provides the means by which they express  
10 their collective views and protect their collective interests.” *Id.*

11 The Plaintiff’s complaint does not mention a single individual member of AID by  
12 name. (Doc. 1, Ex. 1.) Rather, the complaint attempts to allege that the Plaintiff has a  
13 “close relationship” with all “former, current and future disabled individuals” due to its  
14 “charitable acts.” (Doc. 1, Ex. 1 at 3.) There is a total absence of specific facts to support  
15 these conclusory assertions. (*Id.*) Nothing in the complaint alleges that any of the indicia  
16 listed by the *Hunt* Court are present in this case. (*Id.*)

17 In its Response to the Order to Show Cause, the Plaintiff mentions two purported  
18 members, Ms. Shannon Puckett and Mr. David Ritzenthaler. However, the Plaintiff failed  
19 to assert a basis of membership for either individual. Instead, AID argued that any  
20 individual that tests a location for ADA compliance in connection with its serial lawsuits  
21 exerts influence over the litigation, and is thus a member. (Doc. 22 at 5.) Even if the  
22 Court could agree that participation as a tester amounts to exerting influence over  
23 litigation, this alone cannot be said to grant the tester “many indicia” of membership.  
24 *Oregon Advocacy Ctr.*, 322 F.3d at 1111. The Plaintiff again dodged the question in its  
25 Reply to the Order to Show Cause, stating that the question of membership “is not  
26 germane to the proceedings.” (Doc. 24 at 5.)

27 In the absence of demonstrating that either Ms. Puckett or Mr. Ritzenthaler have  
28 any indicia of membership, there is no basis on which AID may assert standing based on

1 their alleged injury. Further, as discussed below, even if Ms. Puckett and Mr. Ritzenthaler  
2 were members, AID may not rely on them to provide associational standing in this  
3 lawsuit.

4 **B. Neither Ms. Puckett nor Mr. Ritzenthaler Suffered an Injury-in-**  
5 **Fact, Thus Neither Can Provide AID with Associational Standing.**

6 An association may only assert standing on behalf of a member if the member has  
7 standing. *Hunt*, 432 U.S. at 343. For an individual member to have standing under Article  
8 III, he must satisfy three elements: 1) an injury-in-fact, 2) causation between the injury  
9 and the allegedly wrongful conduct, and 3) the injury is likely redressable by the court.  
10 *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). The burden is on the plaintiff to  
11 establish that standing exists. *See id.* (“The party invoking federal jurisdiction bears the  
12 burden of establishing these elements.”).

13 An injury-in-fact must be “(a) concrete and particularized and (b) ‘actual or  
14 imminent, not ‘conjectural’ or ‘hypothetical.’ ” *Lujan*, 504 U.S at 560 (internal quotations  
15 and citations omitted). This requires that “the party seeking review must allege facts  
16 showing that he is himself adversely affected.” *Sierra Club v. Morton*, 405 U.S. 727, 740  
17 (1972). In ADA cases, a plaintiff experiences an injury-in-fact when “a disabled person  
18 *encounters an accessibility barrier* violating its provisions.” *Chapman v. Pier 1 Imports*  
19 *(U.S.) Inc.*, 631 F.3d 939, 947 (9th Cir. 2011) (emphasis added). The barrier does not  
20 need to completely hinder the plaintiff’s ability to enter or use the facility, but it must  
21 “interfere with the plaintiff’s ‘full and equal enjoyment’ of the facility.” *Id.* (quoting 42  
22 U.S.C. § 12182(a)).

23 AID cannot assert standing on behalf of Ms. Puckett or Mr. Ritzenthaler because  
24 neither suffered an injury-in-fact. Nothing in AID’s complaint alleges that Ms. Puckett,  
25 Mr. Ritzenthaler, or any other member ever personally encountered the barrier in  
26 question. (Doc. 1, Ex. 1.) In fact, the complaint does not mention Ms. Puckett or Mr.  
27 Ritzenthaler at all. (*Id.*) The complaint merely alleges that “Plaintiff has actual  
28 knowledge of at least one barrier related to third party disabled individuals” on the

1 Defendant's property. (*Id.* at 6.) Likewise, a declaration filed by the Plaintiff establishes  
2 that Ms. Puckett was "informed" of the defective signage, but does not state that she ever  
3 actually encountered the defective signage. (Doc. 21-1 at 18.)

4 Contrary to Plaintiff's assertions, mere knowledge of the Defendant's lack of  
5 signage is insufficient to show injury-in-fact. In *Pickern v. Holiday Quality Foods Inc.*,  
6 the Ninth Circuit found that a plaintiff who had visited the defendant's grocery store in  
7 the past had standing to bring an ADA claim based on the barriers he personally  
8 encountered as well as the barriers that he did not have the chance to encounter during his  
9 visit. 293 F.3d 1133, 1138 (9th Cir. 2002). That case did not involve a situation where, as  
10 here, the plaintiff never frequented the defendant's establishment prior to filing suit. *Id.*  
11 In fact, none of the cases cited by the Plaintiff hold that an injury-in-fact occurs by virtue  
12 of the plaintiff's knowledge of a potential barrier. *See Pickern*, 293 F.3d at 1135 (plaintiff  
13 visited the store in question multiple times); *Chapman*, 631 F.3d at 943 (plaintiff  
14 frequented the defendant's store and personally encountered barriers that deprived him of  
15 "full and equal enjoyment of the facility."); *Houston v. Marod Supermarkets, Inc.*, 733  
16 F.3d 1323, 1326 (11th Cir. 2013) (plaintiff visited and encountered barriers to entry at a  
17 grocery store). Therefore, AID's vague assertions that it had "knowledge of at least one  
18 barrier" at the Defendant's parking lot is insufficient to establish that its members  
19 suffered an injury-in-fact, and thus AID does not have standing to pursue this case.

## 20 **II. Leave to Amend or Supplement the Pleadings**

21 The Plaintiff's Response to the Order to Show Cause states that the "Plaintiff  
22 wishes to file for leave to amend the Complaint or file a Rule 15(d) supplemental  
23 pleading." As of this moment, the Plaintiff has not yet filed any such motion for leave. If  
24 the Plaintiff did, this request would be denied.

25 District courts are permitted to deny leave when it finds "undue delay, bad faith or  
26 dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
27 amendments previously allowed, undue prejudice to the opposing party by virtue of  
28 allowance of the amendment, futility of the amendment, etc." *Foman v. Davis*, 371 U.S.

1 178, 182 (1962).

2 AID's counsel has more than 160 ADA cases currently pending in this Court. The  
3 complaints are largely identical. None of the complaints contain any specific factual  
4 allegations. (Doc. 1, Ex. 1.) Instead, they each contain the same boilerplate language and  
5 assert vague, conclusory allegations. (*Id.*) Counsel relies on the use of clauses such as  
6 "and/or" to ensure that the form complaint may be used in multiple situations. (Doc. 1,  
7 Ex. 1 at 6.) The complaint filed in this case even refers to the Defendant as a hotel,  
8 which it is not. (*Id.*) Given these facts alone, the Court would not grant leave to file an  
9 amendment.

10 However, permitting leave to file an amendment would also be futile in this case.  
11 As noted in the Defendant's Response to Show Cause, the Defendant remedied the  
12 alleged ADA violations and is now ADA compliant. (Doc. 22 at 12.) Apparently, neither  
13 Ms. Puckett nor Mr. Ritzenthaler visited the Defendant's property during the time that it  
14 was noncompliant. (Doc. 21-1 at 18.) Thus, they never encountered any barrier.  
15 Permitting an amendment to the complaint at this point would be futile. Neither purported  
16 member was injured by the noncompliance when it existed, and now that the  
17 noncompliance is remedied, no injury can occur. Therefore, the Plaintiff will not be  
18 granted leave to supplement or amend their complaint.

### 19 **III. Remand to State Court is Proper in This Case**

20 The removal statute instructs that "[i]f at any time before final judgment it appears  
21 that the district court lacks subject matter jurisdiction, the case shall be remanded." 28  
22 U.S.C. § 1447(c). The Ninth Circuit has implied that where a plaintiff would lack  
23 standing in state court as well, a district court may dismiss the entire suit without remand.  
24 *See Bell v. City of Kellogg*, 922 F.2d 1418, 1424–25 (9th Cir. 1991) ("Where the remand  
25 to state court would be futile, however, the desire to have state courts resolve state law  
26 issues is lacking. We do not believe Congress intended to ignore the interest of efficient  
27 use of judicial resources.") However, this should be applied only "where there is absolute  
28 certainty that remand would prove futile." *Id.* at 1425 (internal citations and quotations

1 omitted).

2 Arizona law does not impose the same standing requirements on parties that the  
3 federal Constitution does. *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in*  
4 *Arizona*, 148 Ariz. 1, 6, 712 P.2d 914, 919 (1985).

5 Due to Arizona's flexible standing requirements, the Court cannot say that there is  
6 "absolute certainty" that AID's claims would be dismissed if they were remanded to state  
7 court. *Bell*, 922 F.2d at 1425. Therefore, remand to the state court is the appropriate  
8 action in this case. Furthermore, the Court will not dismiss the federal claims on remand  
9 because the state courts have concurrent jurisdiction to hear the claims. *See Yellow*  
10 *Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 821 (1990) ("[W]e conclude that Congress  
11 did not divest the state courts of their concurrent authority to adjudicate federal claims.").

#### 12 **IV. Defendant is Awarded Fees Incurred Between Removal and Remand**

13 If an attorney "multiplies the proceedings in any case unreasonably and  
14 vexatiously," he "may be required by the court to satisfy personally the excess costs,  
15 expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. §  
16 1927. Attorneys may only be held personally liable for fees under Section 1927 if the  
17 attorney acted in bad faith. *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 436 (9th  
18 Cir. 1996). "Bad faith is present when an attorney knowingly or recklessly raises a  
19 frivolous argument, or argues a meritorious claim for the purpose of harassing an  
20 opponent." *Estate of Blas Through Chargualaf v. Winkler*, 792 F.2d 858, 860 (9th Cir.  
21 1986) (internal citations omitted).

22 In a similar fashion, Section 1447(c) permits district courts to assign "payment of  
23 just costs and any actual expenses, including attorney fees, incurred as a result of the  
24 removal" against a party if "at any time before final judgment it appears that the district  
25 court lacks subject matter jurisdiction." 28 U.S.C. § 1447. Assigning fees to a party is not  
26 the norm, but it is an available option in instances where "such an award is just." *Martin*  
27 *v. Franklin Capital Corp.*, 546 U.S. 132, 138 (2005).

28 ///



1           The standard for awarding fees against a party under Section 1447(c) does not  
2 require a finding of bad faith. Rather, the analysis in Section 1447(c) generally turns on  
3 the “reasonableness of the removal.” *Id.* at 141. The Supreme Court noted in *Martin* that  
4 district courts “retain discretion to consider whether unusual circumstances warrant a  
5 departure from the rule in a given case.”<sup>1</sup> *Id.* However, “discretion is not whim, and  
6 limiting discretion according to legal standards helps promote the basic principle of  
7 justice that like cases should be decided alike.” *Martin*, 546 U.S. at 139. The test for  
8 “awarding fees under § 1447(c) should recognize the desire to deter removals sought for  
9 the purpose of prolonging litigation and imposing costs on the opposing party” while also  
10 recognizing that parties make strategic decisions in litigation. *Id.* at 140.

11           In *Baddie v. Berkeley Farms, Inc.* the Ninth Circuit held that the plaintiffs should  
12 not have been sanctioned under the removal statute for dismissing their federal claims to  
13 ensure remand to the state court. 64 F.3d 487, 491 (9th Cir. 1995). There was no bad faith  
14 present in that case, as “there was nothing manipulative about that straight-forward  
15 tactical decision.” *Id.* *Baddie* stands for the proposition that a plaintiff is entitled to  
16 strategically “choose between federal claims and a state forum” without fear of being  
17 sanctioned. *Id.*

18           AID and its counsel cannot seek refuge under *Baddie*. Unlike the plaintiffs in  
19 *Baddie*, AID and its counsel affirmatively told opposing counsel that they had no  
20 intention of dismissing the federal claims if the Defendant removed the case.  
21 Furthermore, unlike the plaintiffs in *Baddie*, AID and its counsel have an established  
22 practice of misleading opposing counsel.

23           AID and its counsel have filed more than 1,000 lawsuits in the past year asserting  
24 identical state and federal claims in state court. (Doc. 22 at 11.) As expected from this  
25 high level of activity, this is not the first encounter Defendant’s counsel has had with

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27           <sup>1</sup> Notably, nothing in the *Martin* case stands for the proposition that a district court  
28 must leave the decision to sanction counsel for the state court to consider on remand.  
Thus, Plaintiff’s argument that a situation-specific footnote in *Baddie* appoints state court  
as the only appropriate forum for this determination is rejected. (Doc. 21 at 8.)



1 AID, Mr. Strojnik, and Mr. Zazueta. In both this case as well as *Advocates for Individuals*  
2 *with Disabilities Foundation, Incorporated v. Sun West Dental Properties, LLC*, Mr.  
3 Anderson sent a letter to AID’s counsel inquiring whether they intended to pursue their  
4 federal claims. *Compare* (Doc. 10 at 10) *with Advocates for Individuals with Disabilities*  
5 *Foundation, Incorporated v. Sun West Dental Properties, LLC*, 16-cv-02416-JJT, Doc. 8  
6 at 10. If not, Mr. Anderson inquired as to whether AID would be interested in stipulating  
7 to the dismissal of the federal claims to save both parties the costs of removal. *Id.* In both  
8 instances, AID’s counsel assured Mr. Anderson that they had no intention of dismissing  
9 their federal claims. (Doc. 10 at 13–16); *Advocates for Individuals with Disabilities*  
10 *Foundation, Incorporated v. Sun West Dental Properties, LLC*, 16-cv-02416-JJT, Doc. 8  
11 at 13–16. And in both instances, AID’s counsel promptly moved for dismissal of its  
12 federal claims upon notice of removal. AID had costs imposed against it for its behavior  
13 in *Sun West Dental Properties* two weeks prior to the hearing for the same behavior in  
14 this case. *Advocates for Individuals with Disabilities Foundation, Incorporated v. Sun*  
15 *West Dental Properties, LLC*, 16-cv-02416-JJT, Doc. 26.

16 AID and its counsel’s decisions to dismiss its federal claims under these  
17 circumstances are not “straight-forward tactical decision[s].” Rather, these decisions  
18 reflect expensive bait-and-switch maneuvers aimed at “prolonging litigation and  
19 imposing costs on the opposing party.” *Martin*, 546 U.S. at 140. Per Mr. Zazueta’s  
20 testimony at oral argument, these decisions are ultimately made by Mr. Zazueta and Mr.  
21 Strojnik. In this case the Court finds that the refusal to seek dismissal until after counsel  
22 had filed their motions for remand evinces a bad faith desire to “argue a meritorious  
23 claim for the purpose of harassing an opponent.” *Estate of Blas Through Chargualaf*, 792  
24 F.2d at 860. Therefore, the Court finds that counsel’s behavior justifies imposing “the  
25 excess costs, expenses, and attorneys’ fees reasonably incurred” due to counsel’s bad  
26 faith conduct. 28 U.S.C. § 1927.

27 Likewise, the Court finds that costs should be imposed against AID pursuant to  
28 Section 1447(c). AID is a serial litigant in these cases. It had to know that removal to

1 federal court would risk the dismissal of its claims unless it found a way to remand this  
2 case back to state court. The only certain route to state court involved a motion to dismiss  
3 AID's federal claims. Thus, AID knew when defense counsel approached that it would  
4 file a motion to dismiss the federal claims immediately after removal to federal court.  
5 AID knew, and yet its counsel intentionally told the Defendant that AID would not file  
6 such a motion if the case was removed. Defense counsel relied on that statement and  
7 incurred expenses to remove this case to federal court. AID's behavior was aimed at  
8 "imposing costs on the opposing party," and it is the exact sort of behavior that the  
9 *Martin* Court sought to deter. *Martin*, 546 U.S. at 140. Therefore, AID, Mr. Strojnik, and  
10 Mr. Zazueta are ordered jointly and severally to reimburse the Defendant for attorney's  
11 fees incurred between the removal and remand of this case. The Court will determine the  
12 amount of such reasonable fees upon submission by the attorney of an affidavit outlining  
13 his expenses for this period.

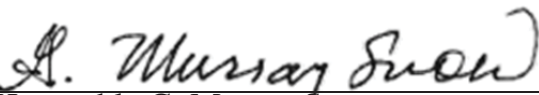
#### 14 CONCLUSION

15 The Plaintiff cannot assert that any individual suffered an injury-in-fact, and thus  
16 AID lacks the requisite standing to pursue this claim in federal court. Because there is a  
17 chance that these claims will be heard in state court, remand is the appropriate remedy.  
18 Furthermore, AID, Mr. Strojnik, and Mr. Zazueta will reimburse the Defendant's fees  
19 due to their bad faith behavior.

20 **IT IS THEREFORE ORDERED** directing the Clerk of Court to remand this  
21 action back to Maricopa County Superior Court.

22 **IT IS FURTHER ORDERED** that AID, Mr. Strojnik, and Mr. Zazueta shall  
23 reimburse the Defendant for attorney's fees acquired between the removal and remand of  
24 this case.

25 Dated this 13th day of October, 2016.

26   
27 Honorable G. Murray Snow  
28 United States District Judge

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

Advocates for Individuals With Disabilities  
Foundation, Inc., et al.,  
  
Plaintiffs,  
  
v.  
  
Globe 2007 PLB LLC, et al.,  
  
Defendants.

No. CV-16-02595-PHX-DGC  
**ORDER**

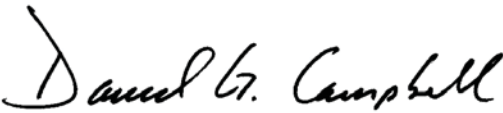
On August 15, 2016, the Court issued orders requiring Plaintiffs to show cause why *Advocates for Individuals with Disabilities Foundation, Inc. v. Greenfield Plaza, LLC*, CV16-2361-PHX-DGC (“Greenfield Plaza”), and *Advocates for Individuals with Disabilities, LLC, et al. v. WSA Properties, LLC*, CV16-2375-PHX-DGC (“WSA”), should not be dismissed for lack of standing. Before Plaintiffs filed their response in either case, the Court informed their counsel that “[s]everal cases with the same plaintiffs are pending before the Court, and the order to show cause is relevant to the Court’s *sua sponte* inquiry into standing in those cases.” CV16-2375, Doc. 18. Plaintiffs filed responses in Greenfield Plaza and WSA that were virtually identical. *Compare* Greenfield Plaza, Doc. 17 *with* WSA, Doc. 24.

“Federal courts are required *sua sponte* to examine jurisdictional issues such as standing.” *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954 (9th Cir. 2011) (en banc) (quotation marks, citation, and brackets omitted). The Court has reviewed the

1 complaint in this case and finds that it is substantially the same as the complaints in  
2 Greenfield Plaza and WSA. For the reasons set forth at length in the Court's  
3 September 28, 2016 order in WSA (CV16-2375, Doc. 27), the Court concludes that (a)  
4 Plaintiffs lack standing in this case, and (b) this case should be remanded to state court.

5 **IT IS ORDERED** that this action is remanded to Maricopa County Superior  
6 Court.

7 Dated this 29th day of September, 2016.

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12 David G. Campbell  
13 United States District Judge  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Advocates for Individuals With Disabilities  
Foundation, Inc.,  
  
Plaintiff,  
  
v.  
  
Gilbert Plaza, Inc.,  
  
Defendant.

No. CV-16-02426-PHX-DGC  
**ORDER**

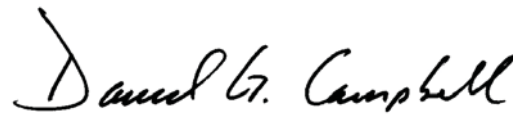
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“Federal courts are required *sua sponte* to examine jurisdictional issues such as standing.” *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954 (9th Cir. 2011) (en banc) (quotation marks, citation, and brackets omitted). The Court has reviewed the

1 complaint in this case and finds that it is substantially the same as the complaints in  
2 Greenfield Plaza and WSA. For the reasons set forth at length in the Court's  
3 September 28, 2016 order in WSA (CV16-2375, Doc. 27), the Court concludes that (a)  
4 Plaintiff lacks standing in this case, and (b) this case should be remanded to state court.

5 **IT IS ORDERED** that this action is remanded to Maricopa County Superior  
6 Court.

7 Dated this 29th day of September, 2016.

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12 David G. Campbell  
13 United States District Judge  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Advocates for Individuals With Disabilities  
10 LLC, *et al.*,

11 Plaintiffs,

12 v.

13 Smith's Food & Drug Centers Incorporated,

14 Defendant.  
15

No. CV-16-01586-PHX-JJT

**ORDER**

16 This Court has reviewed the Order in CV-16-2375-PHX-DGC concluding after  
17 exhaustive analysis that Plaintiff lacked standing under Article III of the Constitution of  
18 the United States to pursue their claims in federal court, and remanding to the Superior  
19 Court of Arizona in and for Maricopa County. Upon review and consideration of the  
20 pleadings in this matter, the Court concludes, upon the identical basis as Judge Campbell  
21 ruled in CV-16-2375, that Plaintiffs here lack Article III standing to pursue their claims  
22 in federal court.

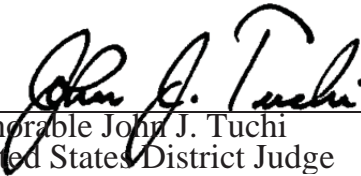
23 IT IS THEREFORE ORDERED *sua sponte* remanding this case to Maricopa  
24 County Superior Court.

25 IT IS FURTHER ORDERED denying as moot Defendant's Motion to Consolidate  
26 Cases (Doc. 20).  
27  
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1 IT IS FURTHER ORDERED vacating the Rule 16 Scheduling conference  
2 presently set in this matter for Monday, October 31, 2016. The Clerk of Court shall close  
3 this matter.

4 Dated this 28th day of October, 2016.

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7 Honorable John J. Tuchi  
8 United States District Judge  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Advocates for Individuals with Disabilities  
Foundation Incorporated,

Plaintiff,

v.

Dillon Real Estate Company Incorporated,

Defendant.


No. CV-16-02781-PHX-SRB

**ORDER**

This Court concurs with the ruling in CV16-2375-PHX-DGC that Plaintiff lacks standing in this case;

IT IS ORDERED remanding this case to the Maricopa County Superior Court.

Dated this 7th day of October, 2016.

  
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Susan R. Bolton  
United States District Judge

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

Advocates for Individuals with Disabilities  
Foundation Incorporated,

Plaintiff,

v.

Circle K Stores Incorporated,

Defendant.

No. CV-16-02458-PHX-ROS

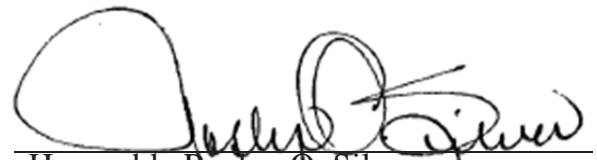
**ORDER**

On August 11, 2016, Defendant filed a motion to dismiss arguing Plaintiff lacks standing. (Doc. 8). Plaintiff did not file an opposition. Pursuant to Local Rule 7.2(i), Plaintiff's failure to file an opposition to the motion to dismiss will be "deemed a consent to the . . . granting of the motion." Therefore, the motion will be granted. A dismissal for lack of standing must be without prejudice. *Fleck & Assocs., Inc. v. City of Phoenix*, 471 F.3d 1100, 1106 (9th Cir. 2006).

Accordingly,

**IT IS ORDERED** the Motion to Dismiss (Doc. 8) is **GRANTED** and the Clerk of Court shall enter a judgment of dismissal without prejudice.

Dated this 16th day of September, 2016.



Honorable Roslyn O. Silver  
Senior United States District Judge

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

Advocates for Individuals With Disabilities  
Foundation, Inc.,

Plaintiff,

v.

Candlewood Industrial Park LLC,

Defendant.

No. CV-16-3016-PHX-DGC

**ORDER**

On August 15, 2016, the Court issued orders requiring Plaintiffs to show cause why *Advocates for Individuals with Disabilities Foundation, Inc. v. Greenfield Plaza, LLC*, CV16-2361-PHX-DGC (“Greenfield Plaza”), and *Advocates for Individuals with Disabilities, LLC, et al. v. WSA Properties, LLC*, CV16-2375-PHX-DGC (“WSA”), should not be dismissed for lack of standing. Before Plaintiffs filed their response in either case, the Court informed their counsel that “[s]everal cases with the same plaintiffs are pending before the Court, and the order to show cause is relevant to the Court’s *sua sponte* inquiry into standing in those cases.” CV16-2375, Doc. 18. Plaintiffs filed responses in Greenfield Plaza and WSA that were virtually identical. *Compare* Greenfield Plaza, Doc. 17 *with* WSA, Doc. 24.

“Federal courts are required *sua sponte* to examine jurisdictional issues such as standing.” *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954 (9th Cir. 2011) (en banc) (quotation marks, citation, and brackets omitted). The Court has reviewed the

1 complaint in this case and finds that it is substantially the same as the complaints in  
2 Greenfield Plaza and WSA. For the reasons set forth at length in the Court's  
3 September 28, 2016 order in WSA (CV16-2375, Doc. 27), the Court concludes that (a)  
4 Plaintiff lacks standing in this case, and (b) this case should be remanded to state court.

5 **IT IS ORDERED** that this action is remanded to Maricopa County Superior  
6 Court.

7 Dated this 29th day of September, 2016.

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12 David G. Campbell  
13 United States District Judge  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Advocates for Individuals With Disabilities  
Foundation, Inc.,  
  
Plaintiff,  
  
v.  
  
Baseline Plaza LLC,  
  
Defendant.

No. CV-16-3028-PHX-DGC  
**ORDER**

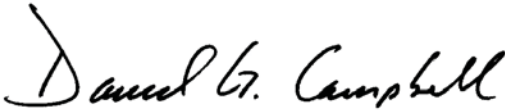
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Advocates for Individuals With Disabilities  
Foundation, Inc.,

Plaintiff,

v.

Arizona Industrial Properties,

Defendant.

No. CV-16-02943-PHX-DGC

**ORDER**

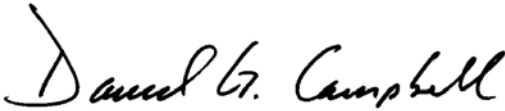
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# EXHIBIT I



3654 N. Power Road, Ste. 132  
 Mesa, Arizona 85215  
 (844) 346.6352  
*Attorneys for Plaintiff*  
 By: Clint G. Goodman, Bar No. 024188  
 Scott L. Potter, Bar No. 025157

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

Advocates for American Disabled Individuals,  
 LLC, and David Ritzenthaler;

Plaintiffs,

vs.

Gemini Business Park;

Defendant.

Case No. CV 2016-090503

**MOTION TO DISMISS AND REQUEST  
 FOR SANCTIONS**

Defendant Gemini Business Park, through its counsel, moves to dismiss Plaintiffs' complaint. Dismissal is appropriate because 1) Plaintiffs do not have standing to sue, and 2) because the complaint fails to state a claim upon which relief may be granted. Additionally, Defendant requests sanctions pursuant to A.R.S. 12-349 and Rule 11 of the Arizona Rules of Civil Procedure. At current count there are **247 known identical** complaints brought merely as a professional pawn in an ongoing scheme to bilk a profit from numerous defendants without substantial justification. This Motion is supported by the accompanying Memorandum of Points and Authorities, incorporated herein by this reference.



## MEMORANDUM OF POINTS AND AUTHORITIES

1  
2 Despite its beneficial purposes, the ADA has created a “cottage industry” of lawsuits involving  
3 professional plaintiffs and unscrupulous lawyers who file scores of cases to secure quick  
4 settlements. *Rodriguez v. Investco, L.L.C.*, 305 F. Supp 2d 1278, 1280-81 (M.D. Fla. 2004). Just in  
5 the last few months, this particular Plaintiff and its attorney have filed **247 cases (and counting) of**  
6 **identical cases with an identical purpose**—demanding \$5,000 to dismiss the ADA complaint.  
7 This case epitomizes the very real problem of cottage industry lawsuits intent on abusing the law to  
8 score a quick dollar.<sup>1</sup> This court should not allow Plaintiffs the courtesy of abusing the judicial  
9 system so freely. Like the Plaintiff in *Molski v. Mandarin Touch Restaurant*, 347 F. Supp 2d 860,  
10 863 (C. D. Cal. 2004), Plaintiffs here are “merely a professional pawn in an ongoing scheme to  
11 bilk attorney’s fees from the Defendant.” This case should be dismissed for numerous reasons, as  
12 follows:  
13  
14

### ARGUMENT

#### **I. Plaintiffs Lack Standing Because They Do Not Suffer Injury-In-Fact.**

15  
16  
17 To establish standing under Article III, the litigants must establish an “irreducible  
18 constitutional minimum of standing.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).  
19 This “irreducible constitutional minimum of standing” contains three elements: (1) plaintiffs  
20 suffered “injury in fact”; (2) the condition complained of caused the injury or threatened injury,  
21 and (3) the requested relief redressed the alleged injury. *Id* at 560-61. When examining whether  
22 plaintiffs suffered actual injury, the inquiry focuses on whether the injury-in-fact is (1) “concrete  
23 and particularized,” and (2) actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan*, 540  
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27  
28 <sup>1</sup> “Several recent cases analyzing the practices of serial ADA plaintiffs and their lawyers indicate that most cases can be settled for approximately \$5,000 in attorney’s fees along with an agreement to remediate the ADA violations alleged by the Plaintiff.” *Seeking Shelter from Abusive ADA Lawsuits*, BLaw, 2009. Very interestingly, **\$5,000 is exactly what these Plaintiffs** are requiring of defendants to dismiss this action.

1 U.S. at 560; *see also Fortyune v. American multiCinema, Inc.*, 364 F.3d 1075, 1081 (9<sup>th</sup> Cir. 2004).

2 The identified injury must be personal to the plaintiffs and cannot be theoretical or speculative.

3 *See Hoepfl v. Barlow*, 906 F. Supp 317, 322 (E.D. Va. 1995); *Doe v. National Board of Medical*  
4 *Examiners*, 199 F. 3d 146, 153 (3d Cir. 1999).

5 Here, the Plaintiff’s alleged injury is not an “injury in fact” because it is theoretical and  
6 speculative *at best*. Specifically, Plaintiffs claim that “[o]n or about 12/13/2015, Plaintiff **became**  
7 **aware** that there were insufficient handicapped parking spaces, insufficient designation or signage  
8 **and or** insufficient disbursement of such parking spaces...in that [the Defendant] fails to identify  
9 van parking spaces by the designation ‘van accessible’ ...”. Complaint at ¶10. (Emphasis added).  
10 The Plaintiffs’ lack of specificity is telling and establishes (and discussed further below) that this is  
11 simply a “form complaint” used by Plaintiffs and their attorneys in hundreds of other “cut and  
12 paste” actions they filed over the last several months. In every case Defendant reviewed thus far,  
13 the exact same Complaint is used by Plaintiffs. By their very nature, form pleadings cannot meet  
14 the “concrete and particularized” requirements of *Lujan*. This is especially true when the pleadings  
15 themselves are not specific.  
16  
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19 **II. Plaintiffs Lacks Standing Because They Lack Actual Knowledge.**

20 The right to bring ADA claims is not “unlimited.” First, Plaintiffs have standing to raise only  
21 ADA violations pertaining to their disability. *Brother v. CPL Investments*, 317 F. Supp. 2d 1358,  
22 1369 (S.D. Fla 2004). Second, standing is limited “only with respect to those barriers of which  
23 [Plaintiffs] had actual knowledge at the time their complaint was filed.” Nowhere in Plaintiffs’  
24 complaint do they allege **actual** knowledge. Nowhere in Plaintiffs’ complaint do they even state  
25 they personally visited the property! Indeed, considering the sheer number of form complaints  
26 Plaintiffs have brought in the last several months, with a demand that Defendants pay \$5,000 to  
27 dismiss the lawsuit, it is reasonable to conclude these actions are a scam.  
28

1 Stated differently, individual plaintiffs only have standing to sue over barriers that they  
2 personally encounter at a facility. *Moyer v. Walt Disney World*, 146 F. Supp 2d 1249 (M.D. Fla.  
3 2000). In *Moyer* the court held that the plaintiff had standing to sue over amusement park rides  
4 that he personally found to be inaccessible during his *actual* visit to the park but that he *did not*  
5 have standing to sue for things over which he lacked “actual notice.” The court went on to state  
6 that actual notice comes from an actual visit. *Id.* Here, nothing in the complaint leads us to  
7 believe, even assuming the allegations are true, that Plaintiffs have *actual notice* or even visited the  
8 property.  
9

### 10 **III. Plaintiffs Complaint Should Be Dismissed As The Allegations Are Not Credible.**

11 Allegations contained in a complaint, even if arguably sufficient to establish standing if  
12 believed, are not credible in light of a plaintiffs’ (and counsel’s) extensive litigation history. In  
13 *Brother v. CPL Investments*, 317 F. Supp 2d 1358, 1369 (S. D. Fla. 2004), the court dismissed  
14 (for lack of standing) the ADA suit of a “serial” plaintiff after it found that plaintiff’s “claim that  
15 he intended to patronize the [defendant’s] hotel prior to suit is not credible, nor are his claims that  
16 he intends to use the Ramada Limited in the future.” Similarly, in *Tiger Partner, LLC*, 331 F.  
17 Supp 2d 1368 at 1274-75, the court dismissed the ADA claim brought by the same plaintiff,  
18 observing that “to satisfy Article III’s standing requirements, Mr. Brother has professed an intent to  
19 return to all *fifty-four* of the properties he has sued,” which the court found was “simply  
20 implausible.” Emphasis added.  
21

22 Here, Plaintiffs do not allege their intent to return to Defendant in the future, a requirement  
23 both *Brother* and *Tiger Partners* found essential. But even if they did, the court should reject the  
24 claim as “simply implausible.” If the court easily concluded that return visits to *fifty-four*  
25 *properties* in the *Tiger Partner* case was “simply implausible” the court in this case can easily  
26 conclude it is *impossible* for these Plaintiffs to visit the *247 properties* this Plaintiff has filed in just  
27  
28

1 the last few months. **Exhibit A**, list of lawsuits involving this Plaintiff and its counsel. That all of  
2 these lawsuits are identical in every way is evidenced by the fact that each *form complaint* is a  
3 mirror of the next, using the exact same language in each instance. See **Exhibit B**, Comparison of  
4 eight (8) randomly pulled complaints from the 247.

#### 5 **IV. Plaintiffs Lack Standing Because They Do Not Plead With Specificity.**

6 “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as  
7 true, to ‘state a claim to relief that is plausible on its face.’” *Bell Atlantic Corp. v. Twombly*, 550  
8 U.S. 544, 570, 126 S. Ct. 2965 (2007). A claim has facial plausibility when the plaintiff pleads  
9 factual content that allows the court to draw the reasonable inference that the defendant is liable for  
10 the misconduct alleged. *Id.* Importantly, the “plausibility standard is not akin to a ‘probability  
11 requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.”  
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). “Where a complaint pleads facts  
13 that are ‘merely consistent with’ a defendant’s liability, it ‘stops short’ of the line between  
14 possibility and plausibility of ‘entitlement of relief.’” *Id.* This means that the complaint will not  
15 survive a motion to dismiss when the facts allege establish “the mere possibility of misconduct”  
16 rather than “show” the pleader is entitled to relief. *Id.* at 1950.

17 In *Ashcroft* all the complaint did was “suggest” injury occurred. *Id.* at 1952. Like *Ashcroft*, the  
18 allegations in this form complaint of “becoming aware,” “and or,” and “if” merely suggest injury  
19 occurred and thus fail to meet the standards of Rules 8 and 12(b)(6), Ariz. R. Civ. Proc.

#### 20 **V. Plaintiffs Never Requested An Accommodation.**

21 The Plaintiffs fail to state a claim upon which relief may be granted under Rule 12(b)(6), Ariz.  
22 R. Civ. Proc. To establish a *prima facie* case for violations of the ADA, the Plaintiff must show  
23 that the Defendant discriminated against plaintiff by failing to make requested reasonable  
24 modifications that were necessary to accommodate plaintiff’s disability. *Fortyune v. American*  
25  
26  
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28



1 *multiCinema, Inc.*, 364 F.3d 1075, 1082 (9<sup>th</sup> Cir. 2004). Plaintiffs never plead they were denied a  
2 reasonable accommodation or that they even requested one.

