

No. 18-16032

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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FERNANDO GASTELUM,  
Plaintiff-Appellant.

v.

CANYON HOSPITALITY LLC,  
Defendant-Appellee

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
Case No. 2:17-cv-02792-GMS

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**STATE OF ARIZONA'S MOTION TO INTERVENE**

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Dated: June 22, 2018

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## INTRODUCTION

The State of Arizona (the “State”)—which has special interest in, and experience with, this case, parties, and issues presented—respectfully moves to intervene in the above-captioned case, both permissively and as of right. For the reasons that follow, this motion should be granted.<sup>1</sup>

This motion arises from the State’s ongoing efforts to ameliorate the abuse of Arizona state and federal courts perpetrated by Plaintiff’s counsel, Peter Strojnik. For example, the State successfully intervened, consolidated and obtained dismissal of, *more than one thousand* state court actions filed by Strojnik against Arizona businesses in different plaintiffs’ names. The State further has sought to intervene in the District of Arizona to obtain relief that would have prevented Strojnik from filing most of the instant actions on appeal.

Because the instant appeal provides an important avenue to meaningful relief for Arizonans improperly sued by Strojnik, the State respectfully seeks to intervene to defend the district court’s judgment of dismissal—which may easily resolve dozens of cases currently pending and/or stayed in the District of Arizona once affirmed on appeal. The State respectfully submits that its participation will facilitate this Court’s resolution of the issues raised and provide important insight on the practical consequences of this Court’s decision here.

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<sup>1</sup> Plaintiff will oppose this motion.

The requirements for permissive and intervention as of right are both satisfied here. As to the former, this motion is timely because it is filed within the deadline to appeal from the district court's original May 25, 2018 judgment, as well as the most recent June 15, 2018 final judgments now on appeal. In addition the State will advance arguments concerning Gastelum's Article III standing, which is a common question of law and fact with the underlying action.

The requirements for intervention as of right are also satisfied. The State has protectable interests in both (1) the economic well-being of its businesses subject to Strojnik's improper suits and related shakedown tactics and (2) the loss of tax revenue that occurs when businesses deduct from their taxable incomes settlement payments they make to Strojnik/Gastelum. Both interests could easily be impaired if Gastelum's fundamentally flawed and improper suits are permitted to proceed beyond the motion to dismiss phase. And existing parties do not adequately represent the State's interests—each private business has narrow economic interests, rather than the “broad public interest” that the State represents.<sup>2</sup> Moreover, it is plainly not the case that existing parties “will undoubtedly make all the intervenor's arguments.”<sup>3</sup>

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<sup>2</sup> *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995), *abrogated in part on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (en banc) (“The government must present the broad public interest, not just the economic concerns of the [affected] industry.”).

<sup>3</sup> *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001).

## BACKGROUND

This action is an important part of nearly two thousand cases filed by Plaintiffs' counsel against Arizona businesses in the last 2½ years. The State, through its Attorney General, has played an important role in the resolution of these cases and continues to be involved. A brief overview of those suits and the Attorney General's role is beneficial to understanding the State's interests here.

### *Round One: Ritzenthaler/AID Cases*

This case arises from the second round of the one of the largest, and still ongoing, abuses of Arizona state and federal courts in their history. In the first round, Plaintiffs' counsel, Peter Strojnik "pursued upwards of 160 cookie-cutter lawsuits in federal court and, from early to later 2016, more than 1,700 such suits in Arizona state court." *Advocates for Individuals With Disabilities LLC v. MidFirst Bank*, 279 F. Supp. 3d 891, 893 (D. Ariz. 2017). Those complaints were filed in the name of *inter alia* David Ritzenthaler and Advocates for Individuals with Disabilities LLC ("AID"), and alleged violations of the Arizona with Disabilities Act ("AzDA") and the Americans with Disabilities Act ("ADA"). *Id.* at 892.

The State successfully intervened in the state court actions, consolidated the thousand-plus suits then pending, and obtained dismissal of virtually all of them for lack of standing (essentially the same issue presented in this appeal). *See*

Ex. A. The State subsequently settled its motion for sanctions in those consolidated actions, which resulted in a permanent injunction against the *Ritzenthaler* plaintiffs from filing any new suit under AzDA or the ADA in Arizona state courts. *Id.* ¶ 4. The settlement expressly “applie[d] solely to the consolidated cases, and does not preclude the State from acting to protect the public in other litigation,” such as this case. *See id.* ¶ 6.

The *Ritzenthaler*/AID cases in federal court were all dismissed for lack of standing or due to settlement. None resulted in a favorable contested judgment for plaintiffs. Numerous judges of the District of Arizona ultimately sanctioned and/or rebuked *Ritzenthaler* and *Strojnik*. Among other findings, those judges explained:

- *Strojnik* filed “cookie-cutter lawsuits” “right down to the same typographical errors.” *MidFirst Bank*, 279 F. Supp. at 893 (Wake, J.).
- *Strojnik*’s “extortionate practice has become pervasive” and he engaged in “unethical extortion of unreasonable attorney’s fees[.]” *Id.* at 893, 898.
- *Strojnik* “misrepresented [plaintiffs’] intent to litigate [their] federal claim” and “misle[d] and manipulate[d] opposing counsel[.]” *AIDF v. Golden Rule Properties, LLC*, CV-16-02412, 2017 WL 2417046, at \*2 (D. Ariz. Mar. 20, 2017) (Logan, J.) (imposing sanctions).
- *Strojnik* and his co-counsel “attempt[ed] to increase the costs of litigation to maximize Defendants’ desire to settle the suit due to the cost of defense,”

and engaged in “bad faith conduct.” *AIDF v. Golden Rule Properties LLC*, No. CV-16-02413, 2016 WL 5939468, at \*1, \*6 (D. Ariz. Oct. 13, 2016) (Snow, J.) (imposing sanctions).

Concerned that Strojnik was abusing Arizona federal and state courts (particularly in light of the new *Gastelum* suits, *see infra* at 5-7), the State moved to intervene in one of the federal *Ritzenthaler* cases on December 5, 2017. *See MidFirst Bank* (Doc. 87) (attached hereto as Exhibit B). The State did so for the limited purpose of seeking a vexatious-litigant determination and requiring Strojnik to obtain pre-suit approval by a court before filing any new actions (such as these). *Id.* The district court has not acted on the State’s motion to intervene, however, and more than 80 new *Gastelum* suits have been filed since the State’s motion was filed. *See Ex. C.*

### ***Round Two: Gastelum Cases***

Following dismissal of the thousand-plus state court actions on April 24, 2017, Ex. D., Strojnik began filing new actions in federal court with a new plaintiff, Fernando Gastelum, on July 27, 2017. *See Gastelum v. MCPHX17 LLC*, No. CV-17-2536 (D. Ariz. filed July 27, 2017). Strojnik continued filing actions in

Gastelum's name, which presently number 143 (and counting). Indeed, Strojnik has filed *ten* new *Gastelum* actions since the original notice of appeal in this case.<sup>4</sup>

Each *Gastelum* suit generally comes in one of two templates. All assert a federal ADA claim and state law negligence claim (essentially negligent failure to comply with disability laws). *See, e.g.*, Ex. E. And many of them also assert state law negligent misrepresentation, failure to disclose and fraud claims (*i.e.*, essentially misleading Gastelum about disability-law compliance). *See, e.g.*, Ex. F.

“The complaints filed in all the cases ... are substantially similar, boilerplate complaints.” *Gastelum v. Canyon Hosp. LLC*, CV-17-02792-PHX-GMS, 2018 WL 2388047, at \*2 (D. Ariz. May 25, 2018). In particular, all of the *Gastelum* complaints contain the same essential allegations regarding Article III standing, *i.e.* that “Mr. Gastelum ‘intends to book a room at the Defendant’s hotel once Defendant has removed all accessibility barriers.’ No complaint contains further detail on Mr. Gastelum’s return plans.” *Id.* (citation omitted).

Strojnik has successfully obtained settlements in over 50 of the *Gastelum* actions already. For each settlement, Gastelum receives a flat \$350 amount, with Strojnik retaining the balance. *Id.* at \*3. The State obtained and submitted a redacted copy of one settlement agreement, which for provided for \$18,750 in

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<sup>4</sup> *See* Ex. C. Those cases are docketed in the District of Arizona as 2:18-cv-01641-GMS, 2:18-cv-01659-GMS, 2:18-cv-01689-JJT, 2:18-cv-01725-DJH, 2:18-cv-01816-DJH, 2:18-cv-01829-DMF, 2:18-cv-01922-DJH, 2:18-cv-01929-HRH, 2:18-cv-01941-ESW, and 2:18-cv-01958-MHB.



recovery, of which \$350 went to Gastelum and the remaining ~95% went to Strojnik. *See MidFirst Bank* (Doc. 97).

### ***District Court Decision On Appeal***

The district court in the cases on appeal here held an evidentiary hearing on defendants' motions to dismiss on May 4 and May 11, 2018. *Canyon Hospitality*, 2018 WL 2388047, at \*2. Following these hearings, in which Gastelum testified, the court concluded that Gastelum "fail[ed] to meet the requirements for standing in every case," and therefore dismissed all of them. *Id.* at \*1. The court's key findings were that:

Because of the volume of cases he has brought, his limited reasons for staying in Phoenix, the proximity to Casa Grande to which he easily can, and frequently does, return for his overnight stays, the evident enterprise in conjunction with his attorney to sue many hotels in the Phoenix area for ADA compliance, his personal finances, his past travel habits, and his testimony that he could not return to all hotels he has sued, the Court finds that he has failed to establish a sufficient likelihood that he would return to any of the hotels that are the defendants in the cases in which this hearing is noticed....

Mr. Gastelum and his counsel Mr. Strojnik are engaged in a joint enterprise in which they are filing multiple suits against any Phoenix area lodgings that they believe to be out of compliance with the ADA in some respect or respects. They are filing such suits without reference to whether Mr. Gastelum actually had any intent to make future visits to those facilities for reasons not related to his pursuit of ADA claims against them. Given the facts of this case Mr. Gastelum has failed to establish that he would have any likelihood of revisiting these facilities except to the extent it would be deemed necessary for him to do so to bring suit against each of the Defendants.

*Id.* at \*4.

Gastelum filed his original notice of appeal on May 25—*i.e.*, the same day of the district court’s judgment dismissing these cases. Judge Snow dismissed additional suits as recently as June 15, 2018, which have been consolidated into this appeal. *See* Doc. 6 (June 16, 2018 amended notice of appeal).

### LEGAL STANDARD

This Court’s consideration of motions to intervene is governed by the standard of Federal Rule of Civil Procedure 24. *See Int’l Union, United Auto., Aerospace & Agric. Implement Workers v. Scofield*, 382 U.S. 205, 216 n.10 (1965); *Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517–18 (7th Cir. 2004) (“[A]ppellate courts have turned to ... Fed.R.Civ.P. 24.”); *Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997) (same); *Day v. Apoliona*, 505 F.3d 963 (9th Cir. 2007).

Under Rule 24(b)(1)(B), “all that is necessary for permissive intervention is that intervenor’s ‘claim or defense and the main action have a question of law or fact in common’” and a timely motion. *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002) (quoting Rule 24(b)(1)(B)).

A party may also intervene as of right under Rule 24(a). In *Wilderness Society v. U.S. Forest Service*, this Court set forth its four-part test for analyzing a motion to intervene of right under Rule 24(a)(2):

(1) the motion must be timely; (2) the applicant must claim a “significantly protectable” interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant’s interest must be inadequately represented by the parties to the action.

630 F.3d 1173, 1177 (9th Cir. 2011) (en banc).

This analysis is “guided primarily by practical considerations, not technical distinctions.” *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001) (quotation marks and citation omitted); *see also Wilderness Soc’y*, 630 F.3d at 1179 (reiterating importance of “practical and equitable considerations” as part of judicial policy favoring intervention). Courts are “required to accept as true the non-conclusory allegations made in support of an intervention motion.” *Berg*, 268 F.3d at 819.<sup>5</sup>

## ARGUMENT

### I. THIS COURT SHOULD GRANT PERMISSIVE INTERVENTION

#### A. This Motion Is Timely

This Court has repeatedly explained that “the ‘general rule is that a post-judgment motion to intervene is timely if filed within the time allowed for the

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<sup>5</sup> This Court has held in an unpublished decision that filing of a notice of appeal “divest[s] the district court of its jurisdiction ... to entertain [a] motion to intervene.” *Bryant v. Crum & Forster Specialty Ins. Co.*, 502 Fed. Appx. 670, 671 (9th Cir. 2012). The State accordingly has sought to intervene in this Court, which plainly has jurisdiction to consider the State’s motion to intervene.

filing of an appeal.’” *U.S. ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992) (quoting *Yniguez v. Arizona*, 939 F.2d 727, 734 (9th Cir.1991) (alteration omitted)). The Supreme Court has similarly held that where a party “filed [its] motion within the time period in which the named plaintiffs could have taken an appeal ... the [party’s] motion to intervene was timely filed[.]” *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 396 (1977).

This motion is filed within 28 days of the district court’s first final judgment on May 25, 2018, and is thus within the time to file a notice of appeal. In addition, it is filed within 7 days of the most recent final judgments on appeal here—thus 24 days before a notice of appeal would be due in those cases.

More generally, this motion was filed within 45 days of the original filing date of the most recent case currently consolidated with this appeal. *See Gastelum v. Chandler HG LLC*, No. CV-18-1453 (filed D. Ariz. May 11, 2018); Doc. 6 (including case in amended notice of appeal). And this Court has held that a motion to intervene was timely when filed within *four months* of the suit being initiated—*i.e.*, nearly *three times* as long. *See Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995).

Importantly, the “requirement of timeliness is ... a guard against prejudicing the original parties.” *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994). Here, Gastelum will suffer little prejudice by having to address the arguments of

one additional appellee answering brief concerning the same issues of Article III standing. Indeed, given Strojnik and Gastelum’s willingness to file *hundreds* of suits against *hundreds* of businesses, they can hardly complain about having *one* additional adverse party. *See also Acree v. Republic of Iraq*, 370 F.3d 41, 50 (D.C. Cir. 2004), *abrogated on other grounds by Republic of Iraq v. Beatty*, 556 U.S. 848 (2009) (“Post-judgment intervention is often permitted ... where intervention would not unduly prejudice the existing parties.”).<sup>6</sup>

For all of these reasons, the State’s motion to intervene on appeal is timely.

**B. The State Will Advance Defenses That Raise Common Questions Of Law And Fact**

The other requirements of permissive intervention—*i.e.* that intervenor’s “claim or defense and the main action have a question of law or fact in common,” *Kootenai Tribe*, 313 F.3d at 1108—is easily satisfied as well. The State will raise Article III standing as a defense supporting the dismissals, which involves common questions of law and fact with arguments existing defendants will raise.

A favorable exercise of discretion is also warranted. The State’s participation would “assist the court in its orderly procedures leading to the resolution” of issues presented. *Kootenai Tribe*, 313 F.3d at 1111. In particular,

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<sup>6</sup> A finding of timeliness is also supported by the fact that the State has been attempting to address these suits through its proposed intervention in the *MidFirst Bank* case. *See supra* at 5.

the State can provide insight into the broader public interests at issue here, which the existing private business defendants may not have equal insight into.

## II. **ALTERNATIVELY, THIS COURT SHOULD GRANT INTERVENTION AS OF RIGHT**

Alternatively, this Court should grant intervention as of right. As discussed above, this motion is timely. *See supra* at 9-11. And the remaining requirements of *Wilderness Society* are satisfied as well.

### A. **The State Has Significant Protectable Interests That Could Be Impaired By Plaintiffs' Multitudinous Suits**

The State has at least two protectable interests that support intervention as of right, both of which could easily be impaired if the district court's dismissals are not affirmed on appeal.

*First*, the State has protectable "interest[s] in the health and well-being—both physical and economic—of its residents in general." *Zimmerman v. GJS Group, Inc.*, No. 17-304, 2017 WL 4560136, at \*5 (D. Nev. Oct. 11, 2017); *see also Sierra Club v. Robertson*, 960 F.2d 83, 86 (8th Cir. 1992) ("[T]he State has an interest in protecting and promoting the state economy on behalf of all of its citizens."). Specifically, the State has important interests in ensuring that its citizens and businesses are not unduly burdened by Strojnik's improper suits and abusive litigation tactics. That interest easily could be impaired if the district court's dismissals for lack of Article III standing are not affirmed.

In *Zimmerman*, the court granted intervention as of right to the State of Nevada in one of “274 actions in the District of Nevada alleging similar violations of the ADA,” so that Nevada could vindicate its “strong interest in protecting the public from malicious or premature [ADA] lawsuits that threaten Nevada business owners and adversely impact Nevada’s general economy.” 2017 WL 4560136, at \*1, \*3. The same result should obtain here for the State of Arizona facing a similarly vexatious ADA litigant.

