

EXHIBIT A

1 **MARK BRNOVICH**

2 **Attorney General**

(Firm Bar No. 14000)

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4 BRUNN W. ROYSDEN III (Bar No. 28698)

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11 *Attorneys for State of Arizona*

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

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

15
16 ADVOCATES FOR AMERICAN
17 DISABLED INDIVIDUALS, LLC, and
David Ritzenthaler, dealing with Plaintiff's
18 Sole and separate claim,

Plaintiff,

19 vs.

20 1639 40TH STREET LLC,
21 Defendant,

22 and

23 STATE OF ARIZONA *ex rel. Mark Brnovich,*
24 Attorney General,

25 Intervenor-Defendant.

Case No.: CV2016-090506

**VERIFIED ANSWER OF INTERVENOR
DEFENDANT STATE OF ARIZONA EX
REL. MARK BRNOVICH TO VERIFIED
COMPLAINT**

1 For its Verified Answer, Intervenor-Defendant State of Arizona, in its capacity as a
2 limited-purpose defendant, hereby responds to the individually numbered paragraphs of
3 Plaintiffs' February 12, 2016 Verified Complaint as follows. Unless expressly admitted, the
4 State Denies each and every allegation not expressly admitted.

5 1. The State lacks sufficient information to form a belief as to the truth or falsity of
6 the matters alleged in Paragraph 1 and therefore denies the same.

7 2. The State lacks sufficient information to form a belief as to the truth or falsity of
8 the matters alleged in Paragraph 2 and therefore denies the same.

9 3. With respect to Paragraph 3, the State admits that the language of Article 6,
10 Section 14(1) contains the language quoted by Plaintiff, but denies that the Court has subject
11 matter jurisdiction over this Complaint as pled. This Paragraph is otherwise denied.

12 4. With respect to Paragraph 4, the State admits that Plaintiff is purportedly bringing
13 this action under the statutes cited. The State denies that Plaintiff has suffered an injury, that
14 this Court has jurisdiction over this Complaint as pled, that the Complaint states a claim upon
15 which relief can be granted, or that injunctive relief is warranted. The State lacks sufficient
16 information to form a belief as to the truth or falsity of whether Plaintiff suffers from a
17 disability as alleged. Because the State is intervening as a limited-purpose Defendant, it takes
18 no position as to the truth or falsity of the allegations regarding the facility at issue.

19 5. With respect to Paragraph 5, the State denies that this Court should retain
20 jurisdiction of this matter because, among other reasons, this Court lacks subject matter over
21 this Complaint as pled. The State lacks sufficient information to form an information or belief
22 as to whether Defendant has a historical failure to comply with the AZDA's and ADA's
23 mandate. This paragraph is otherwise denied.

24 6. Paragraph 6 alleges a legal conclusion to which no answer is required. To the
25 extent a response is required, the paragraph is denied.

26 //

1 7. The State lacks sufficient information to form a belief as to the truth or falsity of
2 the matters alleged in Paragraph 7 and therefore denies the same.

3 8. The State lacks sufficient information to form a belief as to the truth or falsity of
4 the matters alleged in Paragraph 8 and therefore denies the same.

5 9. The State lacks sufficient information to form a belief as to the truth or falsity of
6 the matters alleged in Paragraph 9 and therefore denies the same.

7 10. With respect to Paragraph 10, the State lacks sufficient information to form a
8 belief as to the truth or falsity of whether and how Plaintiff became aware of the facts alleged in
9 this Paragraph and therefore denies the same. The State denies that this Court has jurisdiction
10 over this Complaint as plead or that it states a claim upon which relief can be granted. Because
11 the State is intervening as a limited-purpose Defendant, it takes no position as to the truth or
12 falsity of the other allegations in Paragraph 10.

13 11. Paragraph 11 purports to attach and describe documents. Such documents were
14 not attached to the electronic version of the Complaint that the State accessed. However, on
15 information and belief, the documents Plaintiff intended to attach are what was in fact attached
16 to Plaintiff's complaint in CV2016-007104. Those documents speak for themselves, and
17 otherwise require no response. To the extent a response is required, the State denies the
18 allegations in this Paragraph.

19 12. With respect to Paragraph 12, the State lacks sufficient information to form a
20 belief as to the truth or falsity of Plaintiff's knowledge and therefore denies the same. The
21 State further denies that Plaintiff has alleged an injury-in-fact, that this Court has jurisdiction
22 over the Complaint as plead, or that the Complaint states a claim upon which relief can be
23 granted. Because the State is intervening as a limited-purpose Defendant, it takes no position
24 as to the truth or falsity of the other allegations in Paragraph 12.

