

MICHAEL K. JEANES
Clerk of the Superior Court
By Fidelia Boll, Deputy
Date 12/07/2016 Time 16:30:27
Description Amount
CASE# CV2016-011532
CIVIL NEW COMPLAINT 319.00
TOTAL AMOUNT 319.00
Receipt# 25622475

Peter Strojnik, State Bar No. 006464
Strojnik P.C.
2375 E. Camelback Rd., #600
Phoenix, AZ 85016
(602) 524-6602
ps@strojnik.com
Attorney for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

DAVID RITZENTHALER, an individual;
ADVOCATES FOR INDIVIDUALS
WITH DISABILITIES FOUNDATION,
INC., a charitable non-profit foundation

Plaintiffs,

vs.

Mark Brnovich, in his official capacity as
Attorney General.

Defendant;

Case No. CV2016-011532

VERIFIED COMPLAINT

(Jury Trial Requested)

Plaintiffs David Ritzenthaler and Advocates for Individuals with Disabilities Foundation, Inc. ("Plaintiffs"), for their Complaint against Defendant Mark Brnovich in his official capacity as Attorney General ("Defendant"), do hereby allege:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Ritzenthaler is an individual with a disability suffering from a mobility impairment which constitutes a disability under the Americans with Disabilities Act ("ADA") and its state counterpart the Arizonans with Disabilities Act ("AzDA").

2. Mr. Ritzenthaler regularly travels throughout the greater Phoenix metropolitan area visiting public accommodations in vehicles that are qualified to, and do utilize van-accessible parking.

3. Plaintiff AID is a registered 501(c)(3) non-profit charitable foundation and performs the functions of a traditional association representing individuals with

1 disabilities. See www.aid.org.

2 4. Plaintiff AID has members who are persons with disabilities, and/or who are
3 the parent(s) or close relative(s) of persons with disabilities, who have been impacted by
4 statewide non-compliance of the ADA and its state counterpart, the AzDA.

5 5. Defendant Mark Brnovich is the Attorney General in and for the State of
6 Arizona, and he is named in his official capacity only.

7 6. Venue is proper pursuant to A.R.S. §§ 12-401(17), 12-822.

8 7. Jurisdiction is proper pursuant to A.R.S. § 12-2021.

9 **STANDING**

10 **(As to David Ritzenthaler)**

11 8. Plaintiff Ritzenthaler is a “party beneficially interested” as required by
12 A.R.S. § 12-2021 because he has interest in obtaining mandamus relief stemming from
13 Plaintiff Ritzenthaler filing approximately 9,000 complaints with the Attorney General’s
14 Office (“AGO”) and as an individual living with a disability in Maricopa County.

15 9. Plaintiff Ritzenthaler’s interest in seeking mandamus relief is beyond a
16 general desire to enforce the law as he is an individual living with a disability that
17 substantially limits his major life activities.

18 10. The term “party beneficially interested,” as it affects Plaintiff
19 Ritzenthaler’s standing to bring this Action, must be applied liberally to promote the ends
20 of justice. *Barry v. Phoenix Union High School*, 6 Ariz. 384, 387 (1948).

21 11. Plaintiff Ritzenthaler is entitled to seek mandamus relief because there is
22 “not a plain, adequate and speedy remedy at law” to obtain and enforce performance of
23 the specifically imposed duties as described further herein.

24 **STANDING**

25 **(As to AID)**

26 12. Plaintiff AID is a “party beneficially interested” as required by A.R.S. § 12-
2021 because it has interest in obtaining mandamus relief stemming from Plaintiff AID

1 filing approximately 9,000 complaints with the Attorney General's Office ("AGO") and
2 many of its members are individuals living with a disability in Maricopa County.

3 13. Plaintiff AID's interest in seeking mandamus relief is beyond a general
4 desire to enforce the law as its members consists of individual living with disabilities that
5 substantially limit their major life activities.

6 14. The term "party beneficially interested," as it affects Plaintiff AID's
7 standing to bring this Action, must be applied liberally to promote the ends of justice.
8 *Barry v. Phoenix Union High School*, 6 Ariz. 384, 387 (1948).

