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BY: ALAN WALKER DEPUTY

No. C20102711

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12	IN THE SUPERIOR COURT	OF THE STATE OF ARIZONA	
13	IN AND FOR THE COUNTY OF PIMA		
14			
15	STATE OF ARIZONA, ex rel. MARK	Case No.:	
16	BRNOVICH, the Attorney General, and the CIVIL RIGHTS DIVISON OF THE		
	ARIZONA DEPARTMENT OF LAW,	CIVIL COMPLAINT	
17	Plaintiff,	CIVIL COMPLAINT	
18	VS.		
19	BIG TEX TRAILER WORLD, INC., d/b/a		
20	BIG TEX TRAILERS,		
21	Defendant.		
22	Digintiff the State of Asizone as well	Mode Denovich the Attorney Consequence and the	
2223		Mark Brnovich, the Attorney General, and the	
		Mark Brnovich, the Attorney General, and the ent of Law (collectively, "the State") alleges and	

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<u>INTRODUCTION</u>

- 1. The State brings this civil rights action under the Arizona Civil Rights Act to correct an unlawful employment practice, redress injury, and vindicate the public interest.
- 2. Specifically, the State brings this matter due to employment discrimination by Defendant Big Tex Trailer World, Inc., d/b/a Big Tex Trailers ("Defendant") in failing to reasonably accommodate the disabilities of its employee, Edward Litzinger ("Litzinger"), and discharging Mr. Litzinger on the basis of his disability, in violation of A.R.S. § 41-1463(B)(1) and A.R.S. § 41-1463(F)(4).

JURISDICTION AND VENUE

- 3. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1481(D).
- 4. Venue is proper in Pima County pursuant to A.R.S. § 12-401.

PARTIES

- 5. The Civil Rights Division of the Arizona Department of Law ("the Division") is an administrative agency of the State of Arizona established by A.R.S. § 41-1401 to administer and enforce the provisions of the Arizona Civil Rights Act, A.R.S. § 41-1401, *et seq*.
- 6. The State brings this action on its own behalf, and on behalf of Mr. Litzinger, as provided by A.R.S. § 41-1481(D) and (G) of the Arizona Civil Rights Act.
- 7. Defendant is a manufacturer and retailer of trailers, trailer parts, and trailer accessories headquartered in Mount Pleasant, Texas with 65 stores nationwide and approximately 275 employees.
- 8. At all times relevant to the allegations in this Complaint, Defendant employed fifteen or more employees in each of twenty or more calendar weeks in the current or preceding calendar year. Defendant is an employer within the meaning of A.R.S. § 41-1461(6)(a).
- 9. Mr. Litzinger worked for Defendant as a Sales Representative in its Tucson, Arizona location from on or about August 22, 2016 to on or about February 22, 2018. Mr. Litzinger was an employee under A.R.S. § 41-1461(5)(a).

GENERAL ALLEGATIONS

- 1. In late 2017, Mr. Litzinger began experiencing severe leg pain and sought medical treatment. In or about mid-November 2017, Mr. Litzinger informed his immediate supervisor, Defendant's General Manager James Leader, that he would need to undergo hip replacement surgery and would require medical leave. On or about December 5, 2017, Mr. Litzinger underwent a right total hip arthroplasty and greater trochanteric bursa (hip replacement).
- 2. From in or around November of 2017 through, at least, January 2018, Mr. Litzinger was substantially limited in the major life activities of walking, lifting, standing, performing manual tasks, sitting, and squatting. During the time-period relative to this complaint, Mr. Litzinger had a disability as defined in A.R.S. § 41-1461(4).
- 3. Following his December 5, 2017 hip replacement surgery, Mr. Litzinger believed he was medically restricted from prolonged sitting due to the risk of deep vein thrombosis and pulmonary embolism and thus could not travel via airplane for up to one year.
- 4. On or about January 2, 2018, Mr. Litzinger, requiring the use of a cane for ambulation, attempted to return to work—having been released to do so by his treating physician. Mr. Leader told Mr. Litzinger that he could not return to work while using a cane. On or about January 8, 2018, Litzinger returned to work without the aid of a cane.
- 5. Defendant refused to allow Mr. Litzinger the use of a cane as a reasonable accommodation for his disability.
- 6. In or about February of 2018, Mr. Leader informed Mr. Litzinger that Defendant was requiring all salespeople to fly to Texas in March of 2018 for training. Mr. Litzinger told Mr. Leader that he was unable to fly to Texas for training because of the risk of blood clots and asked if he could attend training in Phoenix as a reasonable accommodation for his disability. The next day Mr. Leader told Mr. Litzinger that if he could not fly to Texas for training, he had to resign or he would be terminated by Defendant. Mr. Litzinger refused to resign.

