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

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

14 **STATE OF ARIZONA, BY AND**  
15 **THROUGH THE ARIZONA**  
16 **DEPARTMENT OF HEALTH**  
17 **SERVICES,**

18 **Plaintiff,**

19 **vs.**

20 **METRO SPORTS BAR AND**  
21 **RESTAURANT, INCORPORATED, an**  
22 **Arizona corporation, dba METRO**  
23 **SPORTZ BAR; ED AND AL, INC. an**  
24 **Arizona corporation, dba BOOMERANG**  
25 **BAR AND BILLIARDS and dba RIVER**  
**CITY POCKETS; MAVERICK**  
**SALOON, INC. an Arizona corporation,**  
**dba MAVERICK SALOON; ALFONSO**  
**A. LARRIVA; ALFONSO RUIZ,**

**Defendants.**

**No.**

**COMPLAINT TO ENJOIN**  
**VIOLATIONS OF THE SMOKE-**  
**FREE ARIZONA ACT AND FOR**  
**IMPOSITION OF FINES**

**(NON-CLASSIFIED CIVIL)**

Plaintiff, State of Arizona, by and through the Arizona Department of Health Services, (hereinafter "Department"), alleges as follows:

1           1.       This action is brought under A.R.S. § 36-601.01, the Smoke-Free Arizona  
2 Act (hereinafter “the Act”), passed by the voters of the State of Arizona in November,  
3 2006. The Act prohibits smoking in all public places and places of employment in  
4 Arizona, with limited exceptions not relevant to this matter. The Act became enforceable  
5 on May 1, 2007. A copy of the Act is attached and incorporated herein as Exhibit 1.

6           2.       The Department is authorized to implement and enforce the Act. A.R.S. §  
7 36-601.01(G). Under A.R.S. § 36-601.01(G) (8), the Department is authorized to apply  
8 for injunctive relief to enforce the provisions of the Act in the Superior Court of the  
9 County in which the violation(s) occurred. In addition to injunctive relief, the Court may  
10 also impose a penalty of between \$100 to \$500 for each violation, with each day being a  
11 separate violation. If the Court finds that any violation is willful or there is evidence of a  
12 pattern of noncompliance, the Court may impose a fine of up to \$5000 per violation.

13           3.       A.R.S. § 36-601.01 (B) provides that smoking is prohibited in all public  
14 places and places of employment in the State of Arizona. A “public place” is defined  
15 generally as “any enclosed area to which the public is invited or in which the public is  
16 permitted,” and includes such places as bars, entertainment facilities or venues, and  
17 restaurants, the type of establishments owned and operated by the Defendants in this  
18 case. A.R.S. § 36-601.01(A)(9). A “place of employment” is generally defined as an  
19 enclosed area under the control of a public or private employer that employees normally  
20 frequent during the course of employment. A.R.S. § 36-601.01(A)(7).

21           4.       An “enclosed area” is defined as “all space between a floor and ceiling that  
22 is enclosed on all sides by permanent or temporary walls or windows (exclusive of  
23 doorways), which extend from the floor to the ceiling. Enclosed area includes a  
24 reasonable distance from any entrances, windows and ventilation systems so that persons  
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1 entering or leaving the building or facility shall not be subjected to breathing tobacco  
2 smoke and so that tobacco smoke does not enter the building or facility through  
3 entrances, windows, ventilation systems or any other means.” A.R.S. § 36-601.01(A)(3).

4 5. Under the Act, the owner, operator, manager or other person in control of a  
5 public place and place of employment where smoking is prohibited must clearly and  
6 conspicuously post a no-smoking sign that identifies where smoking is prohibited and  
7 where complaints about smoking violations may be registered. A.R.S. § 36-601.01(E)(1).  
8 In addition, every public place and place of employment where smoking is prohibited  
9 must have, clearly and conspicuously posted, a sign at every entrance clearly stating that  
10 smoking is prohibited. A.R.S. § 36-601.01(E)(2).

11 6. Under the Act, the owner, operator, manager, or other person having  
12 control of any area where smoking is prohibited is required to remove all ashtrays.  
13 A.R.S. § 36-601.01(E)(3).

14 7. Under the Act, the owner, manager, operator, or employee of a place  
15 regulated by the Act shall inform any person who is smoking in violation of this law that  
16 smoking is illegal and request that the illegal smoking stop immediately. A.R.S. § 36-  
17 601.01(I).

18 8. Pursuant to the authority granted by A.R.S. § 36-601.01(G)(11), the  
19 Department adopted rules, effective May 1, 2007, to aid in the implementation and  
20 enforcement of the Act. The rules are found at Arizona Administrative Code (“A.A.C.”),  
21 R9-2-101 through R9-2-112.