### 3 **REQUEST FOR SANCTIONS**

#### 4 **A.R.S. §12-349 and Rule 11 Sanctions are Appropriate**

5 This is another casualty in a long list of frivolous activity by cottage industry plaintiffs and  
6 attorneys bilking the system. In his most recent formal discipline, the State Bar suspended Mr.  
7 Strojnik for 30 days and placed him on probation for two years (effective September 20, 2011)  
8 because he, in part, filed “frivolous” pleadings that were “prejudicial to the administration of  
9 justice.” **Exhibit C**, Arizona State Bar Printouts And Reports. His most recent string of lawsuits  
10 serve no other purpose but to dupe defendants into paying money in the hopes they will not pay the  
11 defense costs required to dismiss frivolous pleadings. This kind of conduct cannot be encouraged  
12 and is the very reason laws like A.R.S. §12-349 and Rule 11 were implemented. The statute  
13 provides:  
14

- 15
- 16 A. Except as otherwise provided by and not inconsistent with another statute, in  
17 any civil action commenced or appealed in a court of record in this state, the  
18 court shall assess reasonable attorney fees, expenses and, at the court's  
19 discretion, double damages of not to exceed five thousand dollars against an  
20 attorney or party, including this state and political subdivisions of this state, if  
21 the attorney or party does any of the following:
- 22 1. Brings or defends a claim without substantial justification.
  - 23 2. Brings or defends a claim solely or primarily for delay or harassment.
  - 24 3. Unreasonably expands or delays the proceeding.
  - 25 4. Engages in abuse of discovery.

26 As demonstrated above, this lawsuit is clearly without merit. If the analysis was to stop here a  
27 request for sanctions would be unwarranted. But the analysis does not stop there. This lawsuit is  
28 just one of 247 suits recently filed by Peter Strojnik and his client. His client in this action,  
Advocates for American Disabled Individuals, LLC, was only formed on January 4, 2016. Since  
then, with the help of Mr. Strojnik, has filed 115 *identical* lawsuits of discrimination on behalf of

1 the LLC and David Ritzenthaler.<sup>2</sup> Just recently, on March 24, 2016, a new LLC was formed,  
2 Advocates for Individuals with Disabilities, LLC. This new LLC and that same client, David  
3 Ritzenthaler, filed another 133 *identical*<sup>3</sup> lawsuits for discrimination, presumably using the  
4 settlement monies received from their first round to fund the filing fees for second tidal wave.  
5 Exhibit A, Lawsuit List; **Exhibit D**, Corporation Commission Filings.

6  
7 This action was brought as just one of about 247 known attempts to swindle the system.  
8 Upon information and belief, there are more, or will be more, lawsuits filed using the same form  
9 complaint and the same or similar LLCs. Seldom is there found a clearer example of an action  
10 brought “without substantial justification.” Seldom is there found a clearer example of an attempt  
11 to use the judicial system as a scapegoat to defraud and dupe defendants out of money. Mr.  
12 Strojnik did not learn important lessons from past disciplinary actions and this court should  
13 ensure sanctions as severe as necessary to protect future victims like the Defendant.  
14

### 15 CONCLUSION

16 For the above reasons, Defendant respectfully requests this action be dismissed with prejudice  
17 and sanctions be awarded against Plaintiffs and/or its attorneys pursuant to A.R.S. §12-349 and Rule  
18 11.  
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27 <sup>2</sup> Upon information and belief, Defendant alleges each of the approximate 247 complaints are identical based  
28 on its comparison of pleadings filed in 8 random samplings. *See* Exhibit B, comparison of eight (8) random pleading  
examples.

<sup>3</sup> *Id.*

1 DATED this 30<sup>th</sup> day of March, 2016.

2 GOODMAN LAW OFFICES, P.C.

3 /s/ Clint G. Goodman

4 \_\_\_\_\_  
5 Clint G. Goodman, Esq.  
6 Scott L. Potter, Esq.

7 **ORIGINAL** of the foregoing e-filed this same day with:

8 The Clerk of the Court

9 **COPY** mailed this same day to:

10 Peter Strojnik, Esq.  
11 7373 E Doubletree Ranch, Suite B-165  
12 Scottsdale, AZ 85258  
13 4521ejensenstreet@aadi.org  
14 *Attorney for Plaintiff*

15 /s/ Clint G. Goodman

16 By: \_\_\_\_\_



# EXHIBIT J

1 Peter Strojnik, State Bar No. 6464  
2 **STROJNIK P.C.**  
3 1 East Washington Street  
4 Suite 500  
5 Phoenix, AZ 85004  
6 Telephone: (774) 768-2234  
7 *Attorney for Plaintiffs*

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

10 ADVOCATES FOR INDIVIDUALS  
11 WITH DISABILITIES FOUNDATION,  
12 INC., a charitable non-profit foundation;  
13 DAVID RITZENTHALER, an individual;  
14 JASON MATTHEW THOMAS, an  
15 individual; DANNY TAYLOR THOMAS,  
16 an individual;

17 Plaintiffs,

18 vs.

19 Consolidated Defendants; Mark Brnovich,  
20 in his official capacity as Attorney General;

21 Defendants;

22 vs.

23 State of Arizona, *ex rel.* Mark Brnovich;

24 Defendant-Intervenor.

Case No. CV2016-090506,  
Consolidated Cases<sup>1</sup>

**AMENDED COMPLAINT**

**(JURY TRIAL REQUESTED)**

**(Assigned to the  
Honorable David Talamante)**

25 For their Amended Complaint against the Consolidated Defendants named  
26 herein, and against Mark Brnovich in his official capacity as Attorney General  
(collectively, "Defendants"), Plaintiffs Advocates for Individuals with Disabilities

---

<sup>1</sup> A full list of the Consolidated Cases is on file with the Court. A current list is attached as Exhibit "A" hereto and incorporated as if set forth herein.

1 Foundation, Inc. (“AID”); David Ritzenthaler; Jason Matthew Thomas; and Danny  
2 Taylor Thomas hereby allege:

3 **PARTIES**

4 1. Plaintiff Advocates for Individuals with Disabilities Foundation, Inc.  
5 (“Foundation”) is a registered 501(c)(3) non-profit charitable foundation and performs  
6 the functions of a traditional association representing individuals with disabilities. *See*  
7 [www.aid.org](http://www.aid.org). As a non-profit entity, AID is primarily funded through donations, but it  
8 strives to self-fund through the recovery of litigation expenses, as provided for by federal  
9 law.<sup>2</sup> AID does not turn a profit, and it has always operated at a significant loss.

10 2. Plaintiff David Ritzenthaler is the President, Director and Chairman of the  
11 Foundation and a member. Mr. Ritzenthaler has a mobility impairment, uses a cane, and  
12 requires periodic use of a wheelchair. Mr. Ritzenthaler also regularly visits public  
13 accommodations with his mother, who has a mobility impairment that requires use of a  
14 wheelchair. Mr. Ritzenthaler lives within, and regularly travels throughout, the greater  
15 Phoenix Metropolitan area, in vehicles that are qualified to and do utilize van-accessible  
16 parking.

17 3. Plaintiff Jason Matthew Thomas is an amputee who regularly uses a  
18 wheelchair, and he is a member of AID. Mr. Thomas regularly travels throughout the  
19 greater Phoenix metropolitan area, in vehicles that are qualified to and do utilize van-  
20 accessible parking.

21 4. Plaintiff Danny Taylor Thomas regularly provides transportation services  
22 to Jason Thomas, his brother, and is a member of AID. Danny Thomas regularly drives  
23 throughout the greater Phoenix metropolitan area in a vehicle that is qualified to, and

---

24 <sup>2</sup> 42 U.S.C.A. § 12205; 28 CFR Pt. 36, App. C, § 36.505 (“Litigation expenses include items  
25 such as expert witness fees, travel expenses, etc.”).

1 does utilize van-accessible parking for Jason Thomas. Plaintiff Danny Thomas visits  
2 public accommodations together with his brother and for the purpose of accompanying  
3 him. A barrier to Jason Thomas' access amounts to a barrier to Danny Thomas' access as  
4 well, granting Danny Thomas associate standing to bring a cause in his own right  
5 pursuant to 42 U.S.C. § 12182(b)(1)(E).

6 5. Plaintiff AID has other members who are persons with disabilities, or who  
7 are the parent(s) or close relative(s) of persons with disabilities, including disabilities  
8 that are mobility-related. Members of AID participate in its efforts to test public  
9 accommodations, and to enforce compliance with federal and state disability-access  
10 laws, by *inter alia* visiting public accommodations and serving as plaintiffs. They also  
11 guide its efforts by identifying, and collecting information on, noncompliant public  
12 accommodations.

13 6. Consolidated Defendants operate and/or lease places that are public  
14 accommodations within the meaning of 42 U.S.C. § 12181(7). The Consolidated  
15 Defendants are separately identified in the actions that have been consolidated under this  
16 cause number, CV2016-090506. Attached as Exhibit "A" hereto, and incorporated as if  
17 fully set forth herein, is a list identifying the Consolidated Defendants in this matter as of  
18 October 14, 2016.

19 7. Consolidated Defendants are located in the greater Phoenix metropolitan  
20 area, in Maricopa County, Arizona.

21 8. Defendant Mark Brnovich is the Attorney General in and for the State of  
22 Arizona, and is named in his official capacity only.

### 23 **JURISDICTION AND VENUE**

24 9. Plaintiffs bring this action in part under Title III of the Americans with  
25 Disabilities Act, 42 U.S.C. §§ 12101 et seq., (the "ADA") and its implementing  
26

1 regulations; and A.R.S. Title 41, Chapter 9, Article 8, §§ 41-1492 *et seq.* and its  
2 implementing regulations, R10-3-401 *et seq.* (the “AZDA”).

3 10. This Court has original jurisdiction over the AZDA claims by virtue of  
4 A.R.S. §§ 12-123 and 41-1492.08(C), and concurrent jurisdiction over the ADA claims  
5 by virtue of A.R.S. § 12-123 and Article 6, Section 14(1) of the Arizona Constitution.

### 6 **GENERAL ALLEGATIONS**

7 11. Non-compliance with the provisions of the ADA and AZDA relating to  
8 public accommodations is widespread in this State.

9 12. No public agency in this State voluntarily conducts, or has ever  
10 voluntarily conducted, periodic inspections (“compliance reviews”) of existing public  
11 accommodations to determine ADA compliance, for over two decades.

12 13. The Attorney General is specifically required to conduct periodic ADA  
13 compliance reviews of public accommodations in Arizona pursuant to  
14 A.R.S. § 41-1492.09, which was enacted into law twenty-two years ago.

15 14. The Attorney General does not conduct voluntary periodic compliance  
16 reviews pursuant to A.R.S. § 41-1492.09.

17 15. Upon information and belief, the Attorney General and Office of the  
18 Attorney General (“OAG”) have never conducted voluntary periodic compliance  
19 reviews pursuant to A.R.S. § 41-1492.09.

20 16. As a result, less than approximately five percent (5%) of public  
21 accommodations in Maricopa County are compliant with the ADA and AZDA.

22 17. The only individuals or entities that are actively inspecting for and  
23 enforcing ADA and AZDA compliance in Arizona are private, and privately- or  
24 charitably-funded, individuals or serial-litigation groups like AID.

25 18. AID specifically employs “testers” to inspect for, to attempt to use, and/or  
26 to actually use public accommodations to determine whether they are ADA compliant.



1           19. Among the numerous ADA and AZDA violations currently exhibited by  
2 public accommodations in Maricopa County, parking lot violations may be the most  
3 readily-apparent, and easily-identified.

4           20. As of the date of the filing of the original Complaint against each  
5 Consolidated Defendant, each Consolidated Defendant was non-compliant with the  
6 ADA Accessibility Guidelines (hereinafter referred to as “ADAAG,” which includes  
7 but is not limited to 36 C.F.R. § Pt. 1191, App. A and D) and the AZDA<sup>3</sup> in at least one  
8 or more of the following ways:

- 9           • Consolidated Defendant’s parking lot contained fewer than  
10           one (1) accessible space for every twenty-five (25) spaces, in  
11           violation of section 208.2 of 36 C.F.R. § Pt. 1191, App. B;  
12           section 502 of 36 C.F.R. § Pt. 1191, App. D.
- 13           • Consolidated Defendant’s parking lot contained fewer than  
14           one (1) van-accessible space for every six (6) accessible  
15           spaces, in violation of section 208.2.4 of 36 C.F.R. § Pt. 1191,  
16           App. B; section 502 of 36 C.F.R. § Pt. 1191, App. D.
- 17           • Consolidated Defendant’s accessible parking space(s) are not  
18           located on the shortest accessible route from parking to an  
19           accessible entrance, in violation of section 208.3.1 of  
20           36 C.F.R. § Pt. 1191, App. B.

21  
22  
23  
24 <sup>3</sup> The AZDA incorporates the federal ADA Accessibility Guidelines pursuant to Ariz. Admin.  
25 Code R10-3-404 (which incorporates the “2010 Standards.” The “2010 Standards,” in turn,  
26 include the “2004 ADAAG,” pursuant to 28 C.F.R. § 36.104. Finally, the “2004 ADAAG”  
includes “the requirements set forth in appendices B and D to 36 CFR part 1191.”  
*See* 28 C.F.R. § 36.104.)

- 1 • Consolidated Defendant’s parking lot has no “van accessible”  
2 signage identifying van-accessible spaces, in violation of  
3 section 502.6 of 36 C.F.R. § Pt. 1191, App. D.
- 4 • Consolidated Defendant’s parking space identification  
5 signage is fewer than a minimum of 60 inches above the  
6 finish floor or ground surface measured to the bottom of the  
7 sign, in violation of section 502.6 of 36 C.F.R. § Pt. 1191,  
8 App. D.

9 21. The reports made by AID and its members identifying specific violations  
10 particular to each Consolidated Defendant are available at <http://www.aid.org/090506>  
11 and are fully incorporated as if set forth herein.<sup>4</sup> The reports will also be filed on DVD  
12 disc with the Clerk of the Superior Court (pending an Order of this Court<sup>5</sup>) as Exhibit  
13 “B” hereto, which is likewise incorporated as if fully set forth herein.

14 22. Upon information and belief, many of Consolidated Defendants’  
15 accommodations remain non-compliant.

16 23. Plaintiffs Jason and Danny Thomas (“Plaintiffs Thomas”) have either  
17 visited the Consolidated Defendants’ accommodations, or will have visited them by the  
18 end of the second week of November, in order to use or attempt to use the parking lot,  
19 and for the acknowledged purpose of “testing” for compliance. Plaintiffs Thomas intend  
20

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21 <sup>4</sup> The reports are organized and identified by each Consolidated Defendant’s original case  
22 number. (These case numbers are also listed in Exhibit “A” hereto.)

23 <sup>5</sup> Plaintiffs separately submit a “Motion for Leave to File Exhibit with the Clerk in DVD  
24 Format.” The collected reports are over 18,000 pages in paper format, and around five gigabytes  
25 in electronic format. The Clerk’s office has advised Plaintiffs’ counsel that pursuant to Arizona  
26 Supreme Court general administrative order, filings in this matter should be made via  
Turbocourt, rather than in paper or disc format. However, Exhibit “B” would have to be broken  
down into approximately 500 subparts in order to be filed on Turbocourt. Plaintiffs are therefore  
posting the reports online, and separately seek an order from this Court directing the Court Clerk  
to accept the filing of “Exhibit B” on DVD disc.

1 to continue to visit and use (or attempt to use) the Consolidated Defendants'  
2 accommodations for such purposes, and at no longer than regular quarterly intervals, so  
3 long as this matter remains pending, and/or until Plaintiffs deem that compliance has  
4 been achieved.

5 24. Members of AID, including David Ritzenthaler, who have a mobility-  
6 related disability and are qualified to and do utilize van-accessible parking (or who have  
7 a close relationship to/affiliation with a person with a mobility-related disability, and  
8 who drive for/travel with that person in a vehicle that is qualified to and does utilize  
9 van-accessible parking) have visited many of the Consolidated Defendants' public  
10 accommodation parking lots, and intend to continue to do so, whether for the express  
11 purpose of "testing" for compliance, or simply in the normal course of living in and  
12 traveling throughout the Phoenix metropolitan area.

13 25. The barriers make it more difficult for Plaintiffs to park, or to identify  
14 accessible or van-accessible parking.

15 26. The barrier(s) identified above interfere with Plaintiffs' full and equal  
16 enjoyment of the facilities, and deter Plaintiffs from enjoying full and equal access to  
17 the facilities.

18 27. Consolidated Defendants' readily-identifiable failure to comply with the  
19 ADA/AZDA indicates that they never inspected their public accommodations for  
20 ADA/AZDA compliance, and/or that they have never been inspected for ADA/AZDA  
21 compliance.

22 28. Therefore, upon information and belief, Consolidated Defendants are out  
23 of compliance with the ADA/AZDA in additional ways that have yet to be determined.

24 **COUNT ONE**  
25 **Violation of Title III of ADA**  
26 **(as against the Consolidated Defendants)**

29. The prior allegations are incorporated as if set forth herein.

1           30.    U.S.C. § 12182(a) prohibits discrimination “on the basis of disability in  
2 the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or  
3 accommodations of any place of public accommodation by any person who owns,  
4 leases (or lease to); or operates a place of public accommodation.”

5           31.    42 U.S.C. § 12188(a) provides for a private cause of action against such  
6 discrimination.

7           32.    Consolidated Defendants operate and/or lease places of public  
8 accommodation as defined by the ADA, and are thus subject to the anti-discrimination  
9 provisions. 42 U.S.C. § 12182(a). Consolidated Defendants’ parking lots are open to  
10 out-of-state visitors; and the operation of the lots, whether individually or in the  
11 aggregate, affects interstate commerce.

12           33.    Plaintiff David Ritzenthaler’s mobility impairment constitutes a disability  
13 under 42 U.S.C.A. § 12102(1).

14           34.    Plaintiff Jason Thomas’ mobility impairment constitutes a disability under  
15 42 U.S.C.A. § 12102(1).

16           35.    Plaintiff Danny Thomas drives for his brother Jason Thomas and is  
17 separately injured by the interference with his identification or use of accessible or van-  
18 accessible parking. Danny Thomas has affiliate standing to bring suit pursuant to  
19 42 U.S.C. § 12182(b)(1)(E).

20           36.    Consolidated Defendants’ violations of the ADAAG, as identified above,  
21 constitute architectural barriers that interfere with Plaintiffs’ full and equal enjoyment  
22 of the facilities, and that deter Plaintiffs from enjoying full and equal access to the  
23 facilities.

24           37.    Removal of the barriers is readily achievable, or the Consolidated  
25 Defendants may make their facilities available through alternative methods that are  
26 readily available.





1 including those barriers that are identified and discussed in this Amended Complaint—  
2 interfere with Plaintiffs’ full and equal enjoyment of public accommodations, and deter  
3 Plaintiffs from enjoying full and equal access to the facilities.

4 52. Plaintiffs seek mandamus relief against the Attorney General in the form  
5 of an order that the Attorney General conduct periodic compliance reviews of covered  
6 entities in accordance with A.R.S. § 41-1492.09.

7 53. Upon information and belief, the Attorney General does not believe that  
8 he is obligated by law to conduct periodic compliance reviews. Plaintiffs therefore seek  
9 declaratory relief against the Attorney General in form of a judgment declaring that the  
10 Attorney General is required to conduct periodic compliance reviews in accordance  
11 with A.R.S. § 41-1492.09.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 14 a. For an injunction ordering the Consolidated Defendants to remove all  
15 barriers to Plaintiffs’ full and equal enjoyment of the facilities, and to adopt  
16 internal policies that ensure continuing compliance with the ADA;
- 17 b. For damages pursuant to A.R.S. § 41-1492.09(B)(2);
- 18 c. For litigation expenses, including but not limited to attorneys’ fees and  
19 costs and expert witness costs, pursuant to 42 U.S.C.A. § 12205,  
20 28 CFR § 36.505 and A.R.S. § 41-1492.09(F);
- 21 d. For mandamus relief against the Attorney General in the form of an order  
22 that the Attorney General must conduct periodic compliance reviews of  
23 covered entities in accordance with A.R.S. § 41-1492.09;
- 24 e. For declaratory relief against the Attorney General in form of a judgment  
25 declaring that the Attorney General is required to conduct periodic  
26 compliance reviews in accordance with A.R.S. § 41-1492.09;

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f. Whatever other relief the Court deems just, equitable and appropriate.

RESPECTFULLY SUBMITTED this October 19, 2016.

**STROJNIK P.C.**



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Peter Strojnik (6464)  
1 East Washington Street  
Suite 500  
Phoenix, AZ 85004  
*Attorney for Plaintiff*



# EXHIBIT A

The following is the list of Consolidated Defendants identified by the Clerk of the Court as of October 18<sup>th</sup>, 2016.

1639 40th Street L L C  
7845 Evans Road L L C  
Cimarron Industrial Partners L L C  
David A Ford  
Allison F Ford  
Azre Fund I, L L C  
Harvard Business Services Inc  
Cracovia Capital L L C  
Stave Properties L L C  
Ranch Center Retail L L C  
E F G Management L L C  
Ranch Auto Center L L C  
Scottsdale Investors L L C  
J P S Investments L L C  
D & M Insurance Building L L C  
Chandler Sunset L L C  
Danny Joe Kregle  
Kelley Am Kregle  
Sabio Properties L L C  
Saba Brothers Rentals L L C  
Great American Hamburger Co  
Oreganos Pizza Bistro Inc  
Paradise Valley Plaza Owners Association  
Scottsdale Fashion Square L L C  
Cole M F Phoenix A Z, L L C  
4454 E Thomas L L C  
S S C Property Holding Inc  
Cactus Rose Of Wickenburg L L C  
Paradise Place A Z A, L L C  
Wickenburg Shopping Center Limited Partnership  
Wickenburg Commercial Center  
Double D Thoroughbred Farm  
Guru Nanak Investments L L C  
Hayden Shea Properties L L C  
Executive Plaza A Z A, L L C  
Executive Plaza L L C  
Stanfam Enterprises L L C  
Gresham Sophia Andreou Poulcherios Trust  
Z Good Family Holdings L L C  
Mia Properties L L C  
1818 Holdings L L C  
Sada L L C  
Desert Cove Medical Partners L L C  
Higginbotham Properties L L C  
Circle K Properties Inc  
6067 E University L L C  
2353 Baseline L L C

Heights Properties  
Heartland Financial U S A Inc  
Gregory M Worsley Trust And G M Worsely Inc  
12656 N Tatum L L C  
Grandslam 7 L L C  
Grace Power And Chandler Heights L L C  
G & B Investment  
G B Investment Company  
Dora And Son L L C  
D M J Holdings L L C  
Dietche And Freundlich Inc  
David Schneider  
Dahle Investments L L C  
Rosalie Ann Ethington  
Collin Scott  
Circle K Stores Inc  
Megha L L C  
Max Cost Recovery L L C  
Mary Ann Zoria Rodriguez Separate Prop Trust  
Lost Boys Inc  
Levy Properties L L C, E Mesa  
L D R-Seville S W C, L L C  
L D R-Pecos & Higley L L C  
Jeff W And Madalyn B Seguin Trust  
J & M Yin Investment L L C  
Islandia Mesa L L C  
Sy Gilbert Commons I I, L L C  
Tri-City Retail L L C  
Innovative Investment And Consulting Co  
Advocates For American Disabled Individuals L L  
Sy Gilbert Commons I I I, L L C  
Sundial Real Estate L L C  
S S R Capital Group L L C  
Spiny Tail Investments L L C  
Sol Hoff Company L L C  
William Carns & Associates L L C  
J P Morgan Chase Bank N A  
Valley National Bank Of Arizona  
Super Plus Inc  
Universty Mesa C V S, L L C  
R D E V Mesa Ranch L L C  
Phibert L L C  
P7 Village At Hayden L L C  
Northpoint Village L L C  
New Private Resturant Properties L L C  
Native Arizonan Acquisitions I V, L L C  
National Retail Properties L P

Ten Place L L C  
Corona Del Sol Plaza L L C  
C E H, L L C  
Casa Ramos Inc  
Lucy Raineri Grandchildren Trust  
Carlo Mormino  
Cameo Properties L L C  
Ashraf And Zaghi Nasser Trust  
1107 E Main A Z, L L C  
3 Els L L C  
Akai Investments L L C  
Allen F Larry  
Mesa Hotels L L C  
J E K Capital L L C  
Higginbotham Properties L L C  
H H P N Investments L L C  
2nd Hop L L C  
Help Services Inc  
Globe Chandler 2150 L L C  
Gilbert Center Holdings L L C  
E C Good Chandler L L C  
D T D-Devco 5 L L C  
D L C Investments Inc  
Patterson Farms Inc  
Mahesh S Desia  
Deena M Desia  
Lines Properties L L C  
L F S Holdings A Z, L L C  
Leo And Sherry Frumkin Trust  
Laura A Anthony J Stile Trust  
Anthony J Stile  
Laura S Stile  
Kerry M Norgren  
Chandler Center Association Inc  
Joan Norgren  
Minnetonka Capital Investments I I I, L L C  
Michael And Christine Lebaron Trust  
Suniwan L L C  
Southern-Stapley Derito-P Retail 1 L L C  
Southern Promenade L L C  
Sherwood Investments L L C  
Sharon Lynn Olsen  
James R Olsen  
Shane Scottsdale L P  
Northpoint Village L L C  
Scottlin L L C  
Saia Family Limited Partnership

Robert C Beliak  
Rodriguez Esperanza  
Marci N Beliak  
Red Mountain Asset Fund 1 L L C  
Westwood Village Shopping Center L L C  
Wendys Properties L L C  
Wells Reit I I Santan Corporate Center I I , L L C  
Warren L Kutok And Judith A Kutok Trust  
Viel Gluck L P  
Benn Fatto L P  
Boa Sorte L P  
V C C A Gilbert Investors  
Tashico L L C  
S Y Casa Paloma L L C  
Chandler Midway L L C  
Carpe Diem Properties L L C  
Brown Road Medical Building L L C  
Brown Road Medical Clinic L L C  
Bertha Marquez  
A Z G Brown & Gilbbert L L C  
A S N Inc  
A L C Gilbert Center L L C  
Activeg L L C  
A B S, S W Investor L L C  
1548 Main L L C  
Glamazon Beautique L L C  
Gilbert Center Holdings L L C  
Gilbert A Z Wings L L C  
G A J Properties L L C  
East Chandler Blvd #1 L L C  
Desert Taco East L L C  
David Goldberg  
Susan Goldberg  
Crossconnections I I I, L L C  
C H P 1010 McDowell L L C  
Charles H Lesa H Crismon Trust  
Islandia Associates L L C  
Jabbel Holdings L L C  
Jack Berg Family Limited Partnership  
J C V, L L C  
Jose M Ortiz  
Natalia G Ortiz  
Kerby Furniture Inc  
L F2 Val Vista L P  
Main Plaza L L C  
Mauricio Mesa Motor Sports L L C  
Mesa Matrix L L C

Mesa Star Inc  
Sukhwinder Singh  
Montanile Properties Ray L L C  
Northsight L L C  
Odriel Garcia  
Upswing Enterprises L L C  
T T R Properties L L C  
Southland Corp, The  
Sy Gilbert Commons L L C  
S S Sandhu Investment L L C  
See In Company L L C  
Salero Ranch L L C  
S & C Partners Ltd  
Roman A Barayev  
S & C Partners  
Rok Gilbert L L C  
W G N Fund I  
Wendys Properties L L C  
Warner Greenfield L L C  
Villanueva Investments L L C  
Gregory Wayne Avery Living Trust  
Gateway Triangle Development L L C  
Ganesh Company  
F F F McElliot L L C  
E M S Property L L C  
E C Chandler L L C  
Warner Chandler L L C  
East Valley Partners L L C  
Eads Dobson Town Center L L C  
Design Properties Elliot L L C  
Daniel G Ong  
Kendra H Ong  
Comu Scottsdale L L C  
Bayport Scottsdale Road Associates L P  
B & T Vivian Investment Company L L C  
Allan To  
Angela To  
8502 E Via De Ventura L L C  
1900 Univ A Z, L L C  
1740 E Broadway Partners L L C  
15231 N 87th Street Partners L L C  
M W D Commercial L L C  
Walgreen Arizona Drug Co  
Mission Square L L C  
Mesa Star Inc  
Meleyco Partnership No 2  
Mammothrock L L C

Main Street Real Estate Group L L C  
Landrace Holdings L L C  
Koon Boen Inc  
Kingston E Carl  
Justus Limited Partnership  
Jeffrey Shepard  
Grace Jung Liu  
Jaml Ltd  
Jaml Ltd An Arizona Limited Partnership  
J F And Eva Carrazco Trust  
Harold M Walthall  
Syble L Walthall  
Gunco L L C  
S C I Arizona Funeral Services Inc  
Salem Family Trust  
R S D Val Vista Properties L L C  
Richard Skousen  
Wanda Skousen  
Redmond A Jr And Mary Anne B Doms Trust  
Raymond E And Wilma C Stallins Trust  
P V C Ltd  
Westwood Aspirations L L C  
P V Dobson L L C  
B K Arizona L L C  
Mesa Main Investment L L C  
Pure Tempe Partnership  
Price Warner Commerce Centre L L C  
Pima Road L L C  
Phoenix Van Buren Properties L L C  
P B D L Properties L L C  
Orchards At Tucson L L C  
One Five Two Two Three Northsight Blvd L L C  
North Scottsdale Investments L L C  
Cassh Holdings L L C  
W Y A Z Investments L L C  
Winreal Operating Co L P  
William Ramsey  
Gussie Ramsey  
Waltrust Properties Inc  
V V A H, L L C  
Val Vista And Warner Associated Ltd  
University And Gilbert L L C  
Toy Enterprises Inc  
T C B Management Inc  
S W T Arizona Investments L L C  
Swaz Properties L L C  
Steven Thomas Evans



Smith East Valley Properties L L C  
S C U Broncos L L C  
Big Lake Estates L L C  
Bank Of America National T R & Savings  
Bank Of America Arizona  
A Z O F I S, L L C  
A Z G Brown & Gilbert L L C  
Artisan Lofts On Central Retail L L C  
Artisan Lofts On Central Condominium Association  
Inc  
Arthur Investments L L C  
Ambuvision  
8829 South Priest L L C  
7255 South Power Road L L C  
3303 South Lindsay L L C  
J R N N Patel Family L P  
Elliot & 101 P V Condo Association  
2310 W Ray Road L L C  
Larry Fitzgerald  
Charlene Fitzgerald  
Brenden Holdings I I  
10118 S F Ventures L L C  
Broadway Dobson Plaza L L C  
Bryan Investment Group L L C  
C & A Commercials L L C  
Dobson Village Office Condominium Association  
C B C Investment Limited Partnership  
Chandler Frye Road Property L L C  
Coconut Grove M And M Avila L L C  
College Enterprises Inc  
D B P C Investments L L C  
Chandler Gateway Offices Association Inc  
Denali National Trust X X I I, L L C  
Desert Rose Motel L L C  
Double Z Mesa  
L And R Peters Investments L L C  
Warner Village Office Condominium Association  
Kline Properties L L C  
K L A L Enterprise L L C  
Kemptions Travel Town  
Kellie R Miller  
Joseph L Magliozzi  
Dorothy E Magliozzi  
Jack And Ruth Horowitz Trust  
J & M Arizona Properties L L C  
H R S Chandler L L C  
Gilbert Chandler Heights 1 L L C

Gilbert A Z Partners  
Freanel & Son Gilbert L L C  
Elliott 101 Holdings L L C  
Lance Adams  
Janel Adams  
Mentor Hospitality Fund 1 L L L P  
Michael P Pulos Trust  
Alice C Pulos Trust  
Nasser And Ashraf Zaghi Trust  
Om Shree Sainath L L C  
Park 40  
Papago Marketplace L L C  
Patterson Farms Inc  
Power & Ray Holdings L L C  
Prah L L C  
Price-Legacy Mesa L P  
Veena Corp  
Val Vista And Guadalupe L L C  
Centers For Habilitation And T C H, The  
Tabkirk L L C  
Granickin L L C  
Steven D Wilson L L C  
Slisher Productions L L C  
Skanda Investments L L C  
Sitto Amir  
Ahlam Tr  
Sitto Amir And Ahlam Trust  
Sherpa Holdings Company L L C  
S F B Sprouts L L C  
Salina U T Land Holdings L L C  
Saia Jr And Gabriel Gomes Revocable Living Trust  
Safeway Inc # 1567  
Realty Income Properties 14 L L C  
Zynda Family Trust  
White Star Line L L C  
McClintock Professional Plaza Condominium  
Association Inc  
Warner Medical Park L L C  
Warner Medical Park Condo Association  
Warner Medical Park Unit Owners Association  
Chandler Warner C V S, L L C  
C F T Developments L L C  
C D K T, L L C  
Cason Family Holdings L P  
Believe Body L L C  
Auto-Owners Life Insurance Company  
Augusta Ranch L L C

7641 E Guadalupe L L C  
7254 East Southern Avenue L L C  
6610 E Baseline Road Investors L L C  
1230 E Baseline L L C  
Batmd L L C  
J & J Pacific Properties L L C  
Ismail Ataria Investments L L C  
Higley Sterling Properties L L C  
H B Paradise Valley L L C  
Guadalupe Five Timers L L C  
G S S Partners L L C  
C P Signal B P, L L C  
Crimson & Baseline L L C  
Walh L L C  
O M P C Unit Owners Association  
Desert Fairways Investors L L C  
Diamond Shamrock Arizona Inc  
D T D Devco 8 E L L C  
D T D Devco 8 W, L L C  
Eleven Investments L L C  
F A E Holdings 416754 R, L L C  
Gateway Medical Investors L L C  
L A-Power L L C  
Lagrange Plaza L L C  
J D S Countryside L L C  
D L S Countryside L L C  
L S, L L C  
Mako Properties Inc  
N C C Enterprises Inc  
Pavilion Holdings L L C  
Pierce Hardy L P  
Power Ranch Professional Village Condo Assoc  
Power Road Williams Field L L C  
P W R E O Val Vista And Southern L L C  
W D P Town Center L L C  
Village At Superstition Spring Condo Assc  
Val Vista Investments L L C  
Tenk Capital Assets L P  
T B Mesa L L C  
Michael Jonas  
Lo Shik Lam And Anna Trust  
S C I Arizona Funeral Services Inc  
Jong T Chung  
Young Y Chung  
St Georges L L C  
Joshua Clark  
Lara Clark

Indian River Plaza L L C  
Santan Health Services L L C  
Northern 12 L L C  
Roth Investment Properties L L C  
Arizona Grand Resort L L C  
Arizona Bank  
Riley Development I V, L L C  
B H Squaw Peak L L C  
Simonson Buildings Inc  
International Shopping Center Investments L L C  
Ponder Levy Properties  
Willmoth George B & Fern N, T R  
G D O Limited Partnership L L L P  
Brooks Building Inc  
Latisa L L C  
Arrowhead Leasing Services L L C  
Arrowhead Park Place I I Condominium Unit  
Owners Association  
1255 Baseline L L C  
Haystack Holdings L L C  
Hermosa Inn Restaurant L L C  
Acacia Creek Partners L L C  
Ong Helen G & Laurence S Trust  
Valley Of The Sun Entertainment L L C  
A R C, G R M S A A Z 001 L L C  
Stetson Canal L L C  
Baumler Properties L L C  
Harkins Fashion Square L L C  
Curtish Demar  
Anna Demar  
David Dietlein  
Corrin Dietlein  
Sunbrella Properties Ltd  
Franks Revocable Living Trust  
Delfor Alvarez  
Joanne Alvarez  
Desert Flower Owner L L C  
Diamondback Properties Group L L C  
Elze L L C  
City Of Phoenix  
Emil J And Lois M Weser Trust  
Encore Plaza Shopping Center L L C  
E V Med L L C  
Yuen Marilyn Trust  
Evin-Phoenix L L C  
Five Sac 2010 L L C  
Foothills Shopping Center L L C

