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15
16 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

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

18 **ADVOCATES FOR AMERICAN**
19 **DISABLED INDIVIDUALS, LLC, and**
20 **David Ritzenthaler, dealing with Plaintiff's**
sole and separate claim,

21 **Plaintiff,**

22 **vs.**

23 **1639 40TH STREET LLC,**

24 **Defendant.**

Case No: CV2016-090506

**STATE OF ARIZONA'S MOTION TO
CONSOLIDATE CASES FOR LIMITED
PURPOSES, SET A SCHEDULING
CONFERENCE, ALLOW LEAVE TO
SERVE BY OTHER MEANS**

AND

**REQUEST FOR EXPEDITED
CONSIDERATION**

(Assigned to the Hon. David M. Talamante)

1 Pursuant to Arizona Rule of Civil Procedure 42(a), and for the reasons set forth herein,
2 the State of Arizona *ex rel.* Mark Brnovich, the Attorney General (“the State”) hereby moves to
3 consolidate the cases listed in Appendix A for the following limited purposes:

4 (1) considering whether the complaints filed by these Plaintiffs should be dismissed on
5 the basis of common issues of law and fact; and

6 (2) considering whether the Court should issue any sanctions or other remedial orders.¹

7 The State is currently seeking to intervene to pursue these limited purposes.² If these
8 cases are consolidated, and the State is permitted to intervene as a limited purpose defendant, the
9 State intends to file a motion seeking dismissal of all consolidated cases on the basis of
10 threshold questions of law and fact common to all consolidated cases, including, but not limited
11 to, Plaintiffs’ lack of standing. Consolidation would thus allow the Court to resolve in one
12 instance threshold questions common to over one thousand cases, benefiting the parties involved
13 in the cases, providing consistent adjudication of these issues, and reducing the burden on the

14
15 ¹ “Plaintiffs” in this motion refers to the plaintiffs in the cases listed in Exhibit A:
16 Advocates for American Disabled Individuals LLC (“AADI LLC”), Advocates for Individuals
17 with Disabilities LLC (“AID LLC”), Advocates for Individuals with Disabilities Foundation Inc.
18 (“AID Foundation”), and David Ritzenthaler (“Ritzenthaler”). These four plaintiffs are closely
19 related, as evidenced by court and Corporation Commission filings—AADI LLC is simply the
20 former legal name of AID LLC (<http://ecorp.azcc.gov/Details/Corp?corpId=L20576609>); AADI
21 LLC and Ritzenthaler were collectively referred to as “Plaintiff” on the initial cases (including
22 this one); AID LLC and Ritzenthaler were collectively referred to as “Plaintiff” on the later
23 cases (*see, e.g.*, CV2016-092155 Complaint); Ritzenthaler is the Director and Chairman of AID
24 Foundation (<http://ecorp.azcc.gov/Details/Corp?corpId=F21042916>); and Ritzenthaler verified
25 AID Foundation’s recent complaints, which state that the Foundation is directed by Ritzenthaler
26 (*see, e.g.*, CV2016-011385 Complaint at ¶ 21).

² The State files this motion as prompted by the Court, with the Court’s permission to not
include all 1,289 captions in the motion, as would typically be required under Local Rule 3.1.

At this point, the State’s motion to intervene is under consideration, with a response set
for September 6. Although the State is currently a non-party, Rule 42(a) does not require a
motion from a party for consolidation. In fact, a court may order cases consolidated *sua sponte*
under Rule 42(a). *Infra* at p. 6. As previously stated, the State takes no position at this time as to
whether an ADA or AZDA violation exists in any particular case.

1 court system. In addition, consolidation will enable the Superior Court to examine whether it
2 actually has jurisdiction over the cases flooding its system. *See Arvizu v. Fernandez*, 183 Ariz.
3 224, 226 (App. 1995) (A “court has the duty to inspect its jurisdiction *sua sponte*.”).