*Second*, the State has significant interests in protecting tax flows into its treasury. Settlements extracted by Gastelum are generally tax deductible, thus often converting taxable business income into untaxed deductions. The State’s interest in protecting its tax revenue could easily be impaired if Strojnik continues to extract settlements from Arizona businesses (which a reversal here plainly threatens). Indeed, Gastelum/Strojnik have already extracted more than 50 settlements.

The State’s interests in protecting its tax revenues are thus sufficient to support intervention as of right. *See Scotts Valley Band of Pomo Indians of Sugar Bowl Rancheria v. United States*, 921 F.2d 924, 928 (9th Cir. 1990) (holding that potential that “the City will lose tax revenue” supported intervention as of right, and reversing district court’s denial of same); *see also Robertson*, 960 F.2d at 86 (“[T]he State has an interest in protecting its tax revenues.”).

**B. The State's Interests Are Not Adequately Represented By Existing Parties**

Finally, the State's interests are not adequately represented by existing parties. As this Court has explained, a movant's "burden of showing inadequacy is 'minimal,' and the applicant need only show that representation of its interests by existing parties 'may be' inadequate." *Berg*, 268 F.3d at 823 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)) (emphasis added). In considering the adequacy of representation, this Court must consider *inter alia* "whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments." *Id.* at 822.

This requirement is easily met: no private defendant (of the hundreds that Strojnik has sued) has ever raised the vexatious-litigant arguments that State has put forth in the *MidFirst Bank* case—thereby demonstrating that private defendants will not "undoubtedly make all of the [State's] arguments." *Id.* Moreover, none of the private defendants necessarily have sufficient economic interest in their individual cases to brief fully all pertinent issues and litigate them to completion.

More generally, this Court has recognized that while private defendants have narrower "economic concerns," the State "must present the broad public interest." *Forest Conservation Council*, 66 F.3d at 1499 (quoting *Sierra Club v. Espy*, 18 F.3d at 1208) (quotations omitted). Those differing interests further satisfy the State's "minimal" burden here. *Berg*, 268 F.3d at 823.



## CONCLUSION

For the foregoing reasons, the State's motion to intervene should be granted.

Respectfully submitted,

s/ Drew C. Ensign

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of June, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Counsel for all parties to the case that are registered CM/ECF users and will be served by the appellate CM/ECF system.

I have also mailed the foregoing document by First-Class Mail, postage prepaid to the following Defendants' counsel that have not yet entered appearances in this case:

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**APPENDIX: List of Exhibits**

**Exhibit A:** Order Approving Stipulation, *Advocates for Individuals with Disabilities v. Consolidated Defendants* (Ariz. Super. Ct. Nov. 13, 2017).

**Exhibit B:** State's Motion to Intervene, *Advocates for Individuals With Disabilities LLC v. MidFirst Bank*, 279 F. Supp. 3d 891 (D. Ariz. filed Dec. 5, 2017) (without exhibits).

**Exhibit C:** District Of Arizona Cases Involving Fernando Gastelum As Plaintiff (June 22, 2018) (generated by PACER).

**Exhibit D:** Judgment, *Advocates for Individuals with Disabilities v. Consolidated Defendants* (Ariz. Super. Ct. Apr. 24, 2017).

**Exhibit E:** Complaint, *Gastelum v. Debaca Land & Cattle, LLC*, No. CV-18-1112 (D. Ariz. filed Apr. 11, 2018).

**Exhibit F:** Complaint, *Gastelum v. Canyon Hospitality LLC*, No. CV-17-2792 (D. Ariz. filed Aug. 18, 2017).

# Exhibit A

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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 vs.

22  
23 STATE OF ARIZONA, *ex rel.* Mark  
24 Brnovich;

25 Defendant-Intervenor.  
26

Case No: CV2016-090506 (consol.)

**[PROPOSED] ORDER APPROVING  
STIPULATION BETWEEN PLAINTIFFS  
AND DEFENDANT-INTERVENOR,  
AWARDING SANCTIONS AGAINST  
CERTAIN PLAINTIFFS, AND  
RETURNING CASES TO ORIGINATING  
DIVISIONS**

(Assigned to the Hon. David M. Talamante)

1           These consolidated cases are before the Court on the State's pending motions for  
2 sanctions against Plaintiffs—Advocates for Individuals with Disabilities Foundation, Inc.;  
3 Advocates for Individuals with Disabilities, LLC f/k/a Advocates for American Disabled  
4 Individuals, LLC; and David Ritzenthaler—and counsel for Plaintiffs Peter Strojnik  
5 (collectively, "Plaintiffs and Strojnik"). Pursuant to the stipulation of Plaintiffs and Strojnik and  
6 Defendant-Intervenor State of Arizona *ex rel.* Mark Brnovich (the "State"), and good cause  
7 appearing, the Court ORDERS as follows:

- 8 1.     The Court previously consolidated the cases for the limited purposes of addressing  
9 common issues related to standing and, if appropriate, sanctions. On April 27, 2017, the  
10 Court entered judgment pursuant to Arizona Rule of Civil Procedure 54(b), in which the  
11 Court dismissed the consolidated cases for lack of standing. This judgment was amended  
12 *nunc pro tunc* by this Court on June 13, 2017 to attach the list of dismissed cases. This  
13 judgment with the attached exhibit (the "Rule 54(b) Standing Judgment") is incorporated  
14 herein by reference. Plaintiffs filed a notice of appeal of the Rule 54(b) Standing  
15 Judgment on May 25, 2017, which is pending in the Arizona Court of Appeals as 1 CA-  
16 CV-17-0365.
- 17 2.     The Court's dismissal of consolidated cases was on the basis of lack of standing and  
18 never reached the merits of the allegations in the consolidated cases' complaints.
- 19 3.     On March 27, 2017, the State filed a Motion for Rule 11 Sanctions, Motion for Non-  
20 Rule 11 Sanctions, Motion in Limine, and Motion for Evidentiary Hearing. The Court  
21 granted the State's motion for evidentiary hearing on the issue of sanctions against  
22 Plaintiffs and Strojnik to be held on November 20 and 21, 2017.
- 23 4.     Pursuant to the stipulation of Plaintiffs and Strojnik and the State, Plaintiffs and all of  
24 their affiliates and successors that have actual notice of this order are permanently  
25 enjoined from filing as plaintiff any actions in the Superior Court of the State of Arizona  
26 that allege violations of the Arizonans With Disabilities Act, A.R.S. § 41-1492 *et seq.*;



1 Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*; or any  
2 regulations issued thereunder. For purposes of this paragraph, affiliate includes any  
3 entity or person directly or indirectly controlling, controlled by, or under common control  
4 with one or more Plaintiffs. For purposes of this paragraph, successor includes any entity  
5 controlled by one or more Plaintiffs, or by any person who was as of October 1, 2017 a  
6 manager, officer, or director of any Plaintiff or entity member of any Plaintiff. For  
7 avoidance of doubt, nothing in this paragraph limits the ability of Mr. Strojnik or any  
8 other attorney admitted to practice law by the Arizona Supreme Court to represent any  
9 party in any action.

10 5. Plaintiffs Advocates for Individuals with Disabilities Foundation, Inc. and Advocates for  
11 Individuals with Disabilities, LLC consent to the entry of judgment—as a sanction  
12 pursuant to Rule 11, A.R.S. § 12-349, and the inherent power of the Court—against them  
13 and in favor of the Consolidated Defendants in each of the consolidated cases for the  
14 defendant’s reasonable attorneys’ fees and costs (if any) in defending the case.

15 6. The State withdraws with prejudice its Motion(s) for sanctions pursuant to Rule 11,  
16 A.R.S. § 12-349, and the Court’s inherent power, or otherwise, and for an award of  
17 attorney’s fees and costs against Messrs. Ritzenthaler and Strojnik for the reason that a  
18 continuing pursuit of sanctions, costs and fees against Messrs. Ritzenthaler and Strojnik  
19 would not advance the cause of justice. This withdrawal applies solely to the consolidated  
20 cases, and does not preclude the State from acting to protect the public in other litigation.

21 7. Plaintiffs will cause to be paid on execution of this agreement by November 6, 2017 to  
22 the Arizona Attorney General’s Office the amount of \$25,000 for the sole purpose of  
23 establishing a fund to educate businesses regarding ADA and AzDA compliance and that  
24 businesses can apply for to obtain funds towards improvements to their parking lots to  
25 comply with the ADA and AzDA.  
26

- 1 8. Upon payment of money described in the preceding paragraph, the State is dismissed as a
- 2 party to these consolidated cases other than CV2016-090506 for the purpose of enforcing
- 3 this order (if necessary).
- 4 9. Plaintiffs agree to dismiss their appeal of the Rule 54(b) Standing Judgment in the
- 5 Arizona Court of Appeals, and to forego any appeal of the issues addressed in this Order.
- 6 10. Plaintiffs further agree to dismiss their separate mandamus action against the Arizona
- 7 Attorney General, Case No. CV2016-011532.
- 8 11. The evidentiary hearing set for November 20 and 21, 2017 is vacated.
- 9 12. This Court retains jurisdiction of case number CV2016-090506 for the purpose of
- 10 enforcing this Order.
- 11 13. The consolidated cases are returned to their originating divisions for the defendant(s) in
- 12 each case to file, if they choose, an application for reasonable attorneys' fees and costs (if
- 13 any) against Plaintiffs in defending their case.

14 DATED this 13<sup>th</sup> day of November, 2017.

**DAVID M. TALAMANTE**

The Honorable David M. Talamante  
Judge of the Superior Court

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1 CONSENT TO ENTRY OF ORDER


2 1. Plaintiffs and Strojnik and the State have fully read and understand this Order,  
3 understand the legal consequences of signing it, and affirm that this is the entire agreement  
4 between them, no other representations or agreements between them exist, and no force, threats,  
5 or coercion of any kind have been used to obtain their agreement and signatures.

6 2. Plaintiffs and Strojnik acknowledge that the State's agreement to the entry of this  
7 Order is solely for the purpose of settling the consolidated cases and mandamus action described  
8 above, and does not preclude the State, or any other agency, officer, or subdivision of this State,  
9 from instituting other civil or criminal proceedings as may be appropriate now or in the future.

10 3. Plaintiffs Advocates for Individuals with Disabilities Foundation, Inc. and  
11 Advocates for Individuals with Disabilities, LLC represent that the person signing below on  
12 each's behalf is duly appointed and authorized to do so.

13 4. This Consent to Entry of Order may be executed in counterpart, and may be  
14 executed by way of facsimile or electronic signature, and if so, shall be considered an original.

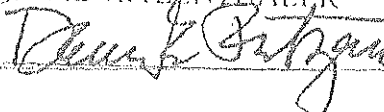
15  
16 ADVOCATES FOR INDIVIDUALS WITH DISABILITIES FOUNDATION, INC.

17  Dated: 11/3/17  
18 By: Alex Cannon  
19 Title: Authorized Agent

20 ADVOCATES FOR INDIVIDUALS WITH DISABILITIES, LLC F/K/A ADVOCATES FOR  
21 AMERICAN DISABLED INDIVIDUALS, LLC

22  Dated: 11/3/17  
23 By: Alex Cannon  
24 Title: Authorized Agent

25 DAVID RITZENTHALER

26  Dated: 1/3/17

1 PETER STROJNIK

2 \_\_\_\_\_ Dated: 11/3/17

3  
4 Approved as to Form

5 HORNE SLATON, PLLC

6 By: Tom Horne Dated: 11/8/17

7 Thomas Horne  
8 6720 N. Scottsdale Rd., Suite 285  
9 Scottsdale, AZ 85253  
10 horne@horneslaton.com  
11 *Attorney for Plaintiffs Peter Strojnik*

12 Approved as to Form and Content

13 MARK BRNOVICH  
14 ATTORNEY GENERAL

15 By: Sam W. Roysden III Dated: 11/3/2017

16 Paul Watkins  
17 Matthew du Mée  
18 Brunn (Beau) W. Roysden III  
19 Oramel H. (O.H.) Skinner  
20 Evan G. Daniels  
21 Aaron M. Duell  
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23 1275 West Washington Street  
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25 Telephone: (602) 542-7731  
26 Facsimile: (602) 542-4377  
*Matthew.duMee@azag.gov*  
*Attorneys for State of Arizona*

# Exhibit B

1 MARK BRNOVICH  
 Arizona Attorney General (Firm Bar No. 014000)  
 2 DREW C. ENSIGN (Bar No. 25462)  
 3 MATTHEW DU MEE (Bar No. 28468)  
 Assistant Attorneys General  
 4 2005 N. Central Avenue  
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 5 Telephone: (602) 542-5200  
 6 Facsimile: (602) 542-4377  
 Drew.Ensign@azag.gov  
 7

8 *Attorneys for Proposed Intervenor-Defendants*

9 **UNITED STATES DISTRICT COURT**  
 10 **DISTRICT OF ARIZONA**

11 Advocates for Individuals With  
 12 Disabilities LLC, and David  
 Ritzenhaler,  
 13 Plaintiffs,  
 14 vs.  
 15 MidFirst Bank,  
 16 Defendant,  
 17 and  
 18 State of Arizona and Mark Brnovich, in  
 19 his official capacity as Attorney General,  
 20 Proposed Intervenor-  
 21 Defendants

Case No: 2:16-cv-01969-PHX-NVW

**STATE’S MOTION TO INTERVENE**

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 28

1 Pursuant to Rule 24 of the Federal Rules of Civil Procedure, the State of Arizona  
2 and Mark Brnovich, in his official capacity as Attorney General of Arizona,  
3 (collectively, the “State”) move to intervene in this action. The State seeks intervention  
4 for the limited and sole purpose of requesting that, as part of its pending sanctions  
5 proceedings, this Court hold appropriate proceedings and make a determination that a  
6 pre-filing order and related relief against Plaintiffs’ counsel Peter Strojnik is necessary to  
7 protect the District Court for the District of Arizona and the public from Mr. Strojnik’s  
8 abusive and bad-faith litigation practices in this Court.

### 9 INTRODUCTION

10 Plaintiffs and their counsel, Peter Strojnik, have engaged in a sweeping abuse of  
11 Arizona state and federal courts. As this Court has previously observed, Plaintiffs and  
12 Strojnik “pursued upwards of 160 cookie-cutter lawsuits in federal court and, from early  
13 to later 2016, more than 1,700 such suits in Arizona state court.” Doc. 49 (hereinafter  
14 “Dismissal Order”) at 3. Indeed, “[t]emplate complaints filled with non-specific  
15 allegations have become the stock-in-trade of ... Peter Strojnik.” *Id.* at 2. And the State  
16 obtained dismissals of hundreds of state court proceedings in light of similar behavior  
17 and related standing failings. *See* Exs. B-C.

18 On December 12, 2016, this Court held a hearing at which it heard testimony  
19 regarding whether remand of this case to state court would be futile. The State  
20 participated as an amicus at that hearing and contended that remand would be futile. *See*  
21 Ex. A at 40:1-41:9. The State also expressed its concerns with Strojnik’s practice of  
22 charging an illusory, unreasonable fee to his client solely for the purpose of extracting  
23 more money from defendants. *Id.* at 57:23-58:14. The State also noted that Strojnik  
24 swore under penalty of perjury in a default case that \$5,000 was a reasonable fee. *Id.* at  
25 58:15-59:8.

26 This Court dismissed the instant action alleging violations of the federal  
27 Americans with Disabilities Act (“ADA”) and the state Arizonans with Disabilities Act  
28 (“AzDA”) on September 5, 2017. In its Dismissal Order, this Court strongly suggested

1 that sanctions were appropriate, concluding that Strojnik’s “extortionate practice ha[d]  
2 become pervasive,” and that he had engaged in “ethically suspect tactics” and “unethical  
3 extortion of unreasonable attorney’s fees.” Dismissal Order at 3, 9-10. This Court  
4 further explained that Strojnik had made “demand[s] without legal basis” by “demanding  
5 a minimum of \$5,000 in attorney’s fees” in each of the cases. *Id.* at 10.

6 While this case was pending in this Court, the State successfully intervened in the  
7 cases filed by AID and Ritzenthaler pending in state court. The State did so for the  
8 limited purpose of challenging Plaintiffs’ standing and obtained a dismissal of virtually  
9 all of the state court actions. *See* Ex. C. The State then sought sanctions based on the  
10 vexatious conduct of Plaintiffs and their counsel.