Francisco Rodriguez  
Lopez Carmen Rodriguez  
F T T Village Fair North L L C  
Sillen Connie  
Superstition Promenade L L C  
Pisa Properties Sixteenth L L C  
F T T Village Square I I, L L C  
C-Lub Holdings L L C  
Marital Trust Under C Shaw  
C Shaw Rev Trust  
Yen Nguyen-Le Thuy  
George Ganem Trust  
Cinema Park Investments L P Improvements  
H B Foothills Gateway L L C  
Redpepper Realty Partners L L C  
Henderson Industries L L C  
J S L Ventures L L C  
Billy Low And Linda Trust  
Albert And Margaret M Trust  
Investment Property Management L L C  
Higley Southern Holdings L L C  
J & N Development Inc  
Garrett Robert  
J B R2 L L C  
Kimco Mountainside Phoenix 647 Inc  
Lakeview Village Center L L C  
Lawrence Real Estate Investments L L C  
L P & M R Investors L L C  
Lundgren Rental Properties L L C  
McChandler Inc  
Mesa Shopping Center L L C  
Pfaffmann Financial Inc  
Qi Chen  
Ye Fang Chen  
Queen Creek Professional Village Development L  
Queen Creek P V Development L C  
B B C & G Investments L L C  
R & B Pizza 1 L L C  
M O R C L, A Z 02 L L C  
Shemer Real Estate I V, L L C  
R & R Supply Inc  
Cari Chadwick Trust  
Ebel Properties A Z, L L C  
Rahimi Properties L L C  
B P, A Z 6 N, L C  
B P-A Z 6 L C  
Ray Ranch Professional Plaza Condo Assoc

Morris B Goldman Sheila M Bolton Trust  
K G N, L L C  
S C P 2009 C32 006 L L C  
Next Gen Financial X, L L C  
S C R Partners L L C  
Seville Square Mesa L L C  
Mesa Ridge Business Park 1 L L C  
Swiss German Properties L L C  
Sicula L L C  
S J Mountainside L L C  
Network Holdings L L C  
M T V Properties L L C  
Foothills Office Park Condominium Association  
Orasi L L C  
P & E, L L C  
Warner Century Plaza Condominium Association  
Pathfinder T R F Six L L C  
Foothills Medical & Professional Plaza Owners  
Association  
P C M Investments L L C  
Sonoma Park Place  
Spruce Tree Investments L L C  
Ahwatukee Professional Plaza Office Condominium  
Association  
St Katherines Greek Orthodox Church Inc  
Syran L L C  
Tee Jay Investments Of Oregon L L C  
T M K Properties L L C  
Todd Pad 5700 L L L P  
Zan Ellertson  
Marianne Kia  
Mountain Park Pavillions L L C  
One Camelback Inc  
Fil Am Properties L L C  
Quad J Holdings L L C  
Park Lane Business Center Owners Association  
Emad M Abushanab  
Dina E Abushanab  
David Johnson  
D L L R Properties L L C  
Jaxen Properties L L C  
T B Baseline And Val Vista L L C  
C S P O Investments L L C  
David A Burmeister  
C M S A Holdings 2 L L C  
R W Management Inc  
Gharib Munira

McDonald U S A, L L C  
Ross E Babcock Sr And Wilma S Babcock Trust  
Babcock Liv Trust  
R E Babcock  
Lone Cactus Property L L C  
T Bell L L C  
10th Avenue Ventures L L C  
Indian Bend Corporate Centre Condominium  
Association  
D B N C H Circle L L C  
Moon Eyes L L C  
Belovodia L L C  
Hutchison Place L L C  
Finney-Indian Bend L L C  
L & G Hour Glass L L C  
S F B Terrace Park Apartments L L C  
86th Place L L C  
Alwan L L C, T R  
Robert P Solliday  
J C G Holdings L L C  
Rose Trust  
Council On Chiropractic Education Inc  
Rabadi Jiries And Eman Trust  
Slugbug 42 L L C  
Deer Valley Corporate Center L L C  
Dominion Holdings L L C  
32 Gallon Investments L L C  
Samaira L L C  
Lindsay Groves Professional Plaza Condominium  
Association Inc  
Sarrar Properties L L C  
Melinda Business Park 4 L L C  
Nselm & Hong L L C  
J B V B, L L C  
S B Spartan Enterprises L L C  
Vista @ The Peak Condominium Association, The  
Asma K Ismail  
Carol Pham  
Lydia H Nguyen  
Rural Center L L C  
John Frederick  
Toni Robie  
T H F T Investments L L C  
Deer Valley I I Business Owner Association  
Candelwood Industrial Park L L C  
John J Sorci Trust  
M M Associates

Mark H Olsen D P M, P L L C  
Marketplace At South Mountain L L C  
Zappia Holdings L L P  
M C S South Point Plaza L L C  
Medawar Maalouf Trust  
Mekong Real Estate Investment Group L L C  
Deer Valley Airpark Venture I I I, L L C  
Mesa Central Center L L C  
Holmstrom Properties Happy Valley L L C  
Mesa Optometric Center  
Midas Properties Inc  
J D L & Company L L C  
Mountain View Business Park Office  
Nace And Company L L C  
N N Y Properties L L C  
Oasis 55 L L C  
Ol-Lonely Enterprises Inc  
Phoenix Northern Resort L L C  
Christ Family Trust  
Chandler Mercado Partners L L C  
Concept Z Performance Inc  
C E H Properties I I, L L C  
Brian C Fitzpatrick  
Loya Properties L L C  
Deer Valley Business Condominiums  
109 W, L L C  
Richard A And Maria Minkle Trust  
Zebra Crossing L L C  
Glendale Storage Co  
Jackson Hole Partners L L P  
Pasadena Plaza Shopping Center L L C  
Pepperwood Pointe L L C  
Ong Family L L C  
Peter D Njegovan  
Milena Njegovan  
P L S Property Management Of Arizona L L C  
Juan A Arellano  
Maricela Arellano  
Quiktrip Corporation  
Phoenix 51st Avenue Partners L L C  
Realty Associates Fund X, L P  
House Of Canvas Inc  
Reynaldo G Ruiz  
Sara Ruiz  
Mahlon A Miller  
Irene Miller  
R J B Holdings L L C



Sachs Ranch Co L L C  
Hurley Land Co L L C  
370 E Virginia Avenue L L C  
Saint Lawrence Holding Co  
Walaz L L C  
Sandra Reilly Irrevocable Trust  
S B K F C Holdings L L C  
S E M Investments L L C  
Slikker Jill E Trust  
Straight Line Real Estate L L C  
S W K Commerce Properties L L C  
Twenty Twenty Trust  
University-Perry Condominium Association  
University McClintock Partners L L C  
University Plaza Randall L L C  
Victor N Stewart  
Sarah A Stewart  
Stewart Family Trust  
Weinberger Properties L L C  
U And A Properties L L C  
Cosi Swan Long Term Investment L P  
Warner Gateway Office Park Condominium  
Association  
Wayne C And Carol G Martella Trust  
Weingarten And Arizona Inc  
Wendys International Inc Lease  
Wendys International L L C  
Wesley R Cain  
Vicki L Cain  
Arrowhead Medical Properties L P  
Western B West A Z, L L C  
W F C Fund I Legacy Opco L L C  
1250 South Pima L L C  
14345 Sylvan L L C  
550 W I S, L L C  
2356 Portland Street L L C  
Botiller Enterprises Inc  
3316 East Baseline Road L L C  
3550 East Southern Avenue L L C  
Glendale Retail I, L L C  
Adrian G Rivera  
Kathryn M Rivera  
A E & K Enterprise Inc  
A G S Enterprises L L C  
Amedeo A Cianci  
Fulton Philomena A Cianci  
Heights Properties L L P

Archland Property I, L L C  
Arizona Central Credit Union  
Arizona Federal Credit Union  
David Kwan Trust  
B A P Of Arizona Inc  
Pros Ranch Market L L C  
Bell Tower Plaza L L C  
Business Properties Partnership No 41  
Carole Anne Morrison Trust Of 2002  
Artane L L C  
Cattaruzzi Investments L L C  
Caveman Enterprises Inc  
Chet L Jenkins  
B L E, L L C  
Claridge Properties Inc  
Commercial Resource Investors L L C  
Swagel Trust  
Cottage Corner L L C  
Cuervo L L C  
Robert Isenberg  
Dake Properties L L C  
Donald G And Donna S Millett Trust  
Eleven Twenty Four Trust  
Executive Villas At Dana Point Owners Association  
Farmhouse Village L L C  
Lowe Properties L L C  
Fiesta Ranch Business Center One L L C  
Fiesta Ranch Industrial Park Property Owners  
Association  
Presson P V Fifteen L L C  
Queen Creek Crossroads Llc  
M P N Investments L L C  
6700 Arrowhead Professional Center Owners  
Association  
North 51st Avenue Partners L L C  
72nd And Bell L L C  
Arrowhead Park Place Condominium Association  
Northwest A A A, L L C  
Robert L & Katherine O Martiny Trust  
Primestor 35th Avenue L L C  
Jeffrey S Runyon  
Wagoner Plaza L L C  
Helen Y Louie Trust  
Conant Limited Partnership  
Robert Lee Thatcher  
Arlene A Thatcher  
B G P Cotton Center L L C

Cullinane Family Trust  
L B A Realty Fund I I-W B P, I V, L L C  
R B R5 L L C  
D V Investment Partners L L C  
Southwest Investors L L C  
Wright Doubleagle L L C  
Simpson Carolyn R Trust  
Beebe Investment Inc  
American Home Water Inc  
5000 South Prairie L L C  
A H R, L L C  
Progressive Casualty Insurance Company  
Seaward R E, L P  
Hillgren M Trust  
21639 N 12th A V, L L C  
John F Long Foundation Inc  
I C Investors L L C  
L And T Enterprises Inc  
Deer Valley Holdings L L C  
Bunker Hill L L C  
Cook Bros L L C  
Jordan Cook  
I P T Deer Valley I C, L L C  
Charles W Gulick  
Susan Gulick  
Rick M L Cortez  
Ganem George Trust  
Gidco L L C  
Gilbert Corporation Center Condominium Owners  
Association  
1116 L L C  
Gilbert Medical Center L L C  
Gilbert Professional Park Owners Association  
H R L-Tempe L L C  
Icon Owner Pool 1 West  
Southwest L L C  
Western B West A Z, L L C  
Meritex Phoenix L L C  
One Lone Cactus L L C  
Camel Central Plaza L L C  
Matthew J And Gladys M Makaus Trust  
Sees Candy Shops Inc  
Evaldo And Rosina Dalesio Trust  
Rockford Eaton L L C  
T L F Investments L L C  
J N Gibbons Holdings L L C  
301 West Deer Valley Road L L C

Taylor Pamela L & Wesley J Graham Tr  
Teal Holdings L L C  
D V T Commercial Properties L L C  
Team Green Properties L L C  
Tempe Santa Fe Palms Homeowners Association  
Deer Valley 320 L L C  
Tempe Shops B, L L C  
A L M Properties L L C  
Zimmerman Properties Inc  
A Sun Down Enterprise L L C  
Lance Tang And Debra Quan-Tang Trust  
401 W Lone Cactus L L C  
510 Camelback L L C  
Tempe Towne Associates L L C  
Thakorebhai D Patel  
Bhartiben T Patel  
Marcia Loeb Trust  
South Hampton Group, The  
Nashville Management Inc  
T P P 28 Gilbert L L C  
Mai Chi  
Bui Kim Hang Thi  
Wood Living Trust  
Robin J Braithwaite Trust  
Wiley Family L L C  
Kline Family Trust  
E T T Huntington Tech L L C  
Westbrook Townhouse Assoc Inc  
L B A Realty Fund I I - Company I, L L C  
W W Grainger Inc  
J M T C, L L C  
Valley Natl Bank Of A Z  
Wilson Investment Group L L C  
Untidy Josephine L L C  
Revocable Trust Agreement Of James G Whiting  
Deer Valley Commerce Center Park  
Condominiums Building G A  
Two-Wheels Properties L L C  
Trejo Oil Co Inc  
McDonalds Corp  
Denali National Trust X I I, L L C  
Sovran Acquisition Limited Partnership  
Solo Ventures L L C  
S G Commercial L L C  
Quest Construction Managers L L C  
Sierra Orlando Properties  
W R I Retail Pool I, L P

2700 W Baseline L L C  
Pink Star L L C  
3830 Doherty L L C  
A C J Properties Baseline L L C  
B A R / J C R Phx Flex Investors L L C  
B R E / E S A Properties L L C  
Premier Commercial Painting S W, L L C  
Parkside Gateway Property Owners Association  
C & C Plaza L L C  
Kowalski Properties L L C  
C B C Jones Holdings L L C  
Lexington Sky Harbor L L C  
Teague Properties L L C  
Hamilton Chase Deer Valley L L C  
Daniel J And Kathy D Walker Trust  
Narp L L C  
Adobe Partners L L C  
Cece Group L L C  
Charles R & Virginia Reichard Trust  
C H C T Arizona L L C  
R S Auto Arts Inc  
C L C Investments L L C  
Cornerstone Retail L L C  
Dickson Insurance Inc  
Dobrott Family Trust  
Moriarty Family Trust  
E T T A Palin Intervivos Trust  
F A E Holdings 452531r L L C  
F A E Holdings 454736r L L C  
O O O C, L L C  
Forrest Purdy  
Janice Purdy  
Gal Pnina  
Garduno Investments Inc  
P & T Holdings L L C  
G C D S Properties L L C  
G M Vasquez Properties L L C  
Deer Valley Investments L L C  
Greg E Kent  
Beverly C Kent  
Eric Cedarstrom  
Gregory G And Diana L Sargenti Trust  
Lori Cedarstrom  
Gurkirpa Hotel Group L L C  
Rocky Knoll Farms L L C  
Midfirst Bank  
C S H R Investments L L C

Lynron Properties L L C  
Residential Property Investment And Management  
Abudis West L L C  
Peoria Business Corp  
Joel S Greene Family Trust  
Hamilton Chase-Gilbert L L C  
Wilshire Aspirations L L C  
Terrace Holding A Z, L L C  
Smart & Final Properties I, L L C  
Carls Jr Restaurants L L C  
J & S Commercial Properties L L C  
2302 N Scottsdale Road L L C  
K T One L L C  
Samuel F Lew  
Mack Ventures L L C  
Clayton Amborn L L C  
Hamid H Mazen  
Wong Joanne W H  
Florence Homes L L C  
91st And McDowell L L C  
Compass Bank  
Baseline Plaza L L C  
1747 Morten L L C  
1730 Apache L L C  
Polk Eugene P Trust  
Christown 1755 L L C  
Public Storage Properties X I I Inc  
Pride Travel Centers L L C, I I  
Panda Express Inc  
Pamela Stewart Martineau Family Trust  
N K Petroleum I I, L L C  
Mountain View Plaza Office Condominiums Unit  
Owners Association  
M G F Property L L C  
McDonalds Real Estate Company  
Mahavir Investments L L C  
M J Jr And Anne W Bramley Trust  
Merced Restart Phoenix Investors I, L L C  
L D R-Camelback L L C  
Calvary Center Inc  
Jpmorgan Chase Bank National Association  
Edward McHugh  
Liberty Square L L C  
King Plaza L L C  
Kenneth Vasseur  
J E R Realty L L C  
Charles B Petrini

Norma A Petrini  
One Stop Nutrition Corporation Office L L C  
J & M Properties L L C  
Human Resources Provider Inc  
Hills McQueen Family L L C  
Guthrie Income Ventures L L C  
Zimmerman Commons L L C  
32 Falcon Field  
20 & 28 W Juniper Avenue L L C  
R G Venue Enterprises L L C  
W J P Investments L L P  
Broatch Family Trust  
G E C C M C 2004-C2 Retail 649 L L C  
Bing K Wong  
Kam W Wong  
Washington Federal Savings  
Metropolis Laboratories L L C  
D N A Revocable Trust  
Harold M Wright  
Peggy N Wright  
Bunkers Garden Chapel L L C  
McCormick Twelve West L L C  
Justicetrax Inc  
Union32 L L C  
B P Gateway L L C  
W & J Properties L L C  
J H T Choate Enterprises L L C  
P G Management Services I I, L L C  
Waterfall Shopping Center Inc  
Robie John Frederick  
Toni Frederick  
M And M Contractors L L C  
Kacill L L C  
Gilbert Plaza Inc  
Cole La Mesa Az L L C  
Kinetic Stapley Square L L C  
Sereno 501 L L C  
Johnston Properties L L C  
Rock Valley Group L L C  
H Trent Townsend L L C  
Cooper Plaza L L C  
Alexandra Holdings L L C  
Wright Oracle L L C  
Rokar L L C  
Catholic Healthcare West  
Dignity Health  
Arizona Rental Management Company L L C

Ashford Scottsdale L P  
North Delaware Investors L L C  
Dr Wolf L L C  
Graflight Engineering Corporation  
Thomas Professional Office Plaza L L C  
Gauthier Family Living Trust  
Valley Natl Bk  
2939 N 24th St L L C  
Tarian Properties L L C  
Sunny Valley Investments L L C  
L & A Suk Limited Partnership  
William E Clark Jr And Evelyn J Clark Trust  
Vector Commercial Properties Inc  
J H J Omaha L L C  
Real Estate & More L L C  
East McDowell Office Plaza Condominium Owners  
Association  
Maximum Property Investments L L C  
Ronald Goldstein  
Badshah L L C  
R J Arcadia S T, L L C  
R M H Franchise Corporation  
Paul Janet  
14000 N Hayden Road Scottsdale L L C  
5th And McDowell Partners L L C  
7830 E Gelding Drive L L C  
Chandler Festival S P E, L L C  
8980 East Shea Boulevard L L C  
C P Maple Leaf 2 L L C  
Charles And Carol Patterson Trust  
Gilbert Mob L L C  
Abart Properties 26 L L C  
Autozone Inc  
B E C Autoplex Inc  
Tendler Mesa L L C  
H J Mesa L L C  
California Asset Port Inc  
Scottsdale P, I, L L C  
1420 N 24th St L L C  
Blue Ridge Holding L L C  
Desert Fairways Phase I I & I I I  
C3 Real Estate Investments L L C  
Dynamic Development Inc  
Caspian Corporation  
K T T F, L L C  
Greentree Investments L L C



Childers R J And Rollins R J And Davis S And  
Beverly J Trust  
Christensen Family Trust  
Christina M McDonald 1998 Trust  
Citation Developers L L P  
Colleen Maryanne Fochetti The Revocable Trust  
Combs 2010 Living Trust  
Rio Salado Center L L C  
Patel Mitesh  
Vadiwala Kruti  
Stanley & Joyce Black Family Trust  
Paul And Eleanor Sade Survivors Trust  
Coyote View Plaza L L C  
Cuclis Family Trust  
Daily Cafe L L C  
Babcock Living Trust  
1215 S R, L L C  
L F M Houston L L C  
Kenjo L L C  
T W C Northern L L C  
East Bell Road L L C  
Harold F Hutton Trust  
H H-Laveen L L C  
James J And Sue Femino Trust  
Karas Bros L L C  
Bubion Investment Co L L C  
W W W, G W C Partners L L C  
Meadows G W C Ventures L L C  
Knowlton Forrest  
Paula Dunn  
Kern Family Revocable Trust  
Silver Barrett  
Barbara Barrett  
K N Amjadi Family Limited Liability  
Kimo Enterprise L L C  
K J R M Investment L L C  
Kyrene Village I I, L L C  
L & G McDowell L L C  
C R H Legacy Trust  
K E H Legacy Trust  
726 South Gilbert L L C  
Quicktrip Corporation  
Dobson Square Property L L C  
L A A C O Ltd  
Marker Trust  
Michaei And Martha L Ohrt P Trust  
Multilateral Scottsdale Income L P

Peppertree Plaza L L C  
Gilbert Veterinary Clinic L L C  
Northsight Scottsdale Crossing L L C  
Gilbert & Ray Plaza L L C  
Frah Veterinary Property L L C  
Four P Properties Arizona L L C  
Frys Smalley L L C  
Charles A & Florence K Mitten Trust  
Jon Terrigino  
Teresa Terrigino  
Ocean Breeze-Dawn L L C  
Gordon Westdahl  
Pima Crossing Annex L L C  
Porter-Acme L L C  
P S A F Development Partners L P  
R M D Enterprises L L C  
Sandra Faye Rulapaugh  
Mary Frances Beranek  
S D S Arizona Commercial L L C  
Seritage K M T Finance L L C  
Sewell Winston Douglas Trust  
S M W Associates L L C  
Stern Land Company I I, L L C  
Qorri Family Trust, The  
Yeliab I V, L L C  
Wenjoy Properties L L C  
Jutland 4141 Investments Ltd  
S E P  
Chandler First Assembly Of God  
Advanced Surgical Holdings L L C  
Pavilions Shopping Center L P  
Allen Lawrence  
Edna Lee Lawrence  
Pavel Investments L L C  
Gerald D Crater  
Vivian A Crater  
Rydesco Investments L L C  
M P H S Plaza L L C  
Carriage Lane L L C  
L J M Commerce Center Condominium Owners  
Association  
Screwie Lewies Dirt N Water Sports  
Hare Investments L L C  
Universal Waste Control  
Hintze Development Co Inc  
Lyons Ronald E Trust  
C P 2004 Station 1 L L C

C D M Development L L C  
F H I, L L C  
Doherty Family Trust  
Dave Doherty  
R & H Investments  
R & H Investments L P  
New West Holdings L L C  
R W F Adventures L L C  
Warner Plaza Condominiums  
Western American Investments L L C  
Ballettos L L C  
Warner Plaza Condominium Association  
R T D, L L C  
Dobson Ranch Medical/ Dental Center  
Store Master Funding V I I I, L L C  
Rickel L L C  
Beefeater Holdings L L C  
Happy Valley Real Estate L L C  
Reliance Management L L C  
White Road Properties Limited  
J P H L L C  
Desert Truss Inc  
R D B Ltd L L C  
Timotei Gherasim  
Kaji Business Properties L L C  
Purcell Properties L P  
J K B Properties L L C  
Four P Properties Colorado L L C  
1041 L L C  
Level 7 Holdings L L C  
Micro-Rel Inc  
Jemco Park Lane Properties L L C  
Y M C Arizona Properties L L C  
Presson P V Four L L C  
Stephen E Wilkinson  
Wilkinson Floor Covering  
Team C B Petroleum Properties L L C  
L T F Real Estate C M B S, I I, L L C  
Omkar L L C  
Dunbar Hayden L L C  
Park Lane Trust Partners L L C  
Kang Mesa Estates L L C  
Anthony J Huberty  
Lisa K Huberty  
C O A Z Holdings L L C  
Mesa Office Suites Unit Owners Association  
Northside Investments Of Spokane L L C

P B F Living Trust  
Presson P V Seven L L C  
J T Markham Ventures L L C  
Clod L L C  
Sun Future L L C  
Saint Hubertus L L C  
Tempe Diablo L L C  
S K T T L Ventures L L C  
Nixi L L C  
Voda L L C  
Pinnacle Business Park Condominiums Owners  
Association  
Kozell Properties L L C  
S C J R, L L C  
B H Islands Village L L C  
Mistry Family Trust  
Hiltonia Family Trust  
Lin-Ray Condominiums  
Jabil Properties L L C  
Lin-Ray Professional Suites Condominium  
Association  
Dover Shores Limited Partnership  
Plenty Holdings L L C  
L J C, L L C  
Warner Gateway Property Double J S Property L L  
Surinder Kaur Bharara  
Davinder Pal Singh  
Bidya Lohani-Sharma  
Nabin Sharma  
T S D, L L C  
Bieser Investments L L C  
Surefireaz L L C  
True Presence Investments L L C  
Elliot Commons Business Center Association Inc  
219 S William Dillard Drive L L C  
Cody & Jessie Properties L L C  
Gilbert Commons Business Center Association Inc  
Tugnme Company L L C  
Ranchland Holdings I V, L L C  
Warner Commerce Park Condominium Association  
K S Properties L L C  
G P O Westech L L C  
C J V, L L C  
Westech Condominium Association  
Hardy Family L L C  
Shaw Squad L L C  
Cobblestone Square L L C

McDonalds Corporation 002-0162  
Valley Real Estate L L C  
Goodyear Plaza I I, L L C  
Garner Properties L L C  
L M R Group Inc  
Stokes Square L L C  
Dover Shores Limited Partnership  
Dover Shores Property Owners Association Inc  
Paulco Properties L L C  
Twenty First And Parkside L L C  
Melaprops L L C  
B C S Investments L L C  
Plumbing Shack L L C  
Renstrom Enterprises L L C  
Melinda Business Park 4 Condominium Association  
S D F Investments L L C  
T C S Enterprises L L C  
Habanero Nova L L C  
Sterling Real Estate Investment L L C  
Red Ryder Ranch L L C  
Lai An Wu  
Falcon Airpark L L C  
Cramer Properties L L C  
Terradyne L L C  
Ivan Penich  
Ana Penich  
Ruth Tam Lim Revocable Living Trust  
D R L J Buckley L L C  
Bull Moose Holdings L L C  
Azofis L L C  
Gunnar Enterprises L L C  
S G Molitor L L C  
Bird Dog Investments L L C  
Preeti-Seema Apartments L P  
Nicholson & Preder 401k Plan  
A M Ventures 1.31 Inc  
Forest Lane Investments L L C  
Paragon Center L L  
2160 Baseline Rd L L C  
S B B C Investments L L C  
Queen Creek Professional Village Condo  
W D P Glendalestorage L L C  
Mark T Druecker  
Park Place Condominiums L L C  
Gerald R Knudson  
Betty D Knudson  
Cabrianie Investments Number Two

K L T Management L L C  
Gents Boxing Club L L C  
A Z P Northsight L L C  
Spirit S P E Portfolio 2007-3 L L C  
Kregle Danny Joe And Kelly A M, T R  
    Danny Joe Kregle  
    Kelly A M Kregle  
    Peoria Holdings L L C  
    Robert C Slagle  
    Joanne I Slagle  
    Purcell Tire Company  
    Owl Properties L L C  
Camelback Office Park Owners Association  
Camelback Office Park L L C  
Mesa Optometric Center

The following is a list produced by Plaintiffs of Consolidated Defendants and their original case numbers, for ease of reference.

<b>Case Number</b>	<b>Defendants (et al.)</b>
CV2016-004503	SABIO PROPERTIES LLC
CV2016-004506	SABA BROTHERS RENTALS LLC
CV2016-004507	GREAT AMERICAN HAMBURGER CO
CV2016-004508	SCOTTSDALE FASHION SQUARE LLC
CV2016-004513	Cole M F Phoenix A Z, L L C
CV2016-004514	4454 E THOMAS LLC
CV2016-004515	SSC PROPERTY HOLDINGS INC
CV2016-004517	CACTUS ROSE OF WICKENBURG LLC
CV2016-004518	PARADISE PLAZA LLC
CV2016-004522	WICKENBURG COMMERCIAL CENTER
CV2016-004523	DOUBLE D THOROUGHBRED FARM INC
CV2016-004527	GURU NANAK INVESTMENTS LLC
CV2016-004533	HAYDEN SHEA PROPERTIES LLC
CV2016-004538	Executive Plaza LLC
CV2016-004539	STANFAM ENTERPRISES LLC
CV2016-004541	GRESHAM SOPHIA ANDREOU POULCHERIOS TRUST
CV2016-004542	Z GOOD FAMILY HOLDINGS LLC
CV2016-004544	MIA PROPERTIES LLC
CV2016-004546	1818 HOLDINGS LLC
CV2016-004548	RANCH AUTO CENTER LLC
CV2016-004549	SADA LLC
CV2016-004554	DESERT COVE MEDICAL PARTNERS L L C
CV2016-004556	HIGGINBOTHAM PROPERTIES LLC
CV2016-004584	CIRCLE K PROPERTIES INC
CV2016-004599	6067 E UNIVERSITY LLC
CV2016-004601	2353 BASELINE LLC
CV2016-004603	12656 NORTH TATUM LLC
CV2016-004606	HEIGHTS PROPERTIES
CV2016-004607	HEARTLAND FINANCIAL USA INC
CV2016-004608	GREGORY M WORSLEY TRUST AND G M WORSLEY INC
CV2016-004609	GRANDSLAM 7 LLC
CV2016-004610	GRACE POWER AND CHANDLER HEIGHTS LLC
CV2016-004611	G. B. INVESTMENT COMPANY
CV2016-004615	DORA AND SON LLC



CV2016-004617	DMJ HOLDINGS L L C
CV2016-004618	DIETCHE AND FREUNDLICH INC
CV2016-004619	DAVID SCHNEIDER, ET AL.
CV2016-004620	DAVID SCHNEIDER, ET AL.
CV2016-004621	DAVID A AND ALLISON F FORD, HUSBAND AND WIFE
CV2016-004622	DAHLE INVESTMENTS LLC
CV2016-004623	COLLIN SCOTT AND ROSALIE ANN ETHINGTON, HUSBAND AND WIFE
CV2016-004625	CIRCLE K PROPERTIES INC
CV2016-004628	MEGHA LLC
CV2016-004629	MAX COST RECOVERY LLC
CV2016-004630	MARY ANN ZORIA RODRIGUEZ SEPARATE PROP TRUST
CV2016-004632	LOST BOYS INC
CV2016-004633	LEVY PROPERTIES LLC E MESA
CV2016-004634	LDR-SEVILLE SWC LLC
CV2016-004635	LDR-PECOS & HIGLEY LLC
CV2016-004639	JEFF W AND MADALYN B SEGUIN TRUST
CV2016-004640	J & M YIN INVESTMENT LLC
CV2016-004641	ISLANDIA MESA LLC
CV2016-004643	INNOVATIVE IMVESTMENT AND CONSULTING CO
CV2016-004648	SY GILBERT COMMONS II LLC
CV2016-004649	SUNDIAL REAL ESTATE LC
CV2016-004652	SSR CAPITAL GROUP LLC
CV2016-004653	SPINY TAIL INVESTMENTS LLC
CV2016-004654	SOL HOFF COMPANY L L C
CV2016-004656	WILLIAM CARNS & ASSOCIATES LLC
CV2016-004659	J P Morgan Chase Bank N A
CV2016-004661	UNIVERSITY MESA CVS LLC
CV2016-004667	RDEV MESA RANCH LLC
CV2016-004668	RDEV MESA RANCH LLC
CV2016-004669	PHILBERT LLC
CV2016-004672	P7 VILLAGE AT HAYDEN LLC
CV2016-004674	NORTHPOINT VILLAGE LLC
CV2016-004675	NEW PRIVATE RESTAURANT PROPERTIES LLC
CV2016-004676	NATIVE ARIZONAN ACQUISITIONS IV LLC
CV2016-004677	NATIONAL RETAIL PROPERTIES LP

CV2016-004678	TEN PLACE LLC
CV2016-006564	CORONA DEL SOL PLAZA LLC
CV2016-006565	CEH LLC
CV2016-006566	CASA RAMOS INC
CV2016-006567	CARLO MORMINO AND LUCY RAINERI GRANDCHILDREN TRUST
CV2016-006568	CAMEO PROPERTIES LLC
CV2016-006572	ASHRAF and ZAGHI NASSER TRUST
CV2016-006575	1107 E MAIN AZ LLC
CV2016-006577	3 EL'S L L C
CV2016-006579	AKAL INVESTMENTS LLC
CV2016-006580	ALLEN LARRY F
CV2016-006582	MESA HOTELS LLC
CV2016-006584	JEK CAPITAL LLC
CV2016-006586	HIGGINBOTHAM PROPERTIES, LLC
CV2016-006587	HHPN INVESTMENTS LLC and 2ND HOP LLC
CV2016-006588	HELP SERVICES INC
CV2016-006592	GLOBAL CHANDLER 2150 LLC
CV2016-006593	GILBERT CENTER HOLDINGS LLC
CV2016-006596	EC GOOD CHANDLER LLC
CV2016-006597	DTD-DEVCO 5 LLC
CV2016-006598	DLC INVESTMENTS INC
CV2016-006602	PATTERSON FARMS INC
CV2016-006605	MAHESH S AND DEENA M DESIA, HUSBAND AND WIFE
CV2016-006606	LINES PROPERTIES LLC
CV2016-006607	LFS HOLDINGS (AZ) LLC
CV2016-006608	LEO AND SHERRY FRUMKIN TRUST
CV2016-006610	LAURA A ANTHONY J STILE TRUST
CV2016-006612	KERRY M AND JOAN M NORGREN , HUSBAND AND WIFE
CV2016-006616	MINNETONKA CAPITAL INVESTMENTS III LLC ETAL
CV2016-006617	MICHAEL AND CHRISTINE LEBARON TRUST
CV2016-006619	SUNIWAN LLC
CV2016-006621	SOUTHERN-STAPLEY DERITO-P RETAIL 1 LLC
CV2016-006623	SOUTHERN PROMENADE LLC
CV2016-006625	SHERWOOD INVESTMENTS LLC

CV2016-006626	SHARON LYNN AND JAMES R OLSEN , HUSBAND AND WIFE
CV2016-006627	SHANE SCOTTSDALE LP
CV2016-006628	NORTHPOINT VILLAGE LLC
CV2016-006632	SCOTTLIN LLC
CV2016-006635	SAIA FAMILY LIMITED PARTNERSHIP
CV2016-006636	Rodriguez Esperanza
CV2016-006637	ROBERT C AND MARCI N BELIAK, HUSBAND AND WIFE
CV2016-006638	RED MOUNTAIN ASSET FUND 1 LLC
CV2016-006643	WESTWOOD VILLAGE SHOPPING CENTER LLC
CV2016-006644	WENDYS PROPERTIES LLC
CV2016-006645	WELLS REIT II SANTAN CORPORATE CENTER II LLC
CV2016-006647	WARREN L KUTOK AND JUDITH A KUTOK TRUST
CV2016-006648	VIEL GLUCK LP AND BENN FATTO LP AND BOA SORTE LP
CV2016-006651	VCCA GILBERT INVESTORS
CV2016-006655	TASHICO LLC
CV2016-006656	SY CASA PALOMA LLC
CV2016-006657	CHANDLER MIDWAY LLC
CV2016-006662	CARPE DIEM PROPERTIES LLC
CV2016-006665	BROWN ROAD MEDICAL CLINIC LLC
CV2016-006669	BERTHA MARQUEZ AND JOHN DOE MARQUEZ, HUSBAND AND WIFE
CV2016-006670	AZRE FUND I LLC
CV2016-006671	A Z G Brown & Gilbert L L C
CV2016-006672	ASN INC
CV2016-006673	ALC GILBERT CENTER LLC
CV2016-006674	ACTIVEG LLC
CV2016-006675	ABS SW INVESTOR LLC
CV2016-006676	1548 MAIN LLC
CV2016-006680	HIGGINBOTHAM PROPERTIES LLC
CV2016-006682	GLAMOZON BEAUTIQUE LLC
CV2016-006684	GILBERT CENTER HOLDINGS, LLC
CV2016-006685	GILBERT AZ WINGS LLC
CV2016-006686	GAJ PROPERTIES LLC
CV2016-006689	EAST CHANDLER BLVD #1 LLC
CV2016-006690	DUNN-EDWARDS CORPORATION
CV2016-006691	DESERT TACO EAST LLC

CV2016-006692	DAVID AND SUSAN GOLDBERG, HUSBAND AND WIFE ET AL
CV2016-006693	CROSSCONNECTIONS III LLC
CV2016-006694	CRACOVIA CAPITAL, L.L.C.
CV2016-006696	CHP 1010 MCDOWELL LLC
CV2016-006697	CHARLES H AND LESA H CRISMON TRUST
CV2016-006698	ISLANDIA ASSOCIATES, LLC
CV2016-006699	JABELL HOLDINGS LLC
CV2016-006700	JABELL HOLDINGS LLC
CV2016-006701	JACK BERG FAMILY LIMITED PARTNERSHIP
CV2016-006702	JACK IN THE BOX INC.
CV2016-006704	JCV LLC
CV2016-006705	JOSE M AND NATALIA G ORTIZ, HUSBAND AND WIFE
CV2016-006707	KERBY FURNITURE INC
CV2016-006708	LF2 VAL VISTA LP
CV2016-006710	MAIN PLAZA LLC
CV2016-006711	MAURICIO MESA MOTOR SPORTS LLC
CV2016-006712	MESA MATRIX, LLC
CV2016-006713	Mesa Star Inc
CV2016-006715	MONTANILE PROPERTIES RAY LLC
CV2016-006716	NORTHSIGHT, LLC
CV2016-006717	Odriel Garcia
CV2016-006718	UPSWING ENTERPRISES LLC
CV2016-006721	TTR PROPERTIES LLC
CV2016-006722	Southland Corp, The
CV2016-006723	SY GILBERT COMMONS I LLC
CV2016-006724	SS SANDHU INVESTMENT LLC
CV2016-006726	SEE IN COMPANY LLC
CV2016-006728	SALERO RANCH LLC
CV2016-006729	S & C PARTNERS
CV2016-006730	ROMAN A BARAYEV AND JANE DOE BARAYEV, HUSBAND AND WIFE
CV2016-006740	WGN FUND I
CV2016-006742	WENDYS PROPERTIES LLC
CV2016-006743	WARNER GREENFIELD LLC
CV2016-006744	WARNER GREENFIELD LLC
CV2016-006746	VILLANUEVA INVESTMENTS LLC