25 13. The State lacks sufficient information to form a belief as to whether Plaintiff's
26 disability prevents Plaintiff or other disabled persons from equal enjoyment of the facility at

1 issue. Because the State is intervening as a limited-purpose Defendant, it takes no position as
2 to the truth or falsity of the other allegations in Paragraph 13.

3 14. Because the State is intervening as a limited-purpose Defendant, it takes no
4 position as to the truth or falsity of the allegations in Paragraph 14.

5 15. The State lacks sufficient information to form a belief as to the truth or falsity of
6 the statement of Plaintiff's future intended actions alleged in Paragraph 15 and therefore denies
7 the same. The State denies that this Court has jurisdiction over the Complaint as plead or that
8 the Complaint states a claim upon which relief can be granted.

9 16. Because the State is intervening as a limited-purpose Defendant, it takes no
10 position as to the truth or falsity of the allegations in Paragraph 16.

11 17. Because the State is intervening as a limited-purpose Defendant, it takes no
12 position as to the truth or falsity of the allegations in Paragraph 17.

13 18. Because the State is intervening as a limited-purpose Defendant, it takes no
14 position as to the truth or falsity of the allegations in Paragraph 18.

15 19. The State lacks sufficient information to form a belief as to the truth or falsity of
16 the matters alleged in Paragraph 19 and therefore denies the same.

17 20. The State lacks sufficient information to form a belief as to the truth or falsity of
18 the matters alleged in Paragraph 20 and therefore denies the same. The State denies that this
19 Court has jurisdiction over this Complaint as plead or that it states a claim upon which relief
20 can be granted.

21 21. The State lacks sufficient information to form a belief as to the truth or falsity of
22 the statement of Plaintiff's future intended actions alleged in Paragraph 21 and therefore denies
23 the same. The State denies that this Court has jurisdiction over this Complaint as plead or that
24 it states a claim upon which relief can be granted.

25 22. With respect to Paragraph 22, the State denies that Plaintiff has suffered an
26 injury, that this Court has jurisdiction over this Complaint as plead, or that the Complaint states

1 a claim upon which relief can be granted. The allegations in this Paragraph are otherwise
2 denied.

3 23. With respect to Paragraph 23, the State denies that injunctive relief is proper in
4 this case. This Paragraph is otherwise denied.

5 24. With respect to Paragraph 24, the State lacks sufficient information to form a
6 belief as to whether Plaintiff shall seek to amend its complaint and therefore denies the same.

7 25. The State incorporates and re-alleges its responses to Paragraphs 1-24.

8 26. Because the State is intervening as a limited-purpose Defendant, it takes no
9 position as to the truth or falsity of the allegations in Paragraph 26.

10 27. Because the State is intervening as a limited-purpose Defendant, it takes no
11 position as to the truth or falsity of the allegations in Paragraph 27. The State denies that the
12 Court should award any damages.

13 28. Because the State is intervening as a limited-purpose Defendant, it takes no
14 position as to the truth or falsity of the allegations in Paragraph 28.

15 29. Because the State is intervening as a limited-purpose Defendant, it takes no
16 position as to the truth or falsity of the allegations in Paragraph 29.

17 30. With respect to Paragraph 30, the State denies that injunctive relief should issue.
18 Because the State is intervening as a limited-purpose Defendant, it takes no position as to the
19 truth or falsity of the other allegations in Paragraph 30.

20 31. With respect to Paragraph 31, the State denies that declaratory, injunctive relief,
21 costs, or attorneys' fees should be awarded. This paragraph is otherwise denied.

22 32. With respect to Paragraph 32, the State denies that injunctive relief should issue,
23 that the Court has or should retain jurisdiction, or that the Court should award any damages.
24 Because the State is intervening as a limited-purpose Defendant, it takes no position as to the
25 truth or falsity of the other allegations in Paragraph 32.

26 **General Denial**

The State denies each and every allegation not expressly admitted. The State denies that Plaintiff has alleged an injury-in-fact, that this Court has jurisdiction over this Complaint as

1 plead, that the Court should award any damages or that the Complaint states a claim upon
2 which relief can be granted.

3 **Affirmative Defenses**

4 1. This Court lacks subject matter jurisdiction over Plaintiff's Complaint under Rule
5 12(b)(1) due to lack of standing and/or mootness.

6 2. Plaintiff has failed to state a claim upon which relief can be granted under Rule
7 12(b)(6), cannot satisfy the requested elements for a cause of action under the AZDA or the
8 ADA as pled, has not suffered any damages, and has failed to plead with sufficient particularity
9 under Ariz. R. Civ. P. 8.

10 3. The State reserves the right to allege such other affirmative defenses set forth in
11 Arizona Rules of Civil Procedure 8 and Rule 12 as may be determined to be applicable during
12 the course of litigating this case.