22 9. Upon information and belief, Defendant Metro Sports Bar and Restaurant,  
23 Incorporated is a corporation registered and in good standing with the Arizona  
24 Corporation Commission (“ACC”) and is the owner of Metro Sportz Bar at 10402 North  
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1 Black Canyon Highway, Phoenix, Arizona. It also registered and owns the active trade  
2 name "Metro Sportz Bar" with a listed address of 10402 Back Canyon Freeway, Phoenix,  
3 Arizona and business type of "sports bar with series #6 liquor license, full liquor".

4 10. Upon information and belief, Defendant Ed and Al, Inc. is a corporation  
5 registered and in good standing with the ACC and is the owner of Boomerang Bar and  
6 Billiards at 6601 West Thomas Road, Suite 8-11, Phoenix, Arizona; and River City  
7 Pockets, 1107 E. Bell Road, Suite 7, Phoenix, Arizona.

8 11. Upon information and belief, Defendant Maverick Saloon, Inc. is a  
9 corporation registered and in good standing with the ACC and is the owner of Maverick  
10 Saloon at 9605 North 19<sup>th</sup> Avenue, Phoenix, Arizona.

11 12. Upon information and belief, Defendant Alfonso A. Larriva is the statutory  
12 agent, President/CEO, and sole director of Metro Sports Bar and Restaurant,  
13 Incorporated. He is also the statutory agent, treasurer and sole director of both Ed and  
14 Al, Inc., and Maverick Saloon, Inc. Mr. Larriva operates and manages Metro Sportz Bar  
15 at 10402 North Black Canyon Freeway, Phoenix, Arizona 85051. Mr. Larriva also  
16 operates and manages Boomerang Bar and Billiards, River City Pockets and Maverick  
17 Saloon with Alfonso Ruiz. Mr. Larriva holds the liquor licenses for Metro Sportz Bar,  
18 Boomerang Bar and Billiards and River City Pockets.

19 13. Upon information and belief, Defendant Alfonso Ruiz is the President/CEO  
20 of Ed and Al, Inc and Maverick Saloon, Inc. He operates and manages, with Alfonso A.  
21 Larriva, Boomerang Bar and Billiards, River City Pockets and Maverick Saloon. He  
22 holds the liquor license for the Maverick Saloon.

23 14. Will Humble is a Deputy Assistant Director of the Public Health Division,  
24 Arizona Department of Health Services, under which the Smoke-Free Arizona Program  
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operates. Don Herrington, R.S., is the Department's Chief of the Bureau of Epidemiology and Disease Control Services. He oversees four Offices, one of which is the Office of Environmental Health which operates the Smoke-Free Arizona Program. Diane Eckles is the Chief of the Office of Environmental Health. Brigitte Dufour, R.S., is the Smoke-Free Arizona Program Manager. Harmony Duport, R.S., and Myrna Motta are Smoke-Free Arizona Program Specialists. Muhamed Hadzihanovic is an Environmental Scientist who also works with the Smoke-Free Arizona Program.

15. All of the facts alleged herein occurred in Maricopa County, Arizona.

16. Venue is proper in this county pursuant to A.R.S. § 12-401(17).

17. This Court has jurisdiction to enter appropriate orders pursuant to A.R.S. § 36-601.01.

### **Count I**

#### **METRO SPORTS BAR AND RESTAURANT, INCORPORATED**

##### **dba Metro Sportz Bar**

18. Plaintiff incorporates by reference paragraphs 1-17.

19. Defendant Metro Sports Bar and Restaurant, Incorporated is a person who owns, manages, operates or otherwise controls a public place or place of employment under the Act, i.e. the Metro Sportz Bar.

20. The Act imposes affirmative duties upon owners, operators, managers or other persons having control of public places and places of employment. These duties include the duty to prohibit smoking; to clearly and conspicuously post "No Smoking" signs, including signs at the entrances announcing that smoking is prohibited; to remove all ashtrays from areas where smoking is prohibited; and to inform persons who are

1 smoking in violation of the law that smoking is illegal and request that the illegal  
2 smoking stop immediately.

3 21. On May 3, 2007, at approximately 3:30 pm, Don Herrington, Brigitte  
4 Dufour and Harmony Duport from the Department conducted an inspection of the Metro  
5 Sportz Bar, located at 10402 N Black Canyon Highway, Phoenix, AZ. The inspection  
6 was the result of the large number of complaints received by the Department concerning  
7 the Metro Sportz Bar during the first three days that the Act was enforceable and the fact  
8 that Defendant Alfonso Larriva, operator/manager of the Metro Sportz Bar, had  
9 communicated to the Department and to the media that he had found a “loop hole” in the  
10 Act that made him and his businesses exempt from the law.