11 The State and Plaintiffs have reached a settlement regarding the State’s motion  
12 for sanctions in the consolidated cases, which has been approved by the Superior Court.  
13 *See* Ex. B. That settlement permanently enjoins Plaintiffs from filing any new suit under  
14 AzDA or the ADA in Arizona state courts. *Id.* ¶ 4. That settlement expressly provided  
15 that nothing in it prevents Mr. Strojnik from representing other parties in other litigation,  
16 however, and it likewise makes clear that nothing prevents the State from acting to  
17 protect the public. *See id.* ¶¶ 4, 6. The settlement thus expressly “applie[d] solely to the  
18 consolidated cases, and does not preclude the State from acting to protect the public in  
19 other litigation,” such as this case. *Id.* ¶ 6.

20 The State had hoped that this Court’s order, along with an order dismissing all the  
21 state court actions and the settlement barring future state court suits by Plaintiffs, might  
22 have halted Strojnik’s abuses. But Plaintiffs’ counsel is nothing if not persistent—he has  
23 resumed filing new suits in this Court with a new plaintiff, Fernando Gastelum. To date,  
24 Strojnik has filed over 55 cases in this Court with Gastelum as plaintiff, and over 25  
25 since this Court’s Dismissal Order.<sup>1</sup> It thus appears that the lesson that Strojnik took

26 \_\_\_\_\_  
27 <sup>1</sup> These new cases each begin with the prefix 2:17-CV, and are -2536, -2560, -2567,  
28 -2619, -2621, -2622, -2623, -2674, -2700, -2704, -2728, -2729, -2732, -2759, -2768,  
-2786, -2792, -2802, -2849, -2855, -2857, -2887, -2888, -2903, -2914, -2957, -2969,  
-3006, -3007, -3017, -3024, -3118, -3120, -3184, -3212, -3213, -3235, -3236, -3269,



1 from this Court’s Dismissal Order was to change his nominal plaintiff and state-law  
2 claims, rather than cease his vexatious and unethical tactics.

3 Defendant has quite reasonably sought attorneys’ fees here as sanctions for  
4 Plaintiffs’ conduct. But, understandably reflecting its narrower interests as a private  
5 party, Defendant has not sought relief to prevent Plaintiffs or Strojnik from filing  
6 additional suits against other businesses.

7 The State, however, has broader interests and has concluded that such relief is  
8 warranted and necessary. It therefore seeks intervention for the limited and narrow  
9 purpose of addressing these issues. Specifically, the State seeks a determination that  
10 Strojnik is a “vexatious litigant” and appropriate resulting relief. Such relief should  
11 include a requirement that Strojnik:

- 12 1) Obtain approval from this Court before filing any new suit under the ADA
- 13 and/or relating to disability law compliance in this Court;
- 14 2) When seeking approval from this court, provide a copy of the complaint to the
- 15 potential defendant; and
- 16 3) When serving a complaint described in the previous sub-paragraph or after a
- 17 state-court complaint is removed to this Court by a defendant, serve and file with
- 18 the district court an itemized list, verified under penalty of perjury, of the dates
- 19 and amounts actual attorney time spent on the particular case, filing costs, other
- 20 recoverable expenses, and all out-of-pocket damages by plaintiff(s) for that

21  
22 -3282, -3534, -3535, -3606, -3607, -3626, -3627, -3718, -3719, -3815, -3816, -3834,  
23 -3842, -4081, -4084, -4089, -4090, -4119, -4150, -4151, -4378 and -4379. Each of those  
24 cases include an ADA claim, along with one or more state law claims. Consistent with  
25 Strojnik’s propensity for “template complaints,” each new complaint appears to fall  
26 within one of two templates: (1) either asserting a federal ADA claim with a negligence  
27 claim or (2) asserting a ADA claim along with state law negligence, negligent  
28 misrepresentation, failure to disclose and fraud claims. The state claim claims are  
presumably included to make damages available and thereby increase settlement  
leverage (much as AzDA claims were for the AID actions, until the legislature amended  
AzDA to make it less susceptible to Strojnik’s vexatious tactics). These new cases do  
not assert claims under AzDA.

1 particular case. The itemized list must also explain at that time the good-faith  
2 basis for all damages claims other than out-of-pocket expenses.

3 To obtain such relief, the State seeks to intervene here for the sole purpose of  
4 seeking vexatious-litigant determinations and appropriate related relief.<sup>2</sup> Intervention  
5 here is appropriate on three independent bases: (1) permissively under Rule 24(b)(2),  
6 because Proposed-Intervenor Brnovich is charged with administering AzDA, under  
7 which Plaintiffs asserted a claim in this case; (2) permissively under Rule 24(b)(1),  
8 because the State seeks to advance a “claim ... that shares with the main action a  
9 common question of law or fact”—*i.e.*, that Plaintiffs’ and their counsel’s conduct  
10 warrants sanctions, and (3) as of right under Rule 24(a)(2), because the State has  
11 protectable interests that might be impaired and the existing parties do not adequately  
12 represent the State’s interests.<sup>3</sup>

13 For the reasons set forth below, this Court should grant the State intervention  
14 limited to the sanctions/vexatious-litigant issues, either permissively or as of right. If  
15 intervention is granted, the State also requests that the Court set a briefing schedule and  
16 hearing for the State’s request, and provide notice to Plaintiffs and their counsel that this  
17 Court will be considering vexatious-litigant relief.<sup>4</sup>

18  
19 <sup>2</sup> While the State seeks to intervene for purposes of all potential vexatious-litigation  
20 issues, the State at present intends only to seek vexatious-litigant relief against Strojnik.

21 <sup>3</sup> The State requests intervention only as to the narrow issues identified. These  
22 proceedings have already been narrowed to the question of sanctions; no broader  
23 participation is warranted or needed, nor does the State consent to broader participation  
24 in this action (and thus broader waiver of its sovereign immunity). If this Court is  
25 unwilling to limit intervention solely to the sanctions/vexatious-litigant issues, the State  
26 respectfully requests that the Court deny intervention.

27 <sup>4</sup> The State has not attached a pleading (such as a proposed answer) to this motion.  
28 Notably, none of the types of pleadings permitted by Rule 7 would seemingly apply in  
this context where judgment has already been entered. The State believes that the  
preview of its vexatious-litigant arguments in Section IV, *infra*, should provide Plaintiffs  
and their counsel with more than sufficient notice of the types of arguments that the State  
intends to make. This preview is far beyond what Rule 8’s “notice pleading” standard  
reviews and fulfills the intent of Rule 24(c). The State is also attaching its motions for  
sanctions in state court and supporting exhibits. *See* Exs. D-F.

## LEGAL STANDARDS

1  
2 Rule 24 provides for intervention both permissively and as-of right. Rule  
3 24(b)(2) is a governmental officer-specific rule, and provides in relevant part that “[o]n  
4 timely motion, the court may permit a federal or state governmental officer or agency to  
5 intervene if a party’s claim or defense is based on ... a statute ... administered by the  
6 officer or agency.” Rule 24(b)(2) thus “allow[s] intervention liberally to governmental  
7 agencies and officers seeking to speak for the public interest.” 5C Charles Alan Wright  
8 & Arthur R. Miller, *Federal Practice and Procedure* § 1912 (3d ed. 2008). “[P]ermissive  
9 intervention is available when sought because an aspect of the public interest with which  
10 [the governmental officer] is officially concerned is involved in the litigation.” *Nuesse v.*  
11 *Camp*, 385 F.2d 694, 706 (D.C. Cir. 1967).

12 More generally, Rule 24(b)(1)(B) provides that “the court may permit anyone to  
13 intervene who ... has a claim or defense that shares with the main action a common  
14 question of law or fact.” Along with timeliness, “all that is necessary for permissive  
15 intervention is that intervenor’s ‘claim or defense and the main action have a question of  
16 law or fact in common.’” *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108  
17 (9th Cir. 2002) (quoting 24(b)(1)(B)).<sup>5</sup>

18 In addition, a party may intervene as of right under Rule 24(a). In *Wilderness*  
19 *Society v. U.S. Forest Service*, the Ninth Circuit set forth its four-part test for analyzing a  
20 motion to intervene of right under Rule 24(a)(2):

21 (1) the motion must be timely; (2) the applicant must claim a  
22 “significantly protectable” interest relating to the property or  
23 transaction which is the subject of the action; (3) the  
24 applicant must be so situated that the disposition of the action  
may as a practical matter impair or impede its ability to  
protect that interest; and (4) the applicant’s interest must be  
inadequately represented by the parties to the action.

25 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc).

26  
27 <sup>5</sup> *Kootenai Tribe* also has language regarding intervention as of right that was overruled  
28 in *Wilderness Society*. *Wilderness Society* does not undermine *Kootenai Tribe*’s holding  
regarding permissive intervention, however.

1 This analysis is “guided primarily by practical considerations, not technical  
 2 distinctions.” *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th  
 3 Cir. 2001) (quotation marks and citation omitted); *see also Wilderness Soc’y*, 630 F.3d at  
 4 1179 (reiterating importance of “practical and equitable considerations” as part of  
 5 judicial policy favoring intervention). “[A] district court is required to accept as true the  
 6 non-conclusory allegations made in support of an intervention motion.” *Berg*, 268 F.3d  
 7 at 819.

8 **ARGUMENT**

9 Intervention here is appropriate under three distinct bases: (1) because the  
 10 Attorney General administers AzDA, which Plaintiffs have asserted claims under, (2)  
 11 because the State seeks to advance common legal and factual arguments already at issue  
 12 and (3) because the State satisfies the requirements for intervention as of right.  
 13 Intervention should be granted on any or all of these grounds.

14 **I. THIS MOTION IS TIMELY**

15 The State’s motion is timely. The State’s intervention is unrelated to the merits of  
 16 this case, making intervention earlier unwarranted.<sup>6</sup> The Court’s Dismissal Order, which  
 17 was issued three months ago, provides the foundation for the State’s motion. And  
 18 briefing on sanctions issues that flow from the Court’s dismissal order has only recently  
 19 completed and briefing on other post-judgment matters is ongoing. The motion is  
 20 therefore well within the contours of timeliness. *Cf. Idaho Farm Bureau Fed’n v.*  
 21 *Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (motion to intervene as plaintiff and  
 22 participate in adjudication of merits of suit was timely when filed four months after suit  
 23 was initiated).

---

24  
 25  
 26 <sup>6</sup> The State did submit a 2-page letter brief as *amicus curiae* informing the Court of state  
 27 court filings and points raised by the State in state court proceedings, and attorneys for  
 28 the State appeared at a prior show cause proceeding to address questions from the Court  
 relating to that letter brief. That letter brief neither addressed standing under federal law  
 nor the merits of Plaintiffs’ ADA and AzDA claims. *See* Doc. 42.

1           Indeed, the Ninth Circuit has concluded a district court abused its discretion in  
2 finding a motion to intervene untimely despite being filed “approximately twenty years  
3 after [the suit’s] commencement” because intervention was sought within a reasonable  
4 time after a “change of circumstance” meant that there was a new stage of proceedings.  
5 *See Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (“Where a  
6 change of circumstances occurs, and that change is the ‘major reason’ for the motion to  
7 intervene, the stage of proceedings factor should be analyzed by reference to the change  
8 in circumstances, and not the commencement of the litigation.”). Here the State’s  
9 motion to intervene is brought within a reasonable time of this Court’s Dismissal Order,  
10 which was a change in circumstances giving rise to a new stage in the litigation.

11           Similarly, “Post-judgment intervention is often permitted ... where the  
12 prospective intervenor’s interest did not arise until the appellate stage or where  
13 intervention would not unduly prejudice the existing parties.” *Acree v. Republic of Iraq*,  
14 370 F.3d 41, 50 (D.C. Cir. 2004), *abrogated on other grounds by Republic of Iraq v.*  
15 *Beatty*, 556 U.S. 848 (2009). Here, the State’s interest in seeking appropriate relief under  
16 this Court’s Dismissal Order did not arise until that Order was issued.

17           Moreover, the necessity of seeking vexatious-litigant relief became apparent only  
18 once Strojnik continued to file new ADA actions notwithstanding this Court’s Dismissal  
19 Order, which extensively criticized Plaintiffs’ conduct. Plaintiffs’ counsel has now filed  
20 more than 25 additional actions since that Dismissal Order, including seven in November  
21 alone (2:17-CV-4081, -0484, 4089, -4090, -4119, -4378, and -4379). The State  
22 reasonably waited a short period to see if this Court’s Dismissal Order would deter new  
23 suits with similar tactics; this motion comes shortly after it became clear there was little  
24 (if any) deterrent effect or change in his conduct.

25           Importantly, the “requirement of timeliness is ... a guard against prejudicing the  
26 original parties.” *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994). Because the  
27 issue of the appropriate sanctions for misconduct is still being litigated in this action,  
28 Plaintiffs will not suffer material prejudice by the State also participating in resolution of

1 that issue. In addition, given Strojnik’s conduct, it is simply a matter of time before a  
2 court considers whether he is a vexatious litigant. Strojnik will suffer little prejudice  
3 from answering the inevitable questions about his conduct in this case, rather than a  
4 different one.

## 5 **II. THE COURT SHOULD GRANT PERMISSIVE INTERVENTION**

### 6 **A. Permissive Intervention Is Appropriate Under Rule 24(b)(2)**

7 Rule 24(b)(2) permits permissive intervention by a governmental official “if a  
8 party’s claim or defense is based on ... a statute ... administered by the officer or  
9 agency.” That is plainly the case here. Plaintiffs asserted a claim under AzDA.  
10 Dismissal Order at 1. The Attorney General, one of the proposed intervenors, is charged  
11 with administering AzDA. *See, e.g.*, A.R.S. § 41-1492.06(A) (“The attorney general  
12 shall adopt rules ... to carry out the intent of this article.”); § 41-1492.09(A) (“The  
13 attorney general shall investigate all alleged violations of this article.”). All of the  
14 requirements for intervention under Rule 24(b)(2) are thus satisfied.

15 A favorable exercise of discretion is also warranted. The State’s participation  
16 could “assist the court in its orderly procedures leading to the resolution” of the  
17 remaining issues. *Kootenai Tribe*, 313 F.3d at 1111. In particular, the State has already  
18 expended significant resources in (1) discovering and compiling evidence of the wide  
19 variety of improper litigation tactics that Plaintiffs’ counsel has engaged in and (2)  
20 briefing many of the pertinent sanctions issues in state court. *See, e.g.*, Exs. D-F. The  
21 State can thus assist the Court in understanding conduct of Plaintiffs and their counsel  
22 and the scope of sanctions that may be warranted.

23 Granting permissive intervention would also address a collective action problem.  
24 Specifically, the costs of seeking broad vexatious litigant relief against Plaintiffs and  
25 their counsel are concentrated and substantial for whatever party might make such a  
26 request, but the benefits are diffused: flowing to the hundreds or *thousands* of  
27 individuals and businesses that would otherwise be targeted by Strojnik and subjected to  
28 his “extortionate practice[s].” Because the State represents the interests of all Arizonans,

1 however, it is well-positioned to seek the broad relief that is both thoroughly warranted  
2 but also excessively costly for any individuals.

3 **B. Permissive Intervention Is Also Appropriate Under Rule 24(b)(1)**

4 Permissive intervention is similarly warranted under Rule 24(b)(1), which permits  
5 timely permissive intervention where the proposed intervenors “ha[ve] a claim or  
6 defense that shares with the main action a common question of law or fact.” Here, the  
7 State seeks to advance an argument in common with Defendant: that Plaintiffs and their  
8 counsel have engaged in abusive litigation conduct that warrants sanctions. The State’s  
9 arguments will necessarily involve common issues of fact (*i.e.*, what Plaintiffs and their  
10 counsel have done) and law (*i.e.*, what legal remedies are appropriate based on that  
11 conduct). Rule 24(b)(1) is thus satisfied. *See Kootenai Tribe*, 313 F.3d at 1108.

12 **III. ALTERNATIVELY, THE STATE SHOULD BE GRANTED  
13 INTERVENTION AS OF RIGHT.**

14 In the alternative, the State also satisfies the requirements for intervention as of  
15 right. As explained above, this motion is timely. In addition, the State (1) has  
16 significant protectable interests that might be impaired by resolution of the remaining  
17 sanctions issues and (2) is not adequately represented by existing parties.

18 **A. The State Has Significant Protectable Interests That Could Be  
19 Impaired Absent The Relief It Seeks Being Issued**

20 The State has at least two protectable interests that can support intervention as of  
21 right, both of which could be impaired if the Court does not award the relief that the  
22 State intends to seek.

23 *First*, the State has protectable “interest[s] in the health and well-being—both  
24 physical and economic—of its residents in general.” *Zimmerman v. GJS Group, Inc.*,  
25 No. 17-304, 2017 WL 4560136, at \*5 (D. Nev. Oct. 11, 2017); *see also*  
26 *Sierra Club v. Robertson*, 960 F.2d 83, 86 (8th Cir. 1992) (“[T]he State has an interest in  
27 protecting and promoting the state economy on behalf of all of its citizens.”).  
28



1 Specifically, the State has interests in ensuring that its citizens and businesses are not  
2 unduly burdened by Strojnik’s abusive litigation tactics. That interest easily could be  
3 impaired if appropriate vexatious litigant relief is not issued, as Strojnik begins a new  
4 round of vexatious suits.

