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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

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

MidFirst Bank,
Defendant,
and

State of Arizona and Mark Brnovich, in his official capacity as Attorney General,
Proposed Intervenor-Defendants

Case No: 2:16-cv-01969-PHX-NVW

STATE'S MOTION TO INTERVENE

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, the State of Arizona and Mark Brnovich, in his official capacity as Attorney General of Arizona, (collectively, the "State") move to intervene in this action. The State seeks intervention for the limited and sole purpose of requesting that, as part of its pending sanctions proceedings, this Court hold appropriate proceedings and make a determination that a pre-filing order and related relief against Plaintiffs' counsel Peter Strojnik is necessary to protect the District Court for the District of Arizona and the public from Mr. Strojnik's abusive and bad-faith litigation practices in this Court.

INTRODUCTION

Plaintiffs and their counsel, Peter Strojnik, have engaged in a sweeping abuse of Arizona state and federal courts. As this Court has previously observed, Plaintiffs and Strojnik "pursued upwards of 160 cookie-cutter lawsuits in federal court and, from early to later 2016, more than 1,700 such suits in Arizona state court." Doc. 49 (hereinafter "Dismissal Order") at 3. Indeed, "[t]emplate complaints filled with non-specific allegations have become the stock-in-trade of … Peter Strojnik." *Id.* at 2. And the State obtained dismissals of hundreds of state court proceedings in light of similar behavior and related standing failings. *See* Exs. B-C.

On December 12, 2016, this Court held a hearing at which it heard testimony regarding whether remand of this case to state court would be futile. The State participated as an amicus at that hearing and contended that remand would be futile. *See* Ex. A at 40:1-41:9. The State also expressed its concerns with Strojnik's practice of charging an illusory, unreasonable fee to his client solely for the purpose of extracting more money from defendants. *Id.* at 57:23-58:14. The State also noted that Strojnik swore under penalty of perjury in a default case that $5,000 was a reasonable fee. *Id.* at 58:15-59:8.

This Court dismissed the instant action alleging violations of the federal Americans with Disabilities Act ("ADA") and the state Arizonans with Disabilities Act ("AzDA") on September 5, 2017. In its Dismissal Order, this Court strongly suggested

that sanctions were appropriate, concluding that Strojnik's "extortionate practice ha[d] become pervasive," and that he had engaged in "ethically suspect tactics" and "unethical extortion of unreasonable attorney's fees." Dismissal Order at 3, 9-10. This Court further explained that Strojnik had made "demand[s] without legal basis" by "demanding a minimum of $5,000 in attorney's fees" in each of the cases. *Id.* at 10.

While this case was pending in this Court, the State successfully intervened in the cases filed by AID and Ritzenthaler pending in state court. The State did so for the limited purpose of challenging Plaintiffs' standing and obtained a dismissal of virtually all of the state court actions. *See* Ex. C. The State then sought sanctions based on the vexatious conduct of Plaintiffs and their counsel.

The State and Plaintiffs have reached a settlement regarding the State's motion for sanctions in the consolidated cases, which has been approved by the Superior Court. *See* Ex. B. That settlement permanently enjoins Plaintiffs from filing any new suit under AzDA or the ADA in Arizona state courts. *Id.* ¶ 4. That settlement expressly provided that nothing in it prevents Mr. Strojnik from representing other parties in other litigation, however, and it likewise makes clear that nothing prevents the State from acting to protect the public. *See id.* ¶¶ 4, 6. The settlement thus expressly "applie[d] solely to the consolidated cases, and does not preclude the State from acting to protect the public in other litigation," such as this case. *Id.* ¶ 6.

The State had hoped that this Court's order, along with an order dismissing all the state court actions and the settlement barring future state court suits by Plaintiffs, might have halted Strojnik's abuses. But Plaintiffs' counsel is nothing if not persistent—he has resumed filing new suits in this Court with a new plaintiff, Fernando Gastelum. To date, Strojnik has filed over 55 cases in this Court with Gastelum as plaintiff, and over 25 since this Court's Dismissal Order.[1] It thus appears that the lesson that Strojnik took

[1] These new cases each begin with the prefix 2:17-CV, and are -2536, -2560, -2567, -2619, -2621, -2622, -2623, -2674, -2700, -2704, -2728, -2729, -2732, -2759, -2768, -2786, -2792, -2802, -2849, -2855, -2857, -2887, -2888, -2903, -2914, -2957, -2969, -3006, -3007, -3017, -3024, -3118, -3120, -3184, -3212, -3213, -3235, -3236, -3269,

from this Court's Dismissal Order was to change his nominal plaintiff and state-law claims, rather than cease his vexatious and unethical tactics.