11 22. During the May 3, 2007 inspection, Don Herrington talked with Mr. Terry  
12 Norsworthy who was the Manager on-duty at the Metro Sportz Bar. Mr. Herrington  
13 explained that the Department staff was there to determine if violations were occurring  
14 and that, if it was determined that violations were occurring, a Notice of Violation would  
15 be issued daily until the violations were discontinued. He also informed Mr. Norsworthy  
16 that the continuance of violations of the Act would be subject to potential fines that could  
17 be quite expensive to the owner.

18 23. Mr. Herrington, Ms. Dufour and Ms. Duport each observed many people  
19 smoking inside the Metro Sportz Bar, observed ashtrays scattered throughout the facility,  
20 the required ‘no-smoking’ signs were not present, and no owner, manager, operator or  
21 employee was informing the customers that smoking was prohibited. These are all  
22 violations of A.R.S. § 36-601.01(B), (E) and (I).

23 24. Mr. Herrington, Ms. Dufour and Ms. Duport each observed the existence of  
24 two small louvered vents cut into the outside wall of the Metro Sportz Bar. The  
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1 Department employees determined that the vents do not exempt the Metro Sportz Bar  
2 from the Act. Ms. Dufour took photographs of the bar to document the inspection.

3 25. The Metro Sportz Bar has an outdoor patio that could be utilized for  
4 smoking if it prevents smoke from entering the Metro Sportz Bar.

5 26. A copy of the Department's Inspection/Investigation Report prepared to  
6 document the May 3, 2007 inspection, and copies of photographs taken by Ms. Dufour of  
7 the Metro Sportz Bar are attached as Exhibit 2.

8 27. On Friday, May 4, 2007, Will Humble, Don Herrington and Harmony  
9 Duport from the Department's Division of Public Health Services visited the Metro  
10 Sportz Bar to determine if violations of the Act were continuing.

11 28. The Department employees each observed many people smoking inside the  
12 Metro Sportz Bar, observed ashtrays scattered throughout the facility, observed that the  
13 required no smoking signs were not present, and no owner, manager, operator or  
14 employee was informing the customers that smoking was prohibited. These are all  
15 continuing violations of A.R.S. §§ 36-601.01(B), (E) and (I).

16 29. During this inspection, Defendant Alfonso Larriva, arrived and spoke with  
17 Mr. Humble. Mr. Humble informed Mr. Larriva that violations of the Act were occurring  
18 at the Metro Sportz Bar. Mr. Humble asked Mr. Larriva to comply with the Act and  
19 asked that Mr. Larriva inform customers to discontinue their smoking. Mr. Larriva said  
20 that he believed that he was within the law. He pointed out vents he had installed in the  
21 wall and said that his engineers told him that the installation of vents meant that the bar  
22 was no longer "enclosed" but only partially enclosed and, therefore, exempt from the  
23 application of the Act. Mr. Larriva stated he was willing to go court and hoped the court  
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1 would decide who was right. Mr. Larriva was informed of the potential fines that could  
2 result from non-compliance.

3 30. A Notice of Violation identifying the observed violations was given to Mr.  
4 Larriva. A copy of the Notice of Violation and the Department's Inspection/Investigation  
5 Report dated May 4, 2007 are attached as Exhibit 3.

6 31. On Saturday, May 5, Department employees Myrna Motta and Brigitte  
7 Dufour returned to the Metro Sportz Bar at 2:00 pm to determine whether it was in  
8 compliance with the Act.

9 32. During the inspection, the Metro Sportz Bar was crowded with customers.  
10 Both Ms. Dufour and Ms. Motta observed customers smoking at tables and at the bar,  
11 ashtrays on many tables, 'no- smoking' signs not present, and no owner, manager,  
12 operator or employee informing the customers that smoking was prohibited. These are  
13 violations of A.R.S. § 36-601.01(B), (E) and (I).

14 33. Ms. Dufour spoke with the manager on duty, Ms. Becky Cardinal. Ms.  
15 Cardinal said that she was expecting the Department and knew the purpose of the  
16 inspection. Ms. Dufour explained that smoking is prohibited in a place of employment or  
17 public place like this establishment because it is an enclosed area. Ms. Cardinal said that  
18 she was aware of the law and said that she was doing what she had been told to do by the  
19 management.

20 34. Ms. Dufour completed a "Notice of Violation" and Ms. Cardinal signed it.  
21 A copy of the Notice of Violation and the Department's Inspection/Investigation Report  
22 dated May 5, 2007 are attached as Exhibit 4.

