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2 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
3 **IN AND FOR THE COUNTY OF MARICOPA**

4 ADVOCATES FOR AMERICAN
5 DISABLED INDIVIDUALS, LLC, and
6 David Ritzenthaler, dealing with Plaintiff's
7 sole and separate claim,

8 Plaintiff,

9 vs.

10 1639 40TH STREET LLC,

11 Defendant,

12 STATE OF ARIZONA,

Limited Purpose Defendant.

Case No: CV2016-090506 (consol.)

**[PROPOSED] ORDER GRANTING IN
PART AND DENYING IN PART
PLAINTIFFS' MOTION FOR LEAVE TO
FILE AMENDED COMPLAINT AND
MOTION TO ALLOW ALTERNATIVE
SERVICE**

(Assigned to the Hon. David M. Talamante)

13 Having considered Plaintiffs' Motion for Leave to File Amended Complaint and Motion
14 to Allow Alternative Service (the "Motion"), and the exhibits thereto; Plaintiffs' Notice of
15 Errata and exhibits; the State's Response to Plaintiff's Motion and the exhibits to the Response;
16 and any Reply by Plaintiffs, and good cause appearing:

17 **IT IS ORDERED** that the Motion for Leave to File Amended Complaint is **granted in**
18 **part and denied in part.**

19 **IT IS ORDERED** that, pursuant to Arizona Rule of Civil Procedure 15(a), Plaintiffs are
20 **granted leave to amend** to add the allegations setting forth transactions, occurrences, and
21 events that occurred **prior** to the filing of the original complaints, specifically: paragraphs 1-2,
22 4-6, 8-9, 17-21, 23-32, 34-43, and Prayer for Relief at a-c and f. (All paragraph numbers above
23 refer to the paragraphs in the proposed amended complaint submitted with Plaintiffs' Notice of
24 Errata.) **IT IS FURTHER ORDERED** that such amendment is for the purposes of this
25 consolidated proceeding only. If the stay is later lifted for these cases and Plaintiffs wish to
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1 amend their complaint in a particular case, Plaintiffs must file an amended complaint in that case
2 and each defendant in such a case shall be permitted to object if desired.

3 **IT IS ORDERED** that, pursuant to Arizona Rule of Civil Procedure 15(d), Plaintiffs are
4 **denied leave to amend** to add any allegations setting forth transactions, occurrences, and events
5 that occurred **after** the filing of the original complaints, such as paragraphs 3, 22, and 33.
6 Consistent with this, any allegations that are ambiguous as to time shall be construed as
7 covering only events that occurred before the filing of the original complaints. **IT IS**
8 **FURTHER ORDERED**, pursuant to Rule 15(d), that Fernando Gastelum may not be added as
9 a plaintiff.

10 **IT IS ORDERED** that, pursuant to Arizona Rule of Civil Procedure 15(a), Plaintiffs are
11 **granted leave to amend** to add allegations related to their mandamus and declaratory relief
12 claims against the Attorney General—specifically the reference to the Attorney General in the
13 caption and prefatory paragraph of the Complaint; Paragraphs 7, 10-16, and the entirety of
14 Count 3 (paragraphs 44-51); and the Prayer for Relief at d and e. **IT IS FURTHER**
15 **ORDERED** that such claims shall be added only to the earliest-filed action CV2016-090506.
16 **IT IS FURTHER ORDERED** that such claims shall be severed pursuant to Rules 20(b), 21,
17 and/or 42(b) for separate consideration, and shall not be considered as part of the consolidated
18 proceeding.

19 **IT IS ORDERED** that Plaintiffs shall file a copy of their amended complaint including
20 only the paragraphs and parties directed above, to be used for the purposes of the consolidated
21 proceeding. **IT IS FURTHER ORDERED** that Plaintiffs shall separately file a complaint
22 (including only the paragraphs related to their claims against the Attorney General) under this
23 case number, to be used for the purposes of the severed proceeding.

24 **IT IS ORDERED** that the Motion to Allow Alternative Service is **granted in part** and
25 **denied in part**.

26

EXHIBIT B
TO STATE'S RESPONSE

**(HIGHLIGHTED VERSION
OF AMENDED COMPLAINT
THAT WAS ATTACHED TO
PLAINTIFFS' NOTICE OF
ERRATA)**

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2 **STROJNIK P.C.**
3 1 East Washington Street
4 Suite 500
5 Phoenix, AZ 85004
6 Telephone: (774) 768-2234
7 *Attorney for Plaintiffs*

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 ADVOCATES FOR INDIVIDUALS
11 WITH DISABILITIES FOUNDATION,
12 INC., a charitable non-profit foundation;
13 DAVID RITZENTHALER, an individual;
14 **FERNANDO GASTELUM, an individual;**

15 Plaintiffs,

16 vs.