9 15. Plaintiff AID is entitled to seek mandamus relief because there is "not a
10 plain, adequate and speedy remedy at law" to obtain and enforce performance of the
11 specifically imposed duties as described further herein.

12 FACTUAL ALLEGATIONS

13 16. The prior allegations are incorporated herein.

14 17. In 1993, the Arizona legislature passed the AzDA, which contains
15 provisions modeled after Title III of the ADA.

16 18. It is the role of the Arizona Attorney General to enforce the AzDA "to
17 vindicate the public interest" and to ensure that any alleged violations are remedied. A.R.S.
18 §41-1492.09.

19 19. The Arizona Attorney general must investigate all alleged violations of the
20 AzDA. A.R.S. §41-1492.09(A) ("The attorney general shall investigate all alleged
21 violations of this article.)

22 20. The Arizona legislature explicitly charged the Attorney General with the
23 responsibilities to ensure that Arizona enforces the standards established by its statute on
24 behalf of individuals with disabilities. See 1992 Ariz. Sess. Laws, ch. 224, § 1(B)(1)-(2)
25 (2d Reg. Sess.).

26 21. In Arizona, non-compliance with the AzDA is widespread.*

* <http://www.prnewswire.com/news-releases/aidorg-finds-95-of-valley-parking-lots-not-in-compliance-with-americans-with-disabilities-act-300268277.html>

1 22. No public agency in this State voluntarily conducts periodic inspections
2 ("compliance reviews") of existing public accommodations to determine AzDA
3 compliance, in over two decades.

4 23. The Attorney General is specifically required to conduct periodic
5 compliance reviews of public accommodations in Arizona. A.R.S. §41-1492.09(A) ("The
6 attorney general shall undertake periodic reviews of compliance of covered entities under
7 this article."

8 24. The requirements of the AzDA outlined in A.R.S. § 41-1492.09, were
9 enacted into law twenty-two years ago.

10 25. The Attorney General does not conduct voluntary periodic compliance
11 reviews pursuant to A.R.S. § 41-1492.09.

12 26. Upon information and belief, the Attorney General and Office of the
13 Attorney General ("OAG") have never conducted voluntary periodic compliance reviews
14 pursuant to A.R.S. § 41-1492.09.

15 27. As evidence of the lack of statutorily required compliance reviews, the OAG
16 possesses no "communications pertaining to periodic reviews of compliance that have
17 been conducted by the AGO pursuant to A.R.S. § 41-1492.09 in the last 26 years." See
18 Exhibit A, (December 6, 2016 Public Records response to September 23, 2016 Public
19 Records request and December 6, 2016, Public Records response to November 10, 2016,
20 Public Records request "Regarding communications, we were unable to locate any
21 communications that meet your request.")

22 28. As a result, less than approximately five percent (5%) of public
23 accommodations in Maricopa County are fully compliant with the AzDA, according to
24 studies conducted by Plaintiff. *

25 29. There are numerous barriers to access by persons with disabilities
26 throughout Maricopa County and this State.

 30. As a readily-identifiable example, at least nine thousand (9,000) public

1 accommodations in Maricopa County alone do not comply with ADA/AzDA access
2 parking-lot regulations in one or more of the following ways:

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

22 31. Such barriers interfere with the full and equal enjoyment of public
23 accommodations by Plaintiffs, Plaintiffs' members, and all Arizonans with disabilities.

24 32. Such barriers deter Plaintiffs, Plaintiffs' members, and all Arizonans with
25 disabilities from enjoying full and equal access to the facilities identified in the Plaintiffs
26 AID and David Ritzenthaler nine thousand (9,000) complaints filed with the Attorney

1 General's Office alleging discrimination on the basis of disability in accordance with Title
2 10, Chapter 3, Article 4 of the Arizona Administrative Code (the "AGO Complaints"),
3 each of which allege one or more of the barriers identified above.

4 COUNT ONE

5 (Special Action – Mandamus – Periodic Compliance Reviews)

6 33. Plaintiff incorporates all allegations of this Complaint as if fully set forth
7 herein.