23 35. On Sunday, May 6, 2007, at approximately 12:00 pm, Department  
24 employees Don Herrington and Diane Eckles conducted an inspection of the Metro  
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1 Sportz Bar to determine whether there were continuing violations of the Act. Mr.  
2 Herrington and Ms. Eckles observed customers smoking inside the facility, ashtrays  
3 available and in use on many tables, the required 'no smoking' signs were not present,  
4 and no owner, manager, operator or employee was informing the customers that smoking  
5 was prohibited. These are and were continuing violations of A.R.S. § 36-601.01(B), (E)  
6 and (I).

7 36. Don Herrington spoke to the manager on-duty, Mr. Terry Norsworthy. Mr.  
8 Herrington explained the continuing violations and again urged compliance to avoid  
9 potential fines. A Notice of Violation was prepared and given to Mr. Norsworthy. A  
10 copy of the Notice of Violation and the Department's Inspection/Investigation Report  
11 dated May 6, 2007 are attached as Exhibit 5.

12 37. At approximately 3:30 pm on Monday, May 7, 2007, Department employee  
13 Don Herrington conducted an inspection of the Metro Sportz Bar to determine  
14 compliance with the Act. He spoke with the manager on duty Becky Cardinal. He  
15 observed customers smoking inside the facility, ashtrays available and in use on many  
16 tables, the required 'no smoking' signs were not present, and no owner, manager,  
17 operator or employee was informing the customers that smoking was prohibited. These  
18 are and were continuing violations of A.R.S. § 36-601.01(B), (E) and (I).

19 38. A Notice of Violation was prepared and given to Ms. Cardinal. A copy of  
20 the Notice of Violation and the Department's Inspection/Investigation Report dated May  
21 7, 2007, are attached as Exhibit 6.

22 39. At approximately 4:30 pm. on Tuesday, May 8, 2007, Department  
23 employees Harmony Duport and Brigitte Dufour conducted a compliance inspection of  
24 the Metro Sportz Bar. Harmony Duport spoke to the manager on-duty, Mr. Terry  
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1 Norsworthy. Ms. Duport explained the continuing violations and again, urged  
2 compliance to avoid potential fines.

3 40. The Department employees observed customers smoking inside the facility,  
4 ashtrays available and in use on many tables, the required 'no smoking' signs were not  
5 present, and no owner, manager, operator or employee was informing the customers that  
6 smoking was prohibited. These are and were continuing violations of A.R.S. § 36-  
7 601.01(B), (E) and (I).

8 41. A Notice of Violation was prepared and given to Mr. Norsworthy. A copy  
9 of the Notice of Violation and the Department's Inspection/Investigation Report dated  
10 May 8, 2007, are attached as Exhibit 7.

11 42. At approximately 3:55 pm, on Wednesday, May 9, 2007, Department  
12 employees Harmony Duport and Ms. Brigitte Dufour conducted another inspection of the  
13 Metro Sportz Bar to determine compliance with the Act. The Department employees  
14 observed customers smoking inside the facility, ashtrays available and in use, the  
15 required 'no smoking' signs were not present, and no owner, manager, operator or  
16 employee was informing the customers that smoking was prohibited. These are and were  
17 continuing violations of A.R.S. § 36-601.01(B), (E) and (I).

18 43. Harmony Duport spoke to the manager on duty, Ms. Becky Cardinal,  
19 explained the continuing violations and again urged compliance to avoid potential fines.  
20 A Notice of Violation was prepared and given to Ms. Cardinal. A copy of the Notice of  
21 Violation and the Department's Inspection/Investigation Report dated May 9, 2007 are  
22 attached as Exhibit 8.

23 44. Based on the violations at the Metro Sportz Bar, Defendant Metro Sports  
24 Bar and Restaurant, Incorporated has not complied with its obligations under the Act.  
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1 Further, Defendant Metro Sports Bar and Restaurant, Incorporated's conduct evidences a  
2 willful pattern of noncompliance with the Act.

3  
4 **Count II**

5 **ED AND AL, INC.**

6 **dba Boomerang Bar and Billiards and dba River City Pockets**

7 45. Plaintiff incorporates by reference paragraphs 1-17.

8 46. Defendant Ed and Al, Inc. is a person who owns, manages, operates or  
9 otherwise controls a public place or place of employment under the Act, i.e., the  
10 establishments known as Boomerang Bar and Billiards, and River City Pockets.

11 47. The Act imposes affirmative duties upon owners, operators, managers or  
12 other persons having control of public places and places of employment. These duties  
13 include the duty to prohibit smoking; to clearly and conspicuously post "No Smoking"  
14 signs, including signs at the entrances announcing that smoking is prohibited; to remove  
15 all ashtrays from areas where smoking is prohibited; and to inform persons who are  
16 smoking in violation of the law that smoking is illegal and request that the illegal  
17 smoking stop immediately.