17 Consolidated Defendants; **Mark Brnovich,**
18 **in his official capacity as Attorney General;**

19 Defendants;

20 vs.

21 State of Arizona, *ex rel.* Mark Brnovich;

22 Defendant-Intervenor.

Case No. CV2016-090506,
Consolidated Cases¹

AMENDED COMPLAINT

(JURY TRIAL REQUESTED)

**(Assigned to the
Honorable David Talamante)**

23 For their Amended Complaint against the Consolidated Defendants named
24 herein, **and against Mark Brnovich in his official capacity as Attorney General**
25 (collectively, “Defendants”), Plaintiffs Advocates for Individuals with Disabilities
26 Foundation, Inc. (“AID”); David Ritzenthaler; and **Fernando Gastelum** hereby allege:

¹ A full list of the Consolidated Cases is on file with the Court. A current list is attached as Exhibit “A” hereto and incorporated as if set forth herein.

1 **PARTIES**

2 1. Plaintiff Advocates for Individuals with Disabilities Foundation, Inc.
3 (“Foundation”) is a registered 501(c)(3) non-profit charitable foundation and performs
4 the functions of a traditional association representing individuals with disabilities. *See*
5 www.aid.org. As a non-profit entity, AID is primarily funded through donations, but it
6 strives to self-fund through the recovery of litigation expenses, as provided for by federal
7 law.² AID does not turn a profit, and it has always operated at a significant loss.

8 2. Plaintiff David Ritzenthaler is the President, Director and Chairman of the
9 Foundation and a member. Mr. Ritzenthaler has a mobility impairment, uses a cane, and
10 requires periodic use of a wheelchair. Mr. Ritzenthaler also regularly visits public
11 accommodations with his mother, who has a mobility impairment that requires use of a
12 wheelchair. Mr. Ritzenthaler lives within, and regularly travels throughout, the greater
13 Phoenix Metropolitan area, in vehicles that are qualified to and do utilize van-accessible
14 parking.

15 3. Plaintiff Fernando Gastelum is an amputee who regularly uses a
16 wheelchair, and he is a member of AID. Mr. Gastelum regularly travels throughout the
17 greater Phoenix metropolitan area, in vehicles that are qualified to and do utilize van-
18 accessible parking.

19 4. Plaintiff AID has other members who are persons with disabilities, or who
20 are the parent(s) or close relative(s) of persons with disabilities, including disabilities
21 that are mobility-related. Members of AID participate in its efforts to test public
22 accommodations, and to enforce compliance with federal and state disability-access
23 laws, by *inter alia* visiting public accommodations and serving as plaintiffs. They also

24 _____
25 ² 42 U.S.C.A. § 12205; 28 CFR Pt. 36, App. C, § 36.505 (“Litigation expenses include items
26 such as expert witness fees, travel expenses, etc.”).

1 guide its efforts by identifying, and collecting information on, noncompliant public
2 accommodations.

3 5. Consolidated Defendants operate and/or lease places that are public
4 accommodations within the meaning of 42 U.S.C. § 12181(7). The Consolidated
5 Defendants are separately identified in the actions that have been consolidated under this
6 cause number, CV2016-090506. Attached as Exhibit “A” hereto, and incorporated as if
7 fully set forth herein, is a list identifying the Consolidated Defendants in this matter as of
8 October 14, 2016.

9 6. Consolidated Defendants are located in the greater Phoenix metropolitan
10 area, in Maricopa County, Arizona.

11 7. Defendant Mark Brnovich is the Attorney General in and for the State of
12 Arizona, and is named in his official capacity only.

13 JURISDICTION AND VENUE

14 8. Plaintiffs bring this action in part under Title III of the Americans with
15 Disabilities Act, 42 U.S.C. §§ 12101 et seq., (the “ADA”) and its implementing
16 regulations; and A.R.S. Title 41, Chapter 9, Article 8, §§ 41-1492 *et seq.* and its
17 implementing regulations, R10-3-401 et seq. (the “AZDA”).

18 9. This Court has original jurisdiction over the AZDA claims by virtue of
19 A.R.S. §§ 12-123 and 41-1492.08(C), and concurrent jurisdiction over the ADA claims
20 by virtue of A.R.S. § 12-123 and Article 6, Section 14(1) of the Arizona Constitution.

21 GENERAL ALLEGATIONS

22 10. Non-compliance with the provisions of the ADA and AZDA relating to
23 public accommodations is widespread in this State.

24 11. No public agency in this State voluntarily conducts, or has ever
25 voluntarily conducted, periodic inspections (“compliance reviews”) of existing public
26 accommodations to determine ADA compliance, for over two decades.

