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

14 THE STATE OF ARIZONA *ex rel.* TERRY
15 GODDARD, the Attorney General; and THE
16 CIVIL RIGHTS DIVISION OF THE ARIZONA
17 DEPARTMENT OF LAW,

18 Plaintiff,

19 v.

20 THE SCOTTSDALE CONDOMINIUM
21 ASSOCIATION, an Arizona nonprofit
22 corporation; WILLIAM J. WALSH and JANE
23 DOE WALSH, husband and wife,

24 Defendants.

No.

CV2008-015374

COMPLAINT

(Non-classified Civil)

25 Plaintiff, the State of Arizona *ex rel.* Terry Goddard, the Attorney General, and the
26 Civil Rights Division of the Arizona Department of Law (collectively "the State"), for its
Complaint, alleges as follows:

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///

1 Walsh. The State will amend the Complaint when the true identity of Defendant Jane Doe
2 Walsh is known.

3 GENERAL ALLEGATIONS

4 8. At all relevant times, Kerns resided within the condominium development in a
5 rental condominium unit owned by Kathleen Carlson ("Carlson") located at 6125 E. Indian
6 School Rd. #205, in Scottsdale, Arizona ("Kerns' rental unit").

7 9. Kerns has multiple disabilities, including lupus, fibromyalgia, cervical spinal cord
8 compression and chronic pain. At all relevant times, Kerns received disability income and had
9 a handicap placard on her vehicle. As a result of her disabilities, Kerns has, and at all relevant
10 times, had difficulty walking more than a short distance.

11 10. TSCA manages the common areas of the condominium development pursuant to
12 the Declaration of Covenants, Conditions and Restrictions for The Scottsdale Condominium
13 Maricopa County, Arizona, as amended ("the CC&R's"), and the Bylaws of the Scottsdale
14 Condominium Association, as amended ("the Bylaws").

15 11. Pursuant to Section 2.2.1 of the CC&R's, each condominium unit owner in the
16 condominium development has an exclusive easement to use a specific parking space assigned
17 by the Declarant, or its successors and assigns, to park a vehicle.

18 12. Parking space no. 11, which is located on the west side of Kerns' building, is
19 assigned to Kerns' rental unit.

20 13. There are forty (40) guest parking spaces located in the center driveway and
21 parking lot of the condominium development near Kerns' building.

22 14. Upon information and belief, parking space no. 11 is approximately fifty (50)
23 meters farther from the elevator entrance to Kerns' building than the guest parking spaces.

24 15. Pursuant to Section 6.1.3 of the Bylaws, TSCA has the authority, subject to
25 approval of the membership, to adopt rules and regulations, among other things, governing use
26 of the common areas and facilities and to establish penalties for infraction of the rules and
regulations. TSCA adopted parking regulations ("the parking regulations") pursuant to its

1 authority under the Bylaws. At all times relevant to this Complaint, the parking regulations
2 stated in pertinent part:

3 All residents MUST park their vehicle in their unit(s) designated parking space. . .
4 Guest Parking Spaces are designated for guests and visitors. They may also be
5 used for active loading and unloading of a vehicle. Residents must apply with the
6 Association Manager for a permit to park a second individual unit resident(s)
vehicle in guest parking.

7
8 16. In accordance with the parking regulations, Defendants TSCA and Walsh have
9 followed a longstanding policy and procedure of issuing guest parking permits only to residents
10 of an individual unit who both apply for a guest parking permit and have two vehicles that are
11 driven regularly. TSCA and/or Walsh do not issue guest parking permits to residents who
12 request them based upon disability.

13 17. Upon information and belief, on or about April 2003, TSCA and/or Walsh
14 refused to issue a guest parking permit in response to a request from the owners of Unit 207
15 who had requested permission for their disabled son to park in the guest parking area of the
16 condominium development. Thereafter, on or about May 20, 2003, an owner of Unit 207, filed
17 an administrative fair housing complaint ("the Unit 207 Complaint") with the Division alleging
18 that TSCA and/or Walsh had violated AFHA by failing to make a reasonable accommodation
19 to allow her disabled son to park in the guest parking area. On or about June 20, 2003, TSCA's
20 counsel responded to the Unit 207 Complaint, and stated:

21 The Association is aware of its responsibilities to make reasonable
22 accommodations under the Federal Fair Housing Amendments Act and under the
Arizona Fair Housing Act.

23
24 18. Upon information and belief, at all times relevant to this Complaint,
25 approximately 13 residents, including Walsh, had guest parking permits from TSCA and/or
26 Walsh pursuant to the parking regulations, and not because of disability.

1 19. Upon information and belief, at all times relevant to this Complaint, TSCA and
2 Walsh had approximately twenty-seven (27) unassigned guest parking spaces available in the
3 center driveway area of the parking lot near Kerns' building.