13 4. No award of attorneys' fees against the State would be proper in this case. The
14 State is a nominal party for purposes of A.R.S. § 12-348. *See* A.R.S. § 12-348(H)(4); *MVC*
15 *Const., Inc. v. Treadway*, 182 Ariz. 615, 620 & n.1 (App. 1995) (finding state is a nominal
16 party where it "does not act as an advocate on the merits" and does not have "any pecuniary or
17 proprietary stake in the outcome of the action"). In addition, A.R.S. § 41-1492.09(F) does not
18 apply to Plaintiff's action.

19 WHEREFORE the State prays that Plaintiff takes nothing by reason of the complaint on
20 file herein; the State be awarded reasonable attorneys' fees and costs incurred; and for such
21 other further relief that this Court deems just and proper.

22 RESPECTFULLY SUBMITTED this 24th day of August, 2016.

23 MARK BRNOVICH
24 State of Arizona Attorney General



25 Paul N. Watkins
26 Matthew du Mee
Brunn W. Roysden III
Oramel H. Skinner
John Heyhoe-Griffiths
Evan G. Daniels
Assistant Attorney General

VERIFICATION

1
2 I, Dottie Conroy, declare that I am employed as an investigator in the Office of
3 the Arizona Attorney General, am over 18 years of age, and am competent to make this
4 Verification. I have read the Verified Complaint, the exhibits to the Complaint in CV2016-
5 007104, and the foregoing Verified Answer of Intervenor-Defendant State of Arizona *ex rel.*
6 Mark Brnovich to Verified Complaint (“Verified Answer”) and I know the contents thereof. I
7 hereby verify that the Verified Answer is true based on my own knowledge, except the matters
8 stated therein on information and belief, and as to those matters, I believe the Verified Answer
9 to be true. I declare (or certify, verify or state) under penalty of perjury that the foregoing is
10 true and correct. Executed this 24 day of August, 2016.

11 Dottie Conroy #513
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EXHIBIT B

1 Peter Strojnik, State Bar No. 6464
2 **STROJNIK P.C.**
3 40 NORTH CENTRAL AVENUE
4 SUITE 1400
5 PHOENIX, AZ 85004

6 Attorney for Plaintiff

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

9
10 **ADVOCATES FOR INDIVIDUALS WITH**
11 **DISABILITIES, LLC, ET AL.,**

12 Plaintiff,

13 vs.

14 **7845 EVANS ROAD LLC,**

15
16 Defendant

Case No.: CV2016-092105

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO DEEM
CASES RELATED AND REQUEST
TRANSFER

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18
19 Plaintiffs Advocates for Individuals with Disabilities, LLC ("Plaintiff"), by and
20 through undersigned counsel, hereby responds to Defendant 7845 Evans Road LLC's
21 ("Defendant") Motion to Deem Cases Related and for Transfer (herein after "Motion). In
22 short, Plaintiff opposes the Motion because the case under which the Defendant moves for
23 the Court to deem cases related and transferred has been dismissed with prejudice. As the
24 Court will see below, this Court must decline to hear the Motion. This Response is
25 supported by the accompanying exhibits, the following Memorandum of Points and
26 Authorities, and the prior record in this matter as incorporated herein by this reference.
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Rule 3.1(c)(1) of the Local Rules of Practice for the Maricopa County Superior

3
4 Court states:

5 *Related Cases.* Whenever two (2) or more cases are pending before different
6 judges and any party believes that such cases: (A) arise from substantially
7 the same transaction or event; (B) involve substantially the same parties or
8 property; (C) call for determination of substantially the same questions of
9 law; or (D) for any other reason would entail substantial duplication of labor
10 if heard by different judges, any party may file a motion to transfer the case
11 or cases involved to a single judge. The motion shall be filed in each affected
12 case, **but shall contain the caption of the earliest-filed case and shall be
13 heard by the judge to whom that case is assigned.** (Emphasis added.)