Defendant has quite reasonably sought attorneys' fees here as sanctions for Plaintiffs' conduct. But, understandably reflecting its narrower interests as a private party, Defendant has not sought relief to prevent Plaintiffs or Strojnik from filing additional suits against other businesses.

The State, however, has broader interests and has concluded that such relief is warranted and necessary. It therefore seeks intervention for the limited and narrow purpose of addressing these issues. Specifically, the State seeks a determination that Strojnik is a "vexatious litigant" and appropriate resulting relief. Such relief should include a requirement that Strojnik:

1) Obtain approval from this Court before filing any new suit under the ADA and/or relating to disability law compliance in this Court;

2) When seeking approval from this court, provide a copy of the complaint to the potential defendant; and

3) When serving a complaint described in the previous sub-paragraph or after a state-court complaint is removed to this Court by a defendant, serve and file with the district court an itemized list, verified under penalty of perjury, of the dates and amounts actual attorney time spent on the particular case, filing costs, other recoverable expenses, and all out-of-pocket damages by plaintiff(s) for that

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-3282, -3534, -3535, -3606, -3607, -3626, -3627, -3718, -3719, -3815, -3816, -3834, -3842, -4081, -4084, -4089, -4090, -4119, -4150, -4151, -4378 and -4379. Each of those cases include an ADA claim, along with one or more state law claims. Consistent with Strojnik's propensity for "template complaints," each new complaint appears to fall within one of two templates: (1) either asserting a federal ADA claim with a negligence claim or (2) asserting a ADA claim along with state law negligence, negligent misrepresentation, failure to disclose and fraud claims. The state claim claims are presumably included to make damages available and thereby increase settlement leverage (much as AzDA claims were for the AID actions, until the legislature amended AzDA to make it less susceptible to Strojnik's vexatious tactics). These new cases do not assert claims under AzDA.

particular case. The itemized list must also explain at that time the good-faith basis for all damages claims other than out-of-pocket expenses.

To obtain such relief, the State seeks to intervene here for the sole purpose of seeking vexatious-litigant determinations and appropriate related relief.[2] Intervention here is appropriate on three independent bases: (1) permissively under Rule 24(b)(2), because Proposed-Intervenor Brnovich is charged with administering AzDA, under which Plaintiffs asserted a claim in this case; (2) permissively under Rule 24(b)(1), because the State seeks to advance a "claim ... that shares with the main action a common question of law or fact"—*i.e.*, that Plaintiffs' and their counsel's conduct warrants sanctions, and (3) as of right under Rule 24(a)(2), because the State has protectable interests that might be impaired and the existing parties do not adequately represent the State's interests.[3]

For the reasons set forth below, this Court should grant the State intervention limited to the sanctions/vexatious-litigant issues, either permissively or as of right. If intervention is granted, the State also requests that the Court set a briefing schedule and hearing for the State's request, and provide notice to Plaintiffs and their counsel that this Court will be considering vexatious-litigant relief.[4]

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[2] While the State seeks to intervene for purposes of all potential vexatious-litigation issues, the State at present intends only to seek vexatious-litigant relief against Strojnik.

[3] The State requests intervention only as to the narrow issues identified. These proceedings have already been narrowed to the question of sanctions; no broader participation is warranted or needed, nor does the State consent to broader participation in this action (and thus broader waiver of its sovereign immunity). If this Court is unwilling to limit intervention solely to the sanctions/vexatious-litigant issues, the State respectfully requests that the Court deny intervention.

[4] The State has not attached a pleading (such as a proposed answer) to this motion. Notably, none of the types of pleadings permitted by Rule 7 would seemingly apply in this context where judgment has already been entered. The State believes that the preview of its vexatious-litigant arguments in Section IV, *infra*, should provide Plaintiffs and their counsel with more than sufficient notice of the types of arguments that the State intends to make. This preview is far beyond what Rule 8's "notice pleading" standard reviews and fulfills the intent of Rule 24(c). The State is also attaching its motions for sanctions in state court and supporting exhibits. *See* Exs. D-F.

