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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 STATE OF ARIZONA, *ex rel.* MARK
12 BRNOVICH, the Attorney General, and the
13 CIVIL RIGHTS DIVISION OF THE
ARIZONA DEPARTMENT OF LAW,

14 Plaintiff,

15 vs.

16
17 SULLIVAN MOTOR COMPANY, INC., an
Arizona corporation,

18 Defendant.
19

CV 2016-015051

Case No.: _____

CIVIL COMPLAINT

20 Plaintiff, the State of Arizona, *ex rel.* Mark Brnovich, the Attorney General, and the
21 Civil Rights Division of the Arizona Department of Law (collectively, "the State"), for its
22 Complaint, alleges as follows:

23 **INTRODUCTION**

24 This is a public enforcement action to correct unlawful employment practices by the
25 Defendant in violation of the Arizona Civil Rights Act, A.R.S. § 41-1401 *et seq.*, to provide
26 appropriate relief to Defendant's former employee, and to vindicate the public interest.

1 Specifically, the State contends that Defendant Sullivan Motor Company, Inc.
2 discriminated against Francis Beesley in employment by failing to provide a reasonable
3 accommodation for his disability, denying him employment opportunities due to the need to
4 make a reasonable accommodation for his disability, and subjecting him to different terms and
5 conditions of employment and terminating his employment on the basis of disability.

6 JURISDICTION AND VENUE

- 7 1. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1481(D), (G).
- 8 2. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

9 PARTIES

10 3. The Civil Rights Division of the Arizona Department of Law (“the Division”) is
11 an administrative agency of the State of Arizona established by A.R.S. § 41-1401 to administer
12 and enforce the provisions of the Arizona Civil Rights Act (“ACRA”), A.R.S. § 41-1401, *et*
13 *seq.*

14 4. The State brings this action, as provided by A.R.S. § 41-1481(D) and (G) of the
15 ACRA, based on the Division’s findings in an investigation of the administrative employment
16 discrimination charge filed by Francis Beesley (“Beesley” or “Charging Party”) against
17 Defendant.

18 5. Defendant Sullivan Motor Company, Inc. (“Sullivan” or “Defendant”) is an
19 Arizona corporation which owns and operates a used car dealership in Maricopa County,
20 located at 1515 W. Broadway Road in Mesa, Arizona.

21 6. At all times relevant to the allegations in this Complaint, Sullivan employed
22 fifteen or more employees in Arizona. Sullivan is an employer, as defined by A.R.S. § 41-
23 1461(6)(a).

24 7. Sullivan employed Beesley as a sales representative to sell used cars on a
25 commission-only basis from 2004 to 2007, and again commencing in or about April 2012.
26 Beesley is an employee, as defined by A.R.S. § 41-1461(5)(a).

GENERAL ALLEGATIONS

1
2 8. In or about May 2014, Beesley was diagnosed with Stage-4 metastatic lung
3 cancer, papillary thyroid cancer, and chronic obstructive pulmonary disease ("COPD") with
4 emphysema.

5 9. These conditions are physical impairments which substantially limit one or more
6 of Beesley's major life activities, including, but not limited to: the operation and function of the
7 respiratory and hemic and lymphatic systems, normal cell growth, and breathing.

8 10. In or about June 2014, Beesley notified Sullivan's General Manager Duane
9 Giguere ("Giguere") of his cancer and, upon information and belief, told Giguere that the
10 cancer was incurable.

11 11. After June 2014, Beesley continued to work at Sullivan.

12 12. After June 2014, Beesley was able to perform the essential functions of his sales
13 representative job at Sullivan with or without reasonable accommodation.

14 13. On or about February 10, 2015, due to his cancer and cancer-related fatigue,
15 Beesley requested that Giguere allow him to have a modified work schedule of no more than 6
16 to 8 hours a day, 4 days a week. In support of his request, Beesley provided Giguere with a
17 letter from his doctor dated February 9, 2015. In the letter, Beesley's doctor asked that Beesley
18 receive the requested modified work schedule accommodation, advised that Beesley was
19 undergoing palliative maintenance chemotherapy, and invited Sullivan to contact him if it had
20 any questions.

21 14. On or about February 10, 2015, on behalf of Sullivan, Giguere agreed to grant
22 Beesley the requested modified work schedule as a reasonable accommodation for Beesley's
23 disability.