18 **dba Boomerang Bar and Billiards**

19 48. At approximately 3:20 pm on Monday, May 7, 2007, Department  
20 employees Brigitte Dufour and Diane Eckles entered the Boomerang Bar and Billiards  
21 located at 6601 W Thomas Rd, Phoenix, AZ, to follow up on a complaint that was  
22 referred to the Department for enforcement by Maricopa County Environmental Services  
23 Department ("MCESD").

1           49. Ms. Dufour met with employees of the facility and confirmed the purpose  
2 of the inspection. The employees pointed out that the front door and the door on the west  
3 side of the establishment were intentionally propped open on a 24 hours per day, 7 days a  
4 week basis. A small vent was also installed in place of a window near the front entrance.

5           50. Ms. Dufour and Ms. Eckles observed individuals smoking inside  
6 Boomerang Bar and Billiards, ashtrays containing ashes and cigarettes butts on tables,  
7 two “No-Smoking” signs on the door of the private office and on the door of the kitchen  
8 but none posted at the entrances of the establishment as required by law, and no  
9 employees were asking patrons not to smoke. They determined the Boomerang Bar and  
10 Billiards to be in violation of the Act, specifically A.R.S. §36-601.01(B), (E), (I). At that  
11 time, they also took photographs to document the inspection.

12           51. Ms. Eckles discussed the Act and the observed violations with Mr. Reeves,  
13 a Boomerang employee, and asked what actions this establishment would be taking to  
14 comply with the law. Mr. Reeves replied that nothing will change. A Notice of Violation  
15 was prepared and given to Mr. Reeves. A copy of the Notice of Violation, the  
16 Department’s Inspection/Investigation Report dated May 7, 2007, and the photographs  
17 are attached as Exhibit 9.

18           52. At approximately 2:45 pm on Tuesday, May 8, 2007, Department  
19 employees Brigitte Dufour and Harmony Duport again investigated the Boomerang Bar  
20 and Billiards, at 6601 W Thomas Ave, Phoenix, AZ, to determine if the facility had come  
21 into compliance with the law. Harmony Duport met with Defendant Alfonso Larriva,  
22 who was in the facility at the time of the inspection and explained to Mr. Larriva that the  
23 purpose of the inspection was to determine if the facility was continuing to violate the  
24 Act.

1           53. Ms. Dufour and Ms. Duport again observed violations of the Act;  
2 specifically, one person was observed smoking inside the establishment and no  
3 establishment employee requested the patron to refrain from smoking. Ashtrays were  
4 observed on tables and at the bar. In addition, one bucket containing sand, ashes and  
5 cigarette butts was used to prop open the front door. The required "No Smoking" signs  
6 were not posted at the entrances of the establishment. Based on these observations, the  
7 Boomerang Bar and Billiards continued to be in violation of A.R.S. §36-601.01(B), (E),  
8 and (I).

9           54. A Notice of Violation was prepared and given to Mr. Larriva. A copy of  
10 the Notice of Violation and the Department's Inspection/Investigation Report dated May  
11 8, 2007 are attached as Exhibit 10.

12           55. At approximately 2:05 pm on Wednesday, May 9, 2007, Department  
13 employees Brigitte Dufour and Harmony Duport returned to the Boomerang Bar and  
14 Billiards, at 6601 W Thomas Ave, Phoenix, AZ. Ms. Duport introduced herself to the  
15 manager, Defendant Alfonso Ruiz, and explained to Mr. Ruiz the purpose of the  
16 inspection was to determine if the facility was continuing to violate the Act.

17           56. Ms. Dufour and Ms. Duport again observed that one person was smoking  
18 inside the establishment and no establishment employee requested the patron to refrain  
19 from smoking. Ashtrays were observed on tables and at the bar. In addition, one bucket  
20 containing sand, ashes and cigarette butts was used to prop open the front door. The  
21 required "No Smoking" signs were not posted at the entrances of the establishment.  
22 Based on these observations, the Boomerang Bar and Billiards continued to be in  
23 violation of A.R.S. §36-601.01(B), (E), and (I).

1           57. A Notice of Violation was prepared and given to Mr. Ruiz. A copy of the  
2 Notice of Violation and the Department's Inspection/Investigation Report dated May 9,  
3 2007 are attached as Exhibit 11.

4                           **dba River City Pockets**

5           58. On May 7, 2007, at approximately 2:45 P.M., Department employees  
6 Harmony Duport, and Muhamed Hadzihasanovic conducted an inspection of River City  
7 Pockets, located at 1107 East Bell Road, Phoenix, Arizona. River City Pockets was the  
8 subject of a complaint that was referred to the Department by the MCESD.

