1 TERRY GODDARD Attorney General Firm State Bar No. 14000 2 3 Rose Daly-Rooney, AZ Bar #015690 Assistant Attorney General 4 Civil Rights Division 5 400 West Congress, Suite S-215 Tucson, AZ 85701-1367 6 (520) 628-6756; (520) 628-6765(fax) Rose.Daly-Rooney@azag.gov 7 8 Phyllis Roestenberg, AZ Bar#022666 Assistant Attorney General 9 Civil Rights Division 1275 West Washington Street 10 Phoenix, AZ 85007 11 (602) 542-7777; (602) 542-8899 (fax) Phyllis.Roestenberg@azag.gov 12 Attorneys for Plaintiff 13 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA 14 IN AND FOR THE COUNTY OF PIMA 15 16 THE STATE OF ARIZONA ex rel. TERRY 17 GODDARD, the Attorney General, and THE CIVIL RIGHTS DIVISION OF THE NO. C20073030 18 ARIZONA DEPARTMENT OF LAW. 19 FIRST AMENDED COMPLAINT FOR Plaintiff. 20 DAMAGES AND INJUNCTIVE RELIEF VS. 21 (Non-Classified Civil) FGPJ APARTMENTS: NATIONAL CITY NEIGHBORHOOD, LLC, an Arizona 22 (Assigned to Honorable Javier Chon-Lopez) Limited Liability Company; FRANK J. 23 KONARSKI and GABRIELA KONARSKI, husband and wife; FRANK EDWARD 24 KONARSKI; JOHN FRANK KONARSKI: 25 PATRICIA KONARSKI: ABC Corporations I-X. 26 Defendants.

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Plaintiff, the State of Arizona ex rel. Terry Goddard, the Attorney General, and the Civil Rights Division of the Arizona Department of Law brings this Arizona Fair Housing action under A.R.S. §41-1491 et seq. to correct disability discrimination arising from Defendants' failure to provide reasonable accommodation to a disabled person. For its cause of action, Plaintiff alleges the following:

## JURISDICTION AND VENUE

- 1. This Court has jurisdiction pursuant to A.R.S. §41-1491.34.
- 2. Venue is proper in Pima County because Defendants operate the FGPJ Apartments in Tucson, Arizona.

### PARTIES

- Plaintiff, the Civil Rights Division of the Arizona Department of Law, is an administrative agency of the State of Arizona established by A.R.S. §41-1401 to enforce the provisions of the Arizona Civil Rights Act, including the Arizona Fair Housing Act.
- 4. The State brings this action, based upon information and belief, pursuant to A.R.S. §41-1491.34 and §41-1491.35, on its own behalf and on behalf of Sabrina Ezell, James Larcom, Tabetha Larcom, Rebecca Larcom, Crystal Ezell and Jessica Ezell aggrieved persons under A.R.S. §41-1491.
- 5. NATIONAL CITY NEIGHBORHOOD, LLC is an agent, officer, director, manager, or member of and/or has or had a direct or indirect ownership interest in FGPJ Apartments located at 450 West Dakota St., Tucson, AZ, 85706 during all relevant time periods.
- 6. FRANK J. KONARSKI and GABRIELA KONARSKI, husband and wife, are agents, officers, directors, managers, or members of and/or have or had a direct or indirect ownership interest in FGPJ Apartments located at 450 West Dakota St., Tucson, AZ, 85706 during all relevant time periods.
- 7. FRANK EDWARD KONARSKI is an is an agent, officer, director, manager, or member of and/or has or had a direct or indirect ownership interest in FGPJ Apartments located at 450 West Dakota St., Tucson, AZ, 85706 during all relevant time periods.

- 8. JOHN FRANK KONARSKI is an is an agent, officer, director, manager, or member of and/or has or had a direct or indirect ownership interest in FGPJ Apartments located at 450 West Dakota St., Tucson, AZ, 85706 during all relevant time periods.
- 9. PATRICIA KONARSKI, is an is an agent, officer, director, manager, or member of and/or has or had a direct or indirect ownership interest in FGPJ Apartments located at 450 West Dakota St., Tucson, AZ, 85706 during all relevant time periods.
- 10. Defendants, ABC Corporations I-X, are presently unknown; pursuant to ARIZ. R. CIV. P. 10(f), the State will amend the Complaint when the true names are discovered.