1 12. The Attorney General is specifically required to conduct periodic ADA
2 compliance reviews of public accommodations in Arizona pursuant to
3 A.R.S. § 41-1492.09, which was enacted into law twenty-two years ago.

4 13. The Attorney General does not conduct voluntary periodic compliance
5 reviews pursuant to A.R.S. § 41-1492.09.

6 14. Upon information and belief, the Attorney General and Office of the
7 Attorney General (“OAG”) have never conducted voluntary periodic compliance
8 reviews pursuant to A.R.S. § 41-1492.09.

9 15. As a result, less than approximately five percent (5%) of public
10 accommodations in Maricopa County are compliant with the ADA and AZDA.

11 16. The only individuals or entities that are actively inspecting for and
12 enforcing ADA and AZDA compliance in Arizona are private, and privately- or
13 charitably-funded, individuals or serial-litigation groups like AID.

14 17. AID specifically employs “testers” to inspect for, to attempt to use, and/or
15 to actually use public accommodations to determine whether they are ADA compliant.

16 18. Among the numerous ADA and AZDA violations currently exhibited by
17 public accommodations in Maricopa County, parking lot violations may be the most
18 readily-apparent, and easily-identified.

19 19. As of the date of the filing of the original Complaint against each
20 Consolidated Defendant, each Consolidated Defendant was non-compliant with the
21 ADA Accessibility Guidelines (hereinafter referred to as “ADAAG,” which includes
22 but is not limited to 36 C.F.R. § Pt. 1191, App. A and D) and the AZDA³ in at least one
23 or more of the following ways:

24 _____
25 ³ The AZDA incorporates the federal ADA Accessibility Guidelines pursuant to Ariz. Admin.
26 Code R10-3-404 (which incorporates the “2010 Standards.” The “2010 Standards,” in turn,
include the “2004 ADAAG,” pursuant to 28 C.F.R. § 36.104. Finally, the “2004 ADAAG”

- 1 • Consolidated Defendant’s parking lot contained fewer than
2 one (1) accessible space for every twenty-five (25) spaces, in
3 violation of section 208.2 of 36 C.F.R. § Pt. 1191, App. B;
4 section 502 of 36 C.F.R. § Pt. 1191, App. D.
- 5 • Consolidated Defendant’s parking lot contained fewer than
6 one (1) van-accessible space for every six (6) accessible
7 spaces, in violation of section 208.2.4 of 36 C.F.R. § Pt. 1191,
8 App. B; section 502 of 36 C.F.R. § Pt. 1191, App. D.
- 9 • Consolidated Defendant’s accessible parking space(s) are not
10 located on the shortest accessible route from parking to an
11 accessible entrance, in violation of section 208.3.1 of
12 36 C.F.R. § Pt. 1191, App. B.
- 13 • Consolidated Defendant’s parking lot has no “van accessible”
14 signage identifying van-accessible spaces, in violation of
15 section 502.6 of 36 C.F.R. § Pt. 1191, App. D.
- 16 • Consolidated Defendant’s parking space identification
17 signage is fewer than a minimum of 60 inches above the
18 finish floor or ground surface measured to the bottom of the
19 sign, in violation of section 502.6 of 36 C.F.R. § Pt. 1191,
20 App. D.

21 20. The reports made by AID and its members identifying specific violations
22 particular to each Consolidated Defendant are available at <http://www.aid.org/090506>
23 and are fully incorporated as if set forth herein.⁴ The reports will also be filed on DVD

24 includes “the requirements set forth in appendices B and D to 36 CFR part 1191.”
25 See 28 C.F.R. § 36.104.)

26 ⁴ The reports are organized and identified by each Consolidated Defendant’s original case
number. (These case numbers are also listed in Exhibit “A” hereto.)

1 disc with the Clerk of the Superior Court (pending an Order of this Court⁵) as Exhibit
2 “B” hereto, which is likewise incorporated as if fully set forth herein.

3 21. Upon information and belief, many of Consolidated Defendants’
4 accommodations remain non-compliant.

5 22. Plaintiff Fernando Gastelum (“Plaintiff Gastelum”) has either visited the
6 Consolidated Defendants’ accommodations, or will have visited them by the end of the
7 first week of December, in order to use or attempt to use the parking lot, and for the
8 acknowledged purpose of “testing” for compliance. Plaintiff Gastelum intends to
9 continue to visit and use (or attempt to use) the Consolidated Defendants’
10 accommodations for such purposes, and at no longer than regular quarterly intervals, so
11 long as this matter remains pending, and/or until Plaintiffs deem that compliance has
12 been achieved.

13 23. Members of AID, including David Ritzenthaler, who have a mobility-
14 related disability and are qualified to and do utilize van-accessible parking (or who have
15 a close relationship to/affiliation with a person with a mobility-related disability, and
16 who drive for/travel with that person in a vehicle that is qualified to and does utilize
17 van-accessible parking) have visited many of the Consolidated Defendants’ public
18 accommodation parking lots, and intend to continue to do so, whether for the express
19 purpose of “testing” for compliance, or simply in the normal course of living in and
20 traveling throughout the Phoenix metropolitan area.