CV2016-006748	VANS GOLF PROPERTIES LLC
CV2016-006752	GREGORY WAYNE AVERY LIVING TRUST
CV2016-006756	GATEWAY TRIANGLE DEVELOPMENT LLC
CV2016-006757	GANESH COMPANY
CV2016-006759	FFF MCELLIOT LLC
CV2016-006761	EMS PROPERTY LLC
CV2016-006762	EC CHANDLER LLC AND WARNER CHANDLER LLC
CV2016-006763	EAST VALLEY PARTNERS LLC
CV2016-006764	EADS DOBSON TOWN CENTER LLC
CV2016-006766	DESIGN PROPERTIES ELLIOT LLC
CV2016-006767	DANIEL G AND KENDRA H ONG, HUSBAND AND WIFE
CV2016-006768	COMU SCOTTSDALE LLC
CV2016-006771	BAYPORT SCOTTSDALE ROAD ASSOCIATES LP
CV2016-006773	B & T VIVIAN INVESTMENT COMPANY LLC
CV2016-006775	ALLAN AND ANGELA TO ET AL
CV2016-006776	AINA HOLDINGS LLC
CV2016-006777	8502 E VIA DE VENTURA LLC
CV2016-006781	1900 UNIV AZ LLC
CV2016-006782	1900 UNIV AZ LLC
CV2016-006783	1740 E BROADWAY PARTNERS LLC
CV2016-006784	15231 N 87TH STREET PARTNERS LLC
CV2016-006785	MWD COMMERCIAL LLC
CV2016-006787	MISSION SQUARE LLC
CV2016-006788	MESA STAR INC
CV2016-006789	MELEYCO PARTNERSHIP NO 2
CV2016-006790	MAMMOTHROCK LLC
CV2016-006791	MAIN STREET REAL ESTATE GROUP LLC
CV2016-006792	LANDRACE HOLDINGS LLC
CV2016-006793	LANDRACE HOLDINGS LLC
CV2016-006794	KOON BOEN INC
CV2016-006796	KINGSTON CARL E TRUSTEE
CV2016-006798	JUSTUS LIMITED PARTNERSHIP
CV2016-006801	JEFFREY SHEPARD AND GRACE JUNG LIU, HUSBAND AND WIFE
CV2016-006802	JAML LTD
CV2016-006803	J F AND EVA CARRAZCO TRUST

CV2016-006805	HAROLD M AND SYBLE L WALTHALL, HUSBAND AND WIFE
CV2016-006806	HARMONY INVESTMENT CO
CV2016-006807	GUNCO L L C
CV2016-006808	SCI ARIZONA FUNERAL SERVICES INC.
CV2016-006809	SALEM FAMILY TRUST
CV2016-006810	RSD VAL VISTA PROPERTIES LLC
CV2016-006811	RICHARD AND WANDA SKOUSEN, HUSBAND AND WIFE
CV2016-006812	REDMOND A JR AND MARY ANNE B DOMS TRUST
CV2016-006813	RAYMOND E AND WILMA C STALLINS TRUST
CV2016-006815	PVC LTD AND WESTWOOD ASPIRATIONS LLC
CV2016-006816	BK ARIZONA LLC
CV2016-006817	PURE TEMPE PARTNERSHIP
CV2016-006818	PRICE WARNER COMMERCE CENTRE LLC ET AL
CV2016-006819	PIMA ROAD LLC
CV2016-006820	PHOENIX VAN BUREN PROPERTIES LLC ET AL
CV2016-006821	PBDL PROPERTIES LLC
CV2016-006823	ORCHARDS AT TUCSON LLC
CV2016-006824	ONE FIVE TWO TWO THREE NORTHSIGHT BLVD LLC
CV2016-006825	NORTH SCOTTSDALE INVESTMENTS LLC
CV2016-006826	CASSH HOLDINGS LLC
CV2016-006828	WYAZ INVESTMENTS LLC
CV2016-006829	WINREAL OPERATING CO L P
CV2016-006830	WILLIAM AND GUSSIE RAMSEY, HUSBAND AND WIFE
CV2016-006831	WALTRUST PROPERTIES INC
CV2016-006832	VVAH L L C
CV2016-006834	VAL VISTA AND WARNER ASSOCIATED LTD
CV2016-006835	UNIVERSITY AND GILBERT LLC
CV2016-006836	TOY ENTERPRISES INC
CV2016-006840	T C B MANAGEMENT INC
CV2016-006841	SWT ARIZONA INVESTMENTS LLC
CV2016-006842	SWAZ PROPERTIES LLC
CV2016-006843	STEVEN THOMAS EVANS ET AL
CV2016-006846	Smith East Valley Properties L L C
CV2016-006848	SCU BRONCOS LLC
CV2016-006850	BIG LAKE ESTATES LLC

CV2016-006851	BERT B MALOUF LLC
CV2016-006853	BANK OF AMERICA NATIONAL TR & SAVINGS
CV2016-006854	BANK OF AMERICA ARIZONA
CV2016-006855	AZOFIS LLC
CV2016-006856	AZG BROWN & GILBERT LLC
CV2016-006859	ARTISAN LOFTS ON CENTRAL RETAIL LLC
CV2016-006860	Aurthur Investments L L C
CV2016-006862	AMBUVISION
CV2016-006864	8829 SOUTH PRIEST LLC
CV2016-006865	7255 SOUTH POWER ROAD LLC
CV2016-006866	3303 SOUTH LINDSAY LLC and JRNN PATEL FAMILY L P
CV2016-006867	2310 W RAY ROAD LLC
CV2016-006868	LARRY and CHARLENE FITZGERALD Husband and Wife
CV2016-006870	BRENDEN HOLDINGS II and 10118 SF VENTURES LLC
CV2016-006872	BROADWAY DOBSON PLAZA L L C
CV2016-006874	BRYAN INVESTMENT GROUP LLC
CV2016-006875	C & A COMMERCIALS LLC
CV2016-006877	CBC INVESTMENT LIMITED PARTNERSHIP
CV2016-006878	CHANDLER FRYE ROAD PROPERTY LLC
CV2016-006879	COCONUT GROVE M AND M AVILA LLC ET AL
CV2016-006880	COLLEGE ENTERPRISES INC
CV2016-006881	DBPC INVESTMENTS LLC
CV2016-006882	DENALI NATIONAL TRUST XXII LLC
CV2016-006883	DESERT ROSE MOTEL LLC
CV2016-006885	Double Z Mesa
CV2016-006890	L AND R PETERS INVESTMENTS LLC
CV2016-006891	KLINE PROPERTIES LLC
CV2016-006892	KLAL ENTERPRISE LLC
CV2016-006893	KEMPTONS TRAVEL TOWN and KELLIE R MILLER ET AL
CV2016-006894	JOSEPH L & DOROTHY E MAGLIOZZI Husband and Wife
CV2016-006895	JACK and RUTH HOROWITZ Trust
CV2016-006896	J & M ARIZONA PROPERTIES LLC
CV2016-006897	HRS CHANDLER LLC
CV2016-006902	GILBERT CHANDLER HEIGHTS 1 LLC
CV2016-006903	GILBERT AZ PARTNERS

CV2016-006904	FREANEL & SON GILBERT LLC
CV2016-006906	ELLIOTT 101 HOLDINGS LLC
CV2016-006907	EDMOND AND NADA THOMASIAN FAMILY TRUST ET AL
CV2016-006910	MENTOR HOSPITALITY FUND 1 LLLP
CV2016-006911	MICHAEL P PULOS Trust and ALICE C PULOS Trust
CV2016-006912	NARAN AND NISHA VARU 1993 LIV Trust and PARESH VARU
CV2016-006913	NASSER and ASHRAF ZAGHI Trust
CV2016-006915	OCOTILLO CATHEDRAL LIMITED PARTNERSHIP ET AL
CV2016-006916	OM SHREE SAINATH LLC
CV2016-006917	PARK 40
CV2016-006918	PAPAGO MARKETPLACE LLC
CV2016-006919	PATTERSON FARMS INC
CV2016-006921	POWER & RAY HOLDINGS LLC
CV2016-006923	PRAH LLC
CV2016-006924	PRICE-LEGACY MESA LP
CV2016-006926	VEENA CORP
CV2016-006927	VAL VISTA and GUADALUPE LLC
CV2016-006929	Centers For Habilitation And T C H, The
CV2016-006930	TABKIRK LLC
CV2016-006932	STEVEN D WILSON LLC
CV2016-006934	SKANDA INVESTMENTS LLC
CV2016-006935	SITTO AMIR and AHLAM TR
CV2016-006936	SHERPA HOLDINGS COMPANY L L C
CV2016-006937	SFB SPROUTS LLC
CV2016-006938	Salina U T Land Holdings L L C
CV2016-006939	SAIA JR and GABRIEL GOMES REVOCABLE LIVING TRUST
CV2016-006940	SAIA FAMILY LIMITED PARTNERSHIP
CV2016-006941	SAFEWAY INC #1567
CV2016-006943	RED MOUNTAIN ASSET FUND I, LLC
CV2016-006944	Realty Income Properties 14 LLC
CV2016-006945	ZYNDA FAMILY TRUST
CV2016-006947	WHITE STAR LINE L L C
CV2016-006950	WARNER MEDICAL PARK LLC
CV2016-006953	CHANDLER WARNER CVS LLC
CV2016-006954	CHANDLER SUNSET LLC



CV2016-006955	CFT DEVELOPMENTS LLC
CV2016-006956	CDKT LLC
CV2016-006957	CASON FAMILY HOLDINGS LP
CV2016-006961	BELIEVE BODY LLC
CV2016-006962	BASELINE INCOME VENTURES LLC
CV2016-006963	AZG GREENFIELD PLAZA LLC
CV2016-006964	AUTO-OWNERS LIFE INSURANCE COMPANY
CV2016-006965	AUGUSTA RANCH LLC
CV2016-006968	7641 E GUADALUPE LLC
CV2016-006969	7254 EAST SOUTHERN AVENUE LLC
CV2016-006970	6610 E BASELINE ROAD INVESTORS LLC
CV2016-006971	1230 E BASELINE LLC
CV2016-006972	BATMD LLC
CV2016-006973	J & J PACIFIC PROPERTIES LLC
CV2016-006974	ISMAL ATARIA INVESTMENTS LLC
CV2016-006975	HIGLEY STERLING PROPERTIES LLC
CV2016-006976	HIGGINBOTHAM PROPERTIES LLC
CV2016-006977	HB PARADISE VALLEY LLC
CV2016-006978	GUADALUPE FIVE TIMBERS LLC
CV2016-006979	GSS PARTNERS LLC
CV2016-006980	GATEWAY TRIANGLE DEVELOPMENT LLC
CV2016-006984	CP SIGNAL BP LLC
CV2016-006985	CRISMON & BASELINE LLC AND WALH LLC
CV2016-006986	DESERT FAIRWAYS INVESTORS LLC
CV2016-006987	DESERT TACO EAST LLC
CV2016-006988	DIAMOND SHAMROCK ARIZONA INC
CV2016-006989	DTD DEVCO 8E L L C
CV2016-006990	DTD DEVCO 8W L L C
CV2016-006991	ELEVEN INVESTMENTS LLC
CV2016-006993	FAE HOLDINGS 416754R LLC
CV2016-006996	GATEWAY MEDICAL INVESTORS LLC
CV2016-006997	GATEWAY TRIANGLE DEVELOPMENT LLC
CV2016-007000	L A-Power L L C
CV2016-007001	LANDRACE HOLDINGS LLC
CV2016-007002	LAGRANGE PLAZA LLC

CV2016-007003	JDS COUNTRYSIDE LLC AND DLS COUNTRYSIDE LLC
CV2016-007006	JABEL HOLDINGS LLC
CV2016-007007	LS LLC
CV2016-007008	MAKO PROPERTIES INC
CV2016-007010	NCC ENTERPRISES INC
CV2016-007011	PAVILION HOLDINGS LLC
CV2016-007012	PAVILION HOLDINGS LLC
CV2016-007013	PIERCE HARDY LP
CV2016-007016	POWER RANCH PROFESSIONAL VILLAGE CONDO ASSOC
CV2016-007017	POWER ROAD WILLIAMS FIELD LLC
CV2016-007018	P W R E O Val Vista And Southern L L C
CV2016-007019	PWREO VAL VISTA AND SOUTHERN LLC
CV2016-007026	WDP TOWN CENTER LLC
CV2016-007027	Village At Superstition Spring Condo Assc
CV2016-007030	VAL VISTA INVESTMENTS LLC
CV2016-007031	TENK CAPITAL ASSETS LP
CV2016-007033	TB MESA LLC
CV2016-007034	SY GILBERT COMMONS III LLC
CV2016-007036	ST GEORGES LLC
CV2016-007038	SANTAN HEALTH SERVICES LLC
CV2016-007041	ROTH INVESTMENT PROPERTIES LLC
CV2016-007042	RILEY DEVELOPMENT IV LLC
CV2016-007043	INTERNATIONAL SHOPPING CENTER INVESTMENTS LLC
CV2016-007044	PVC LTD and WESTWOOD ASPIRATIONS LLC
CV2016-007046	1255 BASELINE LLC
CV2016-007048	ACACIA CREEK PARTNERS LLC
CV2016-007051	ARC GRMSAAZ001 LLC
CV2016-007052	BAUMLER PROPERTIES LLC
CV2016-007057	CURTISH & ANNA DEMAR, HUSBAND AND WIFE
CV2016-007058	DAVID DIETLEIN AND JANE DOE DIETLEIN, HUSBAND AND WIFE
CV2016-007062	DELFORM AND JOANN S ALVAREZ, HUSBAND AND WIFE
CV2016-007063	DESERT FLOWER OWNER LLC
CV2016-007064	DIAMONDBACK PROPERTIES GROUP LLC
CV2016-007066	DOBSON VILLAGE OFFICE CONDOMINIUM ASSOCIATION
CV2016-007068	ELZE LLC

CV2016-007069	EMIL J AND LOIS M WESER TRUST
CV2016-007070	ENCORE PLAZA SHOPPING CENTER, LLC
CV2016-007071	EV MED LLC
CV2016-007072	EVIN-PHOENIX LLC
CV2016-007074	FIVE SAC 2010 LLC
CV2016-007075	FOOTHILLS SHOPPING CENTER LLC
CV2016-007076	FOOTHILLS SHOPPING CENTER LLC
CV2016-007077	FTT VILLAGE FAIR NORTH LLC
CV2016-007078	FTT VILLAGE SQUARE II LLC
CV2016-007080	GATEWAY TRIANGLE DEVELOPMENT LLC
CV2016-007081	GEORGE GANEM TRUST
CV2016-007082	HB FOOTHILLS GATEWAY LLC
CV2016-007083	HENDERSON INDUSTRIES LLC
CV2016-007085	INVESTMENT PROPERTY MANAGEMENT LLC
CV2016-007086	J & N DEVELOPMENT INC
CV2016-007087	JBR2 LLC
CV2016-007089	KIMCO MOUNTAINSIDE PHOENIX 647 INC
CV2016-007090	LAKEVIEW VILLAGE CENTER LLC
CV2016-007091	LAWRENCE REAL ESTATE INVESTMENTS LLC
CV2016-007092	LP & MR INVESTORS LLC
CV2016-007093	LUNDGREN RENTAL PROPERTIES LLC
CV2016-007094	MARCO POLO INC
CV2016-007095	MCCHANDLER INC
CV2016-007096	MESA SHOPPING CENTER L L C
CV2016-007098	PFAFFMANN FINANCIAL INC
CV2016-007099	QI AND YE FANG CHEN, HUSBAND AND WIFE
CV2016-007100	QUEEN CREEK PV DEVELOPMENT LC
CV2016-007101	R & B PIZZA 1 LLC
CV2016-007102	R & R SUPPLY INC
CV2016-007103	RAHIMI PROPERTIES LLC
CV2016-007104	RAY RANCH PROFESSIONAL PLAZA CONDO ASSOC
CV2016-007109	SCP 2009 C32 006 LLC
CV2016-007110	SCR PARTNERS LLC
CV2016-007111	SEVILLE SQUARE MESA LLC
CV2016-007112	SICULA LLC

CV2016-007114	SJ MOUNTAINSIDE LLC
CV2016-007116	NETWORK HOLDINGS LLC
CV2016-007117	MTV PROPERTIES LLC
CV2016-007118	ORASI LLC
CV2016-007119	P & E LLC
CV2016-007121	PATHFINDER HOLDINGS LLC
CV2016-007122	Foothills Medical & Professional Plaza Owners Association
CV2016-007123	PCM INVESTMENTS LLC
CV2016-007124	SONOMA PARK PLACE
CV2016-007125	SPRUCE TREE INVESTMENTS LLC
CV2016-007126	ST KATHERINES GREEK ORTHODOX CHURCH INC
CV2016-007131	SYRAN LLC
CV2016-007132	TEE JAY INVESTMENTS OF OREGON LLC
CV2016-007134	TMK PROPERTIES LLC
CV2016-007135	TODD PAD 5700 LLLP
CV2016-007138	ZAN ELLERTSON AND MARIANNE KIA, HUSBAND AND WIFE
CV2016-007139	MOUNTAIN PARK PAVILLIONS LLC
CV2016-007228	ONE CAMELBACK INC
CV2016-008601	FIL AM PROPERTIES LLC
CV2016-008602	QUAD J HOLDINGS LLC
CV2016-008603	Emad M Abushanab
CV2016-008604	David Johnson
CV2016-008605	D L L R Properties L L C
CV2016-008606	JAXEN PROPERTIES LLC
CV2016-008607	D L L R Properties L L C
CV2016-008608	CSPO INVESTMENTS LLC
CV2016-008609	D L L R Properties L L C
CV2016-008610	R W MANAGEMENT INC
CV2016-008611	Ross E Babcock Sr And Wilma S Babcock Trust
CV2016-008612	LONE CACTUS PROPERTY LLC
CV2016-008614	DBNCH CIRCLE LLC
CV2016-008615	Rose Trust
CV2016-008616	DEER VALLEY CORPORATE CENTER LLC
CV2016-008617	32 Gallon Investments L L C
CV2016-008619	MELINDA BUSINESS PARK 4 LLC

CV2016-008620	SB SPARTAN ENTERPRISES LLC
CV2016-008621	RURAL CENTER LLC
CV2016-008622	THFT INVESTMENTS LLC
CV2016-008623	CANDLEWOOD INDUSTRIAL PARK LLC
CV2016-008624	WESTCOTT ENTERPRISES LLC
CV2016-008625	ZAPPIA HOLDINGS LLP
CV2016-008626	Roya Kamali-Taghavi Family Limited
CV2016-008627	DEER VALLEY AIRPARK VENTURE III LLC
CV2016-008628	RLS PROPERTIES LLC
CV2016-008629	HOLMSTROM PROPERTIES HAPPY VALLEY LLC
CV2016-008630	AHS 116 LLC
CV2016-008631	GOEBEL COMPANY
CV2016-008632	GERGEN ORTHODONTIC LAB INC
CV2016-008633	EPIC INVESTMENTS LIMITED PARTNERSHIP
CV2016-008634	DEER VALLEY VENTURES LLC
CV2016-008635	JDL & COMPANY L L C
CV2016-008636	Phoenix Northern Resort L L C
CV2016-008637	Phoenix Northern Resort L L C
CV2016-008638	CHRIST FAMILY TRUST
CV2016-008639	CHANDLER MERCADO PARTNERS LLC
CV2016-008640	CONCEPT Z PERFORMANCE INC
CV2016-008641	CEH PROPERTIES II LLC
CV2016-008642	BRIAN C AND JANE DOE FITZPATRICK, HUSBAND AND WIFE
CV2016-008643	LOYA PROPERTIES LLC
CV2016-008644	109 W LLC
CV2016-008645	RICHARD A AND MARIA MINKLE TRUST
CV2016-008646	ZEBRA CROSSING LLC
CV2016-008647	GLENDALE STORAGE CO
CV2016-008648	Midas Properties Inc
CV2016-008649	ackson Hole Partners L L P
CV2016-008650	ONG FAMILY LLC
CV2016-008651	Maricela Arellano
CV2016-008653	Phoenix 51st Avenue Partners L L C
CV2016-008654	HOUSE OF CANVAS INC
CV2016-008655	Mahlon A Miller

CV2016-008656	370 E VIRGINIA AVENUE LLC
CV2016-008657	Walaz L L C
CV2016-008658	Weinberger Properties L L C
CV2016-008659	U And A Properties L L C
CV2016-008660	S W T Arizona Investments L L C
CV2016-008661	LIHUI TEMPE LLC
CV2016-008662	Cosi Swan Long Term Investment L P
CV2016-008663	ARROWHEAD MEDICAL PROPERTIES LP
CV2016-008664	Arrowhead Leasing Services L L C
CV2016-008665	550 WIS LLC
CV2016-008666	Arizona Industrial Properties
CV2016-008667	BOTILLER ENTERPRISES INC
CV2016-008668	GLENDALE RETAIL I LLC
CV2016-008669	A G S Enterprises L L C
CV2016-008670	HEIGHTS PROPERTIES LLP
CV2016-008671	Arizona Industrial Properties
CV2016-008672	Arizona Industrial Properties
CV2016-008673	DAVID KWAN TRUST
CV2016-008674	PROS RANCH MARKET LLC
CV2016-008675	Bell Tower Plaza L L C
CV2016-008676	ARTANE LLC
CV2016-008677	Bell Tower Plaza L L C
CV2016-008678	BLE LLC
CV2016-008679	T P P Gateway L L C
CV2016-008680	Swagel Trust
CV2016-008681	Robert Isenberg
CV2016-008682	LOWE PROPERTIES LLC
CV2016-008683	MPN INVESTMENTS LLC
CV2016-008684	Circle K Stores Inc
CV2016-008685	NORTH 51ST AVENUE PARTNERS LLC
CV2016-008686	72ND AND BELL LLC
CV2016-008687	Park Place Condominiums L L C
CV2016-008688	NORTHWEST AAA LLC
CV2016-008689	ROBERT L & KATHERINE O MARTINY TRUST
CV2016-008690	Park Place Condominiums L L C

CV2016-008691	Park Place Condominiums L L C
CV2016-008692	Primestor 35th Avenue L L C
CV2016-008693	Jeffrey S Runyon
CV2016-008695	Primestor 35th Avenue L L C
CV2016-008696	Northern 12 L L C
CV2016-008698	Wagoner Plaza L L C
CV2016-008699	HELEN Y LOUIE TRUST
CV2016-008701	CONANT LIMITED PARTNERSHIP
CV2016-008702	Robert Lee Thatcher
CV2016-008703	BGP COTTON CENTER LLC
CV2016-008704	Cullinane Family Trust
CV2016-008705	L B A Realty Fund II-W B P, IV, L L C
CV2016-008707	R B R 5 L L C
CV2016-008708	DV INVESTMENT PARTNERS LLC
CV2016-008709	DV INVESTMENT PARTNERS LLC
CV2016-008711	DV INVESTMENT PARTNERS LLC
CV2016-008712	Southwest Investors L L C
CV2016-008713	Southwest Investors L L C
CV2016-008714	Southwest Investors L L C
CV2016-008715	NBFRE 43 LLC
CV2016-008716	Wright Doubleagle L L C
CV2016-008717	Simpson Carolyn R Trust
CV2016-008719	Beebe Investment Inc
CV2016-008720	AMERICAN HOME WATER INC
CV2016-008721	5000 SOUTH PRAIRIE LLC
CV2016-008722	AHR LLC
CV2016-008723	Progressive Casualty Insurance Company
CV2016-008724	Seaward R E, L P
CV2016-008725	JOHN F LONG FOUNDATION INC
CV2016-008726	I C Investors L L C
CV2016-008727	I C Investors L L C
CV2016-008728	L AND T ENTERPRISES INC
CV2016-008729	DEER VALLEY HOLDINGS LLC
CV2016-008730	I C Investors L L C
CV2016-008731	I C Investors L L C

CV2016-008732	BUNKER HILL LLC
CV2016-008733	COOK BROS LLC
CV2016-008734	I P T Deer Valley I C, L L C
CV2016-008735	Charles W Gulick
CV2016-008736	Rick M L Cortez
CV2016-008737	1116 LLC
CV2016-008738	1116 LLC
CV2016-008739	1116 LLC
CV2016-008740	1116 LLC
CV2016-008742	1116 LLC
CV2016-008743	MERITEX PHOENIX LLC
CV2016-008744	ONE LONE CACTUS LLC
CV2016-008745	CAMEL CENTRAL PLAZA LLC
CV2016-008746	MATTHEW J AND GLADYS M MAKKAUS TRUST
CV2016-008747	SEES CANDY SHOPS INC
CV2016-008748	EVALDO AND ROSINA DALESIO TRUST
CV2016-008749	Rockford Eaton L L C
CV2016-008750	T L F Investments L L C
CV2016-008751	301 WEST DEER VALLEY ROAD LLC
CV2016-008752	DVT COMMERCIAL PROPERTIES LLC
CV2016-008753	DEER VALLEY 320 LLC
CV2016-008754	ALM PROPERTIES LLC
CV2016-008755	Zimmerman Properties Inc
CV2016-008756	A SUN DOWN ENTERPRISE LLC
CV2016-008757	Lance Tang And Debra Quan-Tang Trust
CV2016-008758	401 W LONE CACTUS LLC
CV2016-008759	510 CAMELBACK LLC
CV2016-008760	MARCIA LOEB TRUST
CV2016-008761	NASHVILLE MANAGEMENT INC
CV2016-008764	Bui Kim Hang Thi
CV2016-008765	KLINE FAMILY TRUST
CV2016-008766	BLOOD SYSTEMS INC
CV2016-008767	L B A Realty Fund I I - Company I, L L C
CV2016-008768	E T T Huntington Tech L L C
CV2016-008770	JMTC LLC



CV2016-008771	WILSON INVESTMENT GROUP LLC
CV2016-008772	REVOCABLE TRUST AGREEMENT OF JAMES G WHITING
CV2016-008773	DRURY SOUTHWEST INC
CV2016-008774	C J E K LLC
CV2016-008775	LANCE TANG AND DEBRA QUAN-TANG TRUST
CV2016-008776	DENALI NATIONAL TRUST XII LLC
CV2016-008777	Quest Construction Managers L L C
CV2016-008778	PREMIER COMMERCIAL PAINTING SW LLC
CV2016-008779	KOWALSKI PROPERTIES LLC
CV2016-008780	LEXINGTON SKY HARBOR LLC
CV2016-008781	Presson P V Four L L C
CV2016-008782	Teague Properties L L C
CV2016-008783	HAMILTON CHASE DEER VALLEY LLC
CV2016-008784	DANIEL J AND KATHY D WALKER TRUST
CV2016-008785	NARP LLC
CV2016-008786	ADOBE PARTNERS LLC
CV2016-008787	Beebe Investment Inc
CV2016-008788	Presson P V Four L L C
CV2016-008789	R S AUTO ARTS INC
CV2016-008790	O O O C LLC
CV2016-008791	P & T HOLDINGS LLC
CV2016-008792	GCDS PROPERTIES LLC
CV2016-008793	DEER VALLEY INVESTMENTS LLC
CV2016-008794	Park Lane Business Center Owners Association
CV2016-008795	Deer Valley Airpark Venture I I I, L L C
CV2016-008796	CSHR INVESTMENTS LLC
CV2016-008797	LYNRON PROPERTIES LLC
CV2016-008798	RESIDENTIAL PROPERTY INVESTMENT AND MANAGEMENT
CV2016-008799	ABUDIS WEST LLC
CV2016-008800	PEORIA BUSINESS CORP
CV2016-008801	JOEL S GREENE FAMILY TRUST
CV2016-008802	GRAND 5 LLC
CV2016-008803	HAMILTON CHASE-GILBERT LLC
CV2016-008804	GILBERT CENTER HOLDINGS LLC
CV2016-008805	Wilshire Aspirations L L C

CV2016-008806	Terrace Holding A Z, L L C
CV2016-008807	SMART & FINAL PROPERTIES I LLC
CV2016-008808	CARLS JR RESTAURANTS LLC
CV2016-008809	J&S COMMERCIAL PROPERTIES LLC
CV2016-008810	2302 N SCOTTSDALE ROAD LLC
CV2016-008811	Eleven Investments L L C
CV2016-008812	KT ONE LLC
CV2016-008813	Samuel F Lew
CV2016-008814	MACK VENTURES LLC
CV2016-008815	CLAYTON AMBORN LLC
CV2016-008816	Mesa Main Investment Llc
CV2016-008817	Wong Joanne W H
CV2016-008818	FLORENCE HOMES LLC
CV2016-008819	Tri City Commerce Center L L C
CV2016-008820	91ST AND MCDOWELL LLC
CV2016-008821	Compass Bank
CV2016-008822	BASELINE PLAZA LLC
CV2016-008823	1747 MORTEN LLC
CV2016-008824	1730 APACHE LLC
CV2016-008825	POLK EUGENE P TRUST
CV2016-008826	CHRISTOWN 1755 LLC
CV2016-008827	MERCED RESTART PHOENIX INVESTORS I LLC
CV2016-008828	L D R-Camelback L L C
CV2016-008830	L D R-Camelback L L C
CV2016-008831	Phoenix Northern Resort L L C
CV2016-008832	CALVARY CENTER INC
CV2016-008833	JPMORGAN CHASE BANK NATIONAL ASSOCIATION
CV2016-008834	Edward McHugh
CV2016-008835	Norma A Petrini
CV2016-008836	ONE STOP NUTRITION CORPORATIONI OFFICE LLC
CV2016-008837	BROATCH FAMILY TRUST
CV2016-008838	G E C M C 2004-C2 Retail 649 L L C
CV2016-008839	Washington Federal Savings
CV2016-008840	METROPOLIS LABORATORIES LLC
CV2016-008841	Peggy N Wright

CV2016-008842	Compass Bank
CV2016-008843	Thomas L Clark
CV2016-008844	P G MANAGEMENT SERVICES II LLC
CV2016-008845	D & M INSURANCE BUILDING L L C
CV2016-008846	Waterfall Shopping Center Inc
CV2016-008847	Robie John Frederick
CV2016-008848	M AND M CONTRACTORS LLC
CV2016-008849	GILBERT PLAZA INC
CV2016-008851	COLE LA MESA AZ LLC
CV2016-008853	KINETIC STAPLEY SQUARE LLC
CV2016-008854	SERENO 501 LLC
CV2016-008855	JOHNSTON PROPERTIES LLC
CV2016-008856	Rock Valley Group L L C
CV2016-008857	COOPER PLAZA LLC
CV2016-008858	Alexandra Holdings L L C
CV2016-008859	Alexandra Holdings L L C
CV2016-008860	Wright Oracle L L C
CV2016-008861	BFS RETAIL & COMMERCIAL OPERATIONS LLC
CV2016-008862	ROKAR LLC
CV2016-008863	BELIEVE BODY LLC
CV2016-008864	Catholic Healthcare West
CV2016-008865	ARIZONA RENTAL MANAGEMENT COMPANY LLC
CV2016-008866	ASHFORD SCOTTSDALE LP
CV2016-008868	NORTH DELAWARE INVESTORS LLC
CV2016-008869	SAIA FAMILY LIMITED PARTNERSHIP
CV2016-008870	GAUTHIER FAMILY LIVING TRUST
CV2016-008871	Valley Natl Bk
CV2016-008872	2939 N 24TH ST LLC
CV2016-008873	William E Clark Jr And Evelyn J Clark Trust
CV2016-008874	Vector Commercial Properties Inc
CV2016-008875	Vector Commercial Properties Inc
CV2016-008876	JHJ OMAHA LLC
CV2016-008877	M D C Ridgeview Plaza Associates L P
CV2016-008878	Ronald Goldstein
CV2016-008879	PACIFIC WAG MESA LLC

CV2016-008880	RJ ARCADIA ST LLC
CV2016-008881	Chandler Festival S P E, L L C
CV2016-008883	Wal-Mart Stores Inc
CV2016-008884	CP MAPLE LEAF 2 LLC
CV2016-008885	CHARLES AND CAROL PATTERSON TRUST
CV2016-008886	GILBERT MOB LLC
CV2016-008887	MAIN PLAZA LLC
CV2016-008888	H J Mesa L L C
CV2016-008889	California Asset Port Inc
CV2016-008890	1420 N 24TH ST LLC
CV2016-008891	Val Vista And Warner Associated Ltd
CV2016-008892	DYNAMIC DEVELOPMENT INC
CV2016-008893	D L L R Properties L L C
CV2016-008894	GREENTREE INVESTMENTS LLC
CV2016-008895	KTTF LLC
CV2016-008896	RIO SALADO CENTER LLC
CV2016-008897	D L L R Properties L L C
CV2016-008898	Patel Mitesh
CV2016-008899	D L L R Properties L L C
CV2016-008900	Stanley & Joyce Black Family Trust
CV2016-010971	PAUL AND ELEANOR SADE SURVIVOR'S TRUST
CV2016-010972	BABCOCK LIVING TRUST
CV2016-010973	1215SR LLC
CV2016-010974	LFM HOUSTON LLC
CV2016-010976	B H, G T S, L L C
CV2016-010977	KENJO LLC
CV2016-010978	T W C Northern L L C
CV2016-010980	Pavilion Holdings L L C
CV2016-010981	BUBION INVESTMENT CO LLC
CV2016-010982	Meadows G W C Ventures L L C
CV2016-010983	Knowlton Forrest
CV2016-010984	K N Amjadi Family Limited Liability
CV2016-010985	Quiktrip Corporation
CV2016-010986	DOBSON SQUARE PROPERTY LLC
CV2016-010987	PEPPERTREE PLAZA LLC

CV2016-010988	GILBERT VETERINARY CLINIC LLC
CV2016-010989	GILBERT & RAY PLAZA LLC
CV2016-010990	FRAH VETERINARY PROPERTY LLC
CV2016-010991	FOUR P PROPERTIES ARIZONA LLC
CV2016-010994	DILLON REAL ESTATE CO INC
CV2016-010995	Frys Smalley L L C
CV2016-010996	CHARLES A & FLORENCE K MITTEN TRUST
CV2016-010997	Teresa Terrigino
CV2016-010998	JUTLAND 4141 INVESTMENTS LTD
CV2016-010999	S E P
CV2016-011000	CHANDLER FIRST ASSEMBLY OF GOD
CV2016-011001	Advances Surgical Holdings L L C
CV2016-011002	PAVILIONS SHOPPING CENTER LP
CV2016-011003	dna Lee Lawrence
CV2016-011004	PAVEL INVESTMENTS LLC
CV2016-011005	T P P 31 Alma L L C
CV2016-011006	Gerald D Crater
CV2016-011007	RYDESCO INVESTMENTS LLC
CV2016-011008	MPHS PLAZA LLC
CV2016-011009	CARRIAGE LANE LLC
CV2016-011010	I C Investors L L C
CV2016-011011	SCREWIE LEWIES DIRT N WATER SPORTS
CV2016-011012	HARE INVESTMENTS LLC
CV2016-011013	Universal Waste Control
CV2016-011014	HINTZE DEVELOPMENT CO INC
CV2016-011015	Wenjoy Properties L L C
CV2016-011016	LYONS RONALD E TRUST
CV2016-011017	CP 2004 STATION 1 LLC
CV2016-011018	CDM DEVELOPMENT LLC
CV2016-011019	FHI LLC
CV2016-011021	ARBOR CREEK LLC
CV2016-011022	Primestor 35th Avenue L L C
CV2016-011023	rimestor 35th Avenue L L C
CV2016-011024	DOHERTY FAMILY TRUST
CV2016-011025	R & H INVESTMENTS

