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14
15 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
16 **IN AND FOR THE COUNTY OF PIMA**

17 STATE OF ARIZONA, *ex rel.* MARK
18 BRNOVICH, the Attorney General, and the
19 CIVIL RIGHTS DIVISION OF THE
20 ARIZONA DEPARTMENT OF LAW,

21 Plaintiff,

22 vs.

23 JOSHUA DAVID MELLBERG, LLC
24 d/b/a J.D. MELLBERG FINANCIAL,

25 Defendant.

Case No.:

Complaint

(Jury Trial Requested)

26 Plaintiff, the State of Arizona, *ex rel.* Mark Brnovich, the Attorney General, and the Civil
Rights Division of the Arizona Department of Law (collectively, “the State”) alleges and states,
as follows:

1 **INTRODUCTION**

2 1. The State brings this action under the Arizona Civil Rights Act (“ACRA”), A.R.S.
3 § 14-1461 et seq., to correct unlawful employment practices, redress the injuries of an aggrieved
4 party, and vindicate the public interest.

5 2. The State brings this public enforcement action because Defendant Joshua David
6 Mellberg, LLC d/b/a J.D. Mellberg Financial (“Defendant”) discriminated against its employee
7 Megan Budke (“Ms. Budke”), because of her disability in violation of the ACRA, A.R.S. § 41-
8 1463.

9 3. The State brings this action to correct Defendant’s employment discrimination;
10 specifically, Defendant’s failure to reasonably accommodate Ms. Budke’s disability and
11 Defendant’s termination of Ms. Budke due to her disability, in violation of A.R.S. § 41-
12 1463(B)(1) and A.R.S. § 41-1463(F)(4).

13 **JURISDICTION AND VENUE**

14 4. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1481(D).

15 5. Venue is proper in Pima County pursuant to A.R.S. § 12-401(17).

16 **PARTIES**

17 6. The Civil Rights Division of the Arizona Department of Law is an administrative
18 agency of the State of Arizona established by A.R.S. § 41-1401 to administer and enforce the
19 provisions of the Arizona Civil Rights Act, A.R.S. § 41-1401 *et seq.*

20 7. The State brings this action on its own behalf and on behalf of Ms. Budke, who is
21 aggrieved by Defendant’s unlawful employment practices.

22 8. Defendant is a licensed insurance agency that markets life and annuity products
23 nationwide. Defendant’s principal place of business is in Pima County at 3067 W. Ina Road,
24 Tucson, Arizona.

25 9. At all times relevant to the allegations in this Complaint, Defendant employed more
26 than fifteen employees in each of twenty or more calendar weeks in the current or proceeding

1 calendar year. Defendant is an employer within the meaning of A.R.S. § 41-1461(6)(a).

2 10. Ms. Budke worked for Defendant as a new business associate from on or about
3 December 12, 2017 until her termination from Defendant's employment on or about June 2, 2020.
4 Ms. Budke is an employee as defined in A.R.S. § 41-1461(5)(a).

5 **GENERAL ALLEGATIONS**

6 11. On or about December 5, 2019, Ms. Budke notified Defendant that she was
7 pregnant.

8 12. In February 2020, Ms. Budke was diagnosed with placenta previa, a pregnancy-
9 related disability. As a result of Ms. Budke's disability, she was substantially limited in a number
10 of major life activities; including but not limited to, mobility, bending, lifting, and transitioning
11 between sitting and standing.

12 13. Despite her disability, at all times relevant to the allegations in this Complaint Ms.
13 Budke was able to perform the essential functions of her position as a new business associate
14 with the reasonable accommodation of working remotely.

15 14. On or about February 24, 2020, Ms. Budke notified Defendant's Human Resources
16 Manager Adrienne Cuaron ("Ms. Cuaron") and Defendant's General Counsel Dan Morgan ("Mr.
17 Morgan") of her disability. Ms. Budke requested that Defendant allow her to work remotely as a
18 reasonable accommodation necessary for her disability.

19 15. On or about February 27, 2020, Ms. Budke provided Defendant a letter from her
20 treating physician, dated February 25, 2020, stating: "it is advisable that [Ms. Budke] work from
21 home due to a medical condition that she has developed related to her pregnancy."

22 16. On or about February 27, 2020, Defendant, by and through Mr. Morgan, denied
23 Ms. Budke's request for the reasonable accommodation to telework and told Ms. Budke to take
24 an unpaid leave of absence until her pregnancy ended.