8 34. A.R.S. § 41-1492.09 (effective January 27, 1994) provides that:

9 The attorney general shall undertake **periodic reviews of**
10 **compliance** of covered entities under this article. If the attorney
11 general concludes at any time after the filing of a complaint of alleged
12 violation, **or as a result of a periodic compliance review**, that
13 prompt judicial action is necessary to carry out the purpose of this
14 article, the attorney general may file a civil action for appropriate
15 temporary or preliminary relief pending final disposition of the
16 complaint **or compliance review**. If, after investigation, the attorney
general determines that reasonable cause exists to believe this article
is being violated, the attorney general shall attempt for a period of not
more than thirty days to effectuate a conciliation agreement. If no
conciliation agreement has been reached after thirty days, the
attorney general **shall file** a civil action in an appropriate court."
(Emphasis added.)

17 35. The Office of the Attorney General has never sufficiently conducted
18 compliance reviews in accordance with this law, much less adequate "periodic" reviews
19 of compliance.

20 36. Arizona law specifically imposes on the Attorney General a duty to conduct
21 periodic compliance reviews of covered entities in accordance with A.R.S. § 41-1492.09.

22 37. The duty to conduct periodic compliance reviews in accordance with A.R.S.
23 § 41-1492.09 is not subject to the discretion of the Attorney General.

24 38. Because of the Attorney General's failure to adequately conduct such
25 compliance reviews, and demonstrate its compliance reviews through recorded
26 communication with places of public accommodation, non-compliance with the AzDA is

1 widespread in this state, impairing Plaintiffs' access.

2 39. As a specific and concrete example, Plaintiff's access to parking lots has
3 been and continues to be impaired by the public accommodations' failure to comply with
4 requirements for the number, location, and signage of accessible/van-accessible parking
5 spots, *inter alia*, as described above.

6 WHEREFORE, Plaintiffs pray for judgment against Defendant on Count One of
7 their Verified Complaint as follows:

8 A. For mandamus relief against the Attorney General in the form of an order
9 that the Attorney General must conduct periodic compliance reviews of covered entities
10 in accordance with A.R.S. § 41-1492.09;

11 B. For declaratory relief against the Attorney General in form of a judgment
12 declaring that the Attorney General is required to conduct periodic compliance reviews
13 of covered entities in accordance with A.R.S. § 41-1492.09;

14 C. For Plaintiffs' fees and other expenses pursuant to A.R.S. § 12-2030(A),
15 including but not limited to "the reasonable cost of any study, analysis, report, test or
16 project found by the court to be necessary for preparation of [Plaintiffs'] case";
17 reasonable and necessary attorney fees; and the reasonable expenses of expert witnesses;

18 D. For Plaintiffs' costs pursuant to A.R.S. § 12-341;

19 E. For whatever other relief the Court deems just, equitable and appropriate.

20 **COUNT TWO**

21 **(Special Action – Mandamus – Inaction on AzDA Complaints)**

22 40. Plaintiff incorporates all allegations of this Complaint as if fully set forth
23 herein.

24 41. On or about September 27, 2016, Plaintiffs AID and David Ritzenthaler
25 filed approximately nine thousand (9,000) complaints with the Attorney General's Office
26 alleging discrimination on the basis of disability in accordance with Title 10, Chapter 3,

1 Article 4 of the Arizona Administrative Code (the "AGO Complaints").

2 42. Specifically, the AGO Complaints identified 9,000 public accommodations
3 that are non-compliant with the AzDA with respect to the number, location, and/or signage
4 of accessible/van-accessible parking spots, *inter alia*, as described in paragraph 30 above.

5 **No response**

6 43. The AGO Complaints were timely filed within the meaning of Ariz. Admin.
7 Code ("AAC") R10-3-405(J),(K).

8 44. The AGO Complaints substantially set forth the allegations of a
9 discriminatory act or practice under the Arizonans with Disabilities Act.

10 45. AAC R10-3-405(G) provides that "[t]he Attorney General shall accept any
11 written statement which substantially sets forth the allegations of a discriminatory act or
12 practice under the Arizonans with Disabilities Act."

13 46. Defendant has no discretion with respect to whether it must accept the AGO
14 Complaints, as provided by AAC R10-3-405(G).

