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11 *Attorneys for State of Arizona*

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 ADVOCATES FOR INDIVIDUALS WITH
15 DISABILITIES FOUNDATION, INC., a
16 charitable non-profit foundation, *et al.*;

17 Plaintiffs,

18 vs.

19 CONSOLIDATED DEFENDANTS;

20 Defendants,

21 and

22 STATE OF ARIZONA, *ex rel.* MARK
23 BRNOVICH;

24 Defendant-Intervenor.
25
26

Case No: CV2016-090506 consol.

**STATE'S RESPONSE TO MOTION FOR
CLARIFICATION AND MOTION FOR
LEAVE TO FILE CONSOLIDATED
RESPONSE TO DEFENDANT'S
APPLICATION FOR FEES AND COSTS**

(Assigned to the Hon. David M. Talamante)

1 Limited-Purpose Defendant State of Arizona *ex rel.* Mark Brnovich (the “State”), by and
2 through undersigned counsel, hereby responds to the Plaintiffs’ Motion for Clarification and
3 Motion for Leave to File Consolidated Response to Defendant’s Application for Fees and Costs
4 (the “Motion”).

5 **I. Clarification that the Deadline for Consolidated Defendants to File Requests for**
6 **Attorneys’ Fees and Costs Has Not Yet Begun to Run and Is Not Triggered by the**
7 **Filing of the Proposed Form of Judgment Would Be Helpful To Eliminate Any**
8 **Doubts.**

9 The State agrees that clarification would be helpful for the avoidance of any uncertainty.¹
10 In the Court’s February 17, 2017 minute entry, which was entered on March 2, the Court made
11 clear “IT IS FURTHER ORDERED that all ... consolidated cases [other than CV2016-090543]
12 remain stayed pending further order of the Court on issues relating to attorneys’ fees and costs.”
13 The State believes that this Order makes clear that the time for Consolidated Defendants to file
14 attorneys’ fees and cost requests has not yet begun to run. However, to the extent it would clear
15 up any remaining ambiguity, the Court should enter a short order making that clear. A proposed
16 form of order is filed concurrently with this Response.

17 In addition, deferring attorneys’ fees and costs will not affect the appealability of the
18 dismissal. As the Court made clear, it ordered the State to file a proposed form of judgment
19 with Rule 54(b) language. The State anticipates filing that form of judgment next week. The
20 Arizona Court of Appeals has made clear that this Court may enter a 54(b) judgment, and
21 reserve for subsequent proceedings the issue of attorneys’ fees and costs. *See, e.g., Nat’l Broker*
22 *Assocs., Inc. v. Marlyn Nutraceuticals, Inc.*, 211 Ariz. 210, 218 ¶ 37 (App. 2005) (“If the trial
23 court had certified the October 13 order under Rule 54(b), it plainly could have later ruled on the
24 separate claim for attorneys’ fees.”). This approach is also consistent with the Rules of Civil

25 ¹ As a preliminary matter, the State did not advise any defendants to file anything. The State
26 simply informed defendants in an email that predated the entry of the February 17, 2017 Minute
Entry that if defendants wished to file a fee application, they needed to do so within 10 days to
ensure it was in on time. Once the minute entry clarified this issue, the State updated defendants
with that information.

1 Procedure. *See* Ariz. R. Civ. P. 54(g)(3)(B). Here, the 54(b) judgment will expressly reserve
2 the adjudication of Consolidated Defendants’ claims for attorneys’ fees and costs, and any
3 sanctions against Plaintiffs, for future proceedings.

4 **II. The Court Should Not Permit a Consolidated Response to Consolidated Defendants’**
5 **Requests for Attorneys’ Fees and Costs.**

6 The State disagrees that a single response by Consolidated Plaintiffs to the various
7 applications for attorneys’ fees and costs would be appropriate. This is because different
8 defendants have identified different issues peculiar to their case (and brought applications for
9 fees based on different statutes, rules, or doctrines). However, to the extent the Court wishes to
10 permit a consolidated response, it should require Plaintiffs, in that response, to specifically
11 address the claims and issues presented in each request for attorneys’ fees and costs. The State
12 has no objection to the Court staying the deadline to respond to the Consolidated Defendants’
13 applications to a later date.

14 For the foregoing reasons, the State respectfully requests the Court 1) grant clarification
15 and 2) deny, in whole or in part, leave to file a consolidated response to Consolidated
16 Defendants’ requests for attorneys’ fees and costs.

17 RESPECTFULLY SUBMITTED this 17th day of March, 2017.

18
19 MARK BRNOVICH,
ATTORNEY GENERAL

20
21 BY: /s/ Brunn W. Roysden III
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1 Document electronically transmitted
2 to the Clerk of the Court for filing, using
3 AZTurboCourt, this 17th day of March, 2017.

4 **COPY** of the foregoing *e*-delivered via
5 AZTurboCourt this 17th day of March, 2017, to:

6 Peter Strojnik, Esq.
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12 **COPY** of the foregoing *e*-mailed to the Attorney's
13 General's distribution list and posted to the
14 Attorney General's website as soon as practicable after
15 this 17th day of March, 2017.

16 *s/ Kim Cundiff*
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