CV2016-011026	NEW WEST HOLDINGS L L C
CV2016-011027	MADISON FAMILY HOLDINGS LLC
CV2016-011028	RWF ADVENTURES LLC
CV2016-011029	AUSTIN FLECK PROPERTY MANAGEMENT PLLC
CV2016-011030	Western American Investments L L C
CV2016-011031	BALLETOS LLC
CV2016-011032	RTD LLC
CV2016-011035	CHANDLER OIL-1 CORPORATION
CV2016-011036	Core Master Funding V I I I, L L C
CV2016-011037	RICKEL LLC
CV2016-011038	BEEFEATER HOLDINGS LLC
CV2016-011039	HAPPY VALLEY REAL ESTATE LLC
CV2016-011040	RELIANCE MANAGEMENT LLC
CV2016-011041	White Road Properties Limited
CV2016-011042	J P H L L C
CV2016-011044	DESERT TRUSS INC
CV2016-011045	RDB LTD LLC
CV2016-011046	imotei Gherasim
CV2016-011047	S C I Arizona Funeral Services Inc
CV2016-011048	KAJI BUSINESS PROPERTIES LLC
CV2016-011049	PURCELL PROPERTIES LP
CV2016-011050	Whitestone Village Square At Dana Park L L C
CV2016-011051	J K B Properties L L C
CV2016-011052	FOUR P PROPERTIES COLORADO LLC
CV2016-011053	1041 LLC
CV2016-011054	Anthony Pasquale Jr And Cheri Ann Preese Trust
CV2016-011055	LEVEL 7 HOLDINGS LLC
CV2016-011056	Micro-Rel Inc
CV2016-011057	JEMCO PARK LANE PROPERTIES LLC
CV2016-011058	L B A Realty Fund I I-W B P, I V, L L C
CV2016-011059	Waramaug I B Phoenix L L C
CV2016-011060	L B A Realty Fund I I-Company I, L L C
CV2016-011061	Emad M Abushanab
CV2016-011062	32 Gallon Investments L L C
CV2016-011063	Circle K Stores Inc

CV2016-011064	Y M C Arizona Properties L L C
CV2016-011065	Presson P V Four L L C
CV2016-011066	Presson P V Four L L C
CV2016-011067	Lihui Tempe L L C
CV2016-011069	A G S Enterprises L L C
CV2016-011070	Stephen E Wilkinson
CV2016-011071	TEAM CB PETROLEUM PROPERTIES L L C
CV2016-011072	LTF REAL ESTATE CMBS II LLC
CV2016-011073	Jason C Taylor L L C
CV2016-011074	OMKAR LLC
CV2016-011075	L B A Realty Fund I I-W B P, I V, L L C
CV2016-011076	DUNBAR HAYDEN LLC
CV2016-011077	PARK LANE TRUST PARTNERS LLC
CV2016-011078	Kang Mesa Estates L L C
CV2016-011079	ANTHONY J AND LISA K HUBERTY
CV2016-011080	COAZ HOLDINGS LLC
CV2016-011081	NORTHSIDE INVESTMENTS OF SPOKANE LLC
CV2016-011082	PBF LIVING TRUST
CV2016-011083	PRESSON P V SEVEN LLC
CV2016-011084	JT MARKHAM VENTURES L L C
CV2016-011085	CLOD LLC
CV2016-011086	Sun Future L L C
CV2016-011087	SAINT HUBERTUS LLC
CV2016-011088	E T T Huntington Tech L L C
CV2016-011089	Tempe Diablo L L C
CV2016-011090	S K T T L Ventures L L C
CV2016-011091	NIXI LLC
CV2016-011092	Primestor 35th Avenue L L C
CV2016-011093	Pinnacle Business Park Condominuims Owers Association
CV2016-011094	Southwest Investors L L C
CV2016-011095	ozell Properties L L C
CV2016-011096	Kozell Properties L L C
CV2016-011097	S C J R, L L C
CV2016-011098	B H ISLANDS VILLAGE LLC
CV2016-011099	MISTRY FAMILY TRUST

CV2016-011100	HILTONIA FAMILY TRUST
CV2016-011101	JABIL PROPERTIES LLC
CV2016-011102	Dover Shores Limited Partnership
CV2016-011103	PLENTY HOLDINGS LLC
CV2016-011104	Chandler Baptist Church
CV2016-011105	LJC LLC
CV2016-011106	WARNER GATEWAY PROPERTY DOUBLE JS PROPERTY LL
CV2016-011107	Surinder Kaur Bharara
CV2016-011108	T S D, L L C
CV2016-011109	Solo Ventures L L C
CV2016-011110	BIESER INVESTMENTS LLC
CV2016-011111	SUREFIREAZ LLC
CV2016-011112	Elliot Commons Business Center Association Inc
CV2016-011113	219 S WILLIAM DILLARD DRIVE LLC
CV2016-011114	CODY & JESSIE PROPERTIES LLC
CV2016-011115	TUGNME COMPANY LLC
CV2016-011116	Warner Commerce Park Condominium Association
CV2016-011117	KS PROPERTIES LLC
CV2016-011118	GPO WESTECH LLC
CV2016-011119	CJV LLC
CV2016-011120	HARDY FAMILY LLC
CV2016-011121	SHAW SQUAD LLC
CV2016-011122	COBBLESTONE SQUARE LLC
CV2016-011123	cDonalds Corporation 002-0162
CV2016-011124	Valley Real Estate L L C
CV2016-011125	I P T Deer Valley I C, L L C
CV2016-011126	GOODYEAR PLAZA II LLC
CV2016-011127	GARNER PROPERTIES LLC
CV2016-011128	Circle K Stores Inc
CV2016-011129	LMR GROUP INC
CV2016-011130	Warner Medical Park L L C
CV2016-011131	Stokes Square L L C
CV2016-011132	Dover Shores Limited Partnership
CV2016-011133	DESERT TACO EAST LLC
CV2016-011134	PAULCO PROPERTIES LLC



CV2016-011135	Twenty First And Parkside L L C
CV2016-011136	Melaprops L L C
CV2016-011137	Quest Construction Managers L L C
CV2016-011138	BCS INVESTMENTS LLC
CV2016-011139	Deer Valley Airpark Venture I I I, L L C
CV2016-011140	PLUMBING SHACK LLC
CV2016-011141	GCON 20325 LLC
CV2016-011142	RENSTROM ENTERPRISES LLC
CV2016-011143	SDF INVESTMENTS LLC
CV2016-011144	T C S Enterprises L L C
CV2016-011146	HABANERO NOVA LLC
CV2016-011148	Sterling Real Estate Investment L L C
CV2016-011149	RED RYDER RANCH LLC
CV2016-011150	Lai An Wu
CV2016-011151	FALCON AIRPARK LLC
CV2016-011152	CRAMER PROPERTIES LLC
CV2016-011153	Dover Shores Limited Partnership
CV2016-011154	Terradyne L L C
CV2016-011155	Ivan Penich
CV2016-011156	RUTH TAN LIM REVOCABLE LIVING TRUST
CV2016-011157	DRLJ BUCKLEY LLC
CV2016-011158	BULL MOOSE HOLDINGS LLC
CV2016-011159	AZOFIS LLC
CV2016-011160	GUNNAR ENTERPRISES LLC
CV2016-011161	S G MOLITOR LLC
CV2016-011162	BIRD DOG INVESTMENTS LLC
CV2016-011163	Preeti-Seema Apartments L P
CV2016-011164	reeti-Seema Apartments L P
CV2016-011165	NICHOLSON & PREDER 401K PLAN
CV2016-011166	vran Acquisition Limited Partnership
CV2016-011167	AM VENTURES 1.31 INC
CV2016-011168	Forest Lane Investments L L C
CV2016-011169	2160 BASELINE RD LLC
CV2016-011170	Christopher J Labban
CV2016-011171	SBBC INVESTMENTS LLC

CV2016-011172	Robert Thatcher
CV2016-011173	W D P Glendalestorage L L C
CV2016-011174	Park Place Condominiums L L C
CV2016-011175	Mark T Druecker
CV2016-011176	Park Place Condominiums L L C
CV2016-011177	Gerald R Knudson
CV2016-011178	MS WHITE ENTERPRISES LLP
CV2016-011180	CABRIANIE INVESTMENTS NUMBER TWO LLC
CV2016-011181	KLT MANAGEMENT LLC
CV2016-011182	GENTS BOXING CLUB LLC
CV2016-011183	AZP NORTHSIGHT LLC
CV2016-011184	Spirit S P E Portfolio 2007-3 L L C
CV2016-011185	KREGLE DANNY JOE AND KELLEY A M TR
CV2016-011186	PEORIA HOLDINGS LLC
CV2016-011187	Robert C Slagle
CV2016-011188	PURCELL TIRE COMPANY
CV2016-011189	OWL PROPERTIES LLC
CV2016-011190	CAMELBACK OFFICE PARK LLC
CV2016-011191	MONTICELLO VENTURES-SONIC LLC
CV2016-011192	Jonas Michael
CV2016-011193	LO SHIK LAM AND ANNA TRUST
CV2016-011194	S C I Arizona Funeral Services Inc
CV2016-011195	Jong T Chung
CV2016-011196	Joshua Clark
CV2016-011197	INDIAN RIVER PLAZA L L C
CV2016-011198	Northern 12 L L C
CV2016-011199	ARIZONA GRAND RESORT LLC
CV2016-011200	PHOENIX SP HILTON L L C
CV2016-011201	Arizona Bank
CV2016-011202	B H SQUAW PEAK LLC
CV2016-011203	Simonson Buildings Inc
CV2016-011204	PONDER LEVY PROPERTIES
CV2016-011205	Willmoth George B & Fern N, T R
CV2016-011206	G D O Limited Partnership L L L P
CV2016-011207	Brooks Building Inc

CV2016-011208	GERMAN DOBSON CVS LLC
CV2016-011209	Latisa L L C
CV2016-011210	Arrowhead Leasing Services L L C
CV2016-011211	HAYSTACK HOLDINGS LLC
CV2016-011212	Hermosa Inn Restaurant L L C
CV2016-011213	ONG HELEN G & LAURENCE S TRUST
CV2016-011214	Valley Of The Sun Entertainment L L C
CV2016-011215	Stetson Canal L L C
CV2016-011216	Superstition Springs L L C
CV2016-011217	PAPAGO MARKETPLACE LLC
CV2016-011218	HARKINS FASHION SQUARE LLC
CV2016-011219	Brooks Building Inc
CV2016-011220	Sunbrella Properties Ltd
CV2016-011221	M D C Ridgeview Plaza Associates L P
CV2016-011222	anks Revocable Living Trust
CV2016-011223	uen Marilyn Trust
CV2016-011224	Lopez Carmen Rodriguez
CV2016-011225	Connie Sillen
CV2016-011226	Superstition Promenade L L C
CV2016-011228	PISA PROPERTIES SIXTEENTH LLC
CV2016-011230	C-LUB HOLDINGS LLC
CV2016-011231	Marital Trust Under C Shaw
CV2016-011232	Yen Nguyen-Le Thuy
CV2016-011233	CINEMA PARK INVESTMENTS LP (IMPROVEMENTS)
CV2016-011234	GILBERT CHANDLER HEIGHTS 1 LLC
CV2016-011235	REDPEPPER REALTY PARTNERS LLC
CV2016-011236	JSL VENTURES LLC
CV2016-011237	Ibert And Margaret M Trust
CV2016-011238	HIGLEY SOUTHERN HOLDINGS L L C
CV2016-011239	Garrett Robert
CV2016-011241	BBC & G INVESTMENTS LLC
CV2016-011242	PIZZA CRAZY LLC
CV2016-011243	MORCL AZ 02 LLC
CV2016-011244	SHEMER REAL ESTATE IV LLC
CV2016-011245	CARI CHADWICK TRUST

CV2016-011246	EBEL PROPERTIES AZ LLC
CV2016-011247	BP-AZ 6N LC
CV2016-011248	MORRIS B GOLDMAN SHEILA M BOLTON TRUST
CV2016-011249	KGN LLC
CV2016-011250	NEXT GEN FINANCIAL X LLC
CV2016-011251	Mesa Ridge Businss Park 1 L L C
CV2016-011252	Swiss German Properties L L C
CV2016-011253	Bank Of America Arizona
CV2016-011254	T B Baseline And Val Vista L L C
CV2016-011255	ISMAIL ATARIA INVESTMENTS LLC
CV2016-011256	David A Burmeister
CV2016-011257	CMSA HOLDINGS 2 LLC
CV2016-011258	8502 E VIA DE VENTURA LLC
CV2016-011259	Gharib Munira
CV2016-011260	PHOENIX LAND CORP
CV2016-011261	MCDONALD USA LLC
CV2016-011262	Y I RANCHES LP
CV2016-011263	T BELL LLC
CV2016-011264	10TH AVENUE VENTURES LLC
CV2016-011265	MOON EYES LLC
CV2016-011266	BELOVODIA LLC
CV2016-011267	HUTCHISON PLACE LLC
CV2016-011268	FINNEY-INDIAN BEND LLC
CV2016-011269	L & G HOUR GLASS LLC
CV2016-011271	S F B Terrace Park Apartments L L C
CV2016-011272	86TH PLACE LLC
CV2016-011273	ALWAN LLC TR
CV2016-011274	JCG HOLDINGS LLC
CV2016-011275	COUNCIL ON CHIROPRACTIC EDUCATION INC
CV2016-011276	RABADI JIRIES AND EMAN TRUST
CV2016-011277	SLUGBUG 42 LLC
CV2016-011279	DOMINION HOLDINGS LLC
CV2016-011280	SAMAIRA LLC
CV2016-011281	M R Shopdevco L L C
CV2016-011282	SARRAR PROPERTIES LLC

CV2016-011283	G D O Limited Partnership L L P
CV2016-011284	NSELM & HONG LLC
CV2016-011285	J B V B, L L C
CV2016-011286	Asma K Ismail
CV2016-011287	Carol Pham
CV2016-011288	John Frederick
CV2016-011289	JOHN J SORCI TRUST
CV2016-011290	M M Associates
CV2016-011291	MARK H OLSEN DPM PLLC
CV2016-011292	MARKETPLACE AT SOUTH MOUNTAIN LLC
CV2016-011293	M C S South Point Plaza L L C
CV2016-011294	MEDAWAR MAALOUF TRUST
CV2016-011295	Mekong Real Estate Investment Group L L C
CV2016-011296	Mesa Central Center L L C
CV2016-011297	esa Optometric Center
CV2016-011298	Midas Properties Inc
CV2016-011299	Mountain View Business Park Office Condominiums
CV2016-011300	MOUNTAIN VIEW BUSINESS PARK OFFICE CONDOMINIUMS ASSOCIATION
CV2016-011301	NACE AND COMPANY LLC
CV2016-011302	NNY PROPERTIES LLC
CV2016-011303	Oasis 55 L L C
CV2016-011304	OL-LONELY ENTERPRISES INC
CV2016-011305	PASADENA PLAZA SHOPPING CENTER LLC
CV2016-011306	Pepperwood Pointe L L C
CV2016-011307	Milena Njegovan
CV2016-011308	PLS PROPERTY MANAGEMENT OF ARIZONA LLC
CV2016-011309	Quiktrip Corporation
CV2016-011310	R D E V Mesa Ranch L L C
CV2016-011311	Realty Associates Fund X, L P
CV2016-011312	Red Mountain Asset Fund I, L L C
CV2016-011313	Red Mountain Asset Fund I, L L C
CV2016-011314	Reynoldo G Ruiz
CV2016-011315	RJB HOLDINGS LLC
CV2016-011316	Sachs Ranch Co L L C
CV2016-011317	Sachs Ranch Co L L C

CV2016-011318	Saint Lawrence Holding Company
CV2016-011319	SANDRA REILLY IRREVOCABLE TRUST
CV2016-011320	S B K F C Holdings L L C
CV2016-011321	S E M Investments L L C
CV2016-011322	Slikker Jill E Trust
CV2016-011323	STRAIGHT LINE REAL ESTATE LLC
CV2016-011324	SWK COMMERCE PROPERTIES LLC
CV2016-011326	UNIVERSITY - PERRY CONDOMINIUM ASSOCIATION
CV2016-011327	University McClintock Partners L L C
CV2016-011328	University McClintock Partners L L C
CV2016-011329	University Plaza Randall L L C
CV2016-011330	Victor N Stewart
CV2016-011331	Warner Gateway Office Park Condominium Association
CV2016-011332	Wayne C And Carol G Martella Trust
CV2016-011333	Weingarten And Arizona Inc
CV2016-011334	WENDYS INTERNATIONAL INC LEASE
CV2016-011335	Wesley R Cain
CV2016-011336	Western B West A Z, L L C
CV2016-011337	W F C Fund I Legacy Opco L L C
CV2016-011338	1250 SOUTH PIMA LLC
CV2016-011339	14345 Sylvan L L C
CV2016-011340	2356 PORTLAND STREET LLC
CV2016-011341	3316 East Baseline Road L L C
CV2016-011342	3350 East Southern Avenue L L C
CV2016-011343	Adrian G Rivera
CV2016-011344	AE&K ENTERPRISE INC
CV2016-011345	Amedeo A Cianci
CV2016-011346	American Way Enterprises Inc
CV2016-011347	Archland Property I, L L C
CV2016-011348	Arizona Central Credit Union
CV2016-011349	Arizona Federal Credit Union
CV2016-011350	B A P Of Arizona Inc
CV2016-011351	BUSINESS PROPERTIES PARTNERSHIP NO 41
CV2016-011352	CAROLE ANNE MORRISON TRUST OF 2002
CV2016-011353	CATTARUZZI INVESTMENTS LLC

CV2016-011354	CAVEMAN ENTERPRISES INC
CV2016-011355	Chet L Jenkins
CV2016-011356	Circle K Stores Inc
CV2016-011357	Claridge Properties Inc
CV2016-011358	Commercial Resource Investors L L C
CV2016-011359	Cottage Corner L L C
CV2016-011360	CUERVO LLC
CV2016-011361	DAKE PROPERTIES LLC
CV2016-011362	Donald G And Donna S Millett Trust
CV2016-011363	Donald G And Donna S Millett Trust
CV2016-011364	Eleven Twenty Four Trust
CV2016-011365	Executive Villas At Dana Point Owners Association
CV2016-011366	Executive Villas At Dana Point Owners Association
CV2016-011367	Farmhouse Village L L C
CV2016-011368	FIESTA RANCH BUSINESS CENTER ONE LLC
CV2016-011369	FIESTA RANCH INDUSTRIAL PARK PROPERTY OWNERS ASSOCIATION
CV2016-011370	GANEM GEORGE TRUST
CV2016-011371	Gateway Triangle Development L L C
CV2016-011372	GIDCO LLC
CV2016-011373	Gilbert Corporation Center Condominium Owners Association
CV2016-011374	GILBERT MEDICAL CENTER LLC
CV2016-011375	Gilbert Professional Park Owners Association
CV2016-011376	HRL-TEMPE LLC
CV2016-011377	Icon Owner Pool 1 West
CV2016-011378	J N Gibbons Holdings L L C
CV2016-011379	TAYLOR PAMELA L & WESLEY J GRAHAM TR
CV2016-011380	TEAL HOLDINGS LLC
CV2016-011381	TEAM GREEN PROPERTIES LLC
CV2016-011382	TEMPE SANTA FE PALMS HOMEOWNERS ASSOCIATION
CV2016-011383	Tempe Shops B, L L C
CV2016-011384	Tempe Towne Associates L L C
CV2016-011385	Tempe Towne Associates L L C
CV2016-011386	Thakorbhai D Patel
CV2016-011387	South Hampton Group, The
CV2016-011388	T P P 28 Gilbert L L C

CV2016-011389	Wood Living Trust
CV2016-011390	Wiley Family L L C
CV2016-011391	W F C Fund I Legacy Opco L L C
CV2016-011392	W F C Fund I Legacy Opco L L C
CV2016-011393	W F C Fund I Legacy Opco L L C
CV2016-011394	Western B West Az L L C
CV2016-011395	Western B West Az L L C
CV2016-011396	Western B West A Z, L L C
CV2016-011397	Westbrook Townhouse Assoc Inc
CV2016-011398	W W Grainger Inc
CV2016-011399	Valley Natl Bank Of A Z
CV2016-011400	Untidy Josephine L L C
CV2016-011401	University Plaza Randall L L C
CV2016-011402	Two-Wheels Properties L L C
CV2016-011403	Trejo Oil Co Inc
CV2016-011404	South Hampton Group, The
CV2016-011405	Tempe Towne Associates L L C
CV2016-011406	Sovran Acquisition Limited Partnership
CV2016-011407	Solo Ventures L L C
CV2016-011408	S G Commercial L L C
CV2016-011409	Sierra Orlando Properties
CV2016-011410	W R I Retail Pool I, L P
CV2016-011411	2700 W Baseline L L C
CV2016-011412	3830 Doherty L L C
CV2016-011413	A C J Properties Baseline L L C
CV2016-011414	Archland Property I, L L C
CV2016-011415	B A R / J C R Phx Flex Investors L L C
CV2016-011416	Believe Body L L C
CV2016-011417	BRE/ESA PROPERTIES L.L.C
CV2016-011418	C & C Plaza L L C
CV2016-011419	C B C Jones Holdings L L C
CV2016-011420	Cece Group L L C
CV2016-011421	Charles R & Virginia Reichard Trust
CV2016-011422	C H C T Arizona L L C
CV2016-011423	Circle K Properties Inc



CV2016-011424	C L C Investments L L C
CV2016-011425	Commercial Resource Investors L L C
CV2016-011426	Cornerstone Retail L L C
CV2016-011427	Dickson Insurance Inc
CV2016-011428	Dobrott Family Trust
CV2016-011429	Eleven Twenty Four Trust
CV2016-011430	E T T A Palin Intervivos Trust
CV2016-011431	Executive Villas At Dana Point Owners Association
CV2016-011432	F A E Holdings 452531r L L C
CV2016-011433	F A E Holdings 454736r L L C
CV2016-011434	Forrest Purdy
CV2016-011435	Gal Pnina
CV2016-011436	Garduno Investments Inc
CV2016-011437	Gateway Triangle Development L L C
CV2016-011438	Gilbert Professional Park Owners Association
CV2016-011439	G M Vasquez Properties L L C
CV2016-011440	Greg E Kent
CV2016-011441	Gregory G And Diana L Sargenti Trust
CV2016-011442	Gurkirpa Hotel Group L L C
CV2016-011443	S E M Investments L L C
CV2016-011444	Sachs Ranch Co L L C
CV2016-011445	Sachs Ranch Co L L C
CV2016-011446	Sachs Ranch Co L L C
CV2016-011447	Rocky Knoll Farms L L C
CV2016-011448	Red Mountain Asset Fund I, L L C
CV2016-011449	Red Mountain Asset Fund I, L L C
CV2016-011450	Midfirst Bank
CV2016-011451	Realty Associates Fund X, L P
CV2016-011452	Public Storage Properties X I I Inc
CV2016-011453	Pride Travel Centers L L C, I I
CV2016-011454	Panda Express Inc
CV2016-011455	Pamela Stewart Martineau Family Trust
CV2016-011456	N K Petroleum I I, L L C
CV2016-011457	Mountain View Plaza Office Condominiums Unit Owners Association
CV2016-011458	M G F Property L L C

CV2016-011459	Mesa Central Center L L C
CV2016-011460	M C S South Point Plaza L L C
CV2016-011461	McDonalds Real Estate Company
CV2016-011462	Mahavir Investments L L C
CV2016-011463	M J Jr And Anne Bramley Trust
CV2016-011464	Liberty Square L L C
CV2016-011465	King Plaza L L C
CV2016-011466	Kenneth Vasseur
CV2016-011467	J E R Realty L L C
CV2016-011468	J & M Properties L L C
CV2016-011469	Human Resources Provider Inc
CV2016-011470	Hills McQueen Family L L C
CV2016-011471	Guthrie Income Ventures L L C
CV2016-011472	Zimmerman Commons L L C
CV2016-011473	32 Falcon Field A Limited Partnership
CV2016-011474	20 & 28 W Juniper Avenue LLC
CV2016-011475	R G Venue Enterprises L L C
CV2016-011476	W J P Investments L L P
CV2016-011477	Bing K Wong
CV2016-011478	D N A Revocable Trust
CV2016-011479	Bunkers Garden Chapel L L C
CV2016-011480	McCormick Twelve West L L C
CV2016-011481	Justicetrax Inc
CV2016-011482	Union32 L L C
CV2016-011483	B P Gateway L L C
CV2016-011484	Red Mountain Asset Fund I, L L C
CV2016-090490	J H T Choate Enterprises LLC
CV2016-090492	Kacill LLC
CV2016-090499	Dr Wolf LLC
CV2016-090504	Graflight Engineering Corporation
CV2016-090506	1639 40TH STREET LLC
CV2016-090541	Thomas Professional Office Plaza LLC
CV2016-090543	Tarian Properties LLC
CV2016-090545	Sunny Valley Investments LLC
CV2016-090552	L & A SUK LIMITED PARTNERSHIP

CV2016-090554	Real Estate & More LLC
CV2016-090558	Maximum Property Investments LLC
CV2016-090565	Badshah LLC
CV2016-090571	NATIONAL RETAIL PROPERTIES LP
CV2016-090573	Paul Janet and Jane Doe Janet, husband and wife
CV2016-092101	14000 N HAYDEN ROAD SCOTTSDALE LLC
CV2016-092103	5TH AND MCDOWELL PARTNERS LLC
CV2016-092104	7830 EAST GELDING DRIVE LLC
CV2016-092105	7845 EVANS ROAD LLC
CV2016-092106	ROBERT ONG and ALICE Y HING and Jane Doe Ong and John Doe Hing
CV2016-092107	8980 EAST SHEA BOULEVARD LLC
CV2016-092109	ABART PROPERTIES 26 LLC
CV2016-092111	AUTOZONE INC
CV2016-092114	BEC AUTOPLEX INC
CV2016-092118	C3 REAL ESTATE INVESTMENTS L L C
CV2016-092119	CASPIAN CORPORATION
CV2016-092122	CHILDERS R J AND ROLLINS R J AND DAVIS S AND BEVERLY J TRUST
CV2016-092123	CHRISTENSEN FAMILY TRUST
CV2016-092124	CHRISTENSEN FAMILY TRUST
CV2016-092125	CHRISTINA M MCDONALD 1998 TRUST
CV2016-092126	CIMARRON INDUSTRIAL PARTNERS LLC
CV2016-092127	CIRCLE K STORES INC
CV2016-092128	CITATION DEVELOPERS L L P
CV2016-092129	COLLEEN MARYANNE FOCHETTI THE REVOCABLE TRUST
CV2016-092130	COMBS 2010 LIVING TRUST
CV2016-092131	COYOTE VIEW PLAZA LLC
CV2016-092134	CUCLIS FAMILY TRUST
CV2016-092135	DAILY CAFE' LLC
CV2016-092141	EAST BELL ROAD LLC
CV2016-092142	EFG MANAGEMENT LLC
CV2016-092148	HAROLD F HUTTON TRUST
CV2016-092149	HH-LAVEEN LLC
CV2016-092153	JACKSON HOLE PARTNERS LLP
CV2016-092154	JAMES J and SUE FEMINO TRUST
CV2016-092156	JPS INVESTMENTS LLC

CV2016-092157	KARAS BROS LLC
CV2016-092160	Kern Family Revocable Trust and Silver and Barbara Barrett a Married Couple
CV2016-092191	KIMO ENTERPRISE LLC
CV2016-092192	KJRM INVESTMENT LLC
CV2016-092193	KYRENE VILLAGE II LLC
CV2016-092194	L & G MCDOWELL LLC
CV2016-092195	LAACO LTD
CV2016-092198	MAKAUS PETER ROBERT TRUST
CV2016-092199	Marker Trust
CV2016-092201	Michaeli And Martha L Ohrt P Trust
CV2016-092203	MULTILATERAL SCOTTSDALE INCOME LP
CV2016-092208	NORTHSIGHT SCOTTSDALE CROSSING LLC
CV2016-092210	Ocean Breeze-Dawn LLC
CV2016-092218	Pima CROSSING ANNEX LLC
CV2016-092219	PORTER-ACME LLC
CV2016-092220	PSAF DEVELOPMENT PARTNERS LP
CV2016-092221	R & K REAL ESTATE LLC
CV2016-092222	RANCH CENTER RETAIL LLC
CV2016-092224	RMD ENTERPRISES LLC
CV2016-092225	ROBERT ONG and ALICE Y HING and Jane Doe Ong and John Doe Hing
CV2016-092229	SANDRA FAYE RULAPAUGH and JOHN DOE RULAPAUGH AND MARY FRANCES BERANEK AND JOHN DOE BERANEK
CV2016-092231	SCOTTSDALE INVESTORS LLC
CV2016-092232	SDS ARIZONA COMMERCIAL LLC
CV2016-092233	SERITAGE KMT FINANCE LLC
CV2016-092234	SEWELL WINSTON DOUGLAS TRUST
CV2016-092240	SMW ASSOCIATES LLC
CV2016-092244	STAVE PROPERTIES LLC
CV2016-092245	STERN LAND COMPANY II LLC
CV2016-092249	THE QORRI FAMILY TRUST
CV2016-092263	YELIAB IV LLC

# EXHIBIT B

**Due to electronic file-size limitations, the reports contained in Exhibit “B” are available for download online at the following website (where each report is identified by its case number):**

**<http://www.aid.org/090506>**

**Pending Order of the Court, Exhibit “B” will also be filed in DVD disc format with the Clerk of the Superior Court.**

# EXHIBIT K

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF ARIZONA

3  
4 **Advocates for American,** )  
5 **Disabled Individuals, LLC,** )  
6 **and David Ritzenthaler,** )  
7 Plaintiffs, ) **No. CV 16-2141-PHX-GMS**

8 vs. )

9 **The Price Company,** )  
10 Defendant. )

11 **Advocates for American,** )  
12 **Disabled Individuals, LLC,** )  
13 Plaintiff, ) **No. CV 16-2298-PHX-GMS**

14 vs. )

15 **Superstition Springs LLC.,** )  
16 Defendant. )

17 **Advocates for American,** )  
18 **Disabled Individuals, LLC,** )  
19 Plaintiff, ) **No. CV 16-2413-PHX-GMS**

20 vs. )

21 **Golden Rule Properties, LLC.,** ) **Phoenix, Arizona**  
22 Defendant. ) **September 29, 2016**  
23 ) **2:33 p.m.**

24 **BEFORE: THE HONORABLE G. MURRAY SNOW, JUDGE**  
25 **REPORTER'S TRANSCRIPT OF PROCEEDINGS**  
***(Show Cause Hearing)***

Official Court Reporter:  
Laurie A. Adams, RMR, CRR  
Sandra Day O'Connor U.S. Courthouse, Suite 312  
401 West Washington Street, Spc 43  
Phoenix, Arizona 85003-2151  
(602) 322-7256  
Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared by Computer-Aided Transcription



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I N D E XWITNESS:DIRECTCROSSREDIRECTRECROSS

PETER STROJNIK  
By Mr. Wilenchik  
By Mr. Haar  
  
FABIAN ZAZUETA  
By Mr. Wilenchik  
By The Court

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September 29, 2016 - CV 16-2141

1 P R O C E E D I N G S

2 THE COURTROOM DEPUTY: This is Civil Case Number  
3 16-2141, Advocates for American Disabled Individuals, LLC, et  
4 al, v. Price Company, on for show cause hearing.

5 Counsel, please announce your appearances. 02:33PM

6 MR. WILENCHIK: John Wilenchik, Peter Strojnik, and  
7 Fabian Zazueta on behalf of the plaintiffs, Advocates for  
8 American Disabled Individuals, LLC, and David Ritzenthaler.

9 MR. VALENTE: Good afternoon, Your Honor. Charles  
10 Valente and Donna Catalfio on behalf of Costco Wholesale  
11 Corporation. 02:34PM

12 THE COURT: Good afternoon to you both.  
13 Who is going to be doing the arguing?

14 MR. WILENCHIK: I will be doing the argument on behalf  
15 of the plaintiffs, Your Honor. 02:34PM

16 MR. VALENTE: And I will, Your Honor.

17 THE COURT: Mr. Wilenchik, I ordered you to show  
18 cause. I have read your brief. Do you have anything you wish  
19 to add?

20 MR. WILENCHIK: Your Honor, may I approach the podium? 02:34PM

21 THE COURT: You can.

22 MR. WILENCHIK: Mainly, Your Honor, I'm here to answer  
23 questions you may have, but I do have one point additionally to  
24 make to what's been said in the briefs.

25 THE COURT: All right. 02:34PM

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1 MR. WILENCHIK: If the Court's decision today is to  
2 dismiss for lack of Article III standing, there is case law to  
3 support that a remand would be appropriate to state court  
4 unless it would be a futile act. And our argument would be  
5 it's not a futile act because under the Arizona Constitution,  
6 standing is a prudential matter. It's a more liberal analysis  
7 that is up to the discretion of the Court.

02:35PM

8 THE COURT: So you are saying the state court should  
9 make a determination whether or not it would take up a federal  
10 claim based on state standing rules?

02:35PM

11 MR. WILENCHIK: That's correct, in the event this  
12 Court determines --

13 THE COURT: Even if I think that there is no standing  
14 in federal court.

15 MR. WILENCHIK: Correct. If the Court determines  
16 there's no subject matter jurisdiction due to lack of Article  
17 III standing in this Court, a remand to state court is  
18 appropriate.

02:35PM

19 THE COURT: Let me ask, you have asserted  
20 associational standing and your client has all kinds of  
21 different corporations and entities by which it's done this.  
22 Is Mr. Ritzenthaler somebody -- well, who are the members of  
23 Advocates for American Disabled Individuals, LLC?

02:35PM

24 MR. WILENCHIK: The members who we believe have  
25 standing for these cases, we have named David Ritzenthaler and

02:36PM

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1 Shannon Puckett.

2 THE COURT: Clearly, Mr. Ritzenthaler doesn't have  
3 standing. Right?

4 MR. WILENCHIK: He does have standing, and the reason  
5 we haven't pushed, so to speak, on the issue of his standing is  
6 because these cases identify issues with van accessibility. 02:36PM  
7 Mr. Ritzenthaler does have a handicapped card. He does have a  
8 mobility issue. He needs a cane.

9 THE COURT: He's never been to this Costco?

10 MR. WILENCHIK: Correct. 02:36PM

11 THE COURT: Okay. So if I determine he has to have  
12 been to this Costco, he doesn't have standing?

13 MR. WILENCHIK: Correct.

14 THE COURT: And the Association cannot base any  
15 standing on Mr. Ritzenthaler who has never been to this Costco? 02:36PM

16 MR. WILENCHIK: Correct.

17 THE COURT: Okay. What about, let me ask, though, is  
18 Mr. Ritzenthaler a member of the LLC?

19 MR. WILENCHIK: He is.

20 THE COURT: And what do you have to do to be a member  
21 of this LLC? 02:36PM

22 MR. WILENCHIK: The members are what are commonly  
23 referred to as testers. They need to agree to --

24 THE COURT: No. I mean, what are the legal  
25 requirements to be a member of an LLC? 02:37PM

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1 MR. WILENCHIK: Let me be clear on the Court's  
2 question. A member of an LLC -- is the Court asking whether  
3 they are owners in terms of --

4 THE COURT: Yeah. That's what you have to be to be a  
5 member of an LLC, is to be an owner, don't you? 02:37PM

6 MR. WILENCHIK: Let me be clear on the question. I do  
7 not believe he's a member. I will have to -- okay. He's not a  
8 member in the sense of the Arizona LLC Act of being an owner.

9 THE COURT: So how can you assert associational  
10 standing on behalf of somebody who is not a member of your 02:37PM  
11 association?

12 MR. WILENCHIK: The way the word "member" is used  
13 under federal standing law is not equivalent to the meaning of  
14 the word member --

15 THE COURT: Do you have any authority for that? 02:37PM

16 MR. WILENCHIK: I can find the authority for it and  
17 brief it. To say that -- the one case is *Hunt* that mainly, the  
18 Supreme Court case that talks about -- it's not so much we  
19 should probably call it organizational standing. Because  
20 associational standing is something kind of different under ADA 02:37PM  
21 analysis.

22 THE COURT: Let me make it clear. You are asserting  
23 organizational, not associational, standing?

24 MR. WILENCHIK: Correct. We're actually stating both  
25 the case of Shannon Puckett, but yes. 02:38PM

September 29, 2016 - CV 16-2141

1 THE COURT: So you are saying somehow Mr. Ritzenthaler  
2 is a member of the organization, although he's not a member of  
3 the LLC that's the plaintiff here?