5 In *Zimmerman*, the court granted intervention as of right to the State of Nevada in  
6 one of “274 actions in the District of Nevada alleging similar violations of the ADA,” so  
7 that the State could vindicate its “strong interest in protecting the public from malicious  
8 or premature [ADA] lawsuits that threaten Nevada business owners and adversely  
9 impact Nevada’s general economy.” 2017 WL 4560136, at \*1, \*3. The same result  
10 should obtain here for the State of Arizona facing similarly vexatious ADA litigants.  
11 Indeed, while the *Zimmerman* plaintiffs filed a “mere” 274 suits, Plaintiffs and their  
12 counsel here have filed a substantial multiple of that number.

13 *Second*, the State has significant interests in protecting tax flows into its treasury.  
14 Settlements under the ADA and AzDA are generally tax deductible, thus often  
15 converting taxable business income into untaxed deductions.<sup>7</sup> The State’s interest in  
16 protecting its tax revenue could easily be impaired if Strojnik again begins extracting  
17 settlements from Arizona businesses and draining their taxable revenue. Indeed, Strojnik  
18 has already obtained at least *three* settlements from his new wave of litigation in  
19 Gastelum’s name.<sup>8</sup> The State’s interests in protecting its tax revenues is thus sufficient  
20 to support intervention as of right. *See Scotts Valley Band of Pomo Indians of Sugar*  
21 *Bowl Rancheria v. United States*, 921 F.2d 924, 928 (9th Cir. 1990) (holding that  
22

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23 <sup>7</sup> Although some of that transferred wealth might ordinarily be taxable income for  
24 Plaintiffs’ counsel, this Court has already noted that Plaintiffs’ counsel purportedly  
25 donates his fees to a charity, which is not taxable income.

26 <sup>8</sup> *See* Notice of Settlement, *Galestum v. Phoenix SP Hilton, LLC*, No. 2:17-CV-2728-  
27 DKD (Oct. 3, 2017) (Doc. 23); Notice of Settlement, *Galestum v. 2536 W. Beryl*  
28 *Phoenix, LLC d/b/a Homewood Suites by Hilton, Phoenix Metro North*, No. 2:17-CV-  
2914-JJT (Oct. 9, 2017) (Doc. 12); Notice of Settlement, *Galestum v. BRE/LQ*  
*Properties, L.L.C. d/b/a La Quinta Inn Phoenix North*, No. 2:17-CV-2802-DGC (Nov. 2,  
2017) (Doc. 23).



1 potential that “the City will lose tax revenue” supported intervention as of right, and  
2 reversing district court’s denial of same); *see also Robertson*, 960 F.2d at 86 (“[T]he  
3 State has an interest in protecting its tax revenues.”).

#### 4 **B. The State’s Interests Are Not Adequately Represented**

5 Finally, the State’s interests are not adequately represented by existing parties. As  
6 the Ninth Circuit has explained, a movant’s “burden of showing inadequacy is  
7 ‘minimal,’ and the applicant need only show that representation of its interests by  
8 existing parties ‘*may be*’ inadequate.” *Berg*, 268 F.3d at 823 (quoting *Trbovich v.*  
9 *United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)) (emphasis added). In considering  
10 the adequacy of representation, this Court must consider *inter alia* “whether the interest  
11 of a present party is such that it will undoubtedly make all the intervenor’s arguments.”  
12 *Id.* at 822.

13 This requirement is easily met: Defendant has not made some of the vexatious  
14 litigant arguments that the State intends to make and has not sought all of the relief the  
15 State intends to request. It is thus clear that existing parties will not “undoubtedly make  
16 all the intervenor’s arguments.”

#### 17 **IV. THE RELIEF SOUGHT BY THE STATE IS SUPPORTED BY NINTH** 18 **CIRCUIT PRECEDENTS**

19 The vexatious litigant determination and relief that the State intends to seek is  
20 well-supported by Ninth Circuit precedent, including *Molski v. Evergreen Dynasty*  
21 *Corp.*, 500 F.3d 1047 (9th Cir. 2007). In *Molski*, the Ninth Circuit affirmed a vexatious  
22 litigant determination against both the plaintiff and his counsel where they had “filed  
23 about 400 lawsuits” alleging violations of the ADA. *Id.* at 1050, 1065. Those numbers  
24 pale in comparison to the conduct here.

25 In this case, the State believes that a vexatious litigant determination against  
26 Strojnik is appropriate under several possible bases. By way of preview, the grounds for  
27 vexatious litigant determinations include that Strojnik:  
28

- 1           1.     Misrepresented (and drastically exaggerated) his actual and/or reasonable  
2           fees by demanding a minimum of \$5,000 in each one of his cookie-cutter  
3           complaints.
- 4           2.     Misrepresented Plaintiffs’ actual damages in several suits, seeking \$5,000  
5           or more without any good-faith basis for doing so.
- 6           3.     Entered into an agreement with Plaintiffs where he would charge (but  
7           never collect) an illusory \$5,000 fee in order to extract more money from  
8           defendants, and then donate to Plaintiffs any settlement money paying the  
9           supposed fee.
- 10          4.     Misrepresented Plaintiffs’ intent to litigate their federal ADA claims,  
11          forcing defendants to incur needless and avoidable costs of removal.
- 12          5.     Filed numerous suits to extort settlements from defendants, improperly  
13          relying on the costs of litigation to coerce settlements.
- 14          6.     Electronically affixed Plaintiff Ritzenthaler’s signature to hundreds of  
15          verified complaints he appears not to have ever read.

16           *Molski* notably explained that “[f]rivolous litigation is not limited to cases in  
17          which a legal claim is entirely without merit. It is also frivolous for a claimant who has  
18          some measure of a legitimate claim to make false factual assertions.” *Id.* at 1060.  
19          Indeed, the Ninth Circuit affirmed vexatious litigant relief even while “acknowledg[ing]  
20          that *Molski*’s numerous suits were probably meritorious in part—many of the  
21          establishments he sued were likely not in compliance with the ADA.” *Id.* at 1062. Thus,  
22          even if some of Plaintiffs’ targets were actually in violation of the ADA and AzDA, it  
23          does not immunize *Strojnik*’s misconduct from judicial scrutiny and sanction.

24           Many of the requisite findings that would support vexatious litigant  
25          determinations have already been made by this Court. Specifically, this Court has  
26          already made three such relevant determinations.

27           *First*, this Court has already found that *Strojnik* misrepresented his fees when  
28          demanding \$5,000 in each and every suit they filed. *See* Dismissal Order at 10 (“In a

1 simple form complaint case like this, it is impossible that the fee for preparing and filing  
2 the complaint could be \$5,000.... A demand for a fee beyond what is reasonable is a  
3 demand without legal basis under the ADA.”). That alone could support a vexatious  
4 litigant filing.

5 *Second*, other judges on this Court have found that Plaintiffs’ counsel has falsely  
6 represented their intent to litigate their federal ADA claims, forcing parties to incur the  
7 costs of removal only for Plaintiffs to dismiss those ADA claims voluntarily and seek  
8 remand to state court. This Court thus found Strojnik’s conduct sanctionable on separate  
9 occasions for *inter alia*, “misrepresent[ing] its intent to litigate its federal claim” and  
10 “mislead[ing] and manipul[at]ing opposing counsel,”<sup>9</sup> as well as “attempt[ing] to  
11 increase the costs of litigation to maximize Defendants’ desire to settle the suit due to the  
12 cost of defense,” and engaging in “bad faith conduct.”<sup>10</sup>

13 *Third*, this Court has already concluded that Strojnik’s intent was to extort  
14 settlements from Defendants, rather than litigate meritorious claims. Indeed, this Court  
15 found Strojnik’s “extortionate practice has become pervasive,” and that Strojnik filed  
16 “cookie-cutter lawsuits” “right down to the same typographical errors.” Dismissal Order  
17 at 3. This Court further concluded that Strojnik had engaged in “unethical extortion of  
18 unreasonable attorney’s fees from defendants.” *Id.* at 10.<sup>11</sup>

19 \* \* \* \* \*

20 This preview is intended to provide notice of the types of arguments that the State  
21 intends to raise if intervention is granted. As set forth above, there are ample bases for  
22

23 \_\_\_\_\_  
24 <sup>9</sup> *AIDF v. Golden Rule Properties LLC*, No. CV-16-02412, Doc. 19 at 4 (D. Ariz. March  
25 20, 2017).

26 <sup>10</sup> *AIDF v. Golden Rule Properties LLC*, No. CV-16-02413, Doc. 28 at 2, 10-11 (D. Ariz.  
27 Oct. 13, 2016).

28 <sup>11</sup> Notably, *Molski* similarly relied on Molski’s intent “to extract cash settlements from  
defendants,” noting that “Molski had tried on the merits only one of his approximately  
400 suits and had settled all the others.” *Id.* at 1052. But Strojnik has yet to try even a  
single case here. Instead, there is ample indication that extracting settlements was his  
overwhelming intent in filing their numerous suits.

1 this Court to at least consider the possibility that Strojnik is a vexatious litigant and that  
 2 appropriate relief should therefore be issued. Such relief could include (1) a pre-filing  
 3 order against Strojnik requiring court approval before filing any new ADA or AzDA  
 4 suits or suits related to disability law compliance in federal court and (2) an award of  
 5 attorneys’ fees to the State for this motion and its motion to seek vexatious litigant relief,  
 6 as well as other appropriate relief.

7 If this Court is inclined to consider vexatious litigant relief, the State respectfully  
 8 requests that the Court give notice to both Plaintiffs and Strojnik that such relief is being  
 9 considered. Such notice is required under *Molski*. See 500 F.3d at 1057 (“[T]he litigant  
 10 must be given notice and a chance to be heard before the order is entered.”). The State  
 11 further requests that the Court set a briefing schedule and hearing for the State’s request  
 12 for vexatious litigant relief. As part of that briefing schedule, the State respectfully  
 13 requests at least 30 days from the grant of intervention to its initial brief in support of its  
 14 request for vexatious litigant relief.

15 **CONCLUSION**

16 For the foregoing reasons, the State’s motion to intervene for the limited purpose  
 17 of addressing (1) whether Plaintiffs and their counsel are “vexatious litigants” and (2) the  
 18 appropriate relief for such determinations, should be granted. In addition, this Court  
 19 should issue notice to Plaintiffs and their counsel that it is considering vexatious litigant  
 20 determination and appropriate relief and set a briefing schedule and hearing for the same.

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28

Respectfully submitted this 5th day of December, 2017.

Mark Brnovich  
Attorney General

s/ Drew C. Ensign

Drew C. Ensign  
Matthew du Mee

*Attorneys for Proposed Intervenor-  
Defendants*

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**CERTIFICATE OF SERVICE**

I certify that I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following, if CM/ECF registrants, and mailed a copy of same if non-registrants, this 5th day of December, 2017:

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s/ Drew C. Ensign  
*Attorney for Proposed Intervenor-Defendants*

# Exhibit C

## Select A Case

**Fernando Gastelum is a plaintiff in 143 cases.**

<a href="#">2:17-cv-02536-DGC</a>	Gastelum v. MCPHX17 LLC	filed 07/29/17	closed 02/06/18
<a href="#">2:17-cv-02560-JAT</a>	Gastelum v. New Crescent Investments LLC	filed 08/01/17	closed 01/18/18
<a href="#">2:17-cv-02567-ESW</a>	Gastelum v. Imara Holdings Incorporated	filed 08/02/17	closed 01/19/18
<a href="#">2:17-cv-02619-DGC</a>	Gastelum v. Sin et al	filed 08/04/17	closed 02/20/18
<a href="#">2:17-cv-02621-JJT</a>	Gastelum v. G6 Hospitality Property LLC	filed 08/05/17	closed 01/11/18
<a href="#">2:17-cv-02622-JJT</a>	Gastelum v. TP & SS Heritage Inn of Phoenix Incorporated	filed 08/06/17	closed 01/24/18
<a href="#">2:17-cv-02623-DJH</a>	Gastelum v. Vedanta Resources LLC	filed 08/06/17	
<a href="#">2:17-cv-02674-DLR</a>	Gastelum v. 8617 Black Canyon Highway LLC	filed 08/08/17	
<a href="#">2:17-cv-02700-JJT</a>	Gastelum v. Phoenix-Metrocenter Lodging LLC	filed 08/10/17	closed 12/08/17
<a href="#">2:17-cv-02704-DJH</a>	Gastelum v. Metro Hospitality LLC	filed 08/10/17	
<a href="#">2:17-cv-02728-JAT</a>	Gastelum v. Phoenix SP Hilton LLC	filed 08/13/17	closed 10/26/17
<a href="#">2:17-cv-02729-GMS</a>	Gastelum v. TP & SS Heritage Inn of Phoenix Incorporated	filed 08/13/17	closed 01/22/18
<a href="#">2:17-cv-02732-</a>	Gastelum v. W2005/Fargo Hotels (Pool C) Realty LP	filed 08/14/17	closed 01/23/18





<a href="#">2:17-cv-03006-DGC</a>	Gastelum v. BRE/LQ Properties LLC	filed 09/04/17	closed 12/05/17
<a href="#">2:17-cv-03007-SPL</a>	Gastelum v. Great West Inns Incorporated	filed 09/04/17	
<a href="#">2:17-cv-03017-GMS</a>	Gastelum v. 11111 North 7th Street Property De LLC	filed 09/05/17	closed 05/25/18
<a href="#">2:17-cv-03024-DLR</a>	Gastelum v. Phoenix Extend-A-Suites LLC	filed 09/06/17	
<a href="#">2:17-cv-03118-DLR</a>	Gastelum v. Shivani SSS LLC	filed 09/12/17	closed 01/26/18
<a href="#">2:17-cv-03120-JJT</a>	Gastelum v. JIVAN LLC	filed 09/12/17	
<a href="#">2:17-cv-03184-DJH</a>	Gastelum v. Bel Aire Hospitality LLC	filed 09/14/17	
<a href="#">2:17-cv-03212-JJT</a>	Gastelum v. East Side Hotel Associates Limited Partnership	filed 09/16/17	closed 12/19/17
<a href="#">2:17-cv-03213-DJH</a>	Gastelum v. 2310 East Highland Avenue LLC	filed 09/17/17	closed 01/23/18
<a href="#">2:17-cv-03235-DJH</a>	Gastelum v. H & A Group LLC	filed 09/19/17	
<a href="#">2:17-cv-03236-JAT</a>	Gastelum v. RRI III LLC	filed 09/19/17	closed 12/04/17
<a href="#">2:17-cv-03269-BSB</a>	Gastelum v. Bell Road Lodge LLC	filed 09/21/17	closed 03/13/18
<a href="#">2:17-cv-03282-SPL</a>	Gastelum v. Jai Ambe Phoenix LLC	filed 09/21/17	closed 01/16/18
<a href="#">2:17-cv-03534-DJH</a>	Gastelum v. MMP Deer Valley Incorporated	filed 10/05/17	closed 02/15/18



JAT

2:17-cv-04119-SPL            Gastelum v. G6 Hospitality Property LLC            filed 11/08/17    closed 01/10/18

2:17-cv-04150-DKD            Gastelum v. PJJ Bros LLC            filed 11/11/17    closed 01/18/18

2:17-cv-04151-DJH            Gastelum v. JC Hotel Management LLC            filed 11/11/17

2:17-cv-04378-GMS            Gastelum v. Clarendon Hotel Group LLC            filed 11/29/17    closed 03/13/18

2:17-cv-04379-DJH            Gastelum v 3600 North Second Avenue Holdings LLC            filed 11/29/17

2:17-cv-04542-DJH            Gastelum v. Midtown Hotel Group LLC            filed 12/07/17    closed 03/01/18

2:17-cv-04544-DLR            Gastelum v. AG-POP CS 3838 Owner LLC            filed 12/07/17

2:17-cv-04562-DKD            Gastelum v. BRE Select Hotels AZ LLC            filed 12/08/17    closed 03/22/18

2:17-cv-04563-SPL            Gastelum v. BRE/ESA P Portfolio LLC            filed 12/10/17    closed 03/21/18

2:17-cv-04611-MHB            Gastelum v. Cityscape Hotel 22 LLC            filed 12/13/17    closed 03/05/18

2:17-cv-04613-JJT            Gastelum v. Phoenix FFIS LLC            filed 12/13/17    closed 01/31/18

2:17-cv-04667-GMS            Gastelum v. Marriott International Incorporated            filed 12/17/17    closed 05/25/18

2:17-cv-04695-DJH            Gastelum v. Tempe/Phoenix Airport Resort LLC            filed 12/19/17    closed 05/29/18