4 **I. BACKGROUND**

5 Since February 12, 2016, Plaintiffs have filed well over 1,500 complaints, and Plaintiffs’
6 counsel has stated in open court that Plaintiffs will “probably file 8,000 cases in the next two
7 months.” Oral Argument on August 12, 2016 in CV2016-090503. Indeed, just days after this
8 Court ruled in CV2016-090503 that the plaintiff in that case lacked standing, Plaintiffs’ counsel
9 filed eighty-one new complaints, also with standing deficiencies.³

10 Based on the State’s research, 1,289 cases filed by Plaintiffs remain active and pending in
11 Maricopa County Superior Court as of the date of this filing, and those cases are listed in
12 Appendix A.⁴ The Court may take judicial notice of the records of these actions. *In re Sabino*
13 *R.*, 198 Ariz. 424, 425 ¶ 4 (App. 2000) (“[i]t is proper for a court to take judicial notice of its
14 own records or those of another action tried in the same court”).

15 **A. Common Allegations**

16 On information and belief, and based on a random sampling,⁵ all of those complaints
17 listed in Appendix A have the following elements:

18
19 ³ Compare CV2016-090503, Dkt. 15 (minute entry entered 8/12/16 and filed 8/16/16) with
20 Appendix A, CV2016-011285 (filed Aug. 8/17/16) through CV2016-011479 (filed Aug.
21 August 17 and 18. In any case, Plaintiffs have made no effort to withdraw these complaints.

22 ⁴ The State realizes that some of these cases may have been dismissed in between the time
23 the State checked these public dockets and the filing of this Motion. But given that Plaintiffs
24 should be aware which cases they have recently dismissed, if Plaintiffs know that any of the
25 cases listed have been recently dismissed, they can provide that information to the Court.

26 ⁵ The State has not yet been able to scrutinize the complaints filed in each of the 1,289
pending actions, or the amended complaints filed in some of those cases, many of which were
filed under “Notices of Errata.” *See, e.g., CV2016-006761, Advocates for Individuals with*
Disabilities Foundation, Inc., Dkt. 4 (“Notice of Errata” attaching First Amended Complaint

1 1) Legal Basis:

2 a. The complaints allege violations of the Americans with Disabilities Act
3 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and the Arizonans with Disabilities Act
4 ("the AZDA"), Arizona Revised Statutes ("A.R.S.") §§ 41-1492 *et seq.*;

5 b. The complaints either allege:

6 i. That the defendant business is a public accommodation (without
7 specifying the nature of the public accommodation or, in the case of
8 several hundred complaints, erroneously claiming that the defendant
9 operates a hotel); or

10 ii. That the defendant business is a commercial facility;

11 c. The complaints allege violations regarding one or more of the following five
12 issues:

13 i. Handicapped parking signs in which the bottom of the sign is less than
14 60 inches from the ground;

15 ii. Handicapped parking signs that do not include a designation that the
16 handicapped parking spot is "van accessible";

17 iii. Handicapped parking signs that do not have the International Symbol of
18 Accessibility;

19 iv. Insufficient number of handicapped parking spots;

20 v. Improper locations for handicapped parking spots.⁶

21
22 with substantive changes.). But the mass-produced, copy-and-paste nature of all of the
23 complaints viewed suggests that all complaints filed on the same day contain the same
24 allegations (other than having different defendants). The State has conducted a random
25 sampling of the complaints listed in Exhibit A, and makes its claims on the basis of this random
26 sampling. Plaintiff, of course, is free to point out any complaints that contradict the State's
findings from its random samplings, or argue that certain cases should not be consolidated.