4 MR. WILENCHIK: Correct. He's not a member in the  
5 sense of being owner as member is defined in the Arizona LLC  
6 Act, that is correct. 02:38PM

7 THE COURT: And neither is Ms. Puckett?

8 MR. WILENCHIK: That is correct.

9 THE COURT: So can you just broadly assert  
10 organizational standing on behalf of whoever you want to assert 02:38PM  
11 it and say that that gives your organization standing to bring  
12 a lawsuit?

13 MR. WILENCHIK: Your Honor raises a good point. I  
14 think they need to agree to be members and participate in what  
15 the organization does. 02:38PM

16 THE COURT: Clearly now your complaint is deficient in  
17 any event, correct?

18 MR. WILENCHIK: To the extent it does not identify  
19 that we're asserting standing on behalf of members, yes, Your  
20 Honor. 02:38PM

21 THE COURT: And Ms. Puckett may not be able to bring a  
22 suit in any event, right?

23 MR. WILENCHIK: We believe she does.

24 THE COURT: Well, how? I mean, she didn't show up to  
25 the place until after the problem was corrected. 02:39PM

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1 MR. WILENCHIK: I believe that she did show up before  
2 the problem was corrected. But even setting that aside, we  
3 have briefed that it's not necessarily to have actually visited  
4 the property.

5 THE COURT: Let's assume, and it's a pretty safe  
6 assumption, I'm going to reject that argument. What you have  
7 indicated to me in the briefing is that as of 9/22 Ms. Puckett  
8 had visited the premises. But the problem, per the affidavit  
9 that's been filed in the briefing has been fixed well before  
10 that date.

02:39PM

02:39PM

11 MR. WILENCHIK: The affidavit in the briefing -- the  
12 affidavit from the defendants saying that the problem had been  
13 fixed, correct, Your Honor.

14 THE COURT: Yes.

15 MR. WILENCHIK: Um --

02:39PM

16 THE COURT: You can't actually acquire standing to  
17 bring a problem that has already been fixed by showing up after  
18 it's been fixed, can you?

19 MR. WILENCHIK: In the case of Costco, that wasn't the  
20 first time she visited. She was very near the Costco.

02:39PM

21 THE COURT: I'm sorry. What?

22 MR. WILENCHIK: In the case of Costco, which is the  
23 defendant in this case, that wasn't the first time she visited.

24 THE COURT: Sure looks like it in her brief.

25 MR. WILENCHIK: She has visited on multiple times

02:40PM



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1 prior to that.

2 THE COURT: Let me read you what her affidavit says.  
3 Maybe this is another problem that I have concerns about which  
4 we'll raise a little later on. But you filed the same  
5 affidavits, the same complaints. You don't tailor anything 02:40PM  
6 here. I think you've maybe got Rule 11 problems. Certainly I  
7 have already raised that your client as an individual attorney  
8 may have problems under the statute that we'll discuss later.  
9 But according to her affidavit, in this one, "I have been  
10 informed that the parking lot does not have" -- I'm sorry. 02:40PM  
11 That's the wrong case. I do it too.

12 "I have been informed that the parking lot at 4502  
13 East Oak Street in Phoenix, 'the lot,' does not have van  
14 accessible signage that is at least 60 inches above the ground  
15 as required by the ADA." So she has never made that 02:41PM  
16 observation prior to filing her affidavit, has she?

17 MR. WILENCHIK: I believe she has, Your Honor.

18 THE COURT: Well, sure doesn't look like it from the  
19 text of her affidavit.

20 MR. WILENCHIK: The issue we have here, I think, the 02:41PM  
21 concern I have is whether or not we need to have an evidentiary  
22 hearing to resolve this or these kind of issues.

23 THE COURT: You are here on an order to show cause.  
24 Do you have witnesses to present?

25 MR. WILENCHIK: Based on the order to show cause I 02:42PM

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1 believe this was a facial attack, so to speak, a facial  
2 challenge.

3 THE COURT: You can just answer yes or no. Do you  
4 have any witnesses you want to bring?

5 MR. WILENCHIK: I do not have Shannon here, no, Your  
6 Honor. 02:42PM

7 THE COURT: So I'm left with her affidavit, aren't I?

8 MR. WILENCHIK: That's correct, Your Honor. And the  
9 only point I have to make there is the mere fact she says she's  
10 been informed of it doesn't mean she had not visited  
11 previously. 02:42PM

12 THE COURT: It certainly suggests that she didn't make  
13 any personal observations.

14 MR. WILENCHIK: It would suggest, but I don't believe  
15 that's the truth. 02:42PM

16 THE COURT: Well, all right. Anything else?

17 MR. WILENCHIK: I will just repeat that the issue with  
18 remand, if the Court's determination is there is no standing  
19 under Article III, the determination of standing under the  
20 Arizona Constitution again is prudential. I don't believe the  
21 Court can say with absolute certainty that a remand would be  
22 futile, and an Arizona court may still make a different  
23 determination as a standing. 02:42PM

24 THE COURT: Thank you.

25 MR. WILENCHIK: Thank you, Your Honor. 02:43PM

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1 THE COURT: Mr. Valente, do you have anything to add  
2 that hasn't been covered by my questions?

3 MR. VALENTE: I'm not even going to touch those  
4 topics, Your Honor. Briefly, I just wanted to, if I could,  
5 make a couple points in response to some things that we were  
6 unable to address in the briefing, either because they came up  
7 in the reply or they were mentioned just now.

02:43PM

02:43PM

8 THE COURT: Can you pull both of those microphones  
9 over so I can hear you better? I'm sorry. As I get holder I  
10 should probably consider hearing aids but I'm too vain to do  
11 it.

12 MR. VALENTE: I don't blame you for that, Judge.

13 I will deal with the first issue you raised about the  
14 Arizona Disabilities Act and they're saying that at this point  
15 they don't want to address the standing under the state  
16 constitution in front of this Court. And I think that's a  
17 little bit too late to come in at the 11th hour and say, after  
18 the judge, Your Honor, orders them to show cause why they have  
19 standing, to say well, we're not going to address it here  
20 because it should just go to the state court. They should have  
21 made that argument in their briefs is my point, Your Honor.

02:44PM

02:44PM

22 THE COURT: Well, maybe they should have. But let me  
23 tell you what I understand Mr. Wilenchik's argument to be,  
24 which wasn't quite that. He was saying, look, you can dismiss  
25 this claims from federal court finding there's no standing to

02:44PM

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1 bring it in federal court, but you can't dismiss the claim  
2 without prejudice because the state court, where standing rules  
3 are more liberal, may find that there's no standing but they  
4 may find that there's standing.

5 MR. VALENTE: And I believe that Your Honor has the  
6 authority to act on that claim and dismiss it for lack of  
7 standing with prejudice even under the state law. 02:44PM

8 THE COURT: How so?

9 MR. VALENTE: Your Honor has concurrent jurisdiction  
10 with both the federal claim and the state law claim. And if  
11 Your Honor can resolve both claims today, you can do so. 02:44PM

12 THE COURT: And I'm sorry, I do get a little confused  
13 with these claims. Is there is state and federal claim  
14 asserted here, both claims?

15 MR. VALENTE: It's an interesting complaint. There's  
16 apparently one count, but in that one count they mention both  
17 the Americans With Disabilities Act and the Arizonians With  
18 Disabilities Act. 02:45PM

19 THE COURT: All right. So I couldn't -- are you  
20 suggesting that I could dismiss both the federal and the state  
21 claim today? 02:45PM

22 MR. VALENTE: Yes, I think you could, Your Honor.  
23 That's well within your authority.

24 THE COURT: All right. Do you have any authority for  
25 that proposition? 02:45PM

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1 MR. VALENTE: I do not have any in front of me today  
2 because this argument was raised for the first time at the  
3 hearing today, which is why I'm objecting.

4 THE COURT: Even if there is authority, and there may  
5 be, wouldn't it prudentially be wiser to remand both claims to  
6 the state court and let them decide what their own standing is?

02:45PM

7 MR. VALENTE: This is essentially the same question  
8 Your Honor faces in any litigation where federal question is  
9 raised along with a state question. And under Section 1367 you  
10 have supplemental jurisdiction over the state law claim.

02:46PM

11 THE COURT: Right. If they find -- the general rule  
12 of the Ninth Circuit is that if I find that there is no federal  
13 claim, there is really no jurisdiction granting claim, and I  
14 should remand. That's what the general law is in the Ninth  
15 Circuit.

02:46PM

16 MR. VALENTE: Your Honor, my understanding of the law,  
17 which, again, we didn't brief it because I didn't know the  
18 issue was going to come up.

19 THE COURT: You impressed me on that.

20 MR. VALENTE: Nonetheless, my understanding is when  
21 the Court rules as a matter of law and is able to resolve all  
22 the issues at the same time, then it's proper for the Court to  
23 enter judgment on both the federal claim and the state claim.  
24 It's only when some other questions would need to be resolved  
25 that the proper decision is to remand.

02:46PM

02:46PM

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1 THE COURT: All right. I get your point and I will  
2 take a look at it. Next point?

3 MR. VALENTE: Yes, Your Honor. I do want to mention  
4 something here. We made an argument based on *Spokeo* that  
5 there's no concrete harm here. And there's some other cases  
6 that are on the docket, which at the time I briefed it I  
7 weren't really as aware as I am now. I want to mention there's  
8 a critical difference in our case to those other cases.

02:46PM

9 The difference in our case is there's no missing  
10 signage in our case. The issue here is the height of the  
11 signage we had and whether that signage was at the appropriate  
12 height. As I understand it, they are arguing that not their  
13 client but Ms. Puckett was harmed because if there was a  
14 vehicle parked in the space she couldn't see over that vehicle  
15 to see our signage to know if that was a space she could park  
16 in.

02:47PM

02:47PM

17 And our position on that is that there's no harm to  
18 her in any event, because if the space is occupied she can't  
19 park on it in any event. And when the space is unoccupied  
20 there's no issue. There's no impairment of her ability to see  
21 the signage for that space.

02:47PM

22 THE COURT: Okay.

23 MR. VALENTE: It always takes longer to just cut out  
24 the stuff you thought you were going to say, Your Honor, so if  
25 you will just bear with me.

02:48PM

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1 THE COURT: Let me ask you a question.

2 MR. VALENTE: Sure.

3 THE COURT: Is there any pending motion by plaintiffs  
4 to dismiss their federal claim in this case?

5 MR. VALENTE: There is not. By plaintiffs? No, Your  
6 Honor. 02:48PM

7 THE COURT: Thank you.

8 MR. VALENTE: Your Honor, I think I don't need to  
9 address the remainder of what I have. With your leave, if Your  
10 Honor doesn't intend to rule on the motion now but intends to 02:48PM  
11 hear the arguments in the other cases, with your leave I'd like  
12 to stay in court in case some issue comes up.

13 THE COURT: You may have that leave.

14 MR. VALENTE: Thank you, Your Honor.

15 THE COURT: Do you have anything more on this matter, 02:48PM  
16 Mr. Wilenchik, quickly?

17 MR. WILENCHIK: Just quickly, Your Honor, you know, I  
18 appreciate counsel's point about briefing this issue to the  
19 remand. There certainly is case law. There's certainly  
20 statute I think to his point. The distinction is this is not a 02:49PM  
21 dismissal on the merits, which certainly the Court can dismiss  
22 both. This would be a dismissal for lack of subject matter  
23 jurisdiction. And 28 USC --

24 THE COURT: Does that amount to a dismissal on the  
25 merits? 02:49PM

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1 MR. WILENCHIK: It does not. In fact, 28 USC Section  
2 1447(c) says if at any time before final judgment it appears  
3 the district court lacks subject matter jurisdiction or a case  
4 removed from state court, the case shall be remanded.

5 THE COURT: Okay.

02:49PM

6 MR. WILENCHIK: This applies to cases that lack  
7 standing. There's a Ninth Circuit case, appears to be very  
8 recent one August 18th, 2016. I have like a Westlaw citation  
9 for it, Your Honor, if you would like it.

10 THE COURT: It's all right.

02:49PM

11 MR. WILENCHIK: Okay. Otherwise, if Your Honor would  
12 like to hear about the *Spokeo* issue, it is an interesting  
13 issue, but I don't know that it is raised by the order to show  
14 cause.

15 THE COURT: He does have a point, right? If your  
16 assertion is, I mean, I think *Spokeo* is one of those cases that  
17 is really going to be interesting to try to apply. But Mr.  
18 Valente's point is not completely without some purchase, right?

02:50PM

19 MR. WILENCHIK: That's why I would like to address it.

20 THE COURT: Your issue is I can't see it when the  
21 stall is occupied. You can't occupy a stall that's been  
22 occupied. And if it's not occupied, if it's just a couple of  
23 inches low, you can see it.

02:50PM

24 MR. WILENCHIK: The issue there is there may be cars  
25 next to it, that kind of thing. *Spokeo* to me stands for the

02:50PM



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1 proposition that, you know, you may have of what's a violation  
2 of statute but it may not be real harm. For example, if the  
3 statute says, Jack Wilenchik should never have a million  
4 dollars. I have a million dollars, sure it's a violation of  
5 statute but there's no harm. I have got a million dollars.

02:50PM

6 Here, that is a harm which is lack of visibility. And  
7 *Spokeo* doesn't stand for the idea that it's a matter of degree  
8 of harm, that if you don't have a big enough harm or something  
9 of that sort.

10 THE COURT: I'm sorry. I should have read through the  
11 statute more clearly. But does the statute define what the  
12 basis of calculating harm is what the remedies are for that  
13 harm?

02:51PM

14 MR. WILENCHIK: It specifics in the case the sign  
15 should be at least 60 inches above the ground.

02:51PM

16 THE COURT: Does the statute itself specify that?

17 MR. WILENCHIK: It's, I believe, the regulations  
18 pursuant to statute.

19 THE COURT: I'm sorry?

20 MR. WILENCHIK: It's the regulations that have been --

02:51PM

21 THE COURT: But doesn't that present an interesting  
22 *Spokeo* problem in and of itself?

23 MR. WILENCHIK: It raises the issue. But again, I  
24 believe the point to *Spokeo* is not that it's a matter of degree  
25 of harm just that there be harm.

02:51PM

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1 THE COURT: Let me ask you another question. I'm  
2 sorry. I'm kind of hopping quickly. If there's been a  
3 determination that the statute's been violated whether or not  
4 it's regulation or the statute, what's the remedy the statute  
5 provides?

02:51PM

6 MR. WILENCHIK: The statute provides for injunctive  
7 relief under the federal statute, under the federal ADA.

8 THE COURT: Right.

9 MR. WILENCHIK: Arizona ADA.

10 THE COURT: Does it provide any monetary damage?

02:52PM

11 MR. WILENCHIK: Federal does not; Arizona does.

12 THE COURT: Okay. So you don't have any -- I mean,  
13 *Spokeo* is *Spokeo*. You don't have any standing, right?

14 MR. WILENCHIK: There's harm there, which is  
15 sufficient for standing. There's not monetary damage available  
16 as a relief. But there is --

02:52PM

17 THE COURT: Does the Arizona statute incorporate the  
18 federal regs in interpreting the Arizona rule statute?

19 MR. WILENCHIK: Yes, it does.

20 THE COURT: Okay. Thank you, Mr. Wilenchik.

02:52PM

21 MR. VALENTE: Your Honor, if I might briefly?

22 THE COURT: Very.

23 MR. VALENTE: I want to --

24 THE COURT: Grab that microphone, please.

25 MR. VALENTE: I'm sorry, Your Honor.

02:52PM

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1 I want to point out that the regulation that we're  
2 talking about is the 2010 regulation. There was a prior  
3 regulation, a 1991 regulation, that did not require the height  
4 of 60 inches, and the 2010 regulation expressly states that if  
5 you are in compliance with the prior statute you don't need to  
6 make any changes until certain events occur and you can stay in  
7 compliance.

02:52PM

8 So I think even if you want to think liberally on  
9 their side that there's some harm, it's kind of undercut by the  
10 regulatory scheme itself. Because they are accepting that in  
11 certain instances it's appropriate to not -- to be below 60  
12 inches and it's not a violation. So I think that undercuts  
13 this whole concept that there's some harm there in any event,  
14 although I don't think there's any harm either way.

02:53PM

15 THE COURT: All right. Thank you.

02:53PM

16 Let me just -- well, we'll bring up the next matter.  
17 I can ask it in the next matter. So thank you, and I give you  
18 leave to stay.

19 MR. VALENTE: Thank you, Your Honor.

20 THE COURT: The next matter is?

02:53PM

21 THE COURTROOM DEPUTY: CV 16-2298, Advocates for  
22 Individuals With Disabilities Foundation, Incorporated v.  
23 Superstition Springs LLC, on for show cause hearing.

24 MR. POTTS: Good afternoon, Your Honor. David Potts  
25 on behalf of defendant Superstition Springs, LLC.

02:54PM

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1 MR. WILENCHIK: Good afternoon, Your Honor. John  
2 Wilenchik, Fabian Zazueta, and Peter Strojnik on behalf of  
3 Advocates for Individuals with Disabilities Foundation,  
4 Incorporated.

5 THE COURT: All right. Mr. Wilenchik, what do you  
6 have to say that's any different that we have already been  
7 saying? 02:54PM

8 MR. WILENCHIK: Your Honor, I think the analysis here  
9 is the same in all respects except that here we have a  
10 different entity named. It's a corporation registered as  
11 501(c)(3). 02:54PM

12 THE COURT: So is -- yeah. That's the whole only  
13 corporation. Mr. whatever -- I'm sorry. I don't mean to be  
14 disrespectful, but Mr. --

15 MR. WILENCHIK: Ritzenthaler. 02:54PM

16 THE COURT: Thank you, is not a shareholder.

17 MR. WILENCHIK: Correct. He's not a shareholder.

18 THE COURT: And Ms. Puckett is not a shareholder.

19 MR. WILENCHIK: Correct. She's not a shareholder.

20 THE COURT: All right. So how can the corporation  
21 assert their interests? 02:55PM

22 MR. WILENCHIK: Again, we believe that a member for  
23 purposes of Article III standing does not have to be a  
24 shareholder or a stockholder or a member as those terms may be  
25 defined under state law. We believe that a member in the 02:55PM

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1 sense --

2 THE COURT: Again, do you have any authority for that  
3 proposition?

4 MR. WILENCHIK: The -- I believe it's the *Hunt* case,  
5 actually the *Hunt* United States Supreme Court case talks about  
6 indicia of membership, talks about how --

02:55PM

7 THE COURT: Isn't an indicia membership in a  
8 corporation holding stock?

9 MR. WILENCHIK: It would be. And the question is  
10 whether --

02:55PM

11 THE COURT: Is there any other indicia of membership  
12 in a corporation?

13 MR. WILENCHIK: For purposes of Article III standing,  
14 membership shall be established by participation and its  
15 activities. And in other words, it's not a required minimum  
16 that there be ownership. Membership purposes of article  
17 standing means a person either participates or --

02:55PM

18 THE COURT: Do you have -- let me be pretty clear  
19 about this. I guess I'm going to ask it in relation to the LLC  
20 case beforehand, too.

02:56PM

21 Do you have any case that says for purposes of an  
22 organization when the organization is a corporation, that you  
23 don't have to be a shareholder to assert incorporate -- to  
24 assert organizational standing?

25 MR. WILENCHIK: I can't, off the top of my head, point

02:56PM

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1 to a case that addresses that exact point. I do have some  
2 cases here that describe how members need to participate in the  
3 organization's efforts.

4 THE COURT: Well, yeah, but that might apply to  
5 something like, I don't know. I guess the most famous case is  
6 the Sierra Club, right? The Sierra Club wasn't a corporation,  
7 was it? It was a club.

02:56PM

8 MR. WILENCHIK: Correct.

9 THE COURT: So it's a little bit different when you  
10 are talking about a club and when you are talking about a  
11 corporation or an LLC, right?

02:56PM

12 MR. WILENCHIK: I think --

13 THE COURT: At least it's potentially different. You  
14 can give me whatever cases you might be able to find if you can  
15 do it quickly. But Sierra Club is a little bit different than  
16 a corporation.

02:56PM

17 MR. WILENCHIK: That's correct. And I don't know --  
18 our position is that the analysis doesn't necessarily depend  
19 how it's organized under state law. Whether it's association,  
20 a partnership, or whatever it may be, the test, again, for  
21 Article III purposes is simply whether the person participates.

02:57PM

22 THE COURT: All right. But there's no argument that  
23 Mr. Ritzenthaler or Ms. Puckett, any of these are shareholders?

24 MR. WILENCHIK: That is correct.

25 THE COURT: And Ms. Puckett can't be a tester, right?

02:57PM

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1 MR. WILENCHIK: She is a tester.

2 THE COURT: Well, she went and supposedly did her test  
3 after the complaint was filed, right?

4 MR. WILENCHIK: For this case, I believe that is  
5 correct, Your Honor. 02:57PM

6 THE COURT: So you are just saying your corporation  
7 can file a complaint and then send out people afterwards to be  
8 considered testers?

9 MR. WILENCHIK: That is our position. And the reason  
10 is, the issue that AID files suits about is not such an issue 02:57PM  
11 about personally visiting it should be required for Article III  
12 standing because it's easily accomplished within minutes. It's  
13 a very imminent --

14 THE COURT: So, in essence, and this is not Costco,  
15 this is Superstition Springs, Superstition Springs files their 02:58PM  
16 parking sign an inch shy or they fail to state that it's van  
17 accessible, and anybody in the State of New York, Tennessee,  
18 Hawaii, that can allege that they might show up in that parking  
19 lot, you can bring a claim on their behalf because they don't  
20 have to be a member of your corporation and they don't have to 02:58PM  
21 even be there when you file the complaint. They don't even  
22 have to have visited the place? Is that what you are arguing?

23 MR. WILENCHIK: Absolutely not, Your Honor. But thank  
24 you for raising it.

25 THE COURT: So where is the line? 02:58PM

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1 MR. WILENCHIK: The line is there has to be a real  
2 imminent harm. And I believe Your Honor --

3 THE COURT: So is there a real imminent harm when  
4 somebody from downtown Phoenix goes clear out in far east Mesa,  
5 is that a place where Ms. Puckett often shops? 02:59PM

6 MR. WILENCHIK: Whether or not she shops there,  
7 whether or not she intends to test there.

8 THE COURT: It all has to do with whether there's a  
9 real imminent harm, doesn't it?

10 MR. WILENCHIK: Correct. And being a tester intending 02:59PM  
11 to go there solely for purposes of a lawsuit is acceptable  
12 under the ADA.

13 THE COURT: If you are a tester from New York or a  
14 tester from New England, perfectly acceptable?

15 MR. WILENCHIK: No, because they need to have, as Your 02:59PM  
16 Honor says, a real imminent harm. They need to be somewhere in  
17 the area. And this goes to the analysis applied in the *Houston*  
18 case, whether it's Tenth or Eleventh Circuit I forget, which is  
19 there was a tester who the Court said, look, this is not like  
20 *Lujan*, this is not somebody who intends to go war touring a 02:59PM  
21 country half way across the world. This is a somebody who  
22 lives in an adjacent county, regularly travels in the area.  
23 For purposes of these kind of cases it's simply too much of a  
24 barrier to require that a person --

25 THE COURT: Yeah, but that wasn't a tester in an ADA 02:59PM



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1 case, right?

2 MR. WILENCHIK: That was a tester.

3 THE COURT: That was a tester who actually had  
4 fraudulent things said to them when they came and applied.

5 MR. WILENCHIK: Are you referring *Lujan* or *Houston*? 03:00PM

6 THE COURT: I think it was *Houston*. I can't represent  
7 to you, Mr. Wilenchik, but I really remember. I wasn't paying  
8 too close attention to the name of the case.

9 MR. WILENCHIK: *Houston* is an ADA testing case.

10 THE COURT: Okay. It must have been *Lujan* then. 03:00PM

11 MR. WILENCHIK: *Lujan* is not an ADA case.

12 THE COURT: Okay.

13 MR. WILENCHIK: To answer the Court's question, that,  
14 to us, is the -- how do I put it -- the parameters. You do  
15 have to have a person in the case of a parking tester who 03:00PM  
16 regularly travels in the area, who lives somewhere in the area.  
17 Because, again, it's just an issue of driving through and  
18 looking for a spot. It's something I could do in any parking  
19 lot right now in the Phoenix/Mesa area within 20, 40 minutes.

20 THE COURT: What about if you live in Wickenburg? Is 03:00PM  
21 that --

22 MR. WILENCHIK: That's where the line may have to be  
23 drawn is where you live more than one county away.

24 THE COURT: Wickenburg is in Maricopa County.

25 MR. WILENCHIK: Okay. 03:01PM

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1 THE COURT: What about Kingman?

2 MR. WILENCHIK: Kingman may be in Coconino. It's a  
3 few counties away.

4 THE COURT: Mohave County.

5 MR. WILENCHIK: In *Houston* it was enough to say it was 03:01PM  
6 the adjacent county and he regularly travels through the area.

7 THE COURT: Counties are a lot smaller in Texas,  
8 aren't they?

9 MR. WILENCHIK: I think it was in Florida. I believe  
10 Houston was in Florida. 03:01PM

11 THE COURT: Whatever. Most places back east counties  
12 are a lot smaller, right?

13 MR. WILENCHIK: They may be. The bottom line is it  
14 was an area that Houston traveled to regularly. A tester like  
15 Shannon Puckett travels regularly through the Mesa/Phoenix 03:01PM  
16 metropolitan area. And that should be sufficient to confer  
17 Article III standing.

18 THE COURT: Have you filed a motion to dismiss your  
19 federal claim in this case?

20 MR. WILENCHIK: No. 03:01PM

21 THE COURT: Anything else?

22 MR. WILENCHIK: Just one moment.

23 The only other thing to point is the distinction in  
24 this case. The issue here was not how tall the sign is. It  
25 was a lack of a van accessible sign. 03:02PM

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1 THE COURT: It was van accessible. But if it is van  
2 accessible, doesn't Mr. Potts have an argument that whether or  
3 not it says "van accessible" seems to be -- what's your damage  
4 on that?

5 MR. WILENCHIK: The damage pursuant to Ninth Circuit  
6 law is that -- well, first of all, just as a practical matter,  
7 it's harder to identify it if it doesn't have a sign. Can't  
8 necessarily see, and that's the whole point to a sign. There's  
9 a harm there. There's a reason for the requirement. And

03:02PM

10 whether it's the -- one among the Ninth Circuit cases that have

03:02PM

11 been quoted in our briefs does state the ADA's requirements are  
12 very strict and it talks about a matter of inches. If

13 something is out of compliance a matter of inches, that is a

14 harm. May have been in the *Pickern* case. You know, here, lack

15 of a sign is a harm. There's a reason it's in the ADA. If

03:03PM

16 here merely having a space --

17 THE COURT: Well, the sign is there, right? It's just  
18 the language, van accessible.

19 MR. WILENCHIK: Right. When I say that usually

20 there's two -- often times there's two separate signs. There's

03:03PM

21 a van accessible sign right below it. There's no van

22 accessible language or van accessible sign, would be the way I

23 would phrase it.

24 THE COURT: Okay.

25 MR. WILENCHIK: Nothing further on this one, Your

03:03PM

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1 Honor.

2 THE COURT: Thanks.

3 Mr. Potts.

4 MR. POTTS: Thank you, Your Honor. Just a couple  
5 brief points. 03:03PM

6 THE COURT: Again, Mr. Potts, you are a tall man.  
7 Either approach the podium or bring that microphone up to you.

8 MR. POTTS: I'm going to approach the podium, Your  
9 Honor.

10 THE COURT: Okay. 03:03PM

11 MR. POTTS: Thank you. First, there is an irony in  
12 what Mr. Wilenchik said. It takes minutes to determine whether  
13 one of these parking lots is compliant and yet despite the fact  
14 that it takes such little time, they didn't even send any  
15 actual member or purported member of the organization out 03:03PM  
16 there. Instead, they attempt to scale these claims where you  
17 can send out all these individual inspectors and not have any  
18 individual person go visit.

19 Second quick point is there's an allegation  
20 unsupported by any declaration but just made in the reply that 03:04PM  
21 since that time she's been to this property. There's a  
22 question there as to whether or not she even qualifies as a  
23 tester because if she simply showed up without her daughter, I  
24 don't know if she's disabled under the statute, whether that's  
25 enough to even encounter the barrier. And I guess -- 03:04PM

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1 THE COURT: I get your point. Is there any issue,  
2 though, like there was with Mr. Valente that he since repaired  
3 the issue, so by the time she showed up the issue may have been  
4 repaired. Is there any issue like that with you?

5 MR. POTTS: No, there is not, Your Honor. I believe 03:04PM  
6 our property manager is still in the process of making sure the  
7 property is compliant. I think we have some disputes as to  
8 whether or not that's the case. I can't sit up here and tell  
9 you whether the property --

10 THE COURT: Okay. I appreciate it. 03:04PM

11 MR. POTTS: The final thing is the, *Houston*, or  
12 *Houston* case, whatever it is, from the Eleventh Circuit that  
13 the plaintiffs cite actually cuts against them. That's a case  
14 that specifically was an appeal in the Eleventh Circuit from a  
15 Florida District Court case. It talked about the exact same 03:05PM  
16 test that's laid out in *Harris*, which is the Southern District  
17 of California case we cite. It says, if you are going to  
18 determine whether someone actually returns matters how close it  
19 is to the residence, their past patronage to the business,  
20 definiteness of their plans to return, and frequency of their 03:05PM  
21 travel in the business. Also in that case they did require he  
22 had actually gone there in the first place.

23 In that case, the plaintiff visited a supermarket that  
24 was two miles from his attorney's office, so though it was 30  
25 miles from his house, he had a reason to be going there. We 03:05PM

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1 don't have that here. We simply have Ms. Puckett saying I have  
2 this vague intent to return, but she doesn't give any reason  
3 why she would go to a Papa John's 20 miles from her house. It  
4 doesn't make sense.

5 And without making any effort to satisfy those four 03:05PM  
6 elements I just discussed, they can't show this intent to  
7 return is necessary to confer Article III standing.

8 THE COURT: What about is Mr. Wilenchik correct that  
9 organizations that are corporations can assert the interests of  
10 people they claim to be their members but who are not 03:06PM  
11 shareholders?

12 MR. POTTS: I have not researched that issue. I  
13 believe that Golden Rule has done a great job briefing the  
14 member issue, the case after us. But I haven't done enough on  
15 that so frankly, I'm not prepared to make that argument today 03:06PM  
16 that for that reason they don't have standing.

17 That's all I have unless you have any questions.

18 THE COURT: Nope. Thank you.

19 MR. POTTS: Thank you.

20 THE COURT: Is Golden Rule here? 03:06PM

21 MR. HAAR: Yes.

22 THE COURT: Are you ready to proceed?

23 MR. HAAR: Yes, Your Honor.

24 THE COURT: All right.

25 MR. POTTS: Oh, Your Honor, and I would request the 03:06PM

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1 same leave.

2 THE COURT: You have the same leave.

3 THE COURTROOM DEPUTY: This is CV 16-2413, Advocates  
4 for Individuals with Disabilities Foundation, Incorporated, v.  
5 Golden Rule Properties, LLC, on for show cause hearing.

03:07PM

6 MR. WILENCHIK: This is John Wilenchik, Fabian  
7 Zazueta, and Peter Strojnik on behalf of plaintiff Advocates  
8 for Individuals with Disabilities Foundation, Incorporated.

9 MR. HAAR: Aaron Haar on behalf of Golden Rule  
10 Properties, LLC, in this matter.

03:07PM

11 THE COURT: Thank you. Mr. Wilenchik.

12 MR. WILENCHIK: Your Honor, I suppose can incorporate  
13 by record the discussions we have had in the previous two  
14 matters. Is that acceptable?

15 THE COURT: Sure. Unless you have any -- do you have  
16 any objection, Mr. Haar? I noticed you were here through them  
17 all.

03:07PM

18 MR. HAAR: No objection, Your Honor.

19 THE COURT: All right.

20 MR. WILENCHIK: And here again, I think it is fairly  
21 comparable to the last case that we have addressed. Again, the  
22 issue is lack of a van accessible sign. And, you know,  
23 somewhat as a reply to the argument that was just made about  
24 *Houston*, in *Houston*, the Court in *Houston* did not specifically  
25 require that the plaintiff have visited. I do think there's

03:07PM

03:07PM

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1 emphasis in the language there under the mere facts that the  
2 plaintiff traveled to the area and had an intent to go.

3 You know, the issue we have here is I don't know  
4 there's a case that specifically says in this arena of ADA  
5 cases that you don't -- in which the plaintiff had not already 03:08PM  
6 been. There is actually an order of this Court which was cited  
7 in the briefs concerning Theresa Brooke where she had not  
8 visited a particular hotel. You know, she had been informed of  
9 an issue at a hotel, and, you know, indicated intent to go  
10 there. 03:08PM

11 We believe this is comparable to that. There is no  
12 hard and fast requirement on Article III that the person have  
13 actually suffered the harm, particularly in the case of these  
14 kind of ADA cases where a lot of the statutory language and a  
15 lot of case law indicates that there should be no need for a 03:08PM  
16 futile act. Again, it's the point that was raised previously,  
17 well, it could just be done in a few minutes. Why not do it?

18 THE COURT: I mean, a futile act, come on. Wouldn't  
19 that let anybody bring a claim?

20 MR. WILENCHIK: Anyone who is a disabled person who 03:09PM  
21 lives in the area, who regularly visits the area, and may have  
22 to stop there and park, whether it's because they are in an  
23 emergency, they have to run in.

24 THE COURT: There may be places very close to my own  
25 house that I never go. If I was disabled, could I bring a 03:09PM



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1 claim against them if I have never been there?

2 MR. WILENCHIK: If you can say even as a tester that  
3 you intend to go there, the answer is yes.

4 THE COURT: Okay. You haven't addressed the whole  
5 second part. 03:09PM

6 MR. WILENCHIK: Oh, yes. Thank you, Your Honor.

7 THE COURT: Why shouldn't I sanction Mr. Strojnik  
8 here? Under -- and I'm talking -- there's a couple different  
9 things here, because we have a pending motion to dismiss. So  
10 why can't I grant fees under 41(a)(2), why can't I grant fees 03:09PM  
11 under 1447, and why can't I grant fees, particularly and  
12 individually, against Mr. Strojnik on 28 USC Section 1927? I  
13 have read *Baddie*, I know *Baddie*. But you know well -- and I  
14 don't have to -- what's the name of the case. *Sun West Dental*,  
15 has already been argued, is on the very same facts, so it's not 03:10PM  
16 against the very same defendant but it's against the very same  
17 law firm. And they engaged in the same sort of discussion with  
18 Mr. Strojnik well before the necessity to remove this case ever  
19 came about.

20 And when you have, as you do, 160 cases like this that 03:10PM  
21 your client has filed in this Court and well over 1,000 in  
22 state court, and we have a record that has already been created  
23 by Judge Tuchi that is not different from that here, why can't  
24 I, and why shouldn't I, sanction your client for multiplying  
25 proceedings? And why isn't it distinguishable from *Baddie* from 03:10PM

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1 which you don't have any similar facts?

2 MR. WILENCHIK: First of all, Your Honor, I believe  
3 the fact in *Baddie* are totally similar --

4 THE COURT: Well, there was no discussion.

5 MR. WILENCHIK: Correct.

03:11PM

6 THE COURT: There was no communication back and forth  
7 as why are you going to make us do this, and do you intend to  
8 pursue your claims and all of that. There wasn't any of that  
9 in *Baddie*.

10 MR. WILENCHIK: Correct. And that's exactly what I  
11 was going to say. Up until that point, you have got the same  
12 facts. With that addition here, defense counsel did  
13 specifically say beforehand, let's not go through the process.

03:11PM

14 THE COURT: Sure does look like your client is trying  
15 to make it as expensive as he can for all of the defendants  
16 against whom he is asserting these claims on a blanket basis.

03:11PM

17 MR. WILENCHIK: The issue we have here is that the  
18 real reason why this happened is, I mean, *Baddie* provides for  
19 it. The rules provide for it. It's almost an issue of, I  
20 think, them not wanting to, when defense counsel says do this  
21 or else, not wanting to do this. They felt like they had a  
22 right to just rely on an actual filing of the Notice of  
23 Removal.

03:11PM

24 THE COURT: As soon as they got a Notice of Removal  
25 they moved to dismiss.

03:12PM

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1 MR. WILENCHIK: Correct. Again, that's the process  
2 that *Baddie* provides for.