## GENERAL ALLEGATIONS

- 11. Mr. James Larcom is a disabled individual who has a substantial impairment of one or more major life activities and an aggrieved party within the meaning of the Arizona Fair Housing Act.
- 12. Ms. Sabrina Ezell is Mr. Larcom's wife and an aggrieved party within the meaning of the Act.
- 13. Tabetha and Rebecca Larcom are Mr. Larcom's daughters and are aggrieved parties within the meaning of the Act.
- 14. Crystal and Jessica Ezell are Ms. Ezell's daughters and are aggrieved parties within the meaning of the Act.
- 15. Mr. Larcom, Ms. Ezell, and their children, Tabetha and Rebecca Larcom and Crystal and Jessica Ezell, resided at the FGPJ Apartments at 450 Dakota St., Tucson, AZ 85706 between approximately November 3, 2006 and February 26, 2007.
- 16. Beginning November 10, 2006, Ms. Ezell requested the reasonable accommodation of a single parking space closer to their apartment on behalf of her husband, which Defendants or their agent, Frank J. Konarski, denied.
- 17. On more than one occasion, Ms. Ezell requested the reasonable accommodation of permission to change the electrical sockets in her apartment, which sockets were worn out and incapable of holding the plugs to Mr. Larcom's oxygen concentrator and Bi-Pap machines.

- 19. Ms. Ezell sought relief by filing a fair housing complaint with City of Tucson officials.
- 20. On January 2, 2007, Defendants served Ms. Ezell and Mr. Larcom with a ten-day Notice of Intent to Terminate the Lease in the form of a letter, in which Frank J. Konarski references her fair housing complaints to city officials.
- 21. On January 10, 2007, Ms. Ezell attempted to give Frank J. Konarski a written diagnosis of Mr. Larcom's disabilities and requested an accommodation in the form of a medical release from her lease agreement, so they could move to a home more suitable to Mr. Larcom's disabilities.
- 22. Defendants or their agent, Frank J. Konarski, refused to accept the documentation and denied the accommodation request.
- 23. On January 23, 2007, Ms. Ezell filed a Complaint with the Arizona Civil Rights Division.
- 24. On February 8, 2007, Frank J. Konarski served Ms. Ezell and Mr. Larcom with Notice of Immediate Termination of her Lease.
- 25. The Division moved for a Temporary Restraining Order with Notice asking the Court to Restrain Mr. Konarski from evicting the aggrieved parties until the Division could complete its investigation of the discrimination and retaliation charges against the Defendants or until the aggrieved parties could find other suitable housing, whichever came first.
- 26. Frank J. Konarski, nevertheless, attempted to go forward with his eviction action; the eviction was only prevented by the Division's delivery of a copy of the Temporary Restraining Order to the forcible detainer judge.

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- 27. The Division then moved for a Preliminary Injunction, but subsequently withdrew the Motion because the aggrieved parties had moved to other housing by the time of the hearing. Pursuant to an Order, to which the parties stipulated in open court, Ms. Ezell and Mr. Larcom delivered possession of the apartment to Defendants, effective February 26, 2007.
- 28. Subsequent to that date and that Order, Defendants or their agent, Frank J. Konarski, sought damages in the Pima County Consolidated Justice Court against the aggrieved parties. Court records suggest Frank J. Konarski sought these damages because Ms. Ezell filed a Complaint of discrimination and retaliation with the Civil Right's Division.
- 29. The Parties have not entered into a conciliation agreement pursuant to A.R.S. \$41-1491.26.

## STATEMENT OF CLAIM

#### COUNT ONE

# (Discrimination in Violation of the Arizona Fair Housing Act, A.R.S. §41-1491.19) Monetary Relief/ Injunctive Relief

- 30. The Arizona Fair Housing Act states that a person may not discriminate against any person in the terms, conditions, or privileges of the rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of the following:

  1) that renter; 2) a person residing in or intending to reside in that dwelling after it is rented or made available; or 3) a person associated with that renter.
- 31. Under the Arizona Fair Housing Act, disability discrimination includes "[a] refusal to make reasonable accommodations in rules, policies, practices or services if the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling." A.R.S. § 41-1491.19
- 32. The Division found Reasonable Cause to believe that the Defendants discriminated against the aggrieved parties by refusing to provide a reasonable accommodation or engage in the interactive process.

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- 33. The Defendants denied the aggrieved parties their rights in violation of the Arizona Fair Housing Act, which denial raises an issue of general public importance. Therefore, the State brings this Count to vindicate the public interest.
- 34. Defendants did not make a good faith effort to comply with the Arizona Fair Housing Act and intentionally discriminated against or acted in reckless disregard of the protected rights of aggrieved persons in violation of the Arizona Fair Housing Act.
- 35. As a result of Defendants' discrimination, the aggrieved parties have suffered actual and monetary damages, including damages for mental anguish, pain, suffering, emotional distress, humiliation, embarrassment, inconvenience, loss of the right to an equal opportunity to enjoy their dwelling, and loss of their rights under the Arizona Fair Housing Act. Therefore, Mr. Larcom, Ms. Ezell, and their children, Tabetha and Rebecca Larcom and Crystal and Jessica Ezell, are entitled to damages under A.R.S. §41-1491.34.
- 36. Because the Defendants denied the aggrieved parties their rights in violation of the Arizona Fair Housing Act, which denial raises an issue of general public importance, Defendants are subject to a statutory civil penalty to vindicate the public interest in an amount of not more than fifty-thousand dollars (\$50,000.00) for a first violation and one-hundred-thousand dollars (\$100,000.00) for any subsequent violation under A.R.S. §41-1491.35(B)(3).
- 37. Plaintiff is also entitled to injunctive relief against Defendants' actions and entitled to its attorneys fees and costs pursuant to A.R.S. §§41-1491.35(B) and 41-1491.36.
- 38. Plaintiff is also entitled to other appropriate relief including punitive damages pursuant to A.R.S. §§41-1491.33 and 41-1491.35(B).