⁶ Tellingly, many of the early complaints list several of these issues with an "and or"
qualifier, failing to adequately inform each defendant about which one of the issues Plaintiffs

- 1 d. The complaints allege that persons with disabilities are “deterred” from visiting
2 the location in the future;
3 e. The complaints allege that the defendants have a “historical failure” to comply
4 with the ADA and AZDA;

5 2) Relief Requested:

- 6 a. The complaints seek declaratory judgments that the defendant was in violation
7 of the ADA and AZDA and “took no action” to ensure its public
8 accommodation was fully accessible;
9 b. The complaints seek permanent injunctive relief, asking the Court to:
10 i. Direct the business to comply with the ADA and AZDA; and
11 ii. Order the business closed until it is in full compliance;
12 c. The complaints seek attorneys’ fees (“no less than \$5,000”) as well as payment
13 of costs and expenses;
14 d. The complaints seek monetary damages under the AZDA (specified in later
15 complaints to be “no less than \$5,000”);

16 3) Signatures on Complaints:

- 17 a. The complaints purport to be signed by Peter Strojnik;
18 b. The complaints purport to be verified under penalty of perjury via an
19 “electronic signature authorized” by David Ritzenthaler or an electronic
20 signature by Fabian Zazueta as an “authorized agent.”

21 **B. Common Omissions**

22 Just as important as what the complaints allege is what they fail to allege:
23

24 are complaining. *See, e.g.*, Complaint at ¶ 10 (“insufficient handicapped parking spaces,
25 insufficient designation or signage **and or** insufficient disbursement of such parking spaces”
26 (emphasis added)).

1 1) Notice:

- 2 a. The complaints fail to allege that the defendants refused to fix the alleged
3 violations, or were even notified about the alleged violations.

4 2) Disability:

- 5 a. The complaints fail to allege that they are brought by a person with an
6 identified disability who actually was or would be injured by the alleged
7 violations.

8 3) Organization:

- 9 a. The complaints brought by the organizational Plaintiffs fail to identify a single
10 member who has been affected by the alleged violations.

11 4) Visit:

- 12 a. The complaints fail to allege that a person with an identified disability:
13 i. Was actually denied equal access;
14 ii. Suffered any sort of injury-in-fact; or
15 iii. Encountered the alleged barriers.
16 b. In fact, the complaints fail to allege that a person with an identified disability
17 **ever visited, or expressed an intent to visit** the pertinent location, prior to
18 filing the complaint.

19 5) Future intent:

- 20 a. The complaints fail to allege that a person with an identified disability has any
21 intent, desire, or reason to visit the location at issue in the future, whether it is
22 fully accessible to persons with disabilities or not.

23 **II. CONSOLIDATION UNDER RULE 42(A)**

24 Arizona Rule of Civil Procedure 42(a) states:

25 When actions involving a common question of law or fact are pending before the
26 court, it may order a joint hearing or trial of any or all the matters in issue in the

1 actions, or it may order all the actions consolidated, and it may make such orders
2 concerning proceedings therein as may tend to avoid unnecessary costs or delay.

3 This rule makes plain that consolidation is a matter of the Court’s discretion. *Cf. Cypress*
4 *on Sunland Ass’n v. Orlandi*, 227 Ariz. 288, 295 ¶ 20 (App. 2011) (court of appeals reviews
5 orders to consolidate for abuse of discretion). The rule requires no motion or other application
6 from the parties—indeed, courts may order consolidation of cases *sua sponte*. *Allen v. Superior*
7 *Court of Maricopa Cnty.*, 86 Ariz. 205, 209 (1959); *cf. In re Adams Apple, Inc.*, 829 F.2d 1484,
8 1487 (9th Cir. 1987) (federal “trial courts may consolidate cases *sua sponte*”).

9 Consolidation “does not merge the suits into a single cause, or change the rights of the
10 parties.” *Yavapai Cnty v. Superior Court In and For Yavapai Cnty.*, 13 Ariz. App. 368, 370
11 (1970) (internal citations and quotation marks omitted). Instead, consolidation is done “for
12 limited purposes or for the trial of certain issues only.” *Torosian v. Paulos*, 82 Ariz. 304, 315
13 (1957). Consolidation allows the courts to bundle together common questions of law or fact,
14 ensuring that legal questions affecting multiple cases are resolved consistently. *See Behrens v.*
15 *O’Melia*, 206 Ariz. 309, 310-11 (App. 2003); *Hancock v. McCarroll*, 188 Ariz. 492, 495 (App.
16 1996) (upholding trial court decision to consolidate on the basis of “sufficient commonality of
17 the questions of law”).