LEGAL STANDARDS

Rule 24 provides for intervention both permissively and as-of right. Rule 24(b)(2) is a governmental officer-specific rule, and provides in relevant part that "[o]n timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on ... a statute ... administered by the officer or agency." Rule 24(b)(2) thus "allow[s] intervention liberally to governmental agencies and officers seeking to speak for the public interest." 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1912 (3d ed. 2008). "[P]ermissive intervention is available when sought because an aspect of the public interest with which [the governmental officer] is officially concerned is involved in the litigation." *Nuesse v. Camp*, 385 F.2d 694, 706 (D.C. Cir. 1967).

More generally, Rule 24(b)(1)(B) provides that "the court may permit anyone to intervene who … has a claim or defense that shares with the main action a common question of law or fact." Along with timeliness, "all that is necessary for permissive intervention is that intervenor's 'claim or defense and the main action have a question of law or fact in common.'" *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002) (quoting 24(b)(1)(B).[5]

In addition, a party may intervene as of right under Rule 24(a). In *Wilderness Society v. U.S. Forest Service*, the Ninth Circuit set forth its four-part test for analyzing a motion to intervene of right under Rule 24(a)(2):

> (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

630 F.3d 1173, 1177 (9th Cir. 2011) (en banc).

[5] *Kootenai Tribe* also has language regarding intervention as of right that was overruled in *Wilderness Society*. *Wilderness Society* does not undermine *Kootenai Tribe*'s holding regarding permissive intervention, however.

This analysis is "guided primarily by practical considerations, not technical distinctions." *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001) (quotation marks and citation omitted); *see also Wilderness Soc'y*, 630 F.3d at 1179 (reiterating importance of "practical and equitable considerations" as part of judicial policy favoring intervention). "[A] district court is required to accept as true the non-conclusory allegations made in support of an intervention motion." *Berg*, 268 F.3d at 819.

ARGUMENT

Intervention here is appropriate under three distinct bases: (1) because the Attorney General administers AzDA, which Plaintiffs have asserted claims under, (2) because the State seeks to advance common legal and factual arguments already at issue and (3) because the State satisfies the requirements for intervention as of right. Intervention should be granted on any or all of these grounds.

I. THIS MOTION IS TIMELY

The State's motion is timely. The State's intervention is unrelated to the merits of this case, making intervention earlier unwarranted.[6] The Court's Dismissal Order, which was issued three months ago, provides the foundation for the State's motion. And briefing on sanctions issues that flow from the Court's dismissal order has only recently completed and briefing on other post-judgment matters is ongoing. The motion is therefore well within the contours of timeliness. *Cf. Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (motion to intervene as plaintiff and participate in adjudication of merits of suit was timely when filed four months after suit was initiated).

[6] The State did submit a 2-page letter brief as *amicus curiae* informing the Court of state court filings and points raised by the State in state court proceedings, and attorneys for the State appeared at a prior show cause proceeding to address questions from the Court relating to that letter brief. That letter brief neither addressed standing under federal law nor the merits of Plaintiffs' ADA and AzDA claims. *See* Doc. 42.

Indeed, the Ninth Circuit has concluded a district court abused its discretion in finding a motion to intervene untimely despite being filed "approximately twenty years after [the suit's] commencement" because intervention was sought within a reasonable time after a "change of circumstance" meant that there was a new stage of proceedings. *See Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) ("Where a change of circumstances occurs, and that change is the 'major reason' for the motion to intervene, the stage of proceedings factor should be analyzed by reference to the change in circumstances, and not the commencement of the litigation."). Here the State's motion to intervene is brought within a reasonable time of this Court's Dismissal Order, which was a change in circumstances giving rise to a new stage in the litigation.

Similarly, "Post-judgment intervention is often permitted … where the prospective intervenor's interest did not arise until the appellate stage or where intervention would not unduly prejudice the existing parties." *Acree v. Republic of Iraq*, 370 F.3d 41, 50 (D.C. Cir. 2004), *abrogated on other grounds by Republic of Iraq v. Beaty*, 556 U.S. 848 (2009). Here, the State's interest in seeking appropriate relief under this Court's Dismissal Order did not arise until that Order was issued.

Moreover, the necessity of seeking vexatious-litigant relief became apparent only once Strojnik continued to file new ADA actions notwithstanding this Court's Dismissal Order, which extensively criticized Plaintiffs' conduct. Plaintiffs' counsel has now filed more than 25 additional actions since that Dismissal Order, including seven in November alone (2:17-CV-4081, -0484, 4089, -4090, -4119, -4378, and -4379). The State reasonably waited a short period to see if this Court's Dismissal Order would deter new suits with similar tactics; this motion comes shortly after it became clear there was little (if any) deterrent effect or change in his conduct.