9           59. Upon entering the establishment, Ms. Duport introduced herself to the  
10 assistant manager, Brian ("Jersey") Zajicek, who was sitting at the east side of the bar.  
11 Mr. Zajicek stated that he was anticipating their inspection. Ms. Duport explained that  
12 she was there to follow up on the complaint referral by MCESD. She stated that MCESD  
13 believed that this establishment was in violation of the Act. Mr. Zajicek pointed to a  
14 small hole in the wall with iron slats located at the southeast side of the establishment  
15 between two dart machines and stated that the bar was not enclosed as there was a vent in  
16 the wall allowing for the exit of tobacco smoke.

17           60. Department employees observed people smoking inside River City Pockets,  
18 ashtrays scattered throughout the facility, no required "No Smoking" signs were present,  
19 and no employee was informing the patrons that smoking was prohibited. The  
20 Department determined that based on these observations, River City Pockets was in  
21 violation of A.R.S. §36-601.01(B), (E) and (I). Department employees took photographs  
22 to document the inspection.

23           61. A Notice of Violation was prepared and given to Mr. Zajicek. Mr. Zajicek  
24 then called the owner, Defendant Alfonso Larriva, and received permission to sign the  
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1 document. A copy was left with Mr. Zajicek. A copy of the Notice of Violation and the  
2 Department's Inspection/Investigation Report dated May 7, 2007, and the photographs  
3 are attached as Exhibit 12.

4 62. On Tuesday, May 8, 2007, at approximately 4:00 pm, Department  
5 employees Harmony Duport and Brigitte Dufour returned to River City Pockets to  
6 determine if the previously observed violations had been corrected. Ms. Duport and Ms.  
7 Dufour again observed people smoking inside the facility, ashtrays scattered throughout  
8 the facility, no required "No Smoking" signs present, and no employee informing the  
9 patrons that smoking was prohibited. The Department determined that River City  
10 Pockets was still in violation of A.R.S. §36-601.01(B), (E) and (I).

11 63. A Notice of Violation was prepared and given to the bartender, Kayla  
12 Jurgens. A copy of the Notice of Violation and the Department's  
13 Inspection/Investigation Report dated May 8, 2007 are attached as Exhibit 13.

14 64. At approximately 3:30 pm. on Wednesday, May 9, 2007, Department  
15 employees Harmony Duport and Brigitte Dufour conducted another inspection of River  
16 City Pockets to determine compliance with the Act. Harmony Duport spoke to the  
17 assistant manager on-duty, Mr. Brian Zajicek. Ms. Duport explained the continuing  
18 violations and again urged compliance to avoid potential fines.

19 65. Ms. Duport and Ms. Dufour observed cigarette smoke inside the facility,  
20 people smoking inside the facility, ashtrays scattered throughout the facility, no required  
21 "No Smoking" signs present, and no employee informing the patrons that smoking was  
22 prohibited. The Department determined that River City Pockets was still in violation of  
23 A.R.S. §36-601.01(B), (E) and (I).

66. A Notice of Violation was prepared and given to Mr. Zajicek. A copy of the Notice of Violation and the Department's Inspection/Investigation Report dated May 9, 2007 are attached as Exhibit 14.

67. Based on the violations at the Boomerang Bar and Billiards, and River City Pockets, Defendant Ed and Al, Inc., has not complied with its obligations under the Act. Further, the conduct of Defendant Ed and Al, Inc. evidences a willful pattern of noncompliance with the Act.

### Count III

**MAVERICK SALOON, INC.**

**dba Maverick Saloon**

68. Plaintiff incorporates by reference paragraphs 1-17.

69. Defendant Maverick Saloon, Inc. is a person who owns, manages, operates or otherwise controls a public place or place of employment under the Act, i.e. the Maverick Saloon.

70. The Act imposes affirmative duties upon owners, operators, managers or other persons having control of public places and places of employment. These duties include the duty to prohibit smoking; clearly and conspicuously post “No Smoking” signs, including signs at the entrances announcing that smoking is prohibited; remove all ashtrays from areas where smoking is prohibited; and inform persons who are smoking in violation of the law that smoking is illegal and request that the illegal smoking stop immediately.

71. On May 7, 2007, at approximately 2:00 pm, Department employees Harmony Duport and Muhamed Hadzihasanovic, conducted an inspection of the

1 Maverick Saloon, located at 9605 North 19<sup>th</sup> Avenue, Phoenix, Arizona. The inspection  
2 was initiated by a complaint that was referred to the Department by the MCESD.

3 72. Upon entering the establishment, Ms. Duport approached the bartender and  
4 asked to speak with the manager. The female bartender, Rene, stated that the manager  
5 was not present. Ms. Duport explained that she was there to follow up on a complaint of  
6 smoking in this establishment. Ms. Duport asked the bartender if the owner had educated  
7 her on the Smoke-Free Arizona Act. Rene stated that she had not yet been educated on  
8 the Act, but had been told by the owner that the establishment was not covered because  
9 the bar was not enclosed as a result of the opening on the south side of the establishment  
10 covered with iron slats. Rene then called the owner, Defendant Alfonso Larriva, to  
11 inform him that ADHS was conducting an inspection.