21
22 ⁵ Plaintiffs separately submit a “Motion for Leave to File Exhibit with the Clerk in DVD
23 Format.” The collected reports are over 18,000 pages in paper format, and around five gigabytes
24 in electronic format. The Clerk’s office has advised Plaintiffs’ counsel that pursuant to Arizona
25 Supreme Court general administrative order, filings in this matter should be made via
26 Turbocourt, rather than in paper or disc format. However, Exhibit “B” would have to be broken
down into approximately 500 subparts in order to be filed on Turbocourt. Plaintiffs are therefore
posting the reports online, and separately seek an order from this Court directing the Court Clerk
to accept the filing of “Exhibit B” on DVD disc.

1 thirty days, the attorney general shall file a civil action in an appropriate court.”

2 (Emphasis added.)

3 46. The Office of the Attorney General has never conducted compliance
4 reviews in accordance with this law, much less “periodic” reviews of compliance.

5 47. Arizona law specifically imposes on the Attorney General a duty to
6 conduct periodic compliance reviews of covered entities in accordance with
7 A.R.S. § 41-1492.09. This duty is not subject to the Attorney General’s discretion.

8 48. The Consolidated Defendants are among such covered entities.

9 49. As a direct result of the Attorney General’s failure to conduct periodic
10 compliance reviews, architectural barriers to full and equal access under the ADA –
11 including those barriers that are identified and discussed in this Amended Complaint—
12 interfere with Plaintiffs’ full and equal enjoyment of public accommodations, and deter
13 Plaintiffs from enjoying full and equal access to the facilities.

14 50. Plaintiffs seek mandamus relief against the Attorney General in the form
15 of an order that the Attorney General conduct periodic compliance reviews of covered
16 entities in accordance with A.R.S. § 41-1492.09.

17 51. Upon information and belief, the Attorney General does not believe that
18 he is obligated by law to conduct periodic compliance reviews. Plaintiffs therefore seek
19 declaratory relief against the Attorney General in form of a judgment declaring that the
20 Attorney General is required to conduct periodic compliance reviews in accordance
21 with A.R.S. § 41-1492.09.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 24 a. For an injunction ordering the Consolidated Defendants to remove all
25 barriers to Plaintiffs’ full and equal enjoyment of the facilities, and to adopt
26 internal policies that ensure continuing compliance with the ADA;

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- b. For damages pursuant to A.R.S. § 41-1492.09(B)(2);
- c. For litigation expenses, including but not limited to attorneys' fees and costs and expert witness costs, pursuant to 42 U.S.C.A. § 12205, 28 CFR § 36.505 and A.R.S. § 41-1492.09(F);
- d. For mandamus relief against the Attorney General in the form of an order that the Attorney General must conduct periodic compliance reviews of covered entities in accordance with A.R.S. § 41-1492.09;
- e. For declaratory relief against the Attorney General in form of a judgment declaring that the Attorney General is required to conduct periodic compliance reviews in accordance with A.R.S. § 41-1492.09;
- f. Whatever other relief the Court deems just, equitable and appropriate.

RESPECTFULLY SUBMITTED this October 19, 2016.

STROJNIK P.C.



Peter Strojnik (6464)
1 East Washington Street
Suite 500
Phoenix, AZ 85004
Attorney for Plaintiff

Exhibit C

STROJNIK, P.C.
ATTORNEY AT LAW

**RULE 408 PROTECTED
SETTLEMENT COMMUNICATION**

October 24, 2016

Mark A. Tucker
Attorney at Law
By E-mail and U.S. Mail *Mark@tuckerlawaz.com*

Re: *Advocates for Individuals with Disabilities Foundation, Inc. v. Rokar, LLC;*
CV2016-008862

Dear Mark:

A judicial stay has been placed in this matter. There will be no motion practice from either side for now. Unfortunately, this stay delays the adjudication of the matters for many months to come, not including the subsequent appeals which are anticipated by all sides in the current dispute. In the meantime, we will consider settling your individual case(s), which would remove your case from the list of consolidated matters. Overtime, our cost and expenses for each individual matter will rise. Offers to settle now will likely not reflect potential future settlement amount offers. We firmly believe that this matter should and will settle, and the best time to do this would be now. The Foundation is prepared to accept 1) remediation of the alleged parking violations. 2) Confidentiality Covenant. 3) a one-time total payment of \$1,750.00 to cover all attorney's fees, expenses and costs. This offer will remain open for 10 business days.

Sincerely,



Peter Strojnik, Esq.