14 Under the statute, the assigned judge in the earliest case filed shall hear the Motion
15 to deem cases related.

16 By filing this motion, Defendant moves to have 13 different cases deemed related.
17 For this Court's convenience, the cases Defendant seeks to have deemed related along with
18 the date in which the complaints for each case were filed are as follows:

- 19 • CV2016-004548 – Ritzenthaler et al., v. Ranch Auto Center, LLC - 2/22/16
- 20 • CV2016-092142 – Ritzenthaler et al., v. EFG Management LLC - 3/14/16
- 21 • CV2016-092222 – Ritzenthaler et al., v. Ranch Center Retail LLC - 3/14/16
- 22 • CV2016-092239 – Ritzenthaler et al., v. SMR Enterprises LLC - 3/14/16
- 23 • CV2016-092244-- Ritzenthaler et al., v. Stave Properties LLC - 3/14/16
- 24 • CV2016-006694 – Ritzenthaler et al., v. Cracovia Captial, LLC - 5/11/16
- 25 • CV2016-006670 – Ritzenthaler et al. v. AZRE Fund I LLC - 5/10/16
- 26 • CV2016-004621 – Ritzenthaler et al. v. David A and Allison F. Ford -
27 4/21/16
- 28 • CV2016-092126 – Ritzenthaler et al. v. Cimarron Industrial Partners LLC -
3/14/16
- CV2016-092105 - Ritzenthaler et al. v. 7845 Evans Road LLC - 3/14/16
- CV2016-092156 – Ritzenthaler et al. v. JPS Investments LLC - 3/14/16
- CV2016-092231 – Ritzenthaler et al. v. Scottsdale Investors LLC - 3/14/16
- CV2016-090506 – Ritzenthaler et al. v. 1639 40th Street, LLC - 2/4/16

1 Previously, the earliest case was, CV2016-090506, assigned to this court, but has
2 now been dismissed with prejudice, as of today. See Exhibits A and B. As a result, it is no
3 longer considered the earliest case filed under the applicable rules. The earliest case filed
4 is case CV2016-004548, assigned to the Honorable Judge Douglas Gerlach in the Superior
5 Court of Maricopa County. Therefore, under Rule 3.1(c)(1), this Court must decline to hear
6 this motion. AZ ST MARICOPA SUPER CT Rule 3.1(c)(1).
7
8
9

10 **RESPECTFULLY SUBMITTED** this 12th day of August, 2016.

11 /s/ Peter Strojnik
12 Peter Strojnik
13 Attorney for Plaintiffs
14
15

16 ORIGINAL of the foregoing E-Filed with
17 the Clerk of the Court and a copy emailed
18 this 12th day of August to:

19 **Scott F. Frerichs**
20 sfrerichs@jsslaw.com
21 Attorney for Defendant

22 **Lindsay G. Leavitt**
23 Lleavitt@jsslaw.com
24 Attorney for Defendant
25
26
27
28

EXHIBIT C

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2 **STROJNIK.P.C.**
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5 Phoenix, AZ 85004

6 Alyssa Illsley, State Bar No. 032956
7 **Advocates for Individuals with Disabilities**
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9 Suite 1400
10 Phoenix, AZ 85004
11 Telephone: (774) 768-2233
12 4040EMcDowellRoad@aadi.org

13 Attorneys for the Plaintiff

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

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

16 Advocates for American Disabled
17 Individuals, LLC, and David Ritzenthaler,
18 dealing with Plaintiff's sole and separate
19 claim,

20 Plaintiff,

21 vs.

22 Real Estate & More LLC,

23 Defendant

24 **Case No.: CV2016-090554**

25 **NOTICE AND APPLICATION FOR**
26 **ENTRY OF DEFAULT (WITH**
27 **HEARING)**

28 Please take **NOTICE** that Plaintiffs, ADVOCATES FOR AMERICAN
29 DISABLED INDIVIDUALS LLC, and David Ritzenthaler, dealing with Plaintiff's sole
30 and separate claim, by and through undersigned counsel, pursuant to Rule 55, Arizona
31 Rules of Civil Procedure, hereby requests that the Clerk of this Court enter default
32 against Defendants Real Estate & More LLC, upon a hearing set by this Court.

1 Please take **NOTICE** that Plaintiffs applied to this Court for default judgment on
2 the date set forth below. A hearing should be granted for the matters subject to Rule 55,
3 because Defendant(s) failed to plead or otherwise defend this action as provided by the
4 Arizona Rules of Civil Procedure. Plaintiffs have mailed a copy of this Application per
5 the mailing certificate attached.
6

7 **Please Note:** If the parties claimed to be in default fail to file a responsive
8 pleading or otherwise defend in this action, within **ten (10) days** of the filing of this
9 Application, the default will be entered against those parties.
10

11
12 **SUBMITTED** this 12TH day of August, 2016.
13

14 /s/ Peter Strojnik
15 Peter Strojnik
16 Alyssa Illsley,
17 Attorneys for Plaintiffs

18 **CERTIFICATE OF MAILING**

19
20 Original of the foregoing was filed this 12th day of August, 2016 with a copy mailed
21 to:

22 **DEFENDANTS:**

23 REAL ESTATE & MORE LLC
24 c/o Melody Yoon- Its Statutory Agent
25 2338 ROYAL PALM ROAD STE J
26 PHOENIX, AZ 85021
27
28