Importantly, the "requirement of timeliness is … a guard against prejudicing the original parties." *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994). Because the issue of the appropriate sanctions for misconduct is still being litigated in this action, Plaintiffs will not suffer material prejudice by the State also participating in resolution of

that issue. In addition, given Strojnik's conduct, it is simply a matter of time before a court considers whether he is a vexatious litigant. Strojnik will suffer little prejudice from answering the inevitable questions about his conduct in this case, rather than a different one.

II. THE COURT SHOULD GRANT PERMISSIVE INTERVENTION

A. Permissive Intervention Is Appropriate Under Rule 24(b)(2)

Rule 24(b)(2) permits permissive intervention by a governmental official "if a party's claim or defense is based on … a statute ... administered by the officer or agency." That is plainly the case here. Plaintiffs asserted a claim under AzDA. Dismissal Order at 1. The Attorney General, one of the proposed intervenors, is charged with administering AzDA. *See, e.g.*, A.R.S. § 41-1492.06(A) ("The attorney general shall adopt rules … to carry out the intent of this article."); § 41-1492.09(A) ("The attorney general shall investigate all alleged violations of this article."). All of the requirements for intervention under Rule 24(b)(2) are thus satisfied.

A favorable exercise of discretion is also warranted. The State's participation could "assist the court in its orderly procedures leading to the resolution" of the remaining issues. *Kootenai Tribe*, 313 F.3d at 1111. In particular, the State has already expended significant resources in (1) discovering and compiling evidence of the wide variety of improper litigation tactics that Plaintiffs' counsel has engaged in and (2) briefing many of the pertinent sanctions issues in state court. *See, e.g.*, Exs. D-F. The State can thus assist the Court in understanding conduct of Plaintiffs and their counsel and the scope of sanctions that may be warranted.

Granting permissive intervention would also address a collective action problem. Specifically, the costs of seeking broad vexatious litigant relief against Plaintiffs and their counsel are concentrated and substantial for whatever party might make such a request, but the benefits are diffused: flowing to the hundreds or *thousands* of individuals and businesses that would otherwise be targeted by Strojnik and subjected to his "extortionate practice[s]." Because the State represents the interests of all Arizonans,

however, it is well-positioned to seek the broad relief that is both thoroughly warranted but also excessively costly for any individuals.

B. Permissive Intervention Is Also Appropriate Under Rule 24(b)(1)

Permissive intervention is similarly warranted under Rule 24(b)(1), which permits timely permissive intervention where the proposed intervenors "ha[ve] a claim or defense that shares with the main action a common question of law or fact." Here, the State seeks to advance an argument in common with Defendant: that Plaintiffs and their counsel have engaged in abusive litigation conduct that warrants sanctions. The State's arguments will necessarily involve common issues of fact (*i.e.*, what Plaintiffs and their counsel have done) and law (*i.e.*, what legal remedies are appropriate based on that conduct). Rule 24(b)(1) is thus satisfied. *See Kootenai Tribe*, 313 F.3d at 1108.

III. ALTERNATIVELY, THE STATE SHOULD BE GRANTED INTERVENTION AS OF RIGHT.

In the alternative, the State also satisfies the requirements for intervention as of right. As explained above, this motion is timely. In addition, the State (1) has significant protectable interests that might be impaired by resolution of the remaining sanctions issues and (2) is not adequately represented by existing parties.

A. The State Has Significant Protectable Interests That Could Be Impaired Absent The Relief It Seeks Being Issued

The State has at least two protectable interests that can support intervention as of right, both of which could be impaired if the Court does not award the relief that the State intends to seek.

First, the State has protectable "interest[s] in the health and well-being—both physical and economic—of its residents in general." *Zimmerman v. GJS Group, Inc.*, No. 17-304, 2017 WL 4560136, at *5 (D. Nev. Oct. 11, 2017); *see also Sierra Club v. Robertson*, 960 F.2d 83, 86 (8th Cir. 1992) ("[T]he State has an interest in protecting and promoting the state economy on behalf of all of its citizens.").

Specifically, the State has interests in ensuring that its citizens and businesses are not unduly burdened by Strojnik's abusive litigation tactics. That interest easily could be impaired if appropriate vexatious litigant relief is not issued, as Strojnik begins a new round of vexatious suits.