2:17-cv-04728-DJH            Gastelum v. Day & Sam Incorporated            filed 12/21/17    closed 03/13/18

<a href="#">2:17-cv-04734-DJH</a>	Gastelum v. World Travel Inns LPV	filed 12/21/17	closed 04/18/18
<a href="#">2:18-cv-00023-GMS</a>	Gastelum v. Vantage Commercial Properties Incorporated	filed 01/04/18	closed 02/21/18
<a href="#">2:18-cv-00035-JAT</a>	Gastelum v. Allred's Hermosa Inn LLC	filed 01/04/18	closed 03/28/18
<a href="#">2:18-cv-00052-SPL</a>	Gastelum v. Kuber-Patel Properties LLC	filed 01/08/18	closed 02/20/18
<a href="#">2:18-cv-00068-GMS</a>	Gastelum v. CPX Phoenix Airport Gateway Opag LLC	filed 01/08/18	closed 05/25/18
<a href="#">2:18-cv-00104-GMS</a>	Gastelum v. AUM Hospitality Ventures LLC	filed 01/11/18	closed 02/23/18
<a href="#">2:18-cv-00119-SPL</a>	Gastelum v. S & J Investments LLC	filed 01/12/18	closed 04/24/18
<a href="#">2:18-cv-00143-DLR</a>	Gastelum v. Kalisha LLC	filed 01/14/18	closed 02/20/18
<a href="#">2:18-cv-00158-SRB</a>	Gastelum v. BRE/LQ Properties LLC	filed 01/16/18	closed 04/10/18
<a href="#">2:18-cv-00192-DGC</a>	Gastelum v. Ashford Phoenix Airport North GP LLC	filed 01/19/18	
<a href="#">2:18-cv-00210-DKD</a>	Gastelum v. HPTWN Corporation	filed 01/21/18	closed 05/14/18
<a href="#">2:18-cv-00262-DGC</a>	Gastelum v. Shreeji Hospitality Incorporated	filed 01/24/18	
<a href="#">2:18-cv-00264-DGC</a>	Gastelum v. Ashford Phoenix Airport LP	filed 01/25/18	
<a href="#">2:18-cv-00293-DGC</a>	Gastelum v. RR Hotels Phoenix LLC	filed 01/29/18	

6/22/2018

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CIV/ECF Filing Query Case Search

<a href="#">2:18-cv-00332-DGC</a>	Gastelum v. V & P LLC	filed 01/30/18	closed 03/02/18
<a href="#">2:18-cv-00388-DJH</a>	Gastelum v. HPT Suite Properties Trust	filed 02/03/18	closed 05/14/18
<a href="#">2:18-cv-00412-DKD</a>	Gastelum v. Verizon Wireless(VAW) LLC	filed 02/05/18	closed 06/04/18
<a href="#">2:18-cv-00439-DLR</a>	Gastelum v. GTI Phoenix LLC	filed 02/07/18	closed 04/20/18
<a href="#">2:18-cv-00452-JJT</a>	Gastelum v. Tempe Hospitality Ventures LLC	filed 02/08/18	closed 05/01/18
<a href="#">2:18-cv-00470-GMS</a>	Gastelum v. Kuber-Rambdas Investments LLC	filed 02/12/18	closed 05/25/18
<a href="#">2:18-cv-00471-DKD</a>	Gastelum v. MLEM Properties Incorporated	filed 02/12/18	closed 06/04/18
<a href="#">2:18-cv-00512-GMS</a>	Gastelum v. CGD Tempe L P	filed 02/14/18	closed 05/25/18
<a href="#">2:18-cv-00551-JAT</a>	Gastelum v. Kang Mesa Estates LLC	filed 02/19/18	
<a href="#">2:18-cv-00559-JZB</a>	Gastelum v. Mesa Hospitality LLC	filed 02/20/18	
<a href="#">2:18-cv-00583-DLR</a>	Gastelum v. HPTMI II Properties Trust	filed 02/22/18	closed 05/15/18
<a href="#">2:18-cv-00697-DLR</a>	Gastelum v. Tempe Town Lake Inn LLC	filed 03/03/18	closed 04/06/18
<a href="#">2:18-cv-00699-SRB</a>	Gastelum v. Residence Inn by Marriott LLC	filed 03/05/18	closed 05/21/18
<a href="#">2:18-cv-00747-DJH</a>	Gastelum v. VRE Holding II LLC	filed 03/07/18	
<a href="#">2:18-cv-00749-</a>	Gastelum v. Tempe 202 Hotel LLC	filed 03/08/18	closed 04/06/18



<a href="#">2:18-cv-01070-HRH</a>	Gastelum v. Rishabh Investment LLC	filed 04/08/18
<a href="#">2:18-cv-01071-SRB</a>	Gastelum v. GIPHX10 LLC	filed 04/08/18
<a href="#">2:18-cv-01073-JJT</a>	Gastelum v. MCRT Tempe 2 LLC	filed 04/09/18
<a href="#">2:18-cv-01095-DJH</a>	Gastelum v. BRE LQ Properties LLC	filed 04/10/18
<a href="#">2:18-cv-01101-DJH</a>	Gastelum v. MCRT Tempe 1 LLC	filed 04/11/18
<a href="#">2:18-cv-01112-GMS</a>	Gastelum v. Debaca Land & Cattle LLC	filed 04/11/18 closed 05/25/18
<a href="#">2:18-cv-01271-DGC</a>	Gastelum v. Pacific Heritage Inn of Chandler LLC	filed 04/25/18
<a href="#">2:18-cv-01283-GMS</a>	Gastelum v. DHILLON Properties & Investments LLC	filed 04/25/18 closed 06/15/18
<a href="#">2:18-cv-01316-DGC</a>	Gastelum v. Greens Chandler LLC	filed 04/30/18
<a href="#">2:18-cv-01341-DLR</a>	Gastelum v. Chandler Hospitality LLC	filed 05/01/18
<a href="#">2:18-cv-01365-DLR</a>	Gastelum v. Correa Lodging LLC	filed 05/02/18
<a href="#">2:18-cv-01366-JJT</a>	Gastelum v. W2005 New Century Hotel Portfolio LP	filed 05/02/18
<a href="#">2:18-cv-01429-GMS</a>	Gastelum v. Concord CS Chandler LLC	filed 05/09/18 closed 06/15/18
<a href="#">2:18-cv-01453-GMS</a>	Gastelum v. Chandler HG LLC	filed 05/11/18 closed 06/15/18





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2:18-cv-01958-  
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Gastelum v. Ashford Scottsdale LP

filed 06/21/18

<b>PACER Service Center</b>			
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<b>Description:</b>	Search	<b>Search Criteria:</b>	Last Name: Gastelum
<b>Billable Pages:</b>	5	<b>Cost:</b>	0.50

# Exhibit D

FILED  
APR 27 2017 *D. J. Ball*  
MICHAEL K. JEANES, Clerk  
By *M. Kay*  
M. Kay/Deputy

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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.

~~PROPOSED~~ **JUDGMENT**

(Assigned to the Hon. David M. Talamante)

1           The Court has before it the non-dismissed cases it consolidated for the purposes of  
2 adjudicating common issues related to dismissal and any sanctions, with the exception of  
3 CV2016-090543 (collectively, “Consolidated Cases”). A list of the Consolidated Cases is  
4 attached hereto as Exhibit A.<sup>1</sup> In particular, the Court has before it the verified complaints (as  
5 amended, if applicable) in the Consolidated Cases (collectively, “Consolidated Complaints”), in  
6 which some combination of plaintiffs—Advocates for Individuals with Disabilities Foundation,  
7 Inc. (“AIDF”); Advocates for Individuals with Disabilities, LLC; Advocates for American  
8 Disabled Individuals, LLC; and David Ritzenthaler (collectively, “Consolidated Plaintiffs”)—  
9 brought claims against one or more defendants (collectively, “Consolidated Defendants”).<sup>2</sup>

10           The Consolidated Complaints assert claims under the federal Americans with Disabilities  
11 Act and the state Arizonans with Disabilities Act (“AzDA”). The Consolidated Complaints’  
12 allegations pertain to the location of and signage for handicapped parking spaces at places  
13 alleged to be public accommodations owned and/or operated by Consolidated Defendants. The  
14 Consolidated Complaints demand injunctive and declaratory relief, costs, attorneys’ fees of at  
15 least \$5,000 per case, and damages (in many cases specified as at least \$5,000 per case).

16           In its September 8, 2016 order and September 9, 2016 minute entry, the Court permitted  
17 the State of Arizona *ex rel.* Mark Brnovich (the “State”) to intervene in the earliest-filed non-  
18 dismissed case as a limited purpose defendant pursuant to Rule 24(a) and (b) of the Rules of  
19 Civil Procedure. The Court entered a series of orders on consolidation, which resulted in the  
20 Consolidated Cases being consolidated for the limited purposes of adjudicating common issues  
21 related to dismissal and any sanctions. *See* note 1, *supra*. The State filed a Motion to Dismiss  
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23 <sup>1</sup> For purposes of this judgment, Consolidated Cases does not include cases for which a valid  
24 voluntary or stipulated dismissal has been entered on or before this judgment’s date of entry.  
The minute entries and orders in this matter relating to consolidation include those filed on  
September 6, September 23, and November 8, 2016 and March 1, 2017.

25 <sup>2</sup> Advocates for Individuals with Disabilities, LLC and Advocates for American Disabled  
26 Individuals, LLC are the same legal entity, which is currently named Advocates for Individuals  
with Disabilities, LLC.

1 and Motion for Judgment on the Pleadings (the “Motion”) challenging, among other things,  
2 Consolidated Plaintiffs’ standing to bring the Consolidated Cases. The Court granted the  
3 Motion in an unsigned minute entry entered on March 2, 2017.

4 Now, having considered all proceedings in this action to date—including all pleadings,  
5 other papers, status conferences, oral arguments, orders, and minute entries—the Court hereby  
6 **ORDERS, ADJUDGES, AND DECREES** as follows:

7 1. Based on the allegations in the Consolidated Complaints, the Consolidated  
8 Plaintiffs lack standing, and therefore the Motion is granted under Rule 12 of the Rules of Civil  
9 Procedure. The Arizona Supreme Court has established a rigorous standing requirement that  
10 requires a plaintiff to allege a “distinct and palpable injury.” *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16  
11 (1998); *see also Bennett v. Brownlow*, 211 Ariz. 193, 196 ¶ 16 (2005); *Fernandez v. Takata Seat*  
12 *Belts, Inc.*, 210 Ariz. 138, 140 ¶ 6 (2005). No allegations in the Consolidated Complaints  
13 support the tester argument raised by Consolidated Plaintiffs in their opposition to the Motion.  
14 The Consolidated Complaints do not allege that Mr. Ritzenthaler or another member of AIDF  
15 (1) patronized or attempted to patronize any of the Consolidated Defendants’ places of public  
16 accommodation; (2) encountered an actual barrier to his or her access; and (3) experienced a  
17 denial of access to the place of public accommodation based on his or her disability.

18 2. The Consolidated Complaints also fail to meet the additional standing  
19 requirements necessary for injunctive and declaratory relief. Consolidated Plaintiffs fail to  
20 allege any intent to patronize the Consolidated Defendants’ places of public accommodation in  
21 the future. Consolidated Plaintiffs also fail to allege actual controversies between them and the  
22 persons they are suing, as is required for declaratory relief.

23 3. The Court further concludes that the Legislature did not waive generally-  
24 applicable standing requirements when enacting the AzDA, including A.R.S. § 41-1492.08.  
25 And the Court declines to waive standing in these cases. Arizona courts have waived standing  
26 only in “exceptional circumstances,” and the “paucity of cases” in which they have done so

1 “demonstrates both [their] reluctance to do so and the narrowness of this exception.” *Sears*, 192  
2 Ariz. at 71 ¶ 25. Cases in which the Arizona courts have waived standing involved either  
3 disputes “at the highest levels of state government” or challenges, in cases brought by or against  
4 a governmental entity, to the lawfulness of an Arizona statute or government action. *Id.* ¶¶ 26-  
5 28 (internal quotation marks omitted). The Consolidated Complaints—involving private claims  
6 against private defendants—do not come within those categories, let alone present exceptional  
7 circumstances.

8 4. Leave to amend the Consolidated Complaints is denied. Although leave to amend  
9 shall “be freely given when justice requires,” Ariz. R. Civ. P. 15(a), the Court may deny leave  
10 because of “undue delay, bad faith or dilatory motive on the party of the movant, repeated  
11 failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing  
12 party by virtue of allowance of the amendment, [or] futility of the amendment,” *Walls v. Ariz.*  
13 *Dep’t of Pub. Safety*, 170 Ariz. 591, 597 (App. 1991) (quotation omitted). For the reasons set  
14 forth in the Motion, the State’s Reply in Support of the Motion, and by the State and the Court at  
15 oral argument on the Motion, the Court concludes that all five *Walls* factors for denying leave  
16 exist here and support denying any request for leave to amend.


17 5. In addition, in its November 28, 2016 minute entry, the Court exercised its  
18 discretion to deny Consolidated Plaintiffs’ motion for leave to amend with respect to a proposed  
19 universal amended complaint (“UAC”). The Court concluded that the motion sought leave to  
20 file a supplemental pleading to add a new party, Mr. Fernando Gastelum, and allege  
21 transactions, occurrences, or events after the dates of the Consolidated Complaints. The Court  
22 reaffirms that denial. Even if Plaintiffs were permitted amendment only as to the alleged  
23 transactions, occurrences, or events in the UAC that pre-date the Consolidated Complaints,  
24 those allegations fail to establish standing for the reasons set forth in paragraphs 1-3, *supra*.

25 6. For the foregoing reasons, as well as all other reasons set forth in the Motion, the  
26 State’s Reply in Support of the Motion, and by the State and the Court at oral argument on the

1 Motion, the Consolidated Complaints are dismissed with prejudice based on lack of standing,  
2 except one or more Consolidated Plaintiffs may pursue a complaint for mandamus against the  
3 State in a separate action. The State has not sought its costs or attorneys' fees with respect to its  
4 participation in these Consolidated Cases. Claims for sanctions, as well as claims for attorneys'  
5 fees and costs by parties other than the State, will be addressed in further proceedings before this  
6 Court.

7 7. There is no just reason for delay, and this judgment is entered under Rule 54(b) of  
8 the Rules of Civil Procedure.

9 DATED this 24 day of APRIL, 2017.

10   
11 The Honorable David M. Talamante  
12 Judge of the Superior Court  
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# Exhibit E

1 Peter Strojnik, State Bar No. 6464  
 2 **STROJNIK P.C.**  
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 4 Phoenix, Arizona 85016  
 5 Telephone: (602) 524-6602  
 6 ADA@strojnik.com  
 7 Attorneys for Plaintiff

8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF ARIZONA**

10 FERNANDO GASTELUM,  
 11  
 12 Plaintiff,  
 13  
 14 vs.  
 15  
 16 DEBACA LAND & CATTLE, LLC,  
 17  
 18 Defendant.

Case No:

**VERIFIED COMPLAINT**

- 1. **Americans with Disabilities Act**
- 2. **Negligence**

**JURY TRIAL REQUESTED**

**INTRODUCTION**

1. Plaintiff brings this action pursuant to the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.* and corresponding regulations, 28 CFR Part 36 and Department of Justice Standards for Accessible Design (“ADA”).
2. Plaintiff’s left leg is amputated below the knee. Plaintiff moves with the aid of a wheelchair or a prosthetic leg. Plaintiff suffers from a disability as this term is defined in 42 U.S.C. 12102 and 28 CFR §36.105 (c)(1)(i) which includes, inter alia, “walking, standing, sitting, reaching, lifting [and] bending” and other

1 activities. A partial missing limb “substantially limit[s] musculoskeletal  
2 function” as a matter of law. 28 CFR § 36.105 (d)(2)(iii)(D).

3  
4 3. Plaintiff is constantly and relentlessly segregated and discriminated against,  
5 excluded, denied equal services, or otherwise treated differently than other  
6 individuals because of his disability, and has been denied the opportunity to  
7 participate in or benefit from services, facilities and opportunities available  
8 people without disabilities.

9  
10 4. Plaintiff incorporates herein Congressional Findings and Purpose set forth in 42  
11 U.S.C. §12-101 and 28 CFR §36.101.

12  
13 5. Plaintiff is being subjected to discrimination on the basis of disability in  
14 violation of Subchapter III of the Americans with Disabilities Act or has  
15 reasonable ground to believe that that he is about to be subjected to  
16 discrimination in violation of 42 U.S.C. §12183.

17  
18 6. Plaintiff alleges that he has actual notice that Defendant has failed to comply  
19 with Subchapter III of the ADA, 28 CFR 36 and the 2010 Standards of  
20 Accessibility Design (“2010 Standards”) as more fully alleged below.