18 Here, substantially similar complaints were filed in over 1,500 cases, with many of those
19 complaints being virtually (or in some cases, completely) identical.⁷ Though the defendants’
20 identities and locations vary, the complaints still contain common questions of law and fact
21 regarding the basis of Plaintiffs’ claims. If the State’s motion to intervene is granted, the State
22
23

24 ⁷ For example, in CV2016-011163, Plaintiff AID Foundation sued Preeti-Seema
25 Apartments LP, regarding a business located at 963 McQueen Rd. in Chandler. In CV2016-
26 011164, the exact same complaint was brought against the same defendant, regarding the same
business at the same location. Neither complaint has been dismissed by Plaintiff.

1 intends to file a motion seeking resolution of these common threshold questions. As such, these
2 cases are perfect candidates for consolidation.

3 The high number of cases the State seeks to consolidate weighs in favor of consolidation,
4 not against it. Without consolidation, the risk of common legal questions being resolved
5 inconsistently is very high. *See Behrens*, 206 Ariz. at 310. Even if this case were to be
6 dismissed, hundreds of other pending cases would remain, and Plaintiffs would—by their own
7 admission—file thousands more cases.

8 Moreover, the State’s interests in the constitutional separation of powers, the
9 effectiveness of its enforcement duties under the AZDA, and the statutory interpretation of the
10 AZDA, as outlined in the Motion to Intervene, will be best addressed by consolidating the
11 actions as requested in this motion. *See Motion to Intervene* at 7-9. Plaintiffs’ actions threaten
12 the State’s interests, and consolidation will serve to ensure these interests are quickly and
13 consistently addressed.

14 **III. CONSOLIDATION UNDER LOCAL RULE 3.1**

15 Under Local Rule 3.1(c)(1), a motion to transfer related cases may be brought by a party
16 who believes that such cases:

- 17 (A) arise from substantially the same transaction or event;
- 18 (B) involve substantially the same parties or property;
- 19 (C) call for determination of substantially the same questions of law; or
- 20 (D) for any other reason would entail substantial duplication of labor if heard by different
21 judges.

22 Defendant moved to transfer twelve related cases under this rule, under largely the same
23 grounds as this motion. The Court granted that motion and related those cases to this one. The
24 unique commonality between those cases is that the defendants at issue are represented by
25 Jennings, Strouss, & Salmon and are willing to fight Plaintiffs rather than settle. Other than
26 that, the cases are like the other open cases listed in Appendix A.

1 Consolidation is governed by Local Rule 3.1(c)(2). That rule refers to a motion to
2 consolidate pursuant to Rule 42(a), but unlike Local Rule 3.1(c)(1), it does not refer to a motion
3 by a party. Therefore, the State may file a motion, even though it is not yet a party (and in any
4 case, the Court may consolidate cases *sua sponte*).

5 Rule 3.1(c)(2) dictates that the consolidation motion “be heard by the judge assigned to
6 the earliest-filed case.” This case is the earliest-filed case that has not been dismissed or
7 removed. It was filed on February 12, 2016, among dozens of other nearly identical complaints.
8 In order to determine which case was filed first, the State reviewed the times written by the clerk
9 next to the “filed” notation on the civil cover sheet. For the first group of complaints, the
10 earliest time written is 1:15pm (CV2016-090508), and then later times are written in case
11 number order to the latest time, which is 1:26 pm (CV2016-090487). In other words, contrary
12 to what one might expect, the ‘508 case is the earliest case, followed in order by ‘507, ‘506,
13 ‘505, through ‘487. The ‘508 and ‘507 cases have been voluntarily dismissed with prejudice,
14 and like other such cases, are not included in Appendix A. Therefore, this case, filed at 1:16 pm
15 on February 12, 2016, is the earliest-filed case sought to be consolidated.