12 73. Ms. Duport and Mr. Hadzihasanovic observed people smoking inside the  
13 facility, ashtrays scattered throughout the facility, no required "No Smoking" signs  
14 present, and no employee informing the patrons that smoking was prohibited. The  
15 Department determined that the Maverick Saloon was in violation of A.R.S. §36-  
16 601.01(B), (E) and (I). Department employees took photographs to document the  
17 inspection.

18 74. A Notice of Violation was prepared and given to Rene. A copy of the  
19 Notice of Violation and the Department's Inspection/Investigation Report dated May 7,  
20 2007 are attached as Exhibit 15.

21 75. On Tuesday, May 8, 2007, at approximately 3:40 pm, Department  
22 employees Harmony Duport and Ms. Brigitte Dufour conducted a follow-up compliance  
23 inspection of the Maverick Saloon. Harmony Duport spoke to the bartender on-duty, Ms.  
24  
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1 Kathryn Copeland. Ms. Duport explained the continuing violations and again urged  
2 compliance to avoid potential fines.

3 76. Ms. Duport and Ms. Dufour observed people smoking inside the facility,  
4 ashtrays scattered throughout the facility, no required "No Smoking" signs present, and  
5 no employee informing the patrons that smoking was prohibited. The Department  
6 determined that the Maverick Saloon was still in violation of A.R.S.§36-601.01(B), (E)  
7 and (I).

8 77. A Notice of Violation was prepared and given to Ms. Copeland. A copy of  
9 the Notice of Violation and the Department's Inspection/Investigation Report dated May  
10 8, 2007 is attached as Exhibit 16.

11 78. On Wednesday, May 9, 2007, Department employees Harmony Duport and  
12 Ms. Brigitte Dufour conducted a compliance inspection of the Maverick Saloon.

13 79. Ms. Duport and Ms. Dufour again observed people smoking inside the  
14 facility, ashtrays scattered throughout the facility, no required "No Smoking" signs  
15 present, and no employee informing the patrons that smoking was prohibited. The  
16 Department determined that the Maverick Saloon was still in violation of A.R.S.§36-  
17 601.01(B), (E) and (I).

18 80. A Notice of Violation was prepared and given to the manager on duty. A  
19 copy of the Notice of Violation and the Department's Inspection/Investigation Report  
20 dated May 9, 2007 is attached as Exhibit 17.

21 81. Based on the violations at the Maverick Saloon, Defendant Maverick  
22 Saloon, Inc., has not complied with its obligations under the Act. Further, the conduct of  
23 Defendant Maverick Saloon, Inc. evidences a willful pattern of noncompliance with the  
24 Act.

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88. The Act imposes affirmative duties upon owners, operators, managers or other persons having control of public places and places of employment. These duties include the duty to prohibit smoking; clearly and conspicuously post “No Smoking” signs, including signs at the entrances announcing that smoking is prohibited; remove all ashtrays from areas where smoking is prohibited; and inform persons who are smoking in violation of the law that smoking is illegal and request that the illegal smoking stop immediately.

89. Based on the violations at the named bars on the specified dates noted above, Defendant Alfonso Ruiz has not complied with his obligations under the Act. Further, the conduct of Defendant Ruiz evidences a willful pattern of noncompliance with the Act.

**REQUEST FOR RELIEF**

The Defendants' continuing and open defiance of the Act, adopted by the voters of the State of Arizona, entitles the Department to obtain a preliminary and permanent injunction against them. In addition, the Court is authorized to award, and the Department is seeking, significant civil penalties for each violation noted and for each day that such a continuing violation occurs.

The conduct and violations of the individual Defendants and the Defendant businesses to avoid compliance with the Act is willful and/or evidences a pattern of noncompliance punishable by fines up to and including \$5,000.00 per violation.

In support of and in conjunction with this Complaint, the Department has prepared and filed an Application for a Preliminary and Permanent Injunction, and Orders to Show Cause for an Expedited Hearing.

1           WHEREFORE, Plaintiff respectfully requests the Court, pursuant to A.R.S. §§ 36-  
2 601.01 to:

3           1.     Enter a Preliminary Injunction and Permanent Injunction against  
4 Defendants, enjoining them, their officers, agents, employees, or anyone acting for them  
5 or on their behalf or in concert with them, from all actions in violation of the Act.