4 20. Due to her disability, Kerns had difficulty walking from her building to her
5 vehicle in parking space no. 11.

6 21. On or about October 27, 2007, Kerns contacted Carlson to advise about her
7 disability-related need for closer parking, and to request an assigned parking space located
8 closer to her building than parking space no. 11.

9 22. Shortly thereafter, Carlson contacted TSCA via email to request that Kerns
10 receive a closer assigned parking space as an accommodation for Kerns' disability.

11 23. On or about October 31, 2007, Walsh, with approval of TSCA's Board of
12 Directors, denied Carlson's disability-related request for a closer assigned parking space for
13 Kerns, and stated: "Many of our residents have a disability and have handicap plates including
14 me and they have to park in their unit's designated parking spaces."

15 24. Kerns continued to park in the guest parking area because she could not walk to
16 parking space no. 11 due to her disability. Upon information and belief, on one occasion,
17 Walsh approached Kerns in a threatening manner with his cane while Kerns was unloading her
18 car in the guest parking area, and told her that she could not park there.

19 25. On or about December 11, 2007, Kerns filed a timely complaint of housing
20 discrimination with the State's Civil Rights Division pursuant to A.R.S. § 41-1491.22(C), in
21 which she alleged that she had been the victim of disability discrimination by Defendants.

22 26. Thereafter, on or about January 11, 2008, February 6, 2008, February 29, 2008
23 and March 8, 2008, TSCA and/or Walsh caused violation notices and fines to be imposed for
24 Kerns' unauthorized parking in the guest parking area.

25 27. The Division investigated Kerns' complaint pursuant to A.R.S. § 41-1491.24(B).
26

1 51. Defendant TSCA has a non-delegable duty not to discriminate in violation of the
2 AFHA, and is responsible for the discriminatory conduct of its agent, Walsh.

3 52. To vindicate the public interest, imposition of a civil penalty against Defendants
4 of up to \$50,000 for a first violation and up to \$100,000 for a subsequent violation is
5 appropriate under A.R.S. § 41-1491.35 of the AFHA.

6 53. As a result of Defendants' unlawful conduct, Kerns and, upon information and
7 belief, other persons with disabilities residing at the condominium development suffered
8 physical pain, emotional distress, inconvenience, embarrassment, humiliation, denial of civil
9 rights, and monetary damages in an amount to be determined at trial, and are entitled to
10 damages under A.R.S. § 41-1491.35(B)(2).

11 54. Injunctive and affirmative relief is necessary to assure the full enjoyment of
12 rights granted by the AFHA under A.R.S. § 41-1491.35 of the AFHA.

13 WHEREFORE, the State requests that this Court:

14 A. Enter judgment on behalf of the State, finding that Defendants unlawfully
15 discriminated against Kerns and any other victims based on disability, in violation of AFHA;

16 B. Enjoin Defendants, their successors, assigns and all persons in active concert or
17 participation with Defendants, from engaging in any housing practice that discriminates based
18 upon disability or interferes with the exercise of rights granted by AFHA, as allowed by
19 A.R.S. §§ 41-1491.34(C) and 41-1491.35(B)(1);

20 C. Assess a statutory civil penalty against Defendants to vindicate the public interest
21 in an amount that does not exceed fifty thousand dollars (\$50,000) for the first violation or one
22 hundred thousand dollars (\$100,000) for a second or subsequent violation, pursuant to A.R.S. §
23 41-1491.35(B)(3);

24 D. Order Defendants to make Kerns and any other victims whole for any damages
25 suffered and award damages in an amount to be determined at trial, pursuant to A.R.S. §§ 41-
26 1491.34(C) and 41-1491.35(B)(2);

1 E. Award punitive damages against Defendants for their intentional discrimination
2 based on race and color and/or their callous disregard or reckless indifference to Kerns' civil
3 rights; pursuant to A.R.S. § 41-1491.34(C);

4 F. Order the State to monitor Defendants' future compliance with AFHA pursuant
5 to A.R.S. §§ 41-1491.34(C) and 41-1491(B)(1);

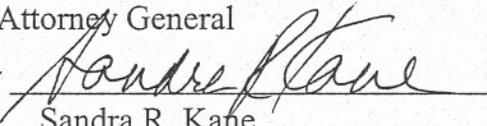
6 G. Award the State its costs incurred in bringing this action, and its costs in
7 monitoring Defendants' future compliance with the AFHA, as allowed by A.R.S. §§ 41-
8 1491.34(C) and 41-1491.35(B)(2);

9 H. Award the State its reasonable attorneys fees, as allowed by § 41-1491.35(B)(2);
10 and

11 I. Grant such other and further relief as this Court may deem just and proper in the
12 public interest.

13 DATED this 2nd day of July, 2008.

14 TERRY GODDARD
15 Attorney General

16 By 

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