16 Without consolidation, hundreds more defendants will be forced to (1) expend thousands
17 of dollars in order to settle or fight legally invalid claims, or (2) risk a default judgment. Many
18 defendants have already capitulated under the temporal and monetary pressures of hiring a
19 lawyer and responding to a complaint asking for thousands of dollars and an order that would
20 shut down their business. Plaintiffs have publicly proclaimed that \$7,500 is “always the
21 opening negotiation amount” they demand to settle each case, regardless of the allegations, and
22 that as of August 18, Plaintiffs already had settled 209 cases for an average of about \$3,900.⁸ If
23

24 ⁸ See AID Foundation, *AID Exposes ABC 15 Hateful Lies*, (published Aug. 19, 2016),
25 https://www.youtube.com/watch?v=PZOE_h10N4A (at 2:55 and 4:25).

26 Plaintiffs insert confidentiality clauses into their settlements with defendants, preventing
the State from testing the accuracy of these numbers at this stage of the proceedings.

1 accurate, this means Plaintiffs have already collected a staggering total of \$815,100 in
2 settlements, almost all of which were reached without a court ever considering the threshold
3 issues the State seeks to raise.

4 At present, hundreds of defendants are either at risk of a default judgment or are rapidly
5 approaching default. And Plaintiffs have started to file applications for default, seeking
6 penalties just as severe as the ones in their complaints. For example, in CV2016-004628,
7 *Advocates for Individuals with Disabilities, LLC v. Megha LLC*, Plaintiffs' counsel, Peter
8 Strojnik, filed a sworn affidavit last Wednesday seeking "not less than \$5,000" in attorneys' fees
9 for himself, even though the only document he filed before the application for entry of default in
10 that case was the mass-produced, copy-and-paste complaint, similar to the one issued here.

11 Some defendants in these cases are now aware of the State's motion to intervene, but are
12 still uncertain of the best course of action, as intervention or consolidation will not stay,
13 suspend, or extend any deadlines. With over one thousand cases still pending and response
14 deadlines approaching or passing for defendants every week, only consolidation can ensure that
15 further settlements or expenses are not incurred before the underlying threshold questions can be
16 resolved.

17 **IV. REQUEST FOR A SCHEDULING CONFERENCE**

18 Pursuant to Rule 16(d), the State further requests that, if the Court grants this Motion to
19 Consolidate, the Court hold a scheduling conference as soon as possible to address the just and
20 efficient administration of the consolidated cases. To provide the Court and the parties
21 maximum notice, the State hereby expresses its intention to request at that conference that the
22 Court (1) set an initial briefing schedule for motions on the issues for which consolidation is
23 granted, and (2) enter a scheduling order staying, suspending, or otherwise enlarging all
24 deadlines in the consolidated cases until 60 days after the Court issues an order stating that the
25 Court has fully and finally resolved the issues on which consolidation was granted, including:

- 26 • all answer deadlines pursuant to Rules 12 and 15;

- 1 • all current or future deadlines for filing responsive pleadings or otherwise defending
- 2 pursuant to the grace period in Rule 55(a)(4);⁹
- 3 • all deadlines and requirements to respond to any discovery already or subsequently
- 4 propounded or served or any motions to compel, and for serving initial or supplemental
- 5 disclosure statements under Rules 26-36; and
- 6 • all deadlines for filing a joint report and proposed scheduling orders under Rule 16(b).