In *Zimmerman*, the court granted intervention as of right to the State of Nevada in one of "274 actions in the District of Nevada alleging similar violations of the ADA," so that the State could vindicate its "strong interest in protecting the public from malicious or premature [ADA] lawsuits that threaten Nevada business owners and adversely impact Nevada's general economy." 2017 WL 4560136, at *1, *3. The same result should obtain here for the State of Arizona facing similarly vexatious ADA litigants. Indeed, while the *Zimmerman* plaintiffs filed a "mere" 274 suits, Plaintiffs and their counsel here have filed a substantial multiple of that number.

Second, the State has significant interests in protecting tax flows into its treasury. Settlements under the ADA and AzDA are generally tax deductible, thus often converting taxable business income into untaxed deductions.[7] The State's interest in protecting its tax revenue could easily be impaired if Strojnik again begins extracting settlements from Arizona businesses and draining their taxable revenue. Indeed, Strojnik has already obtained at least *three* settlements from his new wave of litigation in Gastelum's name.[8] The State's interests in protecting its tax revenues is thus sufficient to support intervention as of right. *See Scotts Valley Band of Pomo Indians of Sugar Bowl Rancheria v. United States*, 921 F.2d 924, 928 (9th Cir. 1990) (holding that

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[7] Although some of that transferred wealth might ordinarily be taxable income for Plaintiffs' counsel, this Court has already noted that Plaintiffs' counsel purportedly donates his fees to a charity, which is not taxable income.

[8] *See* Notice of Settlement, *Galestum v. Phoenix SP Hilton, LLC*, No. 2:17-CV-2728-DKD (Oct. 3, 2017) (Doc. 23); Notice of Settlement, *Galestum v. 2536 W. Beryl Phoenix, LLC d/b/a Homewood Suites by Hilton, Phoenix Metro North*, No. 2:17-CV-2914-JJT (Oct. 9, 2017) (Doc. 12); Notice of Settlement, *Galestum v. BRE/LQ Properties, L.L.C. d/b/a La Quinta Inn Phoenix North*, No. 2:17-CV-2802-DGC (Nov. 2, 2017) (Doc. 23).

potential that "the City will lose tax revenue" supported intervention as of right, and reversing district court's denial of same); *see also Robertson*, 960 F.2d at 86 ("[T]he State has an interest in protecting its tax revenues.").

B. The State's Interests Are Not Adequately Represented

Finally, the State's interests are not adequately represented by existing parties. As the Ninth Circuit has explained, a movant's "burden of showing inadequacy is 'minimal,' and the applicant need only show that representation of its interests by existing parties *'may be'* inadequate." *Berg*, 268 F.3d at 823 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)) (emphasis added). In considering the adequacy of representation, this Court must consider *inter alia* "whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments." *Id.* at 822.

This requirement is easily met: Defendant has not made some of the vexatious litigant arguments that the State intends to make and has not sought all of the relief the State intends to request. It is thus clear that existing parties will not "undoubtedly make all the intervenor's arguments."

IV. THE RELIEF SOUGHT BY THE STATE IS SUPPORTED BY NINTH CIRCUIT PRECEDENTS

The vexatious litigant determination and relief that the State intends to seek is well-supported by Ninth Circuit precedent, including *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007). In *Molski*, the Ninth Circuit affirmed a vexatious litigant determination against both the plaintiff and his counsel where they had "filed about 400 lawsuits" alleging violations of the ADA. *Id.* at 1050, 1065. Those numbers pale in comparison to the conduct here.

In this case, the State believes that a vexatious litigant determination against Strojnik is appropriate under several possible bases. By way of preview, the grounds for vexatious litigant determinations include that Strojnik:

1. Misrepresented (and drastically exaggerated) his actual and/or reasonable fees by demanding a minimum of $5,000 in each one of his cookie-cutter complaints.
2. Misrepresented Plaintiffs' actual damages in several suits, seeking $5,000 or more without any good-faith basis for doing so.
3. Entered into an agreement with Plaintiffs where he would charge (but never collect) an illusory $5,000 fee in order to extract more money from defendants, and then donate to Plaintiffs any settlement money paying the supposed fee.
4. Misrepresented Plaintiffs' intent to litigate their federal ADA claims, forcing defendants to incur needless and avoidable costs of removal.
5. Filed numerous suits to extort settlements from defendants, improperly relying on the costs of litigation to coerce settlements.
6. Electronically affixed Plaintiff Ritzenthaler's signature to hundreds of verified complaints he appears not to have ever read.