3 THE COURT: That's the process that *Baddie* provides  
4 for, and I don't mean to take away from you a case that I think  
5 you are arguing in good faith. But the facts are very  
6 distinguishable, are they not? 03:12PM

7 MR. WILENCHIK: At this time, the only distinguishing  
8 point is what Your Honor has raised and what I have already  
9 stated. Prior to that, we have defense counsel saying we want  
10 you to drop your claims first. 03:12PM

11 THE COURT: Do you have any evidence you want to  
12 present on this issue?

13 MR. WILENCHIK: If it would be helpful to Your Honor's  
14 consideration, I would call the lawyers here since sanctions  
15 against him personally have been proposed. 03:12PM

16 I would call Peter Strojnik.

17 THE COURT: All right. Mr. Strojnik, please come  
18 forward.

19 THE COURTROOM DEPUTY: Could you spell your name?

20 THE WITNESS: First name Peter, last name Strojnik,  
21 S-T-R-O-J-N-I-K. 03:13PM

22 (The witness was sworn.)

23 THE COURT: Not there, Mr. Strojnik. It's over here.

24 THE WITNESS: Shows how long it's been since I tried a  
25 case over here. 03:13PM

1 PETER STROJNIK,  
2 a witness herein, having been first duly sworn by the clerk to  
3 speak the truth and nothing but the truth, was examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WILENCHIK:

7 Q. Hello, Mr. Strojnik.

8 Are you the counsel for the plaintiff in this matter?

9 A. Yes, I am.

10 Q. Can you explain to the Court why -- well, let me back up. 03:14PM

11 I think we all know what the issue is but let me  
12 approach it properly.

13 Are you aware of an offer by defense counsel to  
14 stipulate to the dismissal of federal claims in this matter  
15 prior to defense counsel filing a Notice of Removal? 03:14PM

16 A. I don't recall that, but I assume it's true.

17 Q. Have you encountered that situation before in cases that  
18 you have filed for this plaintiff?

19 A. Most of the time, defendant is simply removed without  
20 discussion. I may have received others. I don't recall. 03:14PM

21 Q. Does -- do you have any policy or intent to cause the  
22 defendant here, or did you, have you ever had -- let me  
23 rephrase.

24 Have you ever had any intent to cause additional  
25 expenses or harm to the defendant in this case? 03:15PM

1 A. Absolutely not. It is my intent to make every litigation  
2 as inexpensive as possible. It is not my intent to cause any  
3 unnecessary fees to anyone, particularly a defendant in an ADA  
4 case. My intent in an ADA case is for a defendant to correct  
5 whatever violations that there might exist on his property and  
6 be done with the case. That's my intent.

03:15PM

7 Q. You said you don't have recollection of this particular  
8 case, correct?

9 A. I know there was one, and I believe this is the one, where  
10 an offer was made to dismiss the federal claim in the state  
11 court, and if I don't, then the threat was then we'll go and  
12 move it to federal court and then the federal court is going to  
13 dismiss it.

03:15PM

14 Now, this is an interesting situation because, as you  
15 know, and as you have discussed during the past half an hour or  
16 so, standing is a jurisdictional issue that is not associated  
17 with a cause of action at all. It is not a question of what  
18 the cause of action is. In other words, standing does not  
19 relate to causes of action, it relates to the power of the  
20 court to decide a cause of action. So if I were to simply  
21 agree to dismiss, with prejudice, a claim that I am obligated  
22 to make, I believe that would be a disservice to my client, and  
23 my belief is that it would be inappropriate.

03:16PM

03:16PM

24 Q. If the Court were to sanction you here personally and your  
25 client today for not stipulating to dismiss claims prior to

03:17PM

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1 removal, what effect do you believe that would have on future  
2 litigation?

3 A. Well, that will have an extraordinarily chilling effect on  
4 everything I do from now on. I do want to note that in --  
5 there's already been a case that this Court had decided. We  
6 received very good guidance on how to handle these types of  
7 cases. We followed that guidance. It is my hope that we  
8 receive further guidance from this Court on how to handle these  
9 cases.

03:17PM

03:17PM

03:18PM

03:18PM

03:18PM

10 But I think it would have an extraordinarily chilling  
11 effect on ADA compliance, on ADA litigation and ADA  
12 enforcement. And it's, perhaps, just, you know, one brick in  
13 the wall of all the chilling effects that occur in this kind of  
14 a case, you know, the death threats, the gun violence threats,  
15 the phone calls. All of those things add up in a lawyer's mind  
16 and ultimately it gets to the cup being full. It spills over  
17 and the lawyer says, okay, I'm not doing this anymore. So  
18 that's the danger I see.

19 Q. Okay. My final question would be: Are you aware that AID  
20 did anything to avoid the removal process --

21 A. Will you repeat that please?

22 Q. Are you aware in this case that AID made an offer or did  
23 anything to avoid the removal remand process?

24 A. I believe we discussed the fact that in this case, an offer  
25 was made to simply dismiss the federal case in the state court

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1 which, in my opinion, would have been inappropriate. But if  
2 the we didn't do that, that in that case, the defendants would  
3 remove the case to federal court, which they did, and then seek  
4 a dismissal on the basis of standing which is, as had been  
5 discussed in this case, is much more stringent in the federal  
6 law than the state law. Actually, the state law does not have  
7 a standing requirement at all. The state law, as I understand  
8 it, any person may file for violation.

03:19PM

9 Q. Why did AID file federal claims in state court?

10 A. Because I have, as a lawyer, I have an affirmative  
11 obligation to file all potential and good faith claims that I  
12 have, and I believed that was a potential good faith claim.

03:19PM

13 Q. And your personal knowledge of why AID did not stipulate to  
14 drop the federal claims before removal?

15 A. Well, the reason for that, as I discussed before, was there  
16 are two different standards of standing, or jurisdiction, or  
17 real party in interest, as we call it in the state court. And  
18 if I -- if my client agreed to dismiss in the state court he  
19 would never be able to reassert that claim no matter what the  
20 changed circumstances might be. And if I had not brought the  
21 claim, I would be violating my duty as a lawyer. I would be  
22 committing malpractice. So obviously, I had to file that.

03:19PM

03:20PM

23 MR. WILENCHIK: Does Your Honor have questions?

24 THE COURT: Are you going to call Mr. Zazueta?

25 MR. WILENCHIK: Yes.

03:20PM

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1 THE COURT: Is he here?

2 MR. WILENCHIK: Yes.

3 THE COURT: Do you intend to call him?

4 MR. WILENCHIK: I do.

5 THE COURT: I don't have any questions.

03:20PM

6 Do you have any questions?

7 MR. HAAR: Just a couple, if I may, Your Honor.

8 THE COURT: All right.

9 CROSS-EXAMINATION

10 BY MR. HAAR:

11 Q. Mr. Strojnik, do you know how many cases AID has had  
12 against my firm?

13 A. I have no idea against your firm.

14 Q. Can you estimate would it be more than 10, do you think?

15 A. Who is your firm again?

03:21PM

16 Q. Jaburg & Wilk.

17 A. Maybe 10, maybe more. I don't know.

18 Q. Would you estimate it's more than 20?

19 A. I'm not going to estimate.

20 Q. More than 30?

03:21PM

21 A. I said I'm not going to estimate.

22 Q. Are you aware of any cases where AID has paid defendants  
23 for the cost of removal?

24 A. Where AID has paid the defendants for the cost of removal?

25 No. At the time of the removal the defendant pays the fee.

03:21PM



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1 That's my understanding.

2 Q. I'm sorry. Let me clarify that. Are you aware of any  
3 prior cases where AID has agreed to reimburse defendants for  
4 the cost of removal when AID immediately dismissed the federal  
5 claim?

03:21PM

6 A. I don't recall. It could have happened. I don't recall.

7 Q. Does your firm have a standing policy that you intend to  
8 litigate only in state court?

9 A. My firm has no policy. My client's decision was to file in  
10 state court.

03:22PM

11 Q. Your client has a policy to litigate only in state court?

12 A. My client made a decision to file in state court because  
13 the state court fees are less than the federal fees, and  
14 because under the state court standing issue, any person may  
15 file for a violation of the Arizona With Disabilities Act.

03:22PM

16 And I was listening earlier to the analogy of a guy  
17 from New York filing a lawsuit. Yes, a guy from New York can  
18 file a lawsuit in Arizona under the statute, under the  
19 Arizonians with Disabilities Act but not under the federal ADA.

20 Q. So has that always been the AID's policy to litigate in  
21 state court only?

03:22PM

22 A. I don't know. Have they filed in a different court that  
23 you are aware of? Perhaps you can enlighten me.

24 Q. Okay. Between the week when the representation was made to  
25 Golden Rule Properties and a week later when dismissal was

03:23PM

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1 sought, can you tell me what changed in that period of time to  
2 provoke dismissal of the federal claim?

3 A. I don't remember. I don't know why you moved to dismiss.  
4 I assume it's on standing.

5 MR. HAAR: No further questions, Your Honor. 03:23PM

6 THE COURT: Thank you. You may redirect.

7 MR. WILENCHIK: No, Your Honor.

8 THE COURT: All right. You may step down, Mr.  
9 Strojnik.

10 THE WITNESS: Thank you, sir. 03:23PM

11 MR. WILENCHIK: I will call Fabian Zazueta.

12 FABIAN ZAZUETA,

13 a witness herein, having been first duly sworn by the clerk to  
14 speak the truth and nothing but the truth, was examined and  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WILENCHIK:

18 Q. Fabian, what is your position with the plaintiff here?

19 A. I'm the in-house counsel for Advocates for Individuals with  
20 Disabilities. 03:24PM

21 Q. And are you familiar with this particular case?

22 A. I am.

23 Q. Do you recall that an offer was made by defense counsel in  
24 this case to stipulate to dismiss federal claims prior to  
25 removal? 03:24PM

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1 A. I am.

2 Q. Can you explain to the Court why the decision was made or  
3 why your client did not enter into that stipulation?

4 A. So just like Mr. Strojnik said, at the time of that offer  
5 was made, I advised my client that this is a position where we  
6 can dismiss those federal claims but then I would be  
7 essentially in a position where I'm committing some sort of  
8 malpractice by not pursuing the federal cause of action. So we  
9 decided not to stipulate to dismiss.

03:24PM

10 Q. Do you believe that was proper under the rules?

03:25PM

11 A. I think it's proper, yes.

12 Q. And is that what your client wanted to do?

13 A. That's correct.

14 Q. Does AID have a policy of filing federal claims in state  
15 court?

03:25PM

16 A. It's just what the attorneys have advised the client, and  
17 this is what -- there are two causes of action that arise under  
18 the same transaction or occurrence, and we just file those in  
19 state court for reasons, economic reasons, for the filing fees  
20 in state court are a lot cheaper. But to answer your question,  
21 we file in state court for particular reasons. There's no  
22 exact policy.

03:25PM

23 Q. And that would be in my follow-up question, just the reason  
24 why.

25 A. Right. Correct.

03:25PM

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1 Q. So I believe you stated the reason why, it is cheaper to  
2 file in state court?

3 A. Correct, and also the standing issues raised by Mr.  
4 Strojnik and this Court.

5 Q. Can you explain why AID, after the removal, moved to  
6 remand?

03:26PM

7 A. We just intended to pursue our claims in state court and we  
8 did that because of the case law suggests that we can and  
9 because we decided to litigate in state court, again, because  
10 of the reasons of standing and efficiencies in state court.

03:26PM

11 Q. Was there any intent here to cause additional cost to be  
12 incurred by the defendant?

13 A. No.

14 Q. Going forward, has AID -- does AID intend to move for  
15 remand in federal cases that are currently pending with the  
16 court?

03:26PM

17 A. Moving forward we're going to stay in federal court just to  
18 avoid the issue at hand.

19 Q. Do you believe there's any bad faith by yourself personally  
20 or by Mr. Strojnik in not entering into a pre-removal  
21 stipulation to dismiss federal claims?

03:27PM

22 A. I don't think there's bad faith.

23 Q. What effect, if the Court were to sanction you and Mr.  
24 Strojnik and or AID today, what effect would that have on  
25 future litigation?

03:27PM

1 A. I think it would allow me to not properly advise my client  
2 whether or not we should do such things such as filing to  
3 dismiss federal claims, because there's a possibility of  
4 sanctions to its attorneys and clients as well. So if we were  
5 to get sanctioned today, I risk improperly advising my client  
6 as to what's the best interest -- what's in the best interests  
7 for the organization.

03:27PM

8 Q. And we discussed again the going forward AID does not  
9 intend to -- will not be filing to remand its cases currently  
10 pending in federal court?

03:28PM

11 A. That's correct.

12 MR. WILENCHIK: Does Your Honor have questions?

13 THE COURT: I do have a few questions.

14 EXAMINATION

15 BY THE COURT:

16 Q. Mr. Zazueta, I'm going to be handing you what is Document  
17 10 on the docket in this case number, which is case Number?  
18 2:16-CV-04213. There is Exhibit A and Exhibit B attached to  
19 this document. I'm going to ask you to look at Exhibit A and  
20 then Exhibit B, please.

03:28PM

21 A. Thank you, Your Honor.

22 Q. Did you receive Exhibit A?

23 A. I did.

24 Q. Is Exhibit A an accurate and exact copy of what you  
25 received from Mr. Anderson, or Mr. Haar?

03:29PM

1 A. I believe so.

2 Q. And then Exhibit B is an e-mail chain that, at least in my  
3 interpretation, seems to be an e-mail chain that follows your  
4 receipt of Exhibit A, or at least it purports to be that. Is  
5 that what it is?

03:29PM

6 A. It appears that the e-mail discussion happened after  
7 receiving a letter. That's correct.

8 Q. And it appears that e-mail discussion was between you, Mr.  
9 Haar, and Mr. Anderson, is that correct?

10 A. That's correct.

03:29PM

11 Q. Is it an accurate statement? Is it an accurate rendition  
12 of your e-mailed discussions with Mr. Haar and Mr. Anderson?

13 A. That's correct, yes.

14 Q. You indicated in your testimony that you filed in state  
15 court and that it was your desire to remain in state court  
16 because that's what your client wanted to do. Is that correct?

03:30PM

17 A. After consulting with my client and outside counsel, that  
18 is what I was advised to do.

19 Q. Who was the representative of your client that you  
20 consulted with and gave you those instructions?

03:30PM

21 A. I discussed with, at the time, it was Mr. Strojnik and the  
22 client, AID Foundation.

23 Q. I'm sorry?

24 A. The client, AID Foundation.

25 Q. Well, AID Foundation is not a person. Is it Mr. Strojnik

03:30PM

1 who gave you the directions on behalf of your client?

2 A. This is a discussion I had with Mr. Strojnik, so yes.

3 Q. Is Mr. Strojnik the representative of your client?

4 A. He is the outside counsel.

5 Q. Is he the person who gives you directions from your client?

03:30PM

6 A. He gives us his legal advice and then I determine whether  
7 or not --

8 Q. I'm just asking who you received your directions from, from  
9 your client.

10 A. I have complete autonomy at the AID Foundation but I  
11 receive advice from outside counsel.

03:30PM

12 Q. So when you say that's what your client wanted to do, what  
13 you are saying is that's what you wanted to do?

14 A. I fully advised my client on what's in their best interest  
15 after receiving advice from outside counsel.

03:31PM

16 Q. You are your client?

17 A. At the time what the client wanted, Peter Strojnik and AID  
18 Foundation and the owners of that company.

19 Q. Who is the representative of the client who gives you  
20 your -- who gives you direction, or do you make your own  
21 decisions on behalf of the client?

03:31PM

22 A. The clients are -- so if I understand the Court's question,  
23 who are the supervisors of --

24 Q. Who are the decision makers in Advocates For Individuals  
25 with Disabilities Foundation, Incorporated?

03:31PM

1 A. The in-house counsel department.

2 Q. And that is who?

3 A. That consists of -- then consisted of myself, but now  
4 that's changed since then. And we follow the advice of our  
5 outside counsel and then we also have our department  
6 supervisors.

03:31PM

7 Q. At the time you declined to dismiss your federal claims and  
8 you represented that you were going to pursue them even after  
9 having represented that you were going to dismiss them prior,  
10 did you make that decision on behalf of your client?

03:32PM

11 A. That was an informed decision from outside counsel and then  
12 discussing that with several department managers from the  
13 foundation.

14 Q. But were you the one who made the decision on behalf of  
15 your client?

03:32PM

16 A. I fully advised them after --

17 Q. When you say you fully advised them, who did you fully  
18 advise?

19 A. I discussed with the department leaders or department  
20 managers from the AID Foundation.

03:32PM

21 Q. Who are the individuals that you advised?

22 A. There's an individual named Alex Callen. There's an  
23 individual named -- at the time it was Alex Callen and Mr.  
24 Strojnik.

25 Q. Alex Callen and Mr. Strojnik?

03:32PM



1 A. Yes.

2 Q. Is Alex Callen a shareholder of Advocates for Individuals  
3 with Disabilities Foundation, Incorporated?

4 A. Not to my knowledge.

5 Q. Is he an officer or a director of Advocates For Individuals  
6 with Disabilities Foundation, Incorporated?

03:32PM

7 A. Not to my knowledge.

8 Q. Is Mr. Strojnik a shareholder of Advocates for Individuals  
9 With Disabilities Foundation, Incorporated?

10 A. Not to my knowledge. He is just outside counsel.

03:33PM

11 Q. Who is the shareholder?

12 A. I don't have information, knowledge of that information.

13 Q. But you received the directions from your client on  
14 behalf -- the directions that your client gave you came either  
15 from yourself, from Mr. Callen, or Mr. Strojnik?

03:33PM

16 A. Yes.

17 Q. Who indicated to you that you should not dismiss your  
18 federal claim but should oblige -- well, who indicated to you  
19 that you should not dismiss your federal claim?

20 A. We discussed, Mr. Strojnik, Alex Callen and myself,  
21 determined it was not in the company's best interest to --

03:33PM

22 Q. So the three of you made that decision?

23 A. If I remember correctly, yes.

24 Q. And who made the decision that you would move to dismiss  
25 your federal claim?

03:33PM

1 A. I think from, judging from the e-mail, I mean, I'm assuming  
2 it's probably all three of us, just because --

3 THE COURT: Thank you, sir.

4 THE WITNESS: Yep.

5 THE COURT: Any questions? 03:34PM

6 MR. HAAR: No questions, Your Honor.

7 THE COURT: Any redirect?

8 MR. WILENCHIK: Very quickly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. WILENCHIK: 03:34PM

11 Q. Alex Callen, would you consider Alex Callen to be a client  
12 representative?

13 A. Yes.

14 Q. What is his title?

15 A. He is -- he heads our case management but he does -- he's a  
16 man of many hats; legal assistant, he kind of facilitates  
17 between departments. He's one of the managements there. 03:34PM

18 Q. Mr. Callen is not a lawyer, correct?

19 A. No.

20 Q. But do you view Mr. Callen as having decision making  
21 authority on behalf of AID? 03:34PM

22 A. To a certain extent.

23 Q. And again, his decision, as we discussed here today, was  
24 made with Mr. Callen and with his consent and direction?

25 A. Yes. 03:35PM

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1 MR. WILENCHIK: No further questions, Your Honor.

2 THE COURT: You may step down.

3 Have you got anything more you want to say?

4 MR. WILENCHIK: Your Honor, the only other thing I  
5 want to point out on this particular issue is that we believe  
6 that the inherent power of the Court should be exercised  
7 fairly. And whether it's a less drastic alternative, that's  
8 proper. Here the less drastic alternative to what we have  
9 discussed is just to retain jurisdiction of the case. And, you  
10 know, currently there is no pending motion to remand that was  
11 denied by the Court. I don't know that there's any intent to  
12 file one.

03:35PM

03:35PM

13 THE COURT: In order to retain jurisdiction of the  
14 case, you would suggest that I do that even if it amounts to  
15 dismissal of the charges?

03:35PM

16 MR. WILENCHIK: I think what the Court can do is  
17 retain jurisdiction, make a ruling on the pending order to show  
18 cause, if the Court were to rule that there's no subject matter  
19 jurisdiction. It is obligated under the authorities I have  
20 cited and I'd certainly be happy to submit a brief on it, to  
21 remand the case to state court.

03:36PM

22 THE COURT: I'm not at all obligated to do that. As  
23 Mr. Valente says, I can dismiss the case outright, can't I?

24 MR. WILENCHIK: Only if remand to the state court  
25 would be futile. And here, given there is a different standing

03:36PM

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1 there --

2 THE COURT: Not only if it would be futile. I have  
3 the authority to interpret state law. I do it all the time.

4 MR. WILENCHIK: But where the decision is that there  
5 is a lack of subject matter jurisdiction. 03:36PM

6 THE COURT: You are asking me to retain jurisdiction  
7 of the case but to remand?

8 MR. WILENCHIK: Correct, retain jurisdiction, in other  
9 words, not grant the remand they have requested.

10 THE COURT: Not grant the remand they have requested 03:36PM  
11 but grant a remand that I would impose.

12 MR. WILENCHIK: To dismiss the case and then remand  
13 for subject matter determination in an Arizona court.

14 THE COURT: So I would dismiss the federal case. If I  
15 dismissed the federal case, the only thing left to remand is 03:36PM  
16 the state case, isn't it?

17 MR. WILENCHIK: No. And, by the way, Your Honor,  
18 there was an order today by Judge Campbell doing this exact  
19 thing.

20 THE COURT: I have read Judge Campbell's order. I 03:37PM  
21 know what Judge Campbell's done. I respect Judge Campbell, but  
22 Judge Campbell didn't have a motion to dismiss in front of him.

23 MR. WILENCHIK: There is currently no motion to  
24 dismiss. That was denied by this Court.

25 THE COURT: What? 03:37PM

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1 MR. WILENCHIK: The motion was denied by this Court  
2 already. All that's pending now is this order to show cause  
3 proceeding.

4 THE COURT: I will have to look at that. You may be  
5 right. Thank you. 03:37PM

6 MR. WILENCHIK: Thank you, Your Honor.

7 THE COURT: Do you have anything you wish to say, Mr.  
8 Haar?

9 MR. HAAR: Just real quick, Your Honor. I don't want  
10 to waste your time any more than it already has been. I just 03:37PM  
11 want to reiterate what prior defense counsel has said. We  
12 believe you do have authority to dismiss both claims. I think  
13 for purposes of judicial efficiency, they fail to state -- I'm  
14 sorry -- they fail, even under state standing, because  
15 prudential standing doesn't apply under these facts as pled. 03:38PM

16 THE COURT: Do you have authority from the state court  
17 that suggests that standing doesn't extend to the degree -- I  
18 mean, it may well not extend. I'm not saying it does, but do  
19 you have any authority from the state court that suggests that  
20 it doesn't? 03:38PM

21 MR. HAAR: I was unable to find any cases that  
22 specifically addressed ADA standing under the state claim.

23 THE COURT: Do you have any cases that you think are  
24 analogous under state law?

25 MR. HAAR: Not off the top of my head, Your Honor. 03:38PM

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1 Simply the fact that both the ADA and the state ADA require  
2 some injury to be remedied. This organization can't possibly  
3 even be disabled. It simply follows that they don't have  
4 standing to pursue their claim either in state court or in  
5 federal court.

03:38PM

6 I also think that Your Honor can dismiss the case with  
7 prejudice under both mootness and futility, because as we have  
8 briefed, the alleged technical violation has been remedied and  
9 we have been given a clean bill of health. So that means that  
10 to the extent they are able to amend the claims, or amend their  
11 complaint and demonstrate standing at the time the complaint  
12 was filed, that amendment would be futile, as would if the case  
13 were remanded to state court.

03:39PM

14 And finally, I think that the Court has authority to  
15 dismiss with prejudice on grounds that the claims were brought  
16 in bad faith with no reasonable basis and intended to harass.

03:39PM

17 THE COURT: All right. Thank you.

18 Do you have anything more you wanted to add?

19 MR. WILENCHIK: Your Honor, you know, I feel like  
20 those issues are somewhat -- very much outside the scope of the  
21 proceeding as far as mootness and the rest of the way those  
22 kind of things go. If there's any intention to rule on any one  
23 of those bases, we would request that they actually file a  
24 motion to dismiss on those bases so they could be properly  
25 briefed.

03:39PM

03:40PM

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1 THE COURT: I will tell you what. I see you standing,  
2 Mr. Valente. I will hear from you.

3 I will go ahead and rule. I'm going to rule. The  
4 only thing I might have interest in is this idea that a  
5 corporation and an LLC can assert a member or an organizational 03:40PM  
6 standing that goes beyond any members of the organization.  
7 Does anybody want to brief that question, or do they just want  
8 me to research it and see what they find?

9 MR. WILENCHIK: We would like to brief that, Your  
10 Honor. 03:40PM

11 THE COURT: I'm not inclined to give you very long to  
12 brief it. How long are you going to need?

13 MR. WILENCHIK: As soon as I get back to my office I'm  
14 going to hit the books.

15 THE COURT: That isn't an answer to my question. 03:40PM

16 MR. WILENCHIK: I can file something later today.

17 THE COURT: By?

18 MR. WILENCHIK: Later today.

19 THE COURT: Do you want to even brief the question?

20 MR. HAAR: If at all possible we would like an 03:41PM  
21 opportunity to respond.

22 THE COURT: I am not going to give you an opportunity  
23 to respond. I will let you simultaneously brief it. If you  
24 need a day or two longer than Mr. Wilenchik is asking for I  
25 will give you all that time but I want it simultaneously 03:41PM

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1 briefed. I'm not going to wait to go back and forth on motions  
2 to reply and responses. How long do you want?

3 MR. HAAR: If we could have until this next Tuesday I  
4 think that would be sufficient.

5 THE COURT: Mr. Valente, do you have any interest in  
6 briefing it? 03:41PM

7 MR. VALENTE: I don't have interest in briefing it but  
8 I'm not going to say that we won't, Your Honor. I will try to  
9 confer with counsel. Maybe we can do something together.

10 THE COURT: Well, you have an LLC. He has a  
11 corporation. The law may be different. 03:41PM

12 MR. VALENTE: I suspect the issues may be somewhat  
13 similar.

14 THE COURT: They may be.

15 Mr. -- is it Potts? 03:41PM

16 MR. POTTS: Yes. I will confer with Mr. Haar.  
17 Tuesday should be plenty.

18 THE COURT: If anybody wants to brief that, you have  
19 until Tuesday to brief it. Okay. And that includes you, Mr.  
20 Wilenchik. 03:42PM

21 MR. WILENCHIK: Yes, sir.

22 THE COURT: Mr. Valente, did you want to say  
23 something?

24 MR. VALENTE: One final point on the futility issue,  
25 Your Honor. Again, this was raised for the first time in the 03:42PM



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1 reply today, essentially. Any state law claim that went back  
2 would be futile because there's no claim for damages here. Mr.  
3 Ritzenthaler has never been there. Ms. Puckett is not a party  
4 to this lawsuit. And the organization itself can't have any  
5 damages from this. And there's case law that says that an  
6 organization, while it may have standing in certain  
7 circumstances, associational standing to pursue a claim on  
8 behalf of its members, it can't pursue a claim for damages if  
9 that organization's very point of being is to file litigation  
10 on behalf of entities, on behalf of their members. And I have  
11 case law on that, Your Honor, if you want it.

03:42PM

03:43PM

12 THE COURT: Is it, Mr. Wilenchik, is it federal and  
13 state statutes only give injunctive relief?

14 MR. WILENCHIK: Federal only injunctive as well as  
15 litigation expenses. State allows for damages; also allows for  
16 injunctive relief.

03:43PM

17 THE COURT: Allows for damages but does it provide  
18 statutory damages or only allows for actual damages?

19 MR. WILENCHIK: It allows for actual damages, is my  
20 understanding.

03:43PM

21 THE COURT: Do you have any claim for actual damages  
22 here?

23 MR. WILENCHIK: Well --

24 THE COURT: You have plaintiffs who haven't even been  
25 to the spot until after the litigation was filed. Is there any

03:43PM

1 actual damage claim?

2 MR. WILENCHIK: In that scenario, no, unless we were  
3 allowed to amend the complaint. But I think the bigger point  
4 here is -- again, the standing analysis, *Bennett v. Brownlow* is  
5 the case that says the Arizona courts can waive standing. The  
6 Court should remand unless its absolutely certain that it would  
7 be futile.

03:43PM

8 THE COURT: But we're talking futility here. Even  
9 under the state law claim, if all you can get is actual damages  
10 and you don't have any claim for actual damages, and the  
11 problem has been fixed, what is there left?

03:44PM

12 MR. WILENCHIK: Injunctive. We can also get  
13 injunctive relief under state law.

14 THE COURT: You can't get injunctive relief for a  
15 problem that doesn't exist.

03:44PM

16 MR. WILENCHIK: Well, now we're getting to mootness  
17 and the issue of voluntary cessation, which is a big issue in  
18 this case which is why we briefed it. It's an issue in just  
19 about every one of them.

20 THE COURT: What?

03:44PM

21 MR. WILENCHIK: We run into these issues of mootness,  
22 voluntary cessation and all of these questions. That's the  
23 answer to your question. It's not moot.

24 THE COURT: It certainly is moot when you don't have  
25 -- when you don't have anybody who has been to the site before

03:44PM

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1 the problem was fixed.

2 MR. WILENCHIK: Not in terms of getting injunction to  
3 fix the problem.

4 THE COURT: The problem is fixed. You are not going  
5 to get an injunction to fix a problem that doesn't exist.

03:44PM

6 MR. WILENCHIK: The issue is it can be changed. This  
7 is a big issue in this case is because we can't sue in the  
8 first place unless it's readily fixable. If it's readily  
9 fixable it's readily unfixable.

10 THE COURT: So you think Costco is going to go around  
11 and have the sign moved back down six inches? Any reason to  
12 believe Costco is going to go move its sign back down six  
13 inches?

03:45PM

14 MR. WILENCHIK: Unless it's absolutely certain  
15 basically they won't. We believe we have jurisdiction. This  
16 is an important issue. I feel if they want to file a separate  
17 motion to dismiss on that basis we'll entertain it. The  
18 voluntary cessation doctrine needs to be applied in these cases  
19 because we briefed the issue. There is a Supreme Court case,  
20 *Buchannon*, that says otherwise you don't get your fees. So  
21 that's why you have to be able to argue voluntary cessation as  
22 an exception of mootness in these cases. Otherwise just about  
23 every one is moot. You can't sue unless it's readily fixable.

03:45PM

03:45PM

24 THE COURT: The issue here is did you ever have  
25 standing to sue?

03:46PM

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1 MR. WILENCHIK: And I understand the Court is probably  
2 inclined to rule under Article III we do not. But again, under  
3 state law, we may have standing. Unless it's absolutely  
4 certain we don't, it's not a futile act to remand.

5 THE COURT: All right. Well, you have until Tuesday  
6 to file your supplemental briefing. And it has to be jointly  
7 filed. We're not going to be responding and replying. And I  
8 will issue my determination shortly thereafter.

03:46PM

9 Thank you.

10 MR. WILENCHIK: Thank you, Your Honor.

03:46PM

11 (Proceeding concluded at 3:46 p.m.)  
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C E R T I F I C A T E

I, LAURIE A. ADAMS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 31st day of October, 2016.

s/Laurie A. Adams

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Laurie A. Adams, RMR, CRR

# EXHIBIT L

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**IN THE UNITED STATES DISTRICT COURT**

7

**FOR THE DISTRICT OF ARIZONA**

8

9 Advocates for Individuals with Disabilities  
Foundation Incorporated,

No. CV-16-02413-PHX-GMS

10

Plaintiff,

**ORDER**

11

v.

12

13 Golden Rule Properties LLC,

13

14 Defendant.

14

15 On August 25, 2016, this Court issued an Order for the Plaintiffs to Show Cause  
16 as to why this case should not be dismissed for lack of standing. (Doc. 22.) For the  
17 following reasons, the Court remands the case to state court, awards fees to the Defendant  
18 pursuant to 18 U.S.C. § 1447, and issues sanctions against the Plaintiff’s counsel  
19 pursuant to 28 U.S.C. § 1927.

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**BACKGROUND**

20

21 Plaintiff Advocates for Individuals with Disabilities (“AID”) is a non-profit  
22 charitable organization that advocates for disabled individuals. It is represented by  
23 attorneys Peter Strojnik and Fabian Zazueta, who also make the decisions on behalf of  
24 the client. Part of AID’s strategy involves filing law suits against local businesses that  
25 violate the Americans with Disabilities Act (“ADA”) and similar state statutes. To date,  
26 162 of these claims have been filed in or removed to this Court, and approximately one  
27 thousand of such claims have been filed in state court. Each claim’s complaint contains  
28 the same general language alleging that the local business violated the ADA by having

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1 inadequate signage or parking spaces for disabled individuals.

2 AID filed a complaint against Defendant Golden Rule Properties LLC (“Golden  
3 Rule”) on June 9, 2016 in Maricopa County Superior Court. (Doc.1.) The complaint  
4 stated that Defendant Golden Rule’s parking lot failed to comply with the ADA and the  
5 Arizona Disability Act because it failed to “identify car parking spaces by the designation  
6 ‘van accessible’ and or fails to maintain the minimum height of 60 inches” above the  
7 floor. (Doc. 1, Ex. 1 at 5.)

8 The complaint does not allege that any disabled individual encountered the  
9 Defendant’s defective signage. Rather, it asserts that “Plaintiff, who is known to have a  
10 relationship or association with individuals with disabilities,” (Doc. 1, Ex. 1 at 5),  
11 investigated the Defendant’s business and found that it “was not accessible to persons  
12 with disabilities.” (*Id.*) Because these general allegations do not illustrate that AID has a  
13 “concrete and particularized” injury that affects it “in a personal and individual way,” the  
14 Court ordered AID to show cause why this case should not be dismissed for lack of  
15 standing.

16 Furthermore, AID’s pre- and post- removal conduct demonstrates an attempt to  
17 increase the costs of litigation to maximize Defendants desire to settle the suit due to the  
18 cost of defense. Because Golden Rule’s counsel had represented other defendants in  
19 cases brought by the Plaintiff and had defendants dismiss the federal claim immediately  
20 upon removal to federal court to require remand of the remaining state law disability  
21 claim to state court, Golden Rule reached out to AID and its counsel to determine their  
22 intent to proceed with the federal claim prior to initiating the removal process. (Doc. 22  
23 at 13.) Defense counsel suggested a willingness to stipulate to a dismissal of the federal  
24 court claim to avoid the incurred expense and time of removal, dismissal and remand.  
25 AID assured Golden Rule and its counsel that it intended to proceed with the federal  
26 claim. (*Id.*) Yet immediately following removal, AID moved to dismiss the federal claim.  
27 (*Id.*) In light of these events, the Court also ordered AID to show cause why AID should  
28 not bear the costs of removal and why its counsel should not be sanctioned for their



1 actions pursuant to 28 U.S.C. § 1927.

2 **DISCUSSION**

3 **I. Plaintiff Lacks Article III Standing, and Thus This Case is Remanded to**  
4 **State Court.**

5 “To invoke the jurisdiction of the federal courts, a disabled individual claiming  
6 discrimination must satisfy the case or controversy requirement of Article III by  
7 demonstrating his standing to sue at each stage of litigation.” *Chapman v. Pier 1 Imports*  
8 *(U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (en banc). After reviewing Plaintiff’s  
9 response to the Order to Show Cause, hearing oral arguments, and reviewing the  
10 supplemental briefings, the Court finds that AID does not have standing to pursue this  
11 suit.

12 An association may sue on behalf of one of its injured members if “(a) its  
13 members would otherwise have standing to sue in their own right; (b) the interests it  
14 seeks to protect are germane to the organization's purpose; and (c) neither the claim  
15 asserted nor the relief requested requires the participation of individual members in the  
16 lawsuit.” *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). This  
17 analysis also applies to situations where the organization does not have traditional  
18 “members,” provided that the purported constituency “possess[es] all of the indicia of  
19 membership” in an organization. *Id.* at 344.

20 **A. Plaintiff does not Allege Sufficient Facts to Assert that Either Ms.**  
21 **Puckett or Mr. Ritzenthaler is a Member of AID.**

22 Nonprofit corporations may file lawsuits on behalf of their members even if it  
23 does not have members in the traditional sense. *See Sierra Ass'n for Env't v. F.E.R.C.*,  
24 744 F.2d 661, 662 (9th Cir. 1984) (allowing a California corporation to file suit as an  
25 unincorporated association due to the presence of federal question jurisdiction). However,  
26 in these situations, a nonprofit must still allege sufficient facts to show that a purported  
27 member “possess[es] many indicia of membership—enough to satisfy the purposes that  
28 undergird the concept of associational standing: that the organization is sufficiently

1 identified with and subject to the influence of those it seeks to represent as to have a  
2 personal stake in the outcome of the controversy.” *Oregon Advocacy Ctr. v. Mink*, 322  
3 F.3d 1101, 1111 (9th Cir. 2003) (internal quotations and citations omitted).