21  
22 7. Plaintiff alleges that he has no obligation to engage in futile gestures as  
23 referenced in 42 U.S.C. §12188(A)(1) and 28 C.F.R. Subpart E

24  
25 8. Defendant has discriminated against Plaintiff by the following actions and  
26 failures to act –  
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- a. Failing to make reasonable modifications in policies, practices, or procedures which are necessary to afford Plaintiff and others similarly situated accessibility to Defendant’s place of public accommodation, thus violating 42 U.S.C. §12182(b)(2)(A)(ii) and 28 C.F.R. §36.302(a); and
- b. Failing to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, thus violating 42 U.S.C. §12182(b)(2)(A)(iii); and
- c. Failing to remove architectural barriers where such removal is readily achievable, thus violating 42 U.S.C. §12182(b)(2)(A)(iii), 28 CFR 36 and the 2010 Standards..

**PARTIES**

- 9. Plaintiff is a disabled person and a committed individual to advance the time when places of public accommodations will be compliant with the ADA. Plaintiff resides in Casa Grande, Arizona.
- 10. Plaintiff’s disability includes the amputation of the left leg below the knee. Plaintiff moves with the use of a wheelchair, walker and/or a prostethis.
- 11. Defendant, DEBACA LAND & CATTLE, LLC, D/B/A Ramada Tempe/At Arizona Mills Mall owns and/or operates hotel at 1701 W. Baseline Rd., Phoenix, AZ 85283 which is a public accommodation pursuant to 42 U.S.C. §

1 12181(7)(A) which offers public lodging services *See* 28 CFR §36.104 and a  
2 listing of public accommodations in 42 U.S.C. §12181(7).

3  
4 **JURISDICTION**

5 12.District Court has jurisdiction over this case or controversy by virtue of 28  
6 U.S.C. §§ 28-1331 and 42 U.S.C. § 12188 and 28 U.S.C. § 1367.

7  
8 13.Plaintiff brings this action as a private attorney general who has been personally  
9 subjected to discrimination on the basis of his disability, *see* 42 U.S.C.12188  
10 and 28 CFR §36.501.

11  
12 14.Venue is proper pursuant to 28 U.S.C. § 1391.

13 **STANDING TO SUE JURISDICTION**

14 15. Plaintiff reviewed 3<sup>rd</sup> party and 1<sup>st</sup> party lodging websites to book an  
15 ambulatory and wheelchair accessible room. Plaintiff was denied equal  
16 opportunity to use and enjoyment of a critical public accommodation through  
17 Defendant’s acts of discrimination and segregation alleged below.

18  
19  
20 16.Plaintiff intends to book a room at the Defendant’s hotel once Defendant has  
21 removed all accessibility barriers, including the ones not specifically referenced  
22 herein, and has fully complied with the ADA.

23  
24 17. Because of Defendant’s denial of Plaintiff’s use and enjoyment of a critical  
25 public accommodation through Defendant’s acts of discrimination and  
26 segregation, he is deterred from visiting that accommodation by accessibility  
27 barriers and other violations of the ADA.  
28

1 18. Defendant has denied Plaintiff -

2 a. The opportunity to participate in or benefit from the goods, services,  
3 facilities, privileges, advantages, or accommodations at its hotel.

4 b. The right to be included in the population at large who benefits from  
5 Defendant's hotel without being segregated because his disability.  
6

7  
8 19. Plaintiff intends to book a room at Defendant's hotel in the future but he will  
9 likely suffer repeated injury unless and until the barriers of accessibility and  
10 ambulatory and wheelchair accessibility barriers have been removed.  
11

12 **CONTINUING JURISDICTION**

13 20. ADA violations which form the subject matter of this Verified Complaint  
14 change frequently due to regular maintenance, remodels, repairs, and normal  
15 wear and tear.  
16

17 21. Defendant's ADA Violations are of the type that can reasonably be expected to  
18 start up again, allowing Defendant to be free to return to the old ways' after the  
19 threat of a lawsuit had passed.  
20

21 22. If one or more ADA violation are cured, Plaintiff alleges that they were cured  
22 and timed to anticipate the current lawsuit, and not as a good faith effort to  
23 comply with the ADA.  
24

25 23. To remedy the violations of 28 CFR 36.302(e), Defendant would be required  
26 not only to modify all 1<sup>st</sup> and 3<sup>rd</sup> party lodging websites, but would be required  
27 to do so truthfully and accurately.  
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**COUNT ONE**

Violation of Plaintiff’s Civil Rights under the ADA

24.Plaintiff realleges all allegations heretofore set forth.

25.By virtue of his disability, Plaintiff requires an ADA compliant lodging facility particularly applicable to his mobility, both ambulatory and wheelchair assisted.

26.On or about April 8, 2018 Plaintiff intended to visit Phoenix and spend the night there. He visited a 3<sup>rd</sup> party website [www.expedia.com](http://www.expedia.com) to book a room.

27.3<sup>rd</sup> party website disclosed general availability and description of Defendant’s hotel.

28.3<sup>rd</sup> party website states, “Accessibility. If you have requests for specific accessibility needs, please note them at check-out when you book your room.

- Accessible bathroom
- In-room accessibility”

29.3<sup>rd</sup> party website failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to assess independently whether Defendant’s hotel meets his accessibility needs.

30.3<sup>rd</sup> party website failed to disclose the following accessibility features in enough detail to reasonably permit Plaintiff to assess independently whether Defendant’s hotel and guest rooms meets his accessibility needs:

- 1 a. Whether accessible routes comply with § 206 of the 2010 Standards; and
- 2 b. Whether operable parts on accessible elements, accessible routes and
- 3 accessible rooms comply with §§205 and 803 of the 2010 Standards; and
- 4
- 5 c. Whether any accessible means of egress comply with §207 of the 2010
- 6 Standards.
- 7
- 8 d. Whether parking spaces comply with §§208 and 502 of the 2010
- 9 Standards; and
- 10
- 11 e. Whether passenger loading zones comply with §§209 and 503 of the
- 12 2010 Standards; and
- 13
- 14 f. Whether any drinking fountains comply with §211 of the 2010 Standards;
- 15 and
- 16
- 17 g. Whether any kitchens, kitchenettes and sinks comply with §§212 and 804
- 18 of the 2010 Standards; and
- 19
- 20 h. Whether toilet facilities and bathing facilities comply with §213 of the
- 21 2010 Standards; and
- 22
- 23 i. Whether any washing machines and clothes dryers comply with §§214
- 24 and 611 of the 2010 Standards; and
- 25
- 26 j. Whether accessible hotel rooms comply with §224 of the 2010 Standards;
- 27 and
- 28
- k. Whether dining surfaces and work surfaces comply with §§226 and 902
- of the 2010 Standards; and



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- l. Whether sales and service elements comply with §227 of the 2010 Standards; and
- m. Whether any saunas and steam rooms comply with §§241 and 612 of the 2010 Standards; and
- n. Whether any swimming pools, wading pools and spas comply with §§242 and 1009 of the 2010 Standards; and
- o. Whether floor and ground surfaces comply with §302 of the 2010 Standards; and
- p. Whether changes in level comply with §303 of the 2010 Standards; and
- q. Whether turning spaces comply with § 304 of the 2010 Standards; and
- r. Whether floor and ground spaces comply with §305 of the 2010 Standards; and
- s. Whether knee and toes clearances comply with §306 of the 2010 Standards; and
- t. Whether protruding objects comply with §307 of the 2010 Standards; and
- u. Whether the reach ranges comply with §308 of the 2010 Standards; and
- v. Whether the operating parts on accessible features comply with §309 of the 2010 Standards; and
- w. Whether accessible routes comply with §402 of the 2010 Standards; and
- x. Whether walking surfaces comply with §403 of the 2010 Standards; and

- 1 y. Whether doors, doorways and gates comply with §404 of the 2010
- 2 Standards; and
- 3
- 4 z. Whether ramps comply with § 405 of the 2010 Standards; and
- 5 aa. Whether curb ramps comply with §406 of the 2010 Standards; and
- 6 bb. Whether any elevators comply with §407 of the 2010 Standards; and
- 7
- 8 cc. Whether any platform lifts comply with §410 of the 2010 Standards; and
- 9 dd. Whether any stairways comply with §504 of the 2010 Standards; and
- 10 ee. Whether handrails on elements requiring handrails comply with §505 of
- 11 the 2010 Standards; and
- 12
- 13 ff. Whether the plumbing facilities comply with Chapter 6 of the 2010
- 14 Standards with respect to all the following subchapters of Chapter 6: §§
- 15 602 (drinking fountains), 603 (toilets and bathing rooms), 604 (water
- 16 closets and toilet compartments, 605 (urinals), 606 (lavatories and sinks),
- 17 607 (bathtubs), 607 (shower compartments), 608 (grab bars), 610 (seats
- 18 in bathtubs and shower compartments), and
- 19
- 20
- 21 gg. Whether service counters comply with 904 of the 2010 Standards.

22 31. Thereafter, Plaintiff consulted Defendant’s 1<sup>st</sup> party website  
 23 www.wyndhamhotels.com to determine the information unavailable from the  
 24 third-party website.  
 25

26 32. 1<sup>st</sup> party website failed to identify and describe mobility related accessibility  
 27 features and guest rooms offered through its reservations service in enough  
 28

1 detail to reasonably permit Plaintiff to assess independently whether  
2 Defendant’s hotel meets his accessibility needs.

3  
4 33. In particular, 1<sup>st</sup> party website failed to disclose the following accessibility  
5 features in enough detail to reasonably permit Plaintiff to assess independently  
6 whether Defendant’s hotel and guest rooms meets his accessibility needs:

- 7 a. Whether accessible routes comply with § 206 of the 2010 Standards; and
- 8 b. Whether operable parts on accessible elements, accessible routes and  
9 accessible rooms comply with §§205 and 803 of the 2010 Standards; and
- 10 c. Whether any accessible means of egress comply with §207 of the 2010  
11 Standards.
- 12 d. Whether parking spaces comply with §§208 and 502 of the 2010  
13 Standards; and
- 14 e. Whether passenger loading zones comply with §§209 and 503 of the  
15 2010 Standards; and
- 16 f. Whether any drinking fountains comply with §211 of the 2010 Standards;  
17 and
- 18 g. Whether any kitchens, kitchenettes and sinks comply with §§212 and 804  
19 of the 2010 Standards; and
- 20 h. Whether toilet facilities and bathing facilities comply with §213 of the  
21 2010 Standards; and
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- 1 i. Whether any washing machines and clothes dryers comply with §§214
- 2 and 611 of the 2010 Standards; and
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- 4 j. Whether accessible hotel rooms comply with §224 of the 2010 Standards;
- 5 and
- 6
- 7 k. Whether dining surfaces and work surfaces comply with §§226 and 902
- 8 of the 2010 Standards; and
- 9
- 10 l. Whether sales and service elements comply with §227 of the 2010
- 11 Standards; and
- 12
- 13 m. Whether any saunas and steam rooms comply with §§241 and 612 of the
- 14 2010 Standards; and
- 15
- 16 n. Whether any swimming pools, wading pools and spas comply with
- 17 §§242 and 1009 of the 2010 Standards; and
- 18
- 19 o. Whether floor and ground surfaces comply with §302 of the 2010
- 20 Standards; and
- 21
- 22 p. Whether changes in level comply with §303 of the 2010 Standards; and
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- 24 q. Whether turning spaces comply with § 304 of the 2010 Standards; and
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- 26 r. Whether floor and ground spaces comply with §305 of the 2010
- 27 Standards; and
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- s. Whether knee and toes clearances comply with §306 of the 2010
- Standards; and
- t. Whether protruding objects comply with §307 of the 2010 Standards; and

- 1 u. Whether the reach ranges comply with §308 of the 2010 Standards; and
- 2 v. Whether the operating parts on accessible features comply with §309 of
- 3 the 2010 Standards; and
- 4
- 5 w. Whether accessible routes comply with §402 of the 2010 Standards; and
- 6 x. Whether walking surfaces comply with §403 of the 2010 Standards; and
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- 8 y. Whether doors, doorways and gates comply with §404 of the 2010
- 9 Standards; and
- 10 z. Whether ramps comply with § 405 of the 2010 Standards; and
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- 12 aa. Whether curb ramps comply with §406 of the 2010 Standards; and
- 13 bb. Whether any elevators comply with §407 of the 2010 Standards; and
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- 15 cc. Whether any platform lifts comply with §410 of the 2010 Standards; and
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- 17 dd. Whether any stairways comply with §504 of the 2010 Standards; and
- 18
- 19 ee. Whether handrails on elements requiring handrails comply with §505 of
- 20 the 2010 Standards; and
- 21
- 22 ff. Whether the plumbing facilities comply with Chapter 6 of the 2010
- 23 Standards with respect to all the following subchapters of Chapter 6: §§
- 24 602 (drinking fountains), 603 (toilets and bathing rooms), 604 (water
- 25 closets and toilet compartments, 605 (urinals), 606 (lavatories and sinks),
- 26 607 (bathtubs), 607 (shower compartments), 608 (grab bars), 610 (seats
- 27 in bathtubs and shower compartments), and
- 28 gg. Whether service counters comply with 904 of the 2010 Standards.

1 34. Thereafter Plaintiff called Defendant's hotel to inquire whether it was  
2 compliant with the ADA and suitable for Plaintiff's accessibility needs.

3  
4 35. Plaintiff spoke with hotel reservations clerk, Chris. Plaintiff specifically  
5 inquired whether Defendant's hotel was compliant with the Americans with  
6 Disabilities Act and compliant with the specific requirements of accessibility.

7  
8 36. Reservations clerk responded that he was pretty sure the hotel was compliant  
9 with the Americans with Disabilities Act, but he would need to check with a  
10 manager the following day.

11  
12 37. Reservations clerk also informed Plaintiff that the accessible room costs more  
13 than a non accessible room.

14  
15 38. Plaintiff subsequently visited the hotel to independently verify that it was, at  
16 least on the outside, suitable to accommodate his disability.

17  
18 39. Plaintiff noted that the hotel was not compliant with the ADA and was replete  
19 with accessibility barriers in the details which include, without limitation, the  
20 following areas of non-compliance:

- 21 a. 208.3.1. The accessible parking is not dispersed to all entrances.
- 22 b. 305.7.2. The alcove containing the ice and vending machines has an
- 23 insufficient clear floor space for a parallel approach.
- 24 c. 309.4. The restroom near the lobby requires a twisting of the wrist motion
- 25 and more than 5 pounds of force to open.
- 26 d. 309.4. The fitness center door requires a twisting of the wrist motion to open.
- 27
- 28

- 1 e. 309.4. The accessible guest rooms require a twisting of the wrist motion to
- 2 enter.
- 3
- 4 f. 309.4. The pool gates require a twisting of the wrist motion to open.
- 5
- 6 g. 403.3. Multiple accessible routes have a walking surface with a running
- 7 slope steeper than 1:20 inches.
- 8
- 9 h. 403.3. Multiple accessible routes have a walking surface cross sloped
- 10 steeper than 1:48 inches.
- 11
- 12 i. 502.2. The van accessible parking space has a clear width of less than 132
- 13 inches.
- 14
- 15 j. 502.3. Multiple access aisles do not adjoin an accessible route.
- 16
- 17 k. 502.3.1. Multiple access aisles have a clear width of less than 60 inches
- 18
- 19 l. 502.4. At least one accessible parking space has a running slope steeper
- 20 than 1:48 inches.
- 21
- 22 m. 503.3. The passenger loading zone does not have an access aisle.
- 23
- 24 n. 504.3. The stairways have open risers at the bottom step and;
- 25
- 26 o. Other ADA violations to be discovered through a discovery process.
- 27
- 28

40. As a result of the deficiencies described above, Plaintiff declined to book a room at the hotel.

41. The removal of accessibility barriers listed above is readily achievable.

1 42.As a direct and proximate result of ADA Violations, Defendant’s failure to  
2 remove accessibility barriers prevented Plaintiff from equal access to the  
3 Defendant’s public accommodation.  
4

5 **WHEREFORE**, Plaintiff prays for all relief as follows:

- 6 A. Relief described in 42 U.S.C. §2000a – 3; and
- 7
- 8 B. Relief described in 42 U.S.C. § 12188(a) and (b) and, particularly -
- 9
- 10 C. Injunctive relief order to alter Defendant’s place of public
- 11 accommodation to make it readily accessible to and usable by ALL
- 12 individuals with disabilities; and
- 13
- 14 D. Requiring the provision of an auxiliary aid or service, modification of a
- 15 policy, or provision of alternative methods, to the extent required by
- 16 Subchapter III of the ADA; and
- 17
- 18 E. Equitable nominal damages in the amount of \$1.00; and
- 19
- 20 F. For costs, expenses and attorney’s fees; and
- 21
- 22 G. All remedies provided for in 28 C.F.R. 36.501(a) and (b).