24 15. From approximately February 10, 2015 to early May 2015, Beesley utilized the
25 reasonable accommodation granted by Sullivan, and continued to sell cars and receive
26 commission.

1 16. In or about early May 2015, Beesley developed skin cancer on his ear and leg.
2 Upon information and belief, Beesley notified his direct supervisor at Sullivan, Sales Manager
3 Mike Stapleton ("Stapleton"), that he needed to be out for a week or two in May to take care of
4 the skin cancer, and Stapleton agreed.

5 17. Upon Beesley's return to work on or about May 20, 2015 following skin cancer
6 surgery, Giguere told Beesley that Sullivan could no longer provide a modified work schedule
7 accommodation for his disability. Giguere said Beesley's co-worker, sales representative
8 Kenneth Spell ("Spell") also requested reduced hours due to cancer, and Sullivan could not
9 accommodate both reduced schedules. Giguere also sent Beesley home.

10 18. After May 20, 2015, Spell continued to work full time for Sullivan, but Giguere
11 did not contact Beesley to return to work and, upon information and belief, did not respond to
12 Beesley's inquiries about his employment status.

13 19. In or about June 2015, Beesley filed a state unemployment claim against Sullivan
14 with the Arizona Department of Economic Security ("DES"). In a response dated June 25,
15 2015, Sullivan's HR manager Sindy Rosell ("Rosell") denied Beesley had been discharged
16 from Sullivan's employment.

17 20. On or about June 26, 2015, Beesley met with Rosell who said Beesley could sign
18 up for a 12-week leave of absence under FMLA if he wrote a letter stating he wanted to go on a
19 medical leave of absence and retain his health insurance. Rosell told Beesley he would have to
20 come back to work full time after the 12 weeks.

21 21. Upon information and belief, on or about June 27, 2015, Beesley told Giguere he
22 did not want a leave of absence -- he wanted to work; but Giguere terminated his employment.
23 Upon information and belief, at that time, Giguere provided Beesley with an undated letter on
24 Sullivan letterhead bearing Giguere's signature, and stating: "Francis Beesley's [sic] was
25 terminated from Sullivan Motor Company on May 20th 2015."
26

1 22. On September 21, 2015, Beesley filed a timely charge of employment
2 discrimination against Sullivan Motors, Inc. with the Division (“the Charge”), which was dual-
3 filed with the Equal Employment Opportunity Commission.

4 23. In the Charge, Beesley alleged that on or about May 20, 2015, which date was
5 within 180 days of the date he filed the Charge, Sullivan told him it could no longer
6 accommodate his disability with reduced hours and sent him home, and that his employment
7 was terminated based on disability.

8 24. Sullivan responded to the Charge under its true name of Sullivan Motor
9 Company, Inc. In its response to the Charge, Sullivan contended Beesley started missing work
10 beyond the reduced schedule and his performance as a sales representative was significantly
11 impacted to the extent that he became non-productive. Sullivan also contended it offered
12 Beesley unpaid medical leave until he could return to work.

13 25. Sullivan has no attendance records to support its allegations regarding the amount
14 of time missed by Beesley, and its car sale statistics and DES wage reports for Beesley and his
15 coworkers reveal that Beesley continued to sell cars and receive commissions after receiving
16 the modified work schedule accommodation from Sullivan.

17 26. When Sullivan’s sales representatives do not sell enough cars, it coaches them for
18 three months to improve their performance, but Sullivan did not coach Beesley about poor
19 performance.

20 27. Beesley denies Sullivan offered him unpaid medical leave when it withdrew the
21 modified work schedule reasonable accommodation in May 2015, or that he requested to be on
22 medical leave. Sullivan has no documents from Beesley requesting medical leave.

23 28. Beesley denies that unpaid medical leave would be effective in reasonably
24 accommodating his disability by helping him perform the essential functions of his job because
25 he would not be working at all. He further maintains unpaid medical leave would be
26

1 ineffective because it would not enable him to return to work full time since his condition is
2 terminal and not expected to improve.