6           2.     Order that Defendants pay fines to the Department as follows:

7           a.     For Defendant Metro Sports Bar and Restaurant, Incorporated, for  
8 the violations at Metro Sportz Bar, in the amount of \$100 for each of  
9 the four violations observed on May 3, 2007 at which time  
10 Defendant was clearly given notice that its conduct violated A.R.S. §  
11 36-601.01(total of \$400); \$500 for each of the four violations  
12 observed on May 4, 2007, the second day Defendant was clearly  
13 warned of the violations of state law (total of \$2,000); and, \$1000  
14 per violation per day for each of the four violations observed on May  
15 5, 6, 7, 8, and 9, 2007 (total of \$20,000), for a grand total of \$22,400  
16 for Metro Sportz Bar.

17           b.     For Defendant Ed and Al, Inc, for the violations at both the  
18 Boomerang Bar and Billiards and River City Pockets, fines in the  
19 amount of \$100 for each of the four violations observed at each bar  
20 on May 7, 2007, at which time Defendant was given notice that its  
21 conduct violated A.R.S. §36-601.01(total of \$400 x 2); \$500 for  
22 each of the four violations observed at each bar on May 8, 2007, the  
23 second day the Defendant was clearly given notice of violations of  
24 state law (total of \$2,000 x 2); and, \$1000 per violation for each of  
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1 the four violations observed at each bar on May 9, 2007 (total of  
2 \$4,000 x 2), for a grand total of \$12,800, split evenly between  
3 Boomerang Bar and Billiards and River City Pockets.

4 c. For Defendant Maverick Saloon, Inc., for the violations at Maverick  
5 Saloon, fines in the amount of \$100 for each of the four violations  
6 observed on May 7, 2007, at which time Defendant was given notice  
7 that its conduct violated A.R.S. §36-601.01 (total of \$400); \$500 for  
8 each of the four violations observed on May 8, 2007, the second day  
9 the Defendant was clearly given notice of violations of state law  
10 (total of \$2,000), and \$1000 per violation for each of the four  
11 violations observed on May 9, 2007 (total of \$4,000), for a grand  
12 total of \$6,400 for the Maverick Saloon.

13 d. For Defendant Alfonso A. Larriva, a person who owns, manages,  
14 operates or otherwise controls the four bars owned by the Defendant  
15 corporations, \$41,600, equal to the total assessed against the three  
16 Defendant corporations for the violations identified at each of the  
17 four bars.

18 e. For Defendant Alfonso Ruiz, a person who owns, manages, operates  
19 or otherwise controls three bars, Boomerang Bar and Billiards,  
20 River City Pockets and the Maverick Saloon, \$19,200, equal to the  
21 total assessed against the two Defendant corporations that own the  
22 three bars for the violations identified at each of the bars.

23 3. For such other relief as the Court deems just and proper under the  
24 circumstances.

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DATED this 14th day of May 2007.

TERRY GODDARD  
Attorney General

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Kevin D. Ray  
Donald P. Schmid  
Assistant Attorneys General  
Attorneys for the Arizona Department of  
Health Services

Original filed May 14th, 2007 with:

Clerk of the Superior Court  
Maricopa County Superior Court  
201 West Jefferson  
Phoenix, Arizona 85003

Copies to be served on All Defendants:

Alfonso A. Larriva, Statutory Agent  
Metro Sports Bar and Restaurant, Incorporated  
Ed and Al, Inc.  
Maverick Saloon, Inc.  
6601 West Thomas Road, #10  
Phoenix, Arizona 85033

Alfonso A. Larriva, President/CEO  
Metro Sports Bar and Restaurant, Incorporated  
6601 West Thomas Road, #10  
Phoenix, Arizona 85033

Alfonso Ruiz, President/CEO  
Ed and Al, Inc.  
Maverick Saloon, Inc.  
6601 West Thomas Road, #10  
Phoenix, Arizona 85033

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Copy mailed May \_\_\_\_, 2007, to:  
Clerk of the Department  
Arizona Department of Health Services  
150 North 18<sup>th</sup> Avenue, Suite 500  
Phoenix, Arizona 85007

By: \_\_\_\_\_

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VERIFICATION

STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa     )

Susan Gerard, being first duly sworn upon her oath, deposes and says:

1.     That I am the Director of the Arizona Department of Health Services and I am authorized to verify the Complaint on behalf of the Department.

2.     That I have read the Complaint against Defendants Alfonso Larriva; Alfonso Ruiz; Metro Sports Bar and Restaurant, Incorporated; Ed and Al Inc.; and Maverick Saloon, Inc., and know the contents thereof.

3.     That the allegations contained in the Complaint are true to the best of my knowledge except to those matters stated therein upon information and belief and as to those matters, I believe them to be true.

\_\_\_\_\_  
Susan Gerard, Director  
Arizona Department of Health Services

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
  
\_\_\_\_\_

#496828