7 **V. REQUEST FOR LEAVE TO SERVE BY OTHER MEANS**

8 Pursuant to Rule 5(c)(2)(D), the State respectfully requests leave to serve this Motion by
9 other means. Under Local Rule 3.1(c)(2), a copy of this Motion must be filed in each case that
10 the State seeks to consolidate. The State intends to file in each case, but locating and serving the
11 defendants in 1,289 cases would be impracticable. *See Blair v. Burgener*, 226 Ariz. 213, 219 ¶
12 18 (App. 2010) (recognizing that alternative service under 4.1(k) is proper when it would
13 otherwise be “extremely difficult or inconvenient” to effectuate service); *cf.* Ariz. R. Civ. P.
14 5(d).¹⁰ The State therefore requests that the Court permit service of this Motion and attachments
15 by the following alternate means: (i) filing a copy of the Motion and attachments through
16 Turbocourt in each case in which it seeks to consolidate; (ii) hand delivering a single copy of the
17 Motion and attachments to Mr. Peter Strojnik, counsel for American Disabled Individuals LLC,
18

19 ⁹ Upon information and belief, there is only one case of the cases the State seeks to
20 consolidate in which an application for default is pending (CV2016-004628), and that
21 application was filed on August 24, 2016.

22 ¹⁰ This rule provides in relevant part:

23 In any action in which there are unusually large numbers of defendants, the court,
24 upon motion or of its own initiative, may order that service of the pleadings of the
25 defendants and replies thereto need not be made as between the defendants and . . .
26 the filing of any such pleading and service thereof upon the plaintiff constitutes
due notice of it to the parties. A copy of every such order shall be served upon the
parties in such manner and form as the court directs.

Although it only applies to pleadings, its logic should inform the Court’s decision under Rule
5(c).

1 Advocates for Individuals with Disabilities LLC, Advocates for Individuals with Disabilities
2 Foundation Inc., and David Ritzenthaler; (iii) hand delivering a single copy of the Motion and
3 attachments to counsel for the defendant in CV2016-090506; and (iv) conspicuously posting a
4 copy of the Motion and attachments, as well as the Court's order granting service by other
5 means, on the Attorney General's website, www.azag.gov. A separate proposed order granting
6 leave to serve by other means is attached to this Motion.

7 **VI. REQUEST FOR EXPEDITED CONSIDERATION**

8 As noted above, the clock is ticking for defendants in many of these cases to file
9 responsive motions or pleadings. Other defendants are already at risk of a default judgment, and
10 in some cases, Plaintiffs are already seeking default judgments and thousands of dollars in
11 attorneys' fees. An order to consolidate these cases, coupled with a scheduling conference to
12 extend the deadlines in these cases, would ensure that the fundamental, threshold jurisdictional
13 questions are considered before these cases proceed further. It would also allow the Court to
14 provide guidance to the parties on the jurisdictional issues before Plaintiffs file 8,000 more cases
15 raising the same questions. As such, consolidating these actions in order to deal now with the
16 underlying, common defects in the existing cases would be appropriate and helpful.

17 The State waives any reply and respectfully requests that this Court rule on this Motion to
18 Consolidate as soon as is practicable. **In particular, the State requests that the Court grant**
19 **leave to serve by other means as soon as possible so that the State may notify defendants in**
20 **all 1,289 cases through alternative means.**

21 **V. CONCLUSION**

22 For the foregoing reasons, the State respectfully requests that the Court consolidate the
23 cases listed in Appendix A for the limited purposes of considering whether the common
24 questions of whether the complaints filed by the Plaintiffs should be dismissed and whether the
25 Court should issue any sanctions or remedial orders. If the Court does consolidate the cases, the
26 State further requests that the Court hold a scheduling conference as soon as possible to extend

1 deadlines in these cases until the common questions can be resolved. Finally, the State also
2 requests that the Court give expedited consideration to this motion and its request for leave to
3 serve by other means.

4
5 RESPECTFULLY SUBMITTED: August 30, 2016.

6 MARK BRNOVICH,
7 ATTORNEY GENERAL

8
9 BY:  _____

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11 Matthew du Mée
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26

1 Document electronically transmitted
2 to the Clerk of the Court for filing using
3 AZTurboCourt this 30th day of August, 2016.

4 **COPY** of the foregoing HAND DELIVERED
5 this 30th day of August, 2016 to

6 Peter Strojnik, State Bar No. 6464
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19 Courtesy copies of the foregoing also mailed and
20 e-delivered using TurboCourt

21 /s/ Nyla Hunsinger