25 17. Between March 2020 and June 2020, Defendant permitted other employees to work
26 remotely on a temporary or extended basis due to the COVID-19 pandemic, but never granted

1 Ms. Budke’s request to work remotely as a reasonable accommodation for her disability, instead
2 requiring her to remain on an unpaid leave of absence due to her disability.

3 18. In or around April 2020, Ms. Budke provided Defendant with another doctor’s note
4 describing Ms. Budke’s diagnosis, asserting her ability to work despite her condition, and
5 describing her functional limitations as requiring “bed rest/pelvic rest...limitation of activity to
6 prevent complications – will need this until she delivers.”

7 19. On May 19, 2020, Ms. Budke emailed Defendant and requested reconsideration of
8 Defendant’s denial of her reasonable accommodation. In the alternative, Ms. Budke requested
9 Defendant “grant me a medical leave of absence as a reasonable accommodation until October
10 19, 2020, when I am expected to be able to return to work without any need for accommodation.”

11 20. On June 1, 2020, Defendant, by and through Mr. Morgan, denied Ms. Budke’s
12 request to work remotely as an accommodation.

13 21. On June 1, 2020, Defendant, by and through Mr. Morgan, also denied Ms. Budke’s
14 request to extend her medical leave of absence.

15 22. Defendant, through Mr. Morgan, claims it denied Ms. Budke’s request to work
16 remotely as a reasonable accommodation in June 2020 because pregnant women should not be
17 allowed to work during the COVID-19 pandemic. Specifically, Mr. Morgan testified, “In a
18 COVID situation a pregnant individual should not be working, but that doesn’t necessarily mean
19 that it has to be a remote working situation, it’s that this individual should not be working.”

20 23. In Defendant’s June 1, 2020 correspondence regarding Ms. Budke’s
21 accommodation requests, Mr. Morgan discharged Ms. Budke, stating: “You will receive
22 information regarding options for you to continue your health coverage under separate
23 cover...We wish you well in your future endeavors.”

24 24. On June 2, 2020, Ms. Budke asked Mr. Morgan “if this letter was a notice of the
25 rejection of my request for medical leave until the end of my pregnancy and the termination of
26 my employment with JDM.”

1 25. On June 4, 2020. Mr. Morgan responded “As we indicated in item three of the
2 attached response, the Company declines to extend FMLA leave. We do however, agree to
3 unpaid leave until the birth of your baby. Please note however, that the Company does not
4 guarantee that a position will be available at that time.”

5 26. After Defendant denied Ms. Budke’s request for reasonable accommodation on or
6 about May 26, 2020, but before the birth of Ms. Budke’s child in July 2020, Defendant finalized
7 Ms. Budke’s termination and cancelled her health insurance coverage.

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 27. On June 22, 2020, Ms. Budke filed a timely charge of discrimination with the State
10 (“Charge”) alleging that Defendant, her employer, discriminated against her because of her sex
11 and disability, and retaliated against her for requesting reasonable accommodations for her
12 disability and complaining about the discrimination she suffered.

13 28. After investigating the allegations in Ms. Budke’s Charge, the State found
14 reasonable cause existed to believe Defendant discriminated against Ms. Budke because of her
15 disability in violation of A.R.S. § 41-1463(B)(1) and retaliated against Ms. Budke because she
16 engaged in protected activity by seeking reasonable accommodations for her disability, in
17 violation of A.R.S. § 41-1464(A). The State issued a Reasonable Cause Determination on May
18 19, 2021.

19 29. The State and Ms. Budke participated in informal methods of conference,
20 conciliation and persuasion with Defendant pursuant to A.R.S. § 41-1481(B).

21 30. The parties have not entered into a conciliation agreement and the State brings this
22 Complaint pursuant to A.R.S. § 41-1481(D).

23 **COUNT I**

24 **FAILURE TO REASONABLY ACCOMMODATE DISABILITY**

25 **IN VIOLATION OF A.R.S. § 41-1463(B)(1) AND (F)(4)**

26 31. The State realleges and incorporates by reference the allegations contained in

1 paragraphs 1 through 30 of this Complaint.

2 32. Under A.R.S. § 41-1463(F)(4), it is an unlawful employment practice for an
3 employer to fail to reasonably accommodate a qualified employee's known disability.

4 33. At all times relevant to this Complaint, Ms. Budke was an individual with placenta
5 previa, a pregnancy-related disability that substantially limits her in at least one major life
6 activity.