Molski notably explained that "[f]rivolous litigation is not limited to cases in which a legal claim is entirely without merit. It is also frivolous for a claimant who has some measure of a legitimate claim to make false factual assertions." *Id.* at 1060. Indeed, the Ninth Circuit affirmed vexatious litigant relief even while "acknowledg[ing] that Molski's numerous suits were probably meritorious in part—many of the establishments he sued were likely not in compliance with the ADA." *Id.* at 1062. Thus, even if some of Plaintiffs' targets were actually in violation of the ADA and AzDA, it does not immunize Strojnik's misconduct from judicial scrutiny and sanction.

Many of the requisite findings that would support vexatious litigant determinations have already been made by this Court. Specifically, this Court has already made three such relevant determinations.

First, this Court has already found that Strojnik misrepresented his fees when demanding $5,000 in each and every suit they filed. *See* Dismissal Order at 10 ("In a

simple form complaint case like this, it is impossible that the fee for preparing and filing the complaint could be $5,000…. A demand for a fee beyond what is reasonable is a demand without legal basis under the ADA."). That alone could support a vexatious litigant filing.

Second, other judges on this Court have found that Plaintiffs' counsel has falsely represented their intent to litigate their federal ADA claims, forcing parties to incur the costs of removal only for Plaintiffs to dismiss those ADA claims voluntarily and seek remand to state court. This Court thus found Strojnik's conduct sanctionable on separate occasions for *inter alia*, "misrepresent[ing] its intent to litigate its federal claim" and "mislead[ing] and manipulat[ing] opposing counsel,"[9] as well as "attempt[ing] to increase the costs of litigation to maximize Defendants' desire to settle the suit due to the cost of defense," and engaging in "bad faith conduct."[10]

Third, this Court has already concluded that Strojnik's intent was to extort settlements from Defendants, rather than litigate meritorious claims. Indeed, this Court found Strojnik's "extortionate practice has become pervasive," and that Strojnik filed "cookie-cutter lawsuits" "right down to the same typographical errors." Dismissal Order at 3. This Court further concluded that Strojnik had engaged in "unethical extortion of unreasonable attorney's fees from defendants." *Id*. at 10.[11]

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This preview is intended to provide notice of the types of arguments that the State intends to raise if intervention is granted. As set forth above, there are ample bases for

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[9] *AIDF v. Golden Rule Properties LLC*, No. CV-16-02412, Doc. 19 at 4 (D. Ariz. March 20, 2017).

[10] *AIDF v. Golden Rule Properties LLC*, No. CV-16-02413, Doc. 28 at 2, 10-11 (D. Ariz. Oct. 13, 2016).

[11] Notably, *Molski* similarly relied on Molski's intent "to extract cash settlements from defendants," noting that "Molski had tried on the merits only one of his approximately 400 suits and had settled all the others." *Id.* at 1052. But Strojnik has yet to try even a single case here. Instead, there is ample indication that extracting settlements was his overwhelming intent in filing their numerous suits.

this Court to at least consider the possibility that Strojnik is a vexatious litigant and that appropriate relief should therefore be issued. Such relief could include (1) a pre-filing order against Strojnik requiring court approval before filing any new ADA or AzDA suits or suits related to disability law compliance in federal court and (2) an award of attorneys' fees to the State for this motion and its motion to seek vexatious litigant relief, as well as other appropriate relief.

If this Court is inclined to consider vexatious litigant relief, the State respectfully requests that the Court give notice to both Plaintiffs and Strojnik that such relief is being considered. Such notice is required under *Molski*. *See* 500 F.3d at 1057 ("[T]he litigant must be given notice and a chance to be heard before the order is entered."). The State further requests that the Court set a briefing schedule and hearing for the State's request for vexatious litigant relief. As part of that briefing schedule, the State respectfully requests at least 30 days from the grant of intervention to its initial brief in support of its request for vexatious litigant relief.

CONCLUSION

For the foregoing reasons, the State's motion to intervene for the limited purpose of addressing (1) whether Plaintiffs and their counsel are "vexatious litigants" and (2) the appropriate relief for such determinations, should be granted. In addition, this Court should issue notice to Plaintiffs and their counsel that it is considering vexatious litigant determination and appropriate relief and set a briefing schedule and hearing for the same.

Respectfully submitted this 5th day of December, 2017.

Mark Brnovich
Attorney General

s/ Drew C. Ensign

Drew C. Ensign
Matthew du Mee

Attorneys for Proposed Intervenor-Defendants

CERTIFICATE OF SERVICE

I certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following, if CM/ECF registrants, and mailed a copy of same if non-registrants, this 5th day of December, 2017:

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