23 **COUNT TWO**  
Negligence

24 43.Plaintiff realleges all allegations heretofore set forth.

25 44.Defendant had a duty to Plaintiff to remove ADA accessibility barriers so that  
26 Plaintiff as a disabled individual would have full and equal access to the public  
27 accommodation.  
28



1 45. Defendant breached this duty.

2 46. Defendant is or should be aware that, historically, society has tended to isolate  
3 and segregate individuals with disabilities, and, despite some improvements,  
4 such forms of discrimination against individuals with disabilities continue to be  
5 a serious and pervasive social problem<sup>1</sup>.

6  
7  
8 47. Defendant knowingly and intentionally participated in this historical  
9 discrimination against Plaintiff, causing Plaintiff damage.

10 48. Discrimination against individuals with disabilities persists in the use and  
11 enjoyment of critical public accommodations<sup>2</sup>.

12  
13 49. Defendant's knowing and intentional persistence in discrimination against  
14 Plaintiff is alleged, causing Plaintiff damage.

15  
16 50. Individuals with disabilities, including Plaintiff, continually encounter various  
17 forms of discrimination, including outright intentional exclusion, the  
18 discriminatory effects of architectural, overprotective rules and policies, failure  
19 to make modifications to existing facilities and practices, exclusionary  
20 qualification standards and criteria, segregation, and relegation to lesser  
21 services, programs, activities, benefits, jobs, or other opportunities<sup>3</sup>.

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<sup>1</sup> 42 U.S.C. § 12101(a)(2)

27 <sup>2</sup> 42 U.S.C. § 12101(a)(3)

28 <sup>3</sup> 42 U.S.C. § 12101(a)(5)

1 51. Defendant’s knowing and intentional discrimination against Plaintiff reinforces  
2 above forms of discrimination, causing Plaintiff damage.

3  
4 52. Census data, national polls, and other studies have documented that people  
5 with disabilities, as a group, occupy an inferior status in our society, and are  
6 severely disadvantaged socially, vocationally, economically, and  
7 educationally<sup>4</sup>.

8  
9 53. Defendant’s knowing and intentional discrimination has relegated Plaintiff to  
10 an inferior status in society, causing Plaintiff damage.

11  
12 54. The Nation’s proper goals regarding individuals with disabilities are to assure  
13 equality of opportunity, full participation, independent living, and economic  
14 self-sufficiency for such individuals<sup>5</sup>.

15  
16 55. Defendant’s knowing and intentional discrimination has worked counter to our  
17 Nation’s goals of equality, causing Plaintiff damage.

18  
19 56. Continued existence of unfair and unnecessary discrimination and prejudice  
20 denies people with disabilities the opportunity to compete on an equal basis and  
21 to pursue those opportunities for which our free society is justifiably famous,  
22 and costs the United States billions of dollars in unnecessary expenses resulting  
23 from dependency and nonproductivity<sup>6</sup>.

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<sup>4</sup> 42 U.S.C. §12101(a)(6)

27 <sup>5</sup> 42 U.S.C. §12101(a)(7)

28 <sup>6</sup> 42 U.S.C. §12101(a)(8)

1 57. Defendant's knowing and intentional unfair and unnecessary discrimination  
2 against Plaintiff demonstrates Defendant's knowing and intentional damage to  
3 Plaintiff.  
4

5 58. Defendant's breach of duty caused Plaintiff damages including, without  
6 limitation, the feeling of segregation, discrimination, relegation to second class  
7 citizen status the pain, suffering and emotional damages inherent to  
8 discrimination and segregation and other damages to be proven at trial.  
9

10 59. By violating Plaintiff's civil rights, Defendant engaged in intentional,  
11 aggravated and outrageous conduct.  
12

13 60. The ADA has been the law of the land since 1991, but Defendant engaged in a  
14 conscious action of a reprehensible character, that is, Defendant denied Plaintiff  
15 his civil rights, and cause him damage by virtue of segregation, discrimination,  
16 relegation to second class citizen status the pain, suffering and emotional  
17 damages inherent to discrimination and segregation and other damages to be  
18 proven at trial  
19  
20

21 61. Defendant either intended to cause injury to Plaintiff or defendant consciously  
22 pursued a course of conduct knowing that it created a substantial risk of  
23 significant harm to Plaintiff.  
24

25 62. Defendant is liable to Plaintiff for punitive damages in an amount to be proven  
26 at trial sufficient, however, to deter this Defendant and others similarly situated  
27 from pursuing similar acts.  
28

1 **WHEREFORE**, Plaintiff prays for relief as follows:

- 2 A. For finding of negligence; and
- 3
- 4 B. For damages in an amount to be proven at trial; and
- 5 C. For punitive damages to be proven at trial; and
- 6 D. For such other and further relief as the Court may deem just and proper.
- 7

8  
9 **REQUEST FOR TRIAL BY JURY**

10 Plaintiff respectfully requests a trial by jury in issues triable by a jury.

11 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of April, 2018.

12  
13 **STROJNIK, P.C.**

14 

15 \_\_\_\_\_  
16 Peter Strojnik, 6464  
17 Attorneys for Plaintiff

18 **VERIFICATION**

19 Plaintiff verifies that he has read the forgoing and that the factual allegations stated above  
20 are true and correct to the best of his knowledge, information and belief. Plaintiff makes  
21 this verification under the penalty of perjury.

22 /s/ Fernando Gastelum  
23 Authorized Electronically  
24  
25  
26  
27  
28

# Exhibit F

1 Peter Strojnik, State Bar No. 6464  
 2 **STROJNIK P.C.**  
 3 2375 East Camelback Road Suite 600  
 4 Phoenix, Arizona 85016  
 5 Telephone: (602) 524-6602  
 6 ADA@strojnik.com  
 7 Attorneys for Plaintiff

8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF ARIZONA**

10 FERNANDO GASTELUM,  
 11  
 12 Plaintiff,  
 13 vs.  
 14 CANYON HOSPITALITY LLC  
 15 Defendant.

Case No:

**VERIFIED COMPLAINT**

- 1. **Americans with Disabilities Act**
- 2. **Negligence**
- 3. **Negligent Misrepresentation**
- 4. **Failure to Disclose**
- 5. **Fraud / Consumer Fraud**

**JURY TRIAL REQUESTED**

**INTRODUCTION**

- 18 1. Plaintiff brings this action pursuant to the Americans with Disabilities Act, 42  
 19 U.S.C. §12101 *et seq.* and corresponding regulations, 28 CFR Part 36 and  
 20 Department of Justice Standards for Accessible Design (“ADA”).
- 21 2. Plaintiff’s left leg is amputated below the knee. Plaintiff moves with the aid of  
 22 a wheelchair or a prosthetic leg. Plaintiff suffers from a disability as this term  
 23 is defined in 42 U.S.C. 12102 and 28 CFR §36.105 (c)(1)(i) which includes,  
 24 inter alia, “walking, standing, sitting, reaching, lifting [and] bending” and other  
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1 activities. A partial missing limb “substantially limit[s] musculoskeletal  
2 function” as a matter of law. 28 CFR § 36.105 (d)(2)(iii)(D).

3 3. Plaintiff is constantly and relentlessly segregated and discriminated against,  
4 excluded, denied equal services, or otherwise treated differently than other  
5 individuals because of his disability, and has been denied the opportunity to  
6 participate in or benefit from services, facilities and opportunities available  
7 people without disabilities.

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9  
10 4. Plaintiff incorporates herein Congressional Findings and Purpose set forth in 42  
11 U.S.C. §12-101 and 28 CFR §36.101.

12  
13 5. Plaintiff is being subjected to discrimination on the basis of disability in  
14 violation of Subchapter III of the Americans with Disabilities Act or has  
15 reasonable ground to believe that that he is about to be subjected to  
16 discrimination in violation of 42 U.S.C. §12183.

17  
18 6. Plaintiff alleges that he has actual notice that Defendant has failed to comply  
19 with Subchapter III of the ADA, 28 CFR 36 and the 2010 Standards of  
20 Accessibility Design (“2010 Standards”) as more fully alleged below.

21  
22 7. Plaintiff alleges that he has no obligation to engage in futile gestures as  
23 referenced in 42 U.S.C. §12188(A)(1) and 28 C.F.R. Subpart E

24  
25 8. Defendant has discriminated against Plaintiff by the following actions and  
26 failures to act –

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- a. Failing to make reasonable modifications in policies, practices, or procedures which are necessary to afford Plaintiff and others similarly situated accessibility to Defendant’s place of public accommodation, thus violating 42 U.S.C. §12182(b)(2)(A)(ii) and 28 C.F.R. §36.302(a); and
- b. Failing to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, thus violating 42 U.S.C. §12182(b)(2)(A)(iii); and
- c. Failing to remove architectural barriers where such removal is readily achievable, thus violating 42 U.S.C. §12182(b)(2)(A)(iii), 28 CFR 36 and the 2010 Standards..

**PARTIES**

- 9. Plaintiff is a disabled person and a committed individual to advance the time when places of public accommodations will be compliant with the ADA.
- 10. Plaintiff’s disability includes the amputation of the left leg below the knee. Plaintiff moves with the use of a wheelchair, walker and/or a prosthetic.
- 11. Defendant Canyon Hospitality LLC owns and/or operates Grand Canyon University Hotel, at 5115 North 27<sup>th</sup> Avenue, Phoenix, Arizona which is a public accommodation pursuant to 42 U.S.C. § 12181(7)(A) which offers public lodging services *See* 28 CFR §36.104 and a listing of public accommodations in 42 U.S.C. §12181(7).

**JURISDICTION**

- 12. District Court has jurisdiction over this case or controversy by virtue of 28 U.S.C. §§ 28-1331 and 42 U.S.C. § 12188 and 28 U.S.C. § 1367.



1 13. Plaintiff brings this action as a private attorney general who has been personally  
2 subjected to discrimination on the basis of his disability, *see* 42 U.S.C.12188  
3 and 28 CFR §36.501.

4 14. Venue is proper pursuant to 28 U.S.C. § 1391.

5 **STANDING TO SUE JURISDICTION**

6 15. Plaintiff reviewed 3<sup>rd</sup> party and 1<sup>st</sup> party lodging websites to book an  
7 ambulatory and wheelchair accessible room. Plaintiff was denied equal  
8 opportunity to use and enjoyment of a critical public accommodation through  
9 Defendant’s acts of discrimination and segregation alleged below.

10 16. Plaintiff intends to book a room at the Defendant’s hotel once Defendant has  
11 removed all accessibility barriers, including the ones not specifically referenced  
12 herein, and has fully complied with the ADA.

13 17. Because of Defendant’s denial of Plaintiff’s use and enjoyment of a critical  
14 public accommodation through Defendant’s acts of discrimination and  
15 segregation, he is deterred from visiting that accommodation by accessibility  
16 barriers and other violations of the ADA.

- 17 18. Defendant has denied Plaintiff -  
18 a. The opportunity to participate in or benefit from the goods, services,  
19 facilities, privileges, advantages, or accommodations at its hotel.  
20 b. The right to be included in the population at large who benefits from  
21 Defendant’s hotel without being segregated because his disability.

22 19. Plaintiff intends to book a room at Defendant’s hotel in the future but he will  
23 likely suffer repeated injury unless and until the barriers of accessibility and  
24 ambulatory and wheelchair accessibility barriers have been removed.

25 **CONTINUING JURISDICTION**

26 20. ADA violations which form the subject matter of this Verified Complaint  
27 change frequently due to regular maintenance, remodels, repairs, and normal  
28 wear and tear.

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21. Defendant’s ADA Violations are of the type that can reasonably be expected to start up again, allowing Defendant to be free to return to the old ways' after the threat of a lawsuit had passed.

22. If one or more ADA violation are cured, Plaintiff alleges that they were cured and timed to anticipate the current lawsuit, and not as a good faith effort to comply with the ADA.

23. To remedy the violations of 28 CFR 36.302(e), Defendant would be required not only to modify all 1<sup>st</sup> and 3<sup>rd</sup> party lodging websites, but would be required to do so truthfully and accurately.

**COUNT ONE**

**Violation of Plaintiff’s Civil Rights under the ADA**

24. Plaintiff realleges all allegations heretofore set forth.

25. By virtue of his disability, Plaintiff requires an ADA compliant lodging facility particularly applicable to his mobility, both ambulatory and wheelchair assisted.

26. On or about August 17, 2017 Plaintiff visited a 3<sup>rd</sup> party website [www.expedia.com](http://www.expedia.com) to book a room.

27. 3<sup>rd</sup> party website disclosed general availability and description of Defendant’s hotel.

28. 3<sup>rd</sup> party website failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to assess independently whether Defendant’s hotel meets his accessibility needs.

29. 3<sup>rd</sup> party website failed to disclose the following accessibility features in enough detail to reasonably permit Plaintiff to assess independently whether Defendant’s hotel and guest rooms meets his accessibility needs:

- a. Whether accessible routes comply with § 206 of the 2010 Standards; and

- 1           b. Whether operable parts on accessible elements, accessible routes and
- 2           accessible rooms comply with §§205 and 803 of the 2010 Standards; and
- 3           c. Whether any accessible means of egress comply with §207 of the 2010
- 4           Standards.
- 5           d. Whether parking spaces comply with §§208 and 502 of the 2010
- 6           Standards; and
- 7           e. Whether passenger loading zones comply with §§209 and 503 of the
- 8           2010 Standards; and
- 9           f. Whether any drinking fountains comply with §211 of the 2010 Standards;
- 10          and
- 11          g. Whether any kitchens, kitchenettes and sinks comply with §§212 and 804
- 12          of the 2010 Standards; and
- 13          h. Whether toilet facilities and bathing facilities comply with §213 of the
- 14          2010 Standards; and
- 15          i. Whether any washing machines and clothes dryers comply with §§214
- 16          and 611 of the 2010 Standards; and
- 17          j. Whether accessible hotel rooms comply with §224 of the 2010 Standards;
- 18          and
- 19          k. Whether dining surfaces and work surfaces comply with §§226 and 902
- 20          of the 2010 Standards; and
- 21          l. Whether sales and service elements comply with §227 of the 2010
- 22          Standards; and
- 23          m. Whether any saunas and steam rooms comply with §§241 and 612 of the
- 24          2010 Standards; and
- 25          n. Whether any swimming pools, wading pools and spas comply with
- 26          §§242 and 1009 of the 2010 Standards; and
- 27          o. Whether floor and ground surfaces comply with §302 of the 2010
- 28          Standards; and

- 1 p. Whether changes in level comply with §303 of the 2010 Standards; and
- 2 q. Whether turning spaces comply with § 304 of the 2010 Standards; and
- 3 r. Whether floor and ground spaces comply with §305 of the 2010
- 4 Standards; and
- 5 s. Whether knee and toes clearances comply with §306 of the 2010
- 6 Standards; and
- 7 t. Whether protruding objects comply with §307 of the 2010 Standards; and
- 8 u. Whether the reach ranges comply with §308 of the 2010 Standards; and
- 9 v. Whether the operating parts on accessible features comply with §309 of
- 10 the 2010 Standards; and
- 11 w. Whether accessible routes comply with §402 of the 2010 Standards; and
- 12 x. Whether walking surfaces comply with §403 of the 2010 Standards; and
- 13 y. Whether doors, doorways and gates comply with §404 of the 2010
- 14 Standards; and
- 15 z. Whether ramps comply with § 405 of the 2010 Standards; and
- 16 aa. Whether curb ramps comply with §406 of the 2010 Standards; and
- 17 bb. Whether any elevators comply with §407 of the 2010 Standards; and
- 18 cc. Whether any platform lifts comply with §410 of the 2010 Standards; and
- 19 dd. Whether any stairways comply with §504 of the 2010 Standards; and
- 20 ee. Whether handrails on elements requiring handrails comply with §505 of
- 21 the 2010 Standards; and
- 22 ff. Whether the plumbing facilities comply with Chapter 6 of the 2010
- 23 Standards with respect to all the following subchapters of Chapter 6: §§
- 24 602 (drinking fountains), 603 (toilets and bathing rooms), 604 (water
- 25 closets and toilet compartments, 605 (urinals), 606 (lavatories and sinks),
- 26 607 (bathtubs), 607 (shower compartments), 608 (grab bars), 610 (seats
- 27 in bathtubs and shower compartments), and
- 28 gg. Whether service counters comply with 904 of the 2010 Standards.

1 30. Thereafter, Plaintiff consulted Defendant's 1<sup>st</sup> party website  
2 www.gcuhotel.com to determine the information unavailable from the third-  
3 party website.