4 The Supreme Court provided examples of relevant “indicia of membership” in  
5 *Hunt*. 432 U.S. at 344–45. Key factors include whether the proposed constituency  
6 maintained control over who was elected to leadership of the association, if the proposed  
7 constituency was the only group that could service on the leadership board, and whether  
8 the proposed constituency financed the association’s activities (including litigation). *Id.*  
9 The analysis turns on whether the association “provides the means by which they express  
10 their collective views and protect their collective interests.” *Id.*

11 The Plaintiff’s complaint does not mention a single individual member of AID by  
12 name. (Doc. 1, Ex. 1.) Rather, the complaint attempts to allege that the Plaintiff has a  
13 “close relationship” with all “former, current and future disabled individuals” due to its  
14 “charitable acts.” (Doc. 1, Ex. 1 at 3.) There is a total absence of specific facts to support  
15 these conclusory assertions. (*Id.*) Nothing in the complaint alleges that any of the indicia  
16 listed by the *Hunt* Court are present in this case. (*Id.*)

17 In its Response to the Order to Show Cause, the Plaintiff mentions two purported  
18 members, Ms. Shannon Puckett and Mr. David Ritzenthaler. However, the Plaintiff failed  
19 to assert a basis of membership for either individual. Instead, AID argued that any  
20 individual that tests a location for ADA compliance in connection with its serial lawsuits  
21 exerts influence over the litigation, and is thus a member. (Doc. 22 at 5.) Even if the  
22 Court could agree that participation as a tester amounts to exerting influence over  
23 litigation, this alone cannot be said to grant the tester “many indicia” of membership.  
24 *Oregon Advocacy Ctr.*, 322 F.3d at 1111. The Plaintiff again dodged the question in its  
25 Reply to the Order to Show Cause, stating that the question of membership “is not  
26 germane to the proceedings.” (Doc. 24 at 5.)

27 In the absence of demonstrating that either Ms. Puckett or Mr. Ritzenthaler have  
28 any indicia of membership, there is no basis on which AID may assert standing based on

1 their alleged injury. Further, as discussed below, even if Ms. Puckett and Mr. Ritzenthaler  
2 were members, AID may not rely on them to provide associational standing in this  
3 lawsuit.

4 **B. Neither Ms. Puckett nor Mr. Ritzenthaler Suffered an Injury-in-**  
5 **Fact, Thus Neither Can Provide AID with Associational Standing.**

6 An association may only assert standing on behalf of a member if the member has  
7 standing. *Hunt*, 432 U.S. at 343. For an individual member to have standing under Article  
8 III, he must satisfy three elements: 1) an injury-in-fact, 2) causation between the injury  
9 and the allegedly wrongful conduct, and 3) the injury is likely redressable by the court.  
10 *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). The burden is on the plaintiff to  
11 establish that standing exists. *See id.* (“The party invoking federal jurisdiction bears the  
12 burden of establishing these elements.”).

13 An injury-in-fact must be “(a) concrete and particularized and (b) ‘actual or  
14 imminent, not ‘conjectural’ or ‘hypothetical.’ ” *Lujan*, 504 U.S at 560 (internal quotations  
15 and citations omitted). This requires that “the party seeking review must allege facts  
16 showing that he is himself adversely affected.” *Sierra Club v. Morton*, 405 U.S. 727, 740  
17 (1972). In ADA cases, a plaintiff experiences an injury-in-fact when “a disabled person  
18 encounters an accessibility barrier violating its provisions.” *Chapman v. Pier 1 Imports*  
19 *(U.S.) Inc.*, 631 F.3d 939, 947 (9th Cir. 2011) (emphasis added). The barrier does not  
20 need to completely hinder the plaintiff’s ability to enter or use the facility, but it must  
21 “interfere with the plaintiff’s ‘full and equal enjoyment’ of the facility.” *Id.* (quoting 42  
22 U.S.C. § 12182(a)).

23 AID cannot assert standing on behalf of Ms. Puckett or Mr. Ritzenthaler because  
24 neither suffered an injury-in-fact. Nothing in AID’s complaint alleges that Ms. Puckett,  
25 Mr. Ritzenthaler, or any other member ever personally encountered the barrier in  
26 question. (Doc. 1, Ex. 1.) In fact, the complaint does not mention Ms. Puckett or Mr.  
27 Ritzenthaler at all. (*Id.*) The complaint merely alleges that “Plaintiff has actual  
28 knowledge of at least one barrier related to third party disabled individuals” on the

1 Defendant's property. (*Id.* at 6.) Likewise, a declaration filed by the Plaintiff establishes  
2 that Ms. Puckett was "informed" of the defective signage, but does not state that she ever  
3 actually encountered the defective signage. (Doc. 21-1 at 18.)

4 Contrary to Plaintiff's assertions, mere knowledge of the Defendant's lack of  
5 signage is insufficient to show injury-in-fact. In *Pickern v. Holiday Quality Foods Inc.*,  
6 the Ninth Circuit found that a plaintiff who had visited the defendant's grocery store in  
7 the past had standing to bring an ADA claim based on the barriers he personally  
8 encountered as well as the barriers that he did not have the chance to encounter during his  
9 visit. 293 F.3d 1133, 1138 (9th Cir. 2002). That case did not involve a situation where, as  
10 here, the plaintiff never frequented the defendant's establishment prior to filing suit. *Id.*  
11 In fact, none of the cases cited by the Plaintiff hold that an injury-in-fact occurs by virtue  
12 of the plaintiff's knowledge of a potential barrier. *See Pickern*, 293 F.3d at 1135 (plaintiff  
13 visited the store in question multiple times); *Chapman*, 631 F.3d at 943 (plaintiff  
14 frequented the defendant's store and personally encountered barriers that deprived him of  
15 "full and equal enjoyment of the facility."); *Houston v. Marod Supermarkets, Inc.*, 733  
16 F.3d 1323, 1326 (11th Cir. 2013) (plaintiff visited and encountered barriers to entry at a  
17 grocery store). Therefore, AID's vague assertions that it had "knowledge of at least one  
18 barrier" at the Defendant's parking lot is insufficient to establish that its members  
19 suffered an injury-in-fact, and thus AID does not have standing to pursue this case.

## 20 **II. Leave to Amend or Supplement the Pleadings**

21 The Plaintiff's Response to the Order to Show Cause states that the "Plaintiff  
22 wishes to file for leave to amend the Complaint or file a Rule 15(d) supplemental  
23 pleading." As of this moment, the Plaintiff has not yet filed any such motion for leave. If  
24 the Plaintiff did, this request would be denied.

25 District courts are permitted to deny leave when it finds "undue delay, bad faith or  
26 dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
27 amendments previously allowed, undue prejudice to the opposing party by virtue of  
28 allowance of the amendment, futility of the amendment, etc." *Foman v. Davis*, 371 U.S.

1 178, 182 (1962).

2 AID's counsel has more than 160 ADA cases currently pending in this Court. The  
3 complaints are largely identical. None of the complaints contain any specific factual  
4 allegations. (Doc. 1, Ex. 1.) Instead, they each contain the same boilerplate language and  
5 assert vague, conclusory allegations. (*Id.*) Counsel relies on the use of clauses such as  
6 "and/or" to ensure that the form complaint may be used in multiple situations. (Doc. 1,  
7 Ex. 1 at 6.) The complaint filed in this case even refers to the Defendant as a hotel,  
8 which it is not. (*Id.*) Given these facts alone, the Court would not grant leave to file an  
9 amendment.

10 However, permitting leave to file an amendment would also be futile in this case.  
11 As noted in the Defendant's Response to Show Cause, the Defendant remedied the  
12 alleged ADA violations and is now ADA compliant. (Doc. 22 at 12.) Apparently, neither  
13 Ms. Puckett nor Mr. Ritzenthaler visited the Defendant's property during the time that it  
14 was noncompliant. (Doc. 21-1 at 18.) Thus, they never encountered any barrier.  
15 Permitting an amendment to the complaint at this point would be futile. Neither purported  
16 member was injured by the noncompliance when it existed, and now that the  
17 noncompliance is remedied, no injury can occur. Therefore, the Plaintiff will not be  
18 granted leave to supplement or amend their complaint.

### 19 **III. Remand to State Court is Proper in This Case**

20 The removal statute instructs that "[i]f at any time before final judgment it appears  
21 that the district court lacks subject matter jurisdiction, the case shall be remanded." 28  
22 U.S.C. § 1447(c). The Ninth Circuit has implied that where a plaintiff would lack  
23 standing in state court as well, a district court may dismiss the entire suit without remand.  
24 *See Bell v. City of Kellogg*, 922 F.2d 1418, 1424–25 (9th Cir. 1991) ("Where the remand  
25 to state court would be futile, however, the desire to have state courts resolve state law  
26 issues is lacking. We do not believe Congress intended to ignore the interest of efficient  
27 use of judicial resources.") However, this should be applied only "where there is absolute  
28 certainty that remand would prove futile." *Id.* at 1425 (internal citations and quotations

1 omitted).

2 Arizona law does not impose the same standing requirements on parties that the  
3 federal Constitution does. *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in*  
4 *Arizona*, 148 Ariz. 1, 6, 712 P.2d 914, 919 (1985).

5 Due to Arizona's flexible standing requirements, the Court cannot say that there is  
6 "absolute certainty" that AID's claims would be dismissed if they were remanded to state  
7 court. *Bell*, 922 F.2d at 1425. Therefore, remand to the state court is the appropriate  
8 action in this case. Furthermore, the Court will not dismiss the federal claims on remand  
9 because the state courts have concurrent jurisdiction to hear the claims. *See Yellow*  
10 *Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 821 (1990) ("[W]e conclude that Congress  
11 did not divest the state courts of their concurrent authority to adjudicate federal claims.").

#### 12 **IV. Defendant is Awarded Fees Incurred Between Removal and Remand**

13 If an attorney "multiplies the proceedings in any case unreasonably and  
14 vexatiously," he "may be required by the court to satisfy personally the excess costs,  
15 expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. §  
16 1927. Attorneys may only be held personally liable for fees under Section 1927 if the  
17 attorney acted in bad faith. *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 436 (9th  
18 Cir. 1996). "Bad faith is present when an attorney knowingly or recklessly raises a  
19 frivolous argument, or argues a meritorious claim for the purpose of harassing an  
20 opponent." *Estate of Blas Through Chargualaf v. Winkler*, 792 F.2d 858, 860 (9th Cir.  
21 1986) (internal citations omitted).

22 In a similar fashion, Section 1447(c) permits district courts to assign "payment of  
23 just costs and any actual expenses, including attorney fees, incurred as a result of the  
24 removal" against a party if "at any time before final judgment it appears that the district  
25 court lacks subject matter jurisdiction." 28 U.S.C. § 1447. Assigning fees to a party is not  
26 the norm, but it is an available option in instances where "such an award is just." *Martin*  
27 *v. Franklin Capital Corp.*, 546 U.S. 132, 138 (2005).

28 ///



1           The standard for awarding fees against a party under Section 1447(c) does not  
2 require a finding of bad faith. Rather, the analysis in Section 1447(c) generally turns on  
3 the “reasonableness of the removal.” *Id.* at 141. The Supreme Court noted in *Martin* that  
4 district courts “retain discretion to consider whether unusual circumstances warrant a  
5 departure from the rule in a given case.”<sup>1</sup> *Id.* However, “discretion is not whim, and  
6 limiting discretion according to legal standards helps promote the basic principle of  
7 justice that like cases should be decided alike.” *Martin*, 546 U.S. at 139. The test for  
8 “awarding fees under § 1447(c) should recognize the desire to deter removals sought for  
9 the purpose of prolonging litigation and imposing costs on the opposing party” while also  
10 recognizing that parties make strategic decisions in litigation. *Id.* at 140.

11           In *Baddie v. Berkeley Farms, Inc.* the Ninth Circuit held that the plaintiffs should  
12 not have been sanctioned under the removal statute for dismissing their federal claims to  
13 ensure remand to the state court. 64 F.3d 487, 491 (9th Cir. 1995). There was no bad faith  
14 present in that case, as “there was nothing manipulative about that straight-forward  
15 tactical decision.” *Id.* *Baddie* stands for the proposition that a plaintiff is entitled to  
16 strategically “choose between federal claims and a state forum” without fear of being  
17 sanctioned. *Id.*

18           AID and its counsel cannot seek refuge under *Baddie*. Unlike the plaintiffs in  
19 *Baddie*, AID and its counsel affirmatively told opposing counsel that they had no  
20 intention of dismissing the federal claims if the Defendant removed the case.  
21 Furthermore, unlike the plaintiffs in *Baddie*, AID and its counsel have an established  
22 practice of misleading opposing counsel.

23           AID and its counsel have filed more than 1,000 lawsuits in the past year asserting  
24 identical state and federal claims in state court. (Doc. 22 at 11.) As expected from this  
25 high level of activity, this is not the first encounter Defendant’s counsel has had with

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27           <sup>1</sup> Notably, nothing in the *Martin* case stands for the proposition that a district court  
28 must leave the decision to sanction counsel for the state court to consider on remand.  
Thus, Plaintiff’s argument that a situation-specific footnote in *Baddie* appoints state court  
as the only appropriate forum for this determination is rejected. (Doc. 21 at 8.)

1 AID, Mr. Strojnik, and Mr. Zazueta. In both this case as well as *Advocates for Individuals*  
2 *with Disabilities Foundation, Incorporated v. Sun West Dental Properties, LLC*, Mr.  
3 Anderson sent a letter to AID’s counsel inquiring whether they intended to pursue their  
4 federal claims. *Compare* (Doc. 10 at 10) *with Advocates for Individuals with Disabilities*  
5 *Foundation, Incorporated v. Sun West Dental Properties, LLC*, 16-cv-02416-JJT, Doc. 8  
6 at 10. If not, Mr. Anderson inquired as to whether AID would be interested in stipulating  
7 to the dismissal of the federal claims to save both parties the costs of removal. *Id.* In both  
8 instances, AID’s counsel assured Mr. Anderson that they had no intention of dismissing  
9 their federal claims. (Doc. 10 at 13–16); *Advocates for Individuals with Disabilities*  
10 *Foundation, Incorporated v. Sun West Dental Properties, LLC*, 16-cv-02416-JJT, Doc. 8  
11 at 13–16. And in both instances, AID’s counsel promptly moved for dismissal of its  
12 federal claims upon notice of removal. AID had costs imposed against it for its behavior  
13 in *Sun West Dental Properties* two weeks prior to the hearing for the same behavior in  
14 this case. *Advocates for Individuals with Disabilities Foundation, Incorporated v. Sun*  
15 *West Dental Properties, LLC*, 16-cv-02416-JJT, Doc. 26.

16 AID and its counsel’s decisions to dismiss its federal claims under these  
17 circumstances are not “straight-forward tactical decision[s].” Rather, these decisions  
18 reflect expensive bait-and-switch maneuvers aimed at “prolonging litigation and  
19 imposing costs on the opposing party.” *Martin*, 546 U.S. at 140. Per Mr. Zazueta’s  
20 testimony at oral argument, these decisions are ultimately made by Mr. Zazueta and Mr.  
21 Strojnik. In this case the Court finds that the refusal to seek dismissal until after counsel  
22 had filed their motions for remand evinces a bad faith desire to “argue a meritorious  
23 claim for the purpose of harassing an opponent.” *Estate of Blas Through Chargualaf*, 792  
24 F.2d at 860. Therefore, the Court finds that counsel’s behavior justifies imposing “the  
25 excess costs, expenses, and attorneys’ fees reasonably incurred” due to counsel’s bad  
26 faith conduct. 28 U.S.C. § 1927.

27 Likewise, the Court finds that costs should be imposed against AID pursuant to  
28 Section 1447(c). AID is a serial litigant in these cases. It had to know that removal to



1 federal court would risk the dismissal of its claims unless it found a way to remand this  
2 case back to state court. The only certain route to state court involved a motion to dismiss  
3 AID's federal claims. Thus, AID knew when defense counsel approached that it would  
4 file a motion to dismiss the federal claims immediately after removal to federal court.  
5 AID knew, and yet its counsel intentionally told the Defendant that AID would not file  
6 such a motion if the case was removed. Defense counsel relied on that statement and  
7 incurred expenses to remove this case to federal court. AID's behavior was aimed at  
8 "imposing costs on the opposing party," and it is the exact sort of behavior that the  
9 *Martin* Court sought to deter. *Martin*, 546 U.S. at 140. Therefore, AID, Mr. Strojnik, and  
10 Mr. Zazueta are ordered jointly and severally to reimburse the Defendant for attorney's  
11 fees incurred between the removal and remand of this case. The Court will determine the  
12 amount of such reasonable fees upon submission by the attorney of an affidavit outlining  
13 his expenses for this period.

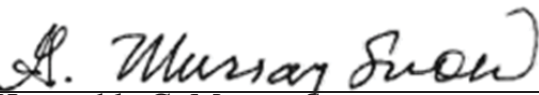
#### 14 CONCLUSION

15 The Plaintiff cannot assert that any individual suffered an injury-in-fact, and thus  
16 AID lacks the requisite standing to pursue this claim in federal court. Because there is a  
17 chance that these claims will be heard in state court, remand is the appropriate remedy.  
18 Furthermore, AID, Mr. Strojnik, and Mr. Zazueta will reimburse the Defendant's fees  
19 due to their bad faith behavior.

20 **IT IS THEREFORE ORDERED** directing the Clerk of Court to remand this  
21 action back to Maricopa County Superior Court.

22 **IT IS FURTHER ORDERED** that AID, Mr. Strojnik, and Mr. Zazueta shall  
23 reimburse the Defendant for attorney's fees acquired between the removal and remand of  
24 this case.

25 Dated this 13th day of October, 2016.

26   
27 Honorable G. Murray Snow  
28 United States District Judge

# EXHIBIT M

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Advocates for Individuals with Disabilities,  
LLC, and David Ritzenthaler,  
  
Plaintiffs,  
  
v.  
  
MidFirst Bank,  
  
Defendant.

No. CV-16-01969-PHX-NVW  
**ORDER**

Before the Court are two pending matters. First is the Court’s Order to Show Cause (Doc. 20) and Plaintiffs’ Response (Doc. 22) concerning whether Plaintiffs have standing. The Court gave Plaintiffs until October 17, 2016, to file an amended complaint if they wish to allege more that could affect standing. Plaintiffs filed no amended complaint. For the reasons stated in the Order to Show Cause (Doc. 20), Plaintiffs have not alleged sufficient standing to invoke federal jurisdiction. The standing and jurisdictional allegations in this case are materially identical to those found insufficient in *Advocates for Individuals with Disabilities LLC v. WSA Props. LLC*, No. CV-16-02375-PHX-DGC, 2016 WL 5436810, at \*1 (D. Ariz. Sept. 29, 2016), an action filed by the same counsel. This Court adopts the analysis and discussion of the court in that case.

Also before the Court is Plaintiff’s Motion to Remand (Doc. 24), which seeks remand to the state court of both the parallel state law claim and of the federal Americans with Disabilities Act claim. Therefore, the Court must determine whether the parallel

1 state law claims must be remanded to the state court or dismissed because it is  
2 “absolutely certain” that Plaintiff would not be allowed to proceed in state court due to  
3 lack of injury and standing. *Bell v. City of Kellogg*, 922 F.2d 1418, 1424 (9th Cir. 1991).  
4 It is necessary to have additional information before that question can be answered.

5 As background to the inquiries stated below, the Court is aware from several news  
6 media accounts widely disseminated in this community that Plaintiffs’ counsel Peter  
7 Strojnik has filed more than a thousand similar cases in the Arizona Superior Court.  
8 Many, like this one, have been removed to federal court. It appears from those reports  
9 that Mr. Strojnik files those actions without prior demand on the defendants and without  
10 opportunity to cure before litigation. It appears that many of the alleged violations are  
11 easily cured with minimal expense. Mr. Strojnik has stated in some news reports that he  
12 always insists that the defendant pay him \$7,000 in attorney fees to dismiss the case, even  
13 after immediate remediation at trivial cost and minimal effort by Mr. Strojnik.

14 This raises a question of whether Mr. Strojnik has engaged in a pattern of  
15 professionally unethical conduct by demanding attorney fees for bringing litigation that is  
16 unnecessary and for which the reasonable attorney fees would be nothing. There is a  
17 similar question whether he has engaged in a pattern of professionally unethical conduct,  
18 even if some attorney fees could be sought, by demanding payment of fees in a highly  
19 unreasonable amount. The circumstances raise the question whether Mr. Strojnik has  
20 used these cases to abuse people with unethical fee demands that are more economical to  
21 pay than defeat. These questions could bear upon whether in this case it is absolutely  
22 certain that Arizona law would not indulge the rare allowance of litigation without an  
23 injured plaintiff. These questions must be explored to decide whether this action should  
24 be remanded in whole or in part or dismissed entirely.

25  
26 IT IS THEREFORE ORDERED that Plaintiffs’ counsel Peter Strojnik and Fabian  
27 Zazueta appear in person on November 28, 2016, at 9:30 a.m. to give full answers to the  
28 following questions:



# EXHIBIT N

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12 fabian@aid.org  
13 760WRayRd@aadi.org  
14 *Attorneys for Plaintiffs*

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 Advocates for Individuals with Disabilities  
12 LLC, and David Ritzenthaler,  
13  
14 Plaintiffs,  
15 v.  
16 MidFirst Bank,  
17  
18 Defendant.

Case No: 2:16cv-01969-PHX-NVW

**PLAINTIFF’S RESPONSE TO ORDER  
TO SHOW CAUSE  
(ORAL ARGUMENT REQUESTED)**

18 Plaintiffs, Advocates for American Individuals with Disabilities, LLC, and David  
19 Ritzenthaler (“Plaintiffs”) and Peter Strojnik, Esq. and Fabian Zazueta, Esq. hereby file their  
20 Response to the Court’s Order to Show Cause (Doc. 20) directing Plaintiffs to show cause as to  
21 why this case should not be dismissed for lack of standing.

22 **I. Plaintiffs’ Members Give it Standing**

23 This case should not be dismissed for lack of standing because the Plaintiffs’  
24 organization (Advocates for Individuals with Disabilities Foundation, hereinafter “AID”) has  
25 several members/principals who are disabled individuals with mobility impairments, or who  
26 drive for a child with a disability that impairs mobility, including but not limited to co-Plaintiff

1 David Ritzenthaler and Shannon Puckett. These persons reside in the greater Phoenix area, are  
2 all motorists who travel on the Valley’s streets; and they all have lawful disability-parking plates  
3 or placards for their vehicles.

4 The subject property, located at 760 West Ray Road in Gilbert (the “Lot”), is a parking  
5 lot for a bank in addition to an adjacent strip mall that includes a preschool and a pizzeria as  
6 well as multiple other restaurants and retailers. The Lot does not have van-accessible signage, as  
7 required by 42 U.S.C. §12102(2) and 28 CFR §§36.101 et seq., the implementing regulations  
8 (hereinafter “the ADA”).<sup>1</sup> In particular, David Ritzenthaler and Shannon Puckett are both  
9 members of AID who regularly travel through Gilbert, and who is aware that the Lot does not  
10 have requisite disability signage. By including the requirement for signage in the ADA,  
11 Congress created a legal right, the invasion of which creates standing. *See Lujan v. Defs. of*  
12 *Wildlife*, 504 U.S. 555, 578 (1992)(“the injury required by Art. III may exist solely by virtue of  
13 statutes creating legal rights, the invasion of which creates standing”)(bracketing and ellipses  
14 omitted).

15 Mr. Ritzenthaler has a disability that impairs his mobility. He is aware that  
16 noncompliance with the ADA is, by all accounts, widespread, and has been for decades. *See*  
17 *Samuel R. Bagenstos, The Perversity of Limited Civil Rights Remedies: The Case of “Abusive”*  
18 *ADA Litigation*, 54 UCLA L. Rev. 1, 3 (2006)(cited by *Molski v. Evergreen Dynasty Corp.*, 500  
19 F.3d 1047, 1062 (9th Cir. 2007)). He has personally experienced the reality that nearly every  
20 business in Arizona is not compliant with the ADA; and businesses adopt a “wait and see if  
21 anyone sues” attitude toward ADA compliance, relying solely on the high burden of filing and  
22 maintaining a federal lawsuit to protect them. Mr. Ritzenthaler knows from experience that  
23 where a business has one obvious violation (such as the complete lack of necessary signage by  
24

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25 <sup>1</sup> See AID inspection report, attached as Exhibit “A” hereto and incorporated herein by reference.  
26



1 Defendant), then there will be more ADA violations surrounding the premises and within the  
2 building, because a lack of obvious signage demonstrates that no-one has ever inspected the  
3 business to determine whether it is ADA-compliant. While Mr. Ritzenthaler’s disabilities are  
4 unique to him personally, he knows and understands that the best way to demand full  
5 compliance with the ADA is to associate with other like-minded individuals with disabilities  
6 because non-compliant businesses may partially satisfy barriers to him personally while not  
7 fully complying with other known disability law.

8 Ms. Puckett has a child with a disability that impairs the child’s mobility. The child is  
9 wheelchair-bound, and Ms. Puckett travels with the child in a motor vehicle that must park in a  
10 van-accessible handicapped spot. Ms. Puckett believes that the lack of signage is a deterrent to  
11 their use of the Lot, because it renders it more difficult for her to identify which, if any parking  
12 spots are van-accessible. Ms. Puckett is able to, would like to, and intends to use the Lot, but the  
13 lack of van-accessible signage is a deterrent and barrier to access. Addressing the case raised by  
14 this Court at the outset of its order, *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954  
15 (9th Cir. 2011), Ms. Puckett’s son’s “particular disability” requires that he use a wheelchair, and  
16 so she needs to identify van-accessible, i.e. wheelchair-accessible spaces. (Van-accessible  
17 spaces are wider, to accommodate wheelchairs and other mobility devices.) Ms. Puckett’s  
18 reasons for visiting the parking lot are legally irrelevant, and in fact visiting the lot merely to  
19 “test” for ADA compliance is entirely proper. *Houston v. Marod Supermarkets, Inc.*, 733 F.3d  
20 1323, 1332 (11th Cir. 2013)(finding that plaintiff’s motivations for visiting the premises—which  
21 he sued for “a lack of designated disabled use parking spaces,” in part—were legally irrelevant,  
22 and specifically finding that an intention to visit only for the purposes of checking whether the  
23 premises were ADA compliant was sufficient to confer standing). See also *Ass’n For Disabled*  
24 *Americans, Inc. v. Reinfeld Anderson Family Ltd. Prt.*, No. 1:12-CV-23798, 2015 WL 1810536,  
25 at \*4 (S.D. Fla. Apr. 21, 2015)(discussing the Houston case, and reaching the same conclusion).

## 1           **II.     Leave to Amend or Supplement May Be Necessary**

2           Responding to the Court’s concerns, Plaintiff wishes to file for leave to amend the  
3 Complaint to allege any additional facts contained in the foregoing necessary to satisfy this  
4 Court’s inquiry into the standing of the named Plaintiffs. In *United Union of Roofers,*  
5 *Waterproofers, & Allied Trades No. 40 v. Ins. Corp. of Am.*, 919 F.2d 1398, 1402 (9th Cir.  
6 1990), the Ninth Circuit found that the denial of leave to amend to cure “standing deficiencies”  
7 related to associational standing was an abuse of discretion. “Often a plaintiff will be able to  
8 amend its complaint to cure standing deficienc[i]es. To deny any amending of the complaint  
9 places too high a premium on artful pleading and would be contrary to the provisions and  
10 purpose of Fed.R.Civ.P. 15.” *Id.* In *Northstar Fin. Advisors Inc. v. Schwab Investments*, 779  
11 F.3d 1036, 1044 (9th Cir.),<sup>2</sup> the Ninth Circuit likewise found that “parties may cure standing  
12 deficiencies through supplemental pleadings” (under Rule 15(d)). The Court found that this rule  
13 obtains whether or not standing existed at the time that the Complaint was filed, or was acquired  
14 subsequently: “Defendants argue that because standing must be determined at the time a  
15 complaint is filed, and because [Plaintiff] did not obtain an assignment of claim until several  
16 months after the original complaint was filed, the assignment could not cure [Plaintiff’s] original  
17 lack of standing....[The district court judge] observed that, although there is no published Ninth  
18 Circuit authority on this point, courts in other circuits have found that parties may cure standing  
19 deficiencies through supplemental pleadings [and granted plaintiff leave to file a supplemental  
20 pleading under Rule 15(d)]....We agree with [the judge’s] application of Fed.R.Civ.P.  
21 15(d)...[The judge] did not abuse her discretion in permitting [Plaintiff] to file a supplemental  
22 pleading after a post-complaint assignment from a party that clearly had standing.” *Id.*, 779 F.3d  
23 at 1044, 1047 (internal quotation marks omitted). Delving further into its reasoning, the Ninth  
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25 <sup>2</sup> *As amended on denial of reh'g and reh'g en banc* (Apr. 28, 2015), *cert. denied*, 136 S. Ct. 240, 193 L.  
26 Ed. 2d 133 (2015).

1 Circuit stated: “Rule 15(d) permits a supplemental pleading to correct a defective complaint and  
2 circumvents the needless formality and expense of instituting a new action when events  
3 occurring after the original filing indicated a right to relief. Moreover, even though Rule 15(d) is  
4 phrased in terms of correcting a deficient statement of claim or a defense, a lack of subject-  
5 matter jurisdiction should be treated like any other defect for purposes of defining the proper  
6 scope of supplemental pleading.” *Id.*, 779 F.3d at 1044 (internal citations, quotations marks and  
7 brackets omitted). “This holding is consistent with *Rockwell Int’l Corp. v. United States*, in  
8 which the Supreme Court [] held that ‘when a plaintiff files a complaint in federal court and  
9 then voluntarily amends the complaint, courts look to the amended complaint to determine  
10 jurisdiction.’” *Id.* (quoting *Rockwell Int’l Corp. v. United States*, 549 U.S. 457, 473–74, 127  
11 S.Ct. 1397, 167 L.Ed.2d 190 (2007)).

### 12 **III. Members of AID Justifiably Associate**

13 Plaintiffs’ Complaint adequately confers standing on both Mr. Ritzenthaler as an  
14 individual with a disability as well as AID as an association with members with disabilities of  
15 varying type and severity. These are members of the community prevented from use of public  
16 accommodations, like Defendant’s Lot, and unable to seek redress unless resources are pooled  
17 and demands are made as suggested by the ADA itself and the body of law supporting serial  
18 ADA litigation. AID’s members are likely to suffer future injury at any public accommodation  
19 which has shown blatant disregard for ADA standards because those accommodations fail to  
20 provide access. A sign out in front of the building is the best way for an individual with a  
21 disability to know whether or not the necessary accommodations have been provided within the  
22 interior. In this case, the bank has made it clear that it is not accommodating to those individuals  
23 with disabilities by failing to provide the necessary signage in its lot. The case of *Shotz v. Cates*,  
24 256 F.3d 1077 (11th Cir. 2001), is instructive in determining the likelihood of future injury to  
25 AID’s members. Mr. Ritzenthaler and Ms. Puckett live and travel near to Defendant’s Lot, and  
26

1 will not be moving out of state like those plaintiffs discussed in *Shotz*. Furthermore, the inter-  
2 state movement of individuals with disabilities is another reason to support AID's inclusion in  
3 the current suit as its members who give it associational standing may change but collectively  
4 suffer discriminatory injury due to the Lot's ongoing non-compliance with the ADA.  
5 Additionally, a bank, a preschool, and a pizzeria are places individuals with disabilities can be  
6 expected to return and not locations to be visited only for limited durations.

7         There is an important reason why AID files as an association, and not merely on behalf of  
8 a single member. If Defendant were not questioning AID's standing to sue, then it would be  
9 questioning Ms. Puckett's. The Defendant could easily "ban" a single member like Ms. Puckett  
10 from their premises, and cite whatever pretextual reason they wanted in order to do so, enabling  
11 them to argue that she has no standing. For example, in *Ass'n For Disabled Americans v.*  
12 *Reinfeld Anderson Family Ltd. Prt.* (cited above), the defendant medical office terminated its  
13 relationship with the disabled ADA plaintiff-patient. That court ultimately determined that its  
14 plaintiff had standing to proceed because, among other reasons, the plaintiff had also filed on  
15 behalf of an association, and other members of the association could still have standing to  
16 pursue the same claims. The clear benefit to filing "associational" claims is cases such as this –  
17 where, as everyone in the room knows, thousands of disabled persons or their drivers could  
18 readily qualify as plaintiffs merely by driving by and searching for a spot to park – is to prevent  
19 such dismissals.

20         To deny standing to Plaintiffs based on the Complaint as drafted would force those  
21 members of AID who require the use of a wheel chair to drive vans to Defendant's Lot without  
22 space or signs, enter the buildings in non-compliance with federal statute, suffer additional  
23 discrimination inside the location, and then bring suit against well-funded defendants without  
24 the benefit of associating with other similarly disabled individuals. AID's interest in ensuring  
25 compliance with the law is not undifferentiated or abstract but is a response to actual injuries  
26

1 and discrimination suffered by its members with disabilities. *See generally United States v.*  
2 *Richardson*, 418 U.S. 166, 176-77 (1974)); and *Simon v. E. Kentucky Welfare Rights Org.*, 426  
3 U.S. 26, 40 (1976). AID’s interests are particular because it gains its standing from the particular  
4 injuries observed by and suffered by its members, not simply a generalized interest in ensuring  
5 Defendant observe federal and state law.


6 In addition to satisfying standing requirements as drafted, Plaintiff alternatively requests  
7 leave to amend or supplement as necessary in order to meet any standing deficiencies in the  
8 action against Defendant seeking to enjoin Defendant’s violations of the ADA. These additions  
9 to the complaint via amendment or supplement include, but are not limited to, including details  
10 of those members of AID who require van accessible parking, including details of those  
11 members who have appeared at Defendant’s lot, naming additional Plaintiffs as parties.

12 **IV. Notice of Non-Settlement**

13 Plaintiffs, in an abundance of caution, inform the court that the parties have failed to  
14 settle this matter as indicated in the Notice of Settlement (Doc. 19). This Court previously  
15 denied the request to stay all deadlines and therefore no requests are made in light of non-  
16 settlement.

17 **RESPECTFULLY SUBMITTED** this September 22, 2016.

18 **STROJNIK P.C.**

19 By:   
20 Peter Strojnik, Esq.  
21 Attorney for Plaintiffs

22 **ADVOCATES FOR INDIVIDUALS WITH DISABILITIES, LLC**

23 By: /s/Fabian Zazueta  
24 Fabian Zazueta, Esq.  
25 Attorney for Plaintiffs  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2016, I electronically transmitted the attached document using the CM/ECF system for filing, and which will be sent electronically to all registered participants as identified on the Notice of Electronic Filing.

By: /s/ Patti Lesser

# EXHIBIT O

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Advocates for Individuals with Disabilities,  
LLC, and David Ritzenthaler,  
  
Plaintiffs,  
  
v.  
  
MidFirst Bank,  
  
Defendant.

No. CV-16-01969-PHX-NVW  
**ORDER**

In their Response (Doc. 22) to the Order to Show Cause (Doc. 20), Plaintiffs state their interest in filing an amended complaint, but they do not state what more an amended complaint would allege that might give them standing. Plaintiffs will therefore be ordered to lodge a proposed amended complaint, failing which the Court will dispose of the Order to Show Cause on the existing Complaint. Plaintiffs will be given no further leave to amend, so the proposed amended complaint must allege everything they can to show standing. They may also file a further memorandum addressing why and how a proposed amended complaint cures the deficiencies of standing noted in the Order to Show Cause.

IT IS THEREFORE ORDERED that, if Plaintiffs wish to amend their Complaint, they must lodge a proposed amended complaint by October 17, 2016. If such an amended

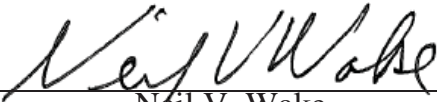
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1 complaint is lodged, the Court will determine standing based on the proposed amended  
2 complaint. No further leave to amend will be allowed.

3 Dated this 3rd day of October, 2016.

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7 Neil V. Wake  
8 Senior United States District  
9 Judge  
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