- 7. On or about February 7, 2018, Mr. Leader—without the knowledge of Mr. Litzinger—sent an email to Defendant's Regional Manager, James Edgell, stating that Mr. Litzinger had given two weeks' notice of his intention to resign.
- 8. On or about February 22, 2018, Defendant terminated Mr. Litzinger's employment.
 - 9. Defendant terminated Mr. Litzinger's employment on the basis of his disability.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

- 10. On or about May 31, 2018, Mr. Litzinger filed a charge of disability discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") against Defendant. The EEOC sent the charge to the Division for investigation. Mr. Litzinger's Amended Charge, dated on or about August 9, 2018, alleges Defendant refused to accommodate his disability, terminated him because of his disability, and retaliated against him in violation of the Arizona Civil Rights Act.
- 11. After investigating the allegations in Mr. Litzinger's charge, the Division issued a Reasonable Cause Determination finding that Defendant discriminated against Mr. Litzinger by failing to provide him a reasonable accommodation for his disabilities, and by terminating his employment in violation of A.R.S. § 41-1463(B)(1), (F)(4).
- 12. The State and Mr. Litzinger have participated in informal methods of conference, conciliation, and persuasion with Defendant pursuant to A.R.S. § 41-1481(B).
- 13. The parties have not entered into a conciliation agreement and the State brings this Complaint pursuant to A.R.S. § 41-1481(D).

COUNT I

[Failure to Accommodate Disability in Violation of A.R.S. § 41-1463(F)(4)]

14. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 13 of this Complaint.

- 15. Under A.R.S. § 41-1463(F)(4), it is an unlawful employment practice for an employer to not make reasonable accommodations to the known physical limitations of an otherwise qualified employee.
- 16. At the time of Mr. Litzinger's request for accommodations, he was a qualified individual with disabilities.
- 17. Mr. Litzinger's requested accommodations—the use of a cane and rescheduling of the training attendance—were reasonable.
- 18. Defendant engaged in an unlawful employment practice in violation of A.R.S. § 41-1463(F)(4) when it refused to grant Mr. Litzinger's request for reasonable accommodations.
- 19. As a result of Defendant's refusal to grant Mr. Litzinger's request for reasonable accommodations, Mr. Litzinger lost his employment and suffered monetary damages in excess of the Court's minimum jurisdictional amount for which he should be compensated in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).
- 20. To remedy the effects of Defendant's discrimination, Mr. Litzinger also is entitled to affirmative relief under A.R.S. § 41-1481(G).
- 21. The State also is entitled to injunctive relief and affirmative relief to remedy Defendant's actions pursuant to A.R.S. § 41-1481(G).

COUNT II

[Disability Discrimination in Employment in Violation of A.R.S. § 41-1463(B)(1)]

- 22. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 21 of this Complaint.
- 23. Under A.R.S. § 41-1463(B)(1), it is an unlawful practice for an employer to discharge any individual on the basis of disability.
- 24. Defendant engaged in unlawful employment discrimination in violation of A.R.S. § 41-1463(B)(1) when it terminated Mr. Litzinger's employment on the basis of his disabilities.

- 25. As a result of Defendant's discrimination, Mr. Litzinger lost his employment and suffered monetary damages in excess of the Court's minimum jurisdictional amount for which he should be compensated in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).
- 26. To remedy the effects of Defendant's discrimination, Mr. Litzinger is entitled to affirmative relief under A.R.S. § 41-1481(G).
- 27. The State is also entitled to injunctive relief and affirmative relief to remedy Defendant's actions pursuant to A.R.S. § 41-1481(G).

PRAYER FOR RELIEF

WHEREFORE, the State requests that this Court:

- A. Enter judgment on behalf of the State, finding that Defendant unlawfully failed to make reasonable accommodations for Mr. Litzinger's disabilities, and discriminated against Mr. Litzinger on the basis of his disabilities when it terminated his employment in violation of the Arizona Civil Rights Act;
- B. Permanently enjoin Defendant, its successors, assigns, and all persons in active concert or participation with Defendant, from engaging in disability discrimination or any other unlawful employment practice that violates the Arizona Civil Rights Act;
- C. Order Defendant to pay Mr. Litzinger appropriate back pay from on or about February 2018 through the date of judgment, in addition to pre- and post-judgment interest, in an amount to be determined at trial:
- D. Order Defendant to evaluate its compliance with anti-discrimination laws and to take necessary corrective action to ensure compliance with laws prohibiting disability discrimination, including but not limited to, instituting, implementing, and enforcing policies, practices, and programs that provide equal employment opportunities for all employees, including those with disabilities, and that eradicate the effects of its present unlawful employment practices;

1	E.	Order Defendant to provide remedial and additional training to its management
2	and human	resources personnel regarding disability discrimination in the workplace and
3	reasonable accommodations;	
4	F.	Issue an Order authorizing the State to monitor Defendant's compliance with the
5	Arizona Civil Rights Act;	
6	G.	Award the State its taxable costs incurred in bringing this action; and
7	H.	Grant such other and further relief as this Court may deem just and proper in the
8	public interest.	
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10		DATED this 30 th day of May, 2019.
11		MARK BRNOVICH
12		The Attorney General
13		
14		By /s/Vincent J. Sottosanti
15		By <u>/s/Vincent J. Sottosanti</u> Vincent J. Sottosanti Senior Litigation Counsel
16		Arizona Civil Rights Division
17		Attorneys for Plaintiff
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