7 34. Ms. Budke informed Defendant of her disability prior to requesting a reasonable
8 accommodation for her disability.

9 35. Ms. Budke requested reasonable accommodations for her disability from
10 Defendant in February 2020 and May 2020.

11 36. At the times of Ms. Budke's requests for reasonable accommodation, Ms. Budke
12 was a qualified to perform the essential functions of her position with reasonable accommodation.

13 37. Defendant engaged in an unlawful employment practice in violation of A.R.S. §
14 41-1463(B)(1) when it refused to grant Ms. Budke's requests for reasonable accommodation that
15 were necessary to afford her equal employment opportunities as required by A.R.S. § 41-
16 1463(F)(4).

17 38. Because of Ms. Budke's disability, Defendant placed Ms. Budke on an indefinite
18 unpaid leave of absence and terminated her employment.

19 39. As a result of Defendant's refusal to grant Ms. Budke's request for a reasonable
20 accommodation and Defendant's consequent adverse employment actions, Ms. Budke suffered
21 monetary damages, including back pay and front pay in amounts to be determined at trial and in
22 excess of the Court's minimum jurisdictional amount for which she should be compensated in an
23 amount to be determined at trial, pursuant to A.R.S. § 41-1481(G).

24 40. To remedy the effects of Defendant's discrimination, Ms. Budke is also entitled to
25 affirmative relief under A.R.S. § 41-1481(G).

26 41. The State is also entitled to injunctive relief and affirmative relief to remedy

1 Defendant's actions pursuant to A.R.S. § 41-1481(G).

2 **COUNT II**

3 **DIFFERENT TERMS OR CONDITIONS OF EMPLOYMENT**

4 **(DISCRIMINATION BASED ON DISABILITY)**

5 **IN VIOLATION OF A.R.S. § 41-1463(B)(1)**

6 42. The State re-alleges and incorporates by reference the allegations contained in
7 paragraphs 1 through 41 of this Complaint.

8 43. Defendant engaged in unlawful employment practices in violation of the Arizona
9 Civil Rights Act, A.R.S. § 41-1463(B)(1), when it subjected Ms. Budke to different terms and
10 conditions of employment including, but not limited to, not allowing Ms. Budke to work remotely
11 because of her pregnancy-related disability, while allowing non-disabled employees to work
12 remotely.

13 44. Under A.R.S. § 41-1463(B)(1), it is unlawful for an employer to discharge any
14 employee because of the employee's disability.

15 45. Defendant engaged in unlawful employment discrimination in violation of A.R.S.
16 § 41-1463(B)(1) when it terminated Ms. Budke's employment due to her disability.

17 46. As a result of Defendant's discrimination, Ms. Budke lost her employment and
18 suffered monetary damages, including back pay and front pay in amounts to be determined at
19 trial and in excess of the Court's minimum jurisdictional amount for which she should be
20 compensated in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

21 47. To remedy the effects of discrimination, Ms. Budke is entitled to affirmative relief
22 under A.R.S. § 41-1481(G).

23 48. The State is entitled to injunctive relief and affirmative relief to remedy
24 Defendant's unlawful employment actions pursuant to A.R.S. § 41-1481(G).

25 **COUNT III**

26 **RETALIATION IN VIOLATION OF A.R.S. § 41-1464(A)**

1 front pay in amounts to be determined at trial.

2 F. Order Defendant to institute, implement, and enforce policies, practices, and
3 programs that provide equal employment opportunities for employees with disabilities, including
4 pregnancy-related disabilities and that eradicate the effects of its present unlawful employment
5 practices.

6 G. Order Defendant to provide remedial and additional training to its owners and
7 employees regarding discriminatory treatment and retaliation in the workplace.

8 H. Order Defendant to evaluate its compliance with anti-discrimination laws and to
9 take necessary corrective actions to ensure compliance with laws prohibiting disability
10 discrimination and retaliation.

11 I. Issue an Order authorizing the State to monitor Defendant's compliance with the
12 Arizona Civil Rights Act.

13 J. Award the State its taxable costs incurred in bringing this action.

14 K. Grant such other and further relief as this Court may deem just and proper in the
15 public interest.

16
17 DATED this 21 day of June, 2021.

18
19 MARK BRNOVICH
Attorney General

20
21
22 By 

23 Chris Carlsen
24 Kristi Mehes
25 Assistant Attorneys General
26 Arizona Civil Rights Division
Attorneys for the State