#### COUNT TWO

## (Retaliation in Violation of the Arizona Fair Housing Act, A.R.S. §41-1491.18) Monetary Relief/ Injunctive Relief

39. Section 41-1491.18 of the Arizona Fair Housing Act prohibits a person from coercing, intimidating, threatening, or interfering with any person in retaliation against the exercise or enjoyment of any right under the Act.

- 41. Defendants intentionally retaliated against or acted in reckless disregard of the protected rights of aggrieved persons in violation of the Arizona Fair Housing Act.
- 42. The Defendants denied the aggrieved parties their rights in violation of the Arizona Fair Housing Act, which denial raises an issue of general public importance. Therefore, the State brings this Count pursuant to A.R.S. §41-1493.35 to vindicate the public interest.
- 43. As a result of Defendants' retaliation, upon information and belief, the aggrieved parties have suffered actual and monetary damages, including damages for mental anguish, pain, suffering, emotional distress, humiliation, embarrassment, inconvenience, loss of the right to an equal opportunity to enjoy their dwelling, and loss of their rights under the Arizona Fair Housing Act.
- 44. Therefore, Mr. Larcom and Ms. Ezell are entitled to and should be compensated pursuant to A.R.S. §41-1491.34.
- 45. Because the Defendants denied the aggrieved parties their rights in violation of the Arizona Fair Housing Act, which denial raises an issue of general public importance, Defendants are subject to a statutory civil penalty to vindicate the public interest in an amount of not more than fifty-thousand dollars (\$50,000.00) for a first violation and one-hundred-thousand dollars (\$100,000.00) for any subsequent violation under A.R.S. §41-1491.35(B)(3).
- 46. Plaintiff is also entitled to injunctive relief against Defendants' actions and entitled to Plaintiff's attorneys fees and costs pursuant to A.R.S. §§41-1491.35(B) and 41-1491.36.
- 47. Plaintiff is also entitled to other appropriate relief including monetary damages pursuant to A.R.S. §§41-1491.33 and 1491.35(B).

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court do the following:

- 1. Enter judgment on behalf of Plaintiff, finding that Defendants discriminated and retaliated against a person with disabilities in violation of the Arizona Fair Housing Act.
- Grant a permanent injunction prohibiting Defendants, their successors, assigns, and all persons in active concert with Defendants from engaging in any housing practice that discriminates on the basis of disability in violation of the Arizona Fair Housing Act.
- 3. Order Defendants to undergo training with respect to the reasonable accommodation provision of the Arizona Fair Housing Act within three (3) months of the date of the Court entering Judgment against one or more Defendants.
- 4. Order Defendants to institute and carry out policies and practices, within three (3) months of the date of the Court entering Judgment against one or more Defendants, under which Defendants will provide equal housing opportunities for disabled persons which will eradicate the effects of their unlawful housing practices.
- Order Defendants to make Mr. Larcom and Ms. Ezell whole and award them actual and punitive damages in amounts to be determined at trial, including prejudgment interest.
- 6. Assess a statutory civil penalty against Defendants in an amount that does not exceed fifty-thousand dollars (\$50,000.00) for the first violation and one-hundred-thousand dollars (\$100,000.00) for the second or subsequent violation, pursuant to A.R.S. § 41-1491.35(B).
- 7. Order Defendants to pay punitive damages to the State to deter Defendants from engaging in future violations of the Arizona Fair Housing Act.
- 8. Issue an Order authorizing Plaintiff to monitor Defendants' compliance with the Arizona Fair Housing Act and this Court's Judgment.

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1 Award payment to Plaintiff for its costs incurred in bringing this action, including its attorneys' fees and taxable costs, and its costs in monitoring Defendants' future compliance with the Arizona Fair Housing Act. 3 Grant such other and further relief as this Court may deem just and proper in the 4 public interest. 5 DATED this 12 day of October, 2007. 6 TERRY GODDARD Arizona Attorney General 8 9 10 11 12 13 Original of the foregoing 14 filed with the Clerk of the Pima County Superior Court on this 12 day of October, 15 2007, and a copy hand-delivered, to: Honorable Javier Chon-Lopez 17 Judge, Pima County Superior Court 18 Copy of the foregoing 19 mailed this 2 day of October, 2007, to: 20 21 Christopher Enos GOERING ROBERTS RUBIN BROGNA ENOS 22 & TREADWELL-RUBIN 23 3320 N. Campbell Avenue, Suite 200 Tucson, AZ 85719-2371 24 Attorney for Defendants 25 Jenne Sandy Forbes 26 405 West Franklin Street

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