3 29. After investigating the Charge, on August 19, 2016, the Division issued a
4 Reasonable Cause Determination, finding that reasonable cause exists to believe that after May
5 20, 2015, Sullivan failed to provide Beesley with a reasonable accommodation for his
6 disability, in violation of A.R.S. § 41-1463(F)(4); Sullivan denied Beesley employment
7 opportunities based on the need to make a reasonable accommodation for Beesley's disability,
8 in violation of A.R.S. § 41-1463(F)(5); and Sullivan subjected Beesley to discrimination in the
9 terms, conditions, and privileges of employment, and terminated his employment based on
10 disability, in violation of A.R.S. § 41-1463(B)(1).

11 30. On August 19, 2016, the Division delivered its Reasonable Cause Determination
12 to Sullivan and Beesley and invited them to participate in conciliation.

13 31. The Division issued an Amended Reasonable Cause Determination on September
14 9, 2016, to reflect that Sullivan Motor Company, Inc. is the true name of the entity named in the
15 Charge, and delivered the Amended Reasonable Cause Determination to Sullivan and Beesley
16 and again invited them to participate in conciliation.

17 32. The Division proposed to the parties that Sullivan enter into a tolling agreement
18 with the Division to extend the date by which to pursue conciliation and file suit, if conciliation
19 failed. This tolling agreement would not require any party to waive any claim or defense (other
20 than that September 21, 2016 was the limitations date to file suit). The parties have not entered
21 into a tolling agreement.

22 33. Thirty (30) days have passed since the Division issued its Reasonable Cause
23 Determination on August 19, 2016, and the parties have not entered into a conciliation
24 agreement.

25 34. Having exhausted administrative procedures, the State brings this complaint
26 pursuant to A.R.S. § 41-1481(D) and (G).

1 **COUNT ONE**

2 **(Failure to Provide Reasonable Accommodation**

3 **in Violation of A.R.S. § 41-1463(F)(4))**

4 35. The State realleges and incorporates by reference the allegations contained in
5 paragraphs 1 through 34 of this Complaint.

6 36. From at least June 2014, Beesley was a person with a disability, as defined by
7 A.R.S. §§ 41-1461(4) and 41-1468.

8 37. Beesley is a qualified individual with a disability, as defined by A.R.S. § 41-
9 1461(11).

10 38. Under A.R.S. § 41-1463(F)(4), it is an unlawful employment practice with
11 respect to a qualified individual to not make reasonable accommodation to the known physical
12 or mental limitations of an otherwise qualified individual who is an employee unless the
13 covered entity can demonstrate that the accommodation would impose an undue hardship on
14 the operation of the business of the covered entity.

15 39. On or about February 10, 2015, Beesley requested an accommodation of a
16 modified work schedule because of his disability, and Sullivan granted that accommodation.

17 40. Beesley's requested accommodation was reasonable because it provided him
18 equal opportunity to perform the essential functions of his sales representative job at Sullivan
19 and enjoy equal benefits and privileges of employment. With that reasonable accommodation,
20 Beesley continued to sell cars and earn commission.

21 41. On May 20, 2015, Sullivan withdrew Beesley's modified work schedule
22 reasonable accommodation, and failed to provide Beesley with an effective alternate reasonable
23 accommodation.

24 42. Sullivan engaged in an unlawful employment practice in violation of A.R.S. § 41-
25 1463(F)(4) on and after May 20, 2015, by not making a reasonable accommodation for
26 Beesley's known physical limitations.

1 need to make a reasonable accommodation to the physical impairment of its employee,
2 Beesley.

3 50. As a result of Sullivan's denial of reasonable accommodation and employment
4 opportunities at Sullivan, Beesley suffered a loss of wages, and is entitled to and should be
5 compensated for his back pay and prejudgment interest in an amount to be determined at trial,
6 pursuant to A.R.S. § 41-1481(G).

7 51. Beesley is entitled to reinstatement to a sales representative position and, if
8 reinstatement is not feasible, front pay in an amount to be determined at trial pursuant to A.R.S.
9 § 41-1481(G).

10 52. The State is entitled to injunctive relief and affirmative action against Sullivan
11 pursuant to A.R.S. § 41-1481(G), and an award of its costs pursuant to A.R.S. § 41-1481(J).

12
13 **COUNT THREE**

14 **(Discrimination in Terms and Conditions of Employment, and Discharge**
15 **in Violation of A.R.S. § 41-1463(B)(1))**

16 53. The State realleges and incorporates by reference the allegations contained in
17 paragraphs 1 through 52 of this Complaint.