4 31. 1<sup>st</sup> party website failed to identify and describe mobility related accessibility  
5 features and guest rooms offered through its reservations service in enough  
6 detail to reasonably permit Plaintiff to assess independently whether  
7 Defendant's hotel meets his accessibility needs.

8 32. In particular, 1<sup>st</sup> party website failed to disclose the following accessibility  
9 features in enough detail to reasonably permit Plaintiff to assess independently  
10 whether Defendant's hotel and guest rooms meets his accessibility needs:

- 11 a. Whether accessible routes comply with § 206 of the 2010 Standards; and
- 12 b. Whether operable parts on accessible elements, accessible routes and  
13 accessible rooms comply with §§205 and 803 of the 2010 Standards; and
- 14 c. Whether any accessible means of egress comply with §207 of the 2010  
15 Standards.
- 16 d. Whether parking spaces comply with §§208 and 502 of the 2010  
17 Standards; and
- 18 e. Whether passenger loading zones comply with §§209 and 503 of the  
19 2010 Standards; and
- 20 f. Whether any drinking fountains comply with §211 of the 2010 Standards;  
21 and
- 22 g. Whether any kitchens, kitchenettes and sinks comply with §§212 and 804  
23 of the 2010 Standards; and
- 24 h. Whether toilet facilities and bathing facilities comply with §213 of the  
25 2010 Standards; and
- 26 i. Whether any washing machines and clothes dryers comply with §§214  
27 and 611 of the 2010 Standards; and
- 28

- 1 j. Whether accessible hotel rooms comply with §224 of the 2010 Standards;
- 2 and
- 3 k. Whether dining surfaces and work surfaces comply with §§226 and 902
- 4 of the 2010 Standards; and
- 5 l. Whether sales and service elements comply with §227 of the 2010
- 6 Standards; and
- 7 m. Whether any saunas and steam rooms comply with §§241 and 612 of the
- 8 2010 Standards; and
- 9 n. Whether any swimming pools, wading pools and spas comply with
- 10 §§242 and 1009 of the 2010 Standards; and
- 11 o. Whether floor and ground surfaces comply with §302 of the 2010
- 12 Standards; and
- 13 p. Whether changes in level comply with §303 of the 2010 Standards; and
- 14 q. Whether turning spaces comply with § 304 of the 2010 Standards; and
- 15 r. Whether floor and ground spaces comply with §305 of the 2010
- 16 Standards; and
- 17 s. Whether knee and toes clearances comply with §306 of the 2010
- 18 Standards; and
- 19 t. Whether protruding objects comply with §307 of the 2010 Standards; and
- 20 u. Whether the reach ranges comply with §308 of the 2010 Standards; and
- 21 v. Whether the operating parts on accessible features comply with §309 of
- 22 the 2010 Standards; and
- 23 w. Whether accessible routes comply with §402 of the 2010 Standards; and
- 24 x. Whether walking surfaces comply with §403 of the 2010 Standards; and
- 25 y. Whether doors, doorways and gates comply with §404 of the 2010
- 26 Standards; and
- 27 z. Whether ramps comply with § 405 of the 2010 Standards; and
- 28 aa. Whether curb ramps comply with §406 of the 2010 Standards; and

- 1 bb. Whether any elevators comply with §407 of the 2010 Standards; and
- 2 cc. Whether any platform lifts comply with §410 of the 2010 Standards; and
- 3 dd. Whether any stairways comply with §504 of the 2010 Standards; and
- 4 ee. Whether handrails on elements requiring handrails comply with §505 of
- 5 the 2010 Standards; and
- 6 ff. Whether the plumbing facilities comply with Chapter 6 of the 2010
- 7 Standards with respect to all the following subchapters of Chapter 6: §§
- 8 602 (drinking fountains), 603 (toilets and bathing rooms), 604 (water
- 9 closets and toilet compartments, 605 (urinals), 606 (lavatories and sinks),
- 10 607 (bathtubs), 607 (shower compartments), 608 (grab bars), 610 (seats
- 11 in bathtubs and shower compartments), and
- 12 gg. Whether service counters comply with 904 of the 2010 Standards.

13 33. Thereafter Plaintiff called Defendant’s hotel to inquire whether it was  
 14 compliant with the ADA and suitable for Plaintiff’s accessibility needs.

15 34. Plaintiff spoke with hotel reservations clerk, Rena. Plaintiff specifically  
 16 inquired whether Defendant’s hotel was compliant with the Americans with  
 17 Disabilities Act and compliant with the specific requirements of accessibility.

18 35. Reservations clerk responded that the hotel was compliant with the Americans  
 19 with Disabilities Act.

20 36. Plaintiff subsequently visited the hotel to independently verify that it was, at  
 21 least on the outside, suitable to accommodate his disability.

22 37. Plaintiff noted that the hotel was not compliant with the ADA and was replete  
 23 with accessibility barriers in the details which include, without limitation, the  
 24 following areas of non-compliance with the 2010 Standards of Accessibility  
 25 Design:

- 26 a. Passenger Loading Zones in front of the building is unmarked; and
- 27 b. Passenger loading zone in the back of the building is unmarked; and
- 28 c. Accessible parking is not dispersed properly; and



- d. Multiple access points to accessible routes are not served with curb ramps; and
- e. Multiple stairways have open risers; and
- f. Multiple stair treads have improper nosings; and
- g. Multiple stairways have non-continuous handrails between flights; and
- h. Some parts of the accessible routes have a cross slope greater than 1:48; and
- i. Some accessible parking spaces have a cross slope greater than 1:48; and
- j. Some access aisles have improper cross slope; and
- k. Accessible route from accessible parking is impeded by drainage gate; and
- l. Ramp at rear entrance has a running slope is greater than 1:12; and
- m. Curb ramp on accessible route has a running slope greater than 1:12;and
- n. A curb ramp has a missing landing; and
- o. Pet waste station by the pool is inaccessible; and
- p. Outside smoking area is inaccessible; and
- q. Elevator is non-compliant; and
- r. South lobby bathroom sink is non-compliant (no knee and toe clearance); and
- s. Washing machines have improper reach ranges; and
- t. Pool latch is too high and requires 2 hands to use; and
- u. Pool shower controls are not operable at shower point; and
- v. Other non-compliance items to be discovered during the discovery process.



1 38. As a result of the deficiencies described above, Plaintiff declined to book a room  
2 at the hotel.

3 39. The removal of accessibility barriers listed above is readily achievable.

4 40. As a direct and proximate result of ADA Violations, Defendant's failure to  
5 remove accessibility barriers prevented Plaintiff from equal access to the  
6 Defendant's public accommodation.

7 **WHEREFORE**, Plaintiff prays for all relief as follows:

- 8 A. Relief described in 42 U.S.C. §2000a – 3; and
- 9 B. Relief described in 42 U.S.C. § 12188(a) and (b) and, particularly -
- 10 C. Injunctive relief order to alter Defendant's place of public
- 11 accommodation to make it readily accessible to and usable by ALL
- 12 individuals with disabilities; and
- 13 D. Requiring the provision of an auxiliary aid or service, modification of a
- 14 policy, or provision of alternative methods, to the extent required by
- 15 Subchapter III of the ADA; and
- 16 E. For costs, expenses and attorney's fees; and
- 17 F. All remedies provided for in 28 C.F.R. 36.501(a) and (b).

18  
19 **COUNT TWO**

20 Negligence

21 41. Plaintiff realleges all allegations heretofore set forth.

22 42. Defendant had a duty to Plaintiff to remove ADA accessibility barriers so that  
23 Plaintiff as a disabled individual would have full and equal access to the public  
24 accommodation.

25 43. Defendant breached this duty.

26 44. Defendant is or should be aware that, historically, society has tended to isolate  
27 and segregate individuals with disabilities, and, despite some improvements,  
28

1 such forms of discrimination against individuals with disabilities continue to be  
2 a serious and pervasive social problem<sup>1</sup>.

3 45. Defendant knowingly and intentionally participated in this historical  
4 discrimination against Plaintiff, causing Plaintiff damage.

5 46. Discrimination against individuals with disabilities persists in the use and  
6 enjoyment of critical public accommodations<sup>2</sup>.

7 47. Defendant's knowing and intentional persistence in discrimination against  
8 Plaintiff is alleged, causing Plaintiff damage.

9 48. Individuals with disabilities, including Plaintiff, continually encounter various  
10 forms of discrimination, including outright intentional exclusion, the  
11 discriminatory effects of architectural, overprotective rules and policies, failure  
12 to make modifications to existing facilities and practices, exclusionary  
13 qualification standards and criteria, segregation, and relegation to lesser  
14 services, programs, activities, benefits, jobs, or other opportunities<sup>3</sup>.

15 49. Defendant's knowing and intentional discrimination against Plaintiff reinforces  
16 above forms of discrimination, causing Plaintiff damage.

17 50. Census data, national polls, and other studies have documented that people  
18 with disabilities, as a group, occupy an inferior status in our society, and are  
19 severely disadvantaged socially, vocationally, economically, and  
20 educationally<sup>4</sup>.

21 51. Defendant's knowing and intentional discrimination has relegated Plaintiff to  
22 an inferior status in society, causing Plaintiff damage.

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24  
25 

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<sup>1</sup> 42 U.S.C. § 12101(a)(2)

26 <sup>2</sup> 42 U.S.C. §12101(a)(3)

27 <sup>3</sup> 42 U.S.C. §12101(a)(5)

28 <sup>4</sup> 42 U.S.C. §12101(a)(6)

1 52. The Nation’s proper goals regarding individuals with disabilities are to assure  
2 equality of opportunity, full participation, independent living, and economic  
3 self-sufficiency for such individuals<sup>5</sup>.

4 53. Defendant’s knowing and intentional discrimination has worked counter to our  
5 Nation’s goals of equality, causing Plaintiff damage.

6 54. Continued existence of unfair and unnecessary discrimination and prejudice  
7 denies people with disabilities the opportunity to compete on an equal basis and  
8 to pursue those opportunities for which our free society is justifiably famous,  
9 and costs the United States billions of dollars in unnecessary expenses resulting  
10 from dependency and nonproductivity<sup>6</sup>.

11 55. Defendant’s knowing and intentional unfair and unnecessary discrimination  
12 against Plaintiff demonstrates Defendant’s knowing and intentional damage to  
13 Plaintiff.

14 56. Defendant’s breach of duty caused Plaintiff damages including, without  
15 limitation, the feeling of segregation, discrimination, relegation to second class  
16 citizen status the pain, suffering and emotional damages inherent to  
17 discrimination and segregation and other damages to be proven at trial.

18 57. By violating Plaintiff’s civil rights, Defendant engaged in intentional,  
19 aggravated and outrageous conduct.

20 58. The ADA has been the law of the land since 1991, but Defendant engaged in a  
21 conscious action of a reprehensible character, that is, Defendant denied Plaintiff  
22 his civil rights, and cause him damage by virtue of segregation, discrimination,  
23 relegation to second class citizen status the pain, suffering and emotional  
24 damages inherent to discrimination and segregation and other damages to be  
25 proven at trial

26  
27 <sup>5</sup> 42 U.S.C. §12101(a)(7)

28 <sup>6</sup> 42 U.S.C. §12101(a)(8)

1 59. Defendant either intended to cause injury to Plaintiff or defendant consciously  
2 pursued a course of conduct knowing that it created a substantial risk of  
3 significant harm to Plaintiff.

4 60. Defendant is liable to Plaintiff for punitive damages in an amount to be proven  
5 at trial sufficient, however, to deter this Defendant and others similarly situated  
6 from pursuing similar acts.

7 **WHEREFORE**, Plaintiff prays for relief as follows:

- 8 A. For finding of negligence; and
- 9 B. For damages in an amount to be proven at trial; and
- 10 C. For punitive damages to be proven at trial; and
- 11 D. For such other and further relief as the Court may deem just and proper.

12  
13 **COUNT THREE**  
14 Negligent Misrepresentation

15 61. Plaintiff realleges all allegations heretofore set forth.

16 62. Defendant failed to exercise reasonable care or competence in obtaining or  
17 communicating the information regarding ADA compliance to Plaintiff both on  
18 the websites and telephonically.

19 63. Defendant hotel supplied false information to Plaintiff for guidance in  
20 Plaintiff's business transaction, to wit: the renting of a hotel room.

21 64. Defendant's false statement was made in the course of Defendant's business in  
22 which Defendant has a pecuniary interest, to wit: renting of rooms.

23 65. Plaintiff justifiably relied on Defendant's false information.

24 66. Plaintiff has suffered pecuniary losses as a result of his reliance on Defendant's  
25 false information regarding ADA compliance, to wit: he spent time, effort and  
26 resources.

27  
28

1 67. Defendant either intended to cause injury to Plaintiff or defendant consciously  
2 pursued a course of conduct knowing that it created a substantial risk of  
3 significant harm to Plaintiff.

4 68. Defendant is liable to Plaintiff for punitive damages in an amount to be proven  
5 at trial sufficient, however, to deter this Defendant and others similarly situated  
6 from pursuing similar acts.

7 **WHEREFORE**, Plaintiff prays for relief as follows:

- 8 A. For finding of negligent misrepresentation; and
- 9 B. For damages in an amount to be proven at trial; and
- 10 C. For punitive damages to be proven at trial; and
- 11 D. For such other and further relief as the Court may deem just and proper.

12  
13 **COUNT FOUR**  
14 Failure to Disclose

15 69. Plaintiff realleges all allegations heretofore set forth.

16 70. Defendant was under a duty to Plaintiff to exercise reasonable care to disclose  
17 matters required to be disclosed pursuant to 28 CFR 36.302(e) as more fully  
18 alleged above.

19 71. Defendant was under a duty to disclose matters to Plaintiff that Defendant knew  
20 were necessary to be disclosed to prevent Plaintiff to be misled by partial  
21 disclosures of ADA compliance as more fully alleged above.

22 72. The compliance with the ADA is a fact basic to the transaction.

23 73. Defendant failed to make the necessary disclosures.

24 74. As a direct consequence of Defendant's failure to disclose, Plaintiff visited the  
25 hotel, but did not book a room because of its non-compliance with the ADA.

26 75. Plaintiff has been damaged by Defendant's non-disclosure.  
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1 76. Defendant either intended to cause injury to Plaintiff or defendant consciously  
2 pursued a course of conduct knowing that it created a substantial risk of  
3 significant harm to Plaintiff.

4 77. Defendant is liable to Plaintiff for punitive damages in an amount to be proven  
5 at trial sufficient, however, to deter this Defendant and others similarly situated  
6 from pursuing similar acts.

7 **WHEREFORE**, Plaintiff prays for relief as follows:

- 8 A. For finding of that Defendant failed to disclose information; and
- 9 B. For damages in an amount to be proven at trial; and
- 10 C. For punitive damages to be proven at trial; and
- 11 D. For such other and further relief as the Court may deem just and proper.

12  
13 **COUNT FIVE**  
14 Fraud  
15 Common Law and Consumer

16 78. Plaintiff realleges all allegations heretofore set forth.

17 79. Defendant made a representation as alleged above.

18 80. The representation was material.

19 81. The representation was false.

20 82. Defendant knew that the representation was false or was ignorant to the truth or  
21 falsity thereof.

22 83. Defendant intended that Plaintiff rely on the false representation.

23 84. Plaintiff reasonably relied on the misrepresentation.

24 85. Plaintiff has a right to rely on the misrepresentation.

25 86. Plaintiff was consequently and proximately damaged by Defendant's  
26 misrepresentation.

27 87. Defendant's misrepresentation was made in connection with the sale or  
28 advertisement of merchandise with the intent that Plaintiff rely on it.

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88. Renting of hotel rooms is “merchandise” as this term is defined in A.R.S. §44-1521(5).

89. Plaintiff relied on the misrepresentation.

90. Plaintiff suffered an injury resulting from the false misrepresentation

91. Defendant either intended to cause injury to Plaintiff or defendant consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to Plaintiff.

92. Defendant is liable to Plaintiff for punitive damages in an amount to be proven at trial sufficient, however, to deter this Defendant and others similarly situated from pursuing similar acts.

**WHEREFORE**, Plaintiff prays for relief as follows:

- A. For finding of that Defendant failed to disclose information; and
- B. For damages in an amount to be proven at trial; and
- C. For punitive damages to be proven at trial; and
- D. For such other and further relief as the Court may deem just and proper.

**REQUEST FOR TRIAL BY JURY**

Plaintiff respectfully requests a trial by jury in issues triable by a jury.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of August 2017.

**STROJNIK, P.C.**



\_\_\_\_\_  
Peter Strojnik, 6464  
Attorneys for Plaintiff

**VERIFICATION**

Plaintiff verifies that he has read the forgoing and that the factual allegations stated above are true and correct to the best of his knowledge, information and belief. Plaintiff makes this verification under the penalty of perjury.

/s/ Fernando Gastelum  
Authorized Electronically