15 47. AAC R10-3-407 provides that "[u]pon the filing of a complaint, the
16 Attorney General shall serve a notice upon each complaining person on whose behalf the
17 complaint was filed," and "[t]he notice shall...[a]cknowledge the filing of the complaint
and state the date that the complaint was accepted for filing," *inter alia*.

18 48. Defendant has not served a notice upon Plaintiffs AID or David Ritzenthaler
19 acknowledging the filing of the AGO Complaints, or otherwise complying with AAC
20 R10-3-407.

21 49. Defendant has no discretion with respect to whether it must issue a notice to
22 Plaintiffs AID and David Ritzenthaler, as provided by AAC R10-3-407.

23 **No notice to respondents**

24 50. AAC R10-3-408 provides that "[w]ithin 20 days of the filing of a complaint
25 or the filing of an amended complaint, the Attorney General shall serve a notice on each
26 respondent." "The notice shall...[i]dentify the alleged discriminatory act or practice upon

1 which the complaint is based, and include a copy of the complaint"; and shall "[a]dvice
2 the respondent of the time limits to file a response and of the procedural rights and
3 obligations of the respondent"; *inter alia*.

4 51. Pursuant to AAC R10-3-408, Defendant's deadline to serve the notices was
5 Monday, October 17, 2016.

6 52. Upon information and belief, Defendant has not served any notices on the
7 respondents named in the AGO Complaints.

8 53. Defendant has no discretion with respect to whether it must issue notices to
9 the complainants and respondents named in the AGO Complaints (as provided by AAC
10 R10-3-407, -408).

11 54. Pursuant to R10-3-409, the sending of the notice described in the preceding
12 paragraphs triggers the respondent's ten (10)-day deadline to file an answer.

13 55. Upon information and belief, no respondent has filed an answer.

14 **No investigation**

15 56. Pursuant to A.R.S. § 41-1492.09, the Attorney General "shall investigate all
16 alleged violations of" the AzDA.

17 57. Pursuant to R10-3-410, "[u]pon the filing of a complaint, the Attorney
18 General shall initiate an investigation to: 1. Obtain information concerning the events or
19 transactions that relate to the alleged discriminatory act or practice identified in the
20 complaint. 2. Document policies or practices of the respondent involved in the alleged
21 discriminatory act or practice raised in the complaint. 3. Develop factual data necessary
22 for the Attorney General to make a determination whether reasonable cause exists to
23 believe that a discriminatory act or practice has occurred or is about to occur, and to take
24 other actions provided by A.R.S. § 41-1492.09."

25 58. Upon information and belief, in response to the filing of the AGO
26 Complaints, the Attorney General has not initiated any investigation pursuant to A.R.S. §
41-1492.09, AAC R10-3-410.

59. Defendant has no discretion or with respect to whether it must initiate an investigation of the violations alleged in the AGO Complaints, pursuant to A.R.S. § 41-1492.09 and AAC R10-3-410.

WHEREFORE, Plaintiffs pray for judgment against Defendant on Count Two of their Verified Complaint as follows:

F. For mandamus relief against the Attorney General in the form of an order that the Attorney General must accept the AGO Complaints;

G. For mandamus relief against the Attorney General in the form of an order that the Attorney General must issue notices to the complainants and respondents named in the AGO Complaints pursuant to AAC R10-3-407, R10-3-408;

H. For mandamus relief against the Attorney General in the form of an order that the Attorney General must initiate an investigation of the violations alleged in the AGO Complaints, pursuant to A.R.S. § 41-1492.09 and AAC R10-3-410;

I. For Plaintiffs' fees and other expenses pursuant to A.R.S. § 12-2030(A), including but not limited to "the reasonable cost of any study, analysis, report, test or project found by the court to be necessary for preparation of [Plaintiffs'] case"; reasonable and necessary attorney fees; and the reasonable expenses of expert witnesses;

J. For Plaintiffs' costs pursuant to A.R.S. § 12-341;

K. For whatever other relief the Court deems just, equitable and appropriate.

RESPECTFULLY SUBMITTED this Wednesday, December 7, 2016.

'STROJNIK, P.C.

By: Peter Strojnik
Peter Strojnik
Attorney for Plaintiffs

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

DATED this 7th day of December, 2016.

Alex Callan
De facto Representative for AID