18 54. Under A.R.S. § 41-1463(B)(1), it is an unlawful practice for an employer to
19 discharge or otherwise discriminate against an employee with respect to the employee's
20 compensation, terms, conditions or privileges of employment on the basis of disability.

21 55. Sullivan engaged in an unlawful employment practice in violation of A.R.S. § 41-
22 1463(B)(1) by discharging Beesley on the basis of disability.

23 56. Sullivan also engaged in an unlawful employment practice in violation of A.R.S.
24 § 41-1463(B)(1) by discriminating against Beesley on the basis of disability by sending him
25 home from work, refusing to allow him to return to work, failing to respond to his inquiries
26 about his employment status and health insurance status, claiming he was on unpaid medical

1 leave which he did not request, and failing to treat him the same way it treats other employees
2 without disabilities who receive coaching or other progressive discipline for perceived
3 performance problems.

4 57. As a result of Sullivan's discharge of Beesley and discrimination in terms,
5 conditions and privileges of employment on the basis of disability, Beesley lost his
6 employment and suffered a loss of wages, and is entitled to and should be compensated for his
7 back pay and prejudgment interest in an amount to be determined at trial, pursuant to A.R.S. §
8 41-1481(G).

9 58. Beesley is entitled to reinstatement to a sales representative position and, if
10 reinstatement is not feasible, front pay in an amount to be determined at trial pursuant to A.R.S.
11 § 41-1481(G).

12 59. The State is entitled to injunctive relief and affirmative relief to remedy
13 Sullivan's actions, pursuant to A.R.S. § 41-1481(G), and an award of its costs pursuant to
14 A.R.S. § 41-1481(J).

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, the State requests that this Court:

18 A. Enter judgment on behalf of the State, finding that Defendant Sullivan unlawfully
19 discriminated against Beesley in violation of the Arizona Civil Rights Act.

20 B. Permanently enjoin Defendant Sullivan, its successors, assigns, and all persons in
21 active concert or participation with Sullivan, from engaging in any unlawful employment
22 practice, including subjecting disabled employees to different terms and conditions of
23 employment and failing to provide reasonable accommodation for disabled employees in
24 violation of the Arizona Civil Rights Act.

25 C. Order Defendant Sullivan to make whole Beesley by providing appropriate back
26 pay from May 20, 2015 in an amount to be determined at trial, plus prejudgment interest at the

1 maximum legal rate, and an amount to compensate Beesley for the increased tax burden of a
2 lump sum payment in amounts to be determined at trial.

3 D. Order Defendant Sullivan to make whole Beesley, by reinstating him to his
4 previously held position or an equivalent position and in addition, or in the alternative, provide
5 appropriate front pay in an amount to be determined at trial.

6 E. Order Defendant Sullivan to provide Beesley with necessary reasonable
7 accommodation, if reinstated, including but not limited to: granting him an appropriate
8 modified work schedule.

9 F. Order Defendant Sullivan to waive for Beesley the new employee waiting period
10 for eligibility to obtain employee benefits, such as health insurance.

11 G. Order Defendant Sullivan to institute, implement, and enforce policies, practices,
12 and programs that provide equal employment opportunities for persons with disabilities and
13 that eradicate the effects of its present unlawful employment practices, including failure to
14 make reasonable accommodation for employees with disabilities, refusing to allow employees
15 who need reasonable accommodations to enjoy employment opportunities, placing employees
16 on unpaid medical leave without consent or request, and discharging employees with
17 disabilities when a reasonable accommodation would have been possible.

18 H. Order Defendant Sullivan to provide remedial and additional training to its
19 management and human resources personnel regarding discriminatory employment practices in
20 the workplace, with emphasis on failure to make reasonable accommodation and disability
21 discrimination.

22 I. Order Defendant Sullivan to evaluate its compliance with disability
23 discrimination laws and to take necessary corrective action to ensure compliance with laws
24 prohibiting disability discrimination.
25
26

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

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

4 DATED this 20th day of September, 2016.

5 MARK BRNOVICH
6 Attorney General

7
8 By 
9 Sandra R. Kane
10 Assistant Attorney General
11 Civil Rights Division
12 Attorneys for Plaintiff

13 #5308871-v2