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COPY

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

14 THE STATE OF ARIZONA *ex rel.* TERRY
15 GODDARD, the Attorney General; and THE
16 CIVIL RIGHTS DIVISION OF THE ARIZONA
17 DEPARTMENT OF LAW,

18 Plaintiff,

19 v.

20 OLD CONCHO COMMUNITY ASSISTANCE
21 CENTER, INC., an Arizona nonprofit
22 corporation,

23 Defendant.

No.

CV2009-009839

COMPLAINT

(Non-classified Civil)

24 Plaintiff, the State of Arizona *ex rel.* Terry Goddard, the Attorney General, and the
25 Civil Rights Division of the Arizona Department of Law (collectively "the State"), for its
26 Complaint, alleges as follows:

INTRODUCTION

The State brings this action pursuant to the Arizona Fair Housing Act ("AFHA"),
A.R.S. §§ 41-1491 to 41.1491.37, to correct a discriminatory and unlawful housing practice,
provide appropriate relief to an aggrieved person, and to vindicate the public interest.

1 Specifically, the State brings this matter to redress the injury sustained by the refusal of the
2 Defendants to grant a reasonable modification for Betty J. Kreeger (“Kreeger”), a person with
3 a disability, to raise the height of the sinks and countertops in her unit at Defendant’s housing
4 development.

5 JURISDICTION AND VENUE

6 1. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1491.34(A).

7 2. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

8 PARTIES

9 3. The Civil Rights Division of the Arizona Department of Law (“the Division”) is
10 an administrative agency established by A.R.S. § 41-1401 to enforce the provisions of the
11 Arizona Civil Rights Act, A.R.S. § 41-1401, *et seq.*

12 4. The State brings this action on its own behalf and on behalf of Kreeger, who is an
13 aggrieved person within the meaning of A.R.S. § 41-1491(1)(a).

14 5. Defendant, Old Concho Community Assistance Center, Inc. (“OCCAC”), is an
15 Arizona non-profit corporation which is the owner, manager and lessor of that certain four-unit
16 special needs housing development for persons with multiple chemical sensitivity (“MCS”)
17 located at 8333 Rockin R Ranch Road, Snowflake, Arizona, in Navajo County (“the Rockin R
18 Ranch”). Upon information and belief, the Rockin R Ranch is the first and only special needs
19 housing development in Arizona for persons with MCS.

20 GENERAL ALLEGATIONS

21 6. On or about March 24, 2008, Kreeger entered into a lease agreement with
22 Defendant OCCAC to rent Unit 1 at Rockin R Ranch, for a term of one year commencing on
23 April 1, 2008.

24 7. Kreeger has multiple disabilities, including but not limited to: Fibromyalgia,
25 Chronic Fatigue Syndrome, Myofascial Pain Syndrome in the cervical, thoracic and lumbar
26 spine following a motor vehicle accident, and Degenerative Disc Disease with cervical and
lumbar radiculopathy. At all relevant times, Kreeger received disability benefits. As a result of

1 her disabilities, Kreeger has, and at all relevant times, had difficulty, among other things,
2 standing or sitting in one position for more than a few minutes, and bending forward, squatting
3 or kneeling.

4 8. The sinks and countertops at the Rockin R Ranch were designed to meet the
5 needs of persons who use wheelchair. The sinks and countertops are 34" high, which is 2"
6 lower than the standard height for persons who do not use wheelchairs.

7 9. Kreeger, who was the first resident with MCS at the Rockin R Ranch, does not
8 use a wheelchair. On or about April 14, 2008, Kreeger hand-delivered a letter to OCCAC's
9 Executive Director Cindy Furrh ("Furrh"), pointing out problems encountered at Rockin R
10 Ranch and requesting some disability-related modifications. Among other things, Kreeger
11 requested that OCCAC raise the kitchen sink and countertop to 36" high. In connection with
12 that request, Kreeger explained that it was particularly difficult for her to stand at the kitchen
13 sink because she has to bend over at an odd angle which puts pressure on her low back and
14 neck where she has problems due to an old car accident injury.

15 10. On or about April 21, 2008, Furrh responded to Kreeger's letter and addressed the
16 problems noted in Kreeger's April 14, 2008 letter. With respect to the height of the kitchen
17 sink and counter, Furrh stated:

18 "We can only raise the sink and counters if we have a statement from your Doctor
19 stating that the height of the sink and counters is causing you pain and pressure
20 and is considered a disability or handicap to you."

21 11. On or about May 6, 2008, Kreeger provided OCCAC with a letter addressed "To
22 Whom It May Concern" from her doctor, Gerald P. Keane, M.D. In the letter, Dr. Keane
23 discusses Kreeger's chronic spine-related problems, her associated pain stemming from her
24 motor vehicle accident, and her Fibromyalgia. Dr. Keane notes that Kreeger "requires as much
25 ergonomic assistance as possible including the placement of proper heights for counters, sinks,
26 etc., in order to reduce the load on her spine as she carries out normal activities of daily living"
and recommends that "any possible adjustments to the heights of these counters be completed

1 to try and allow [Kreeger] to be more functional and reduce her potential for aggravating her
2 spine.”

3 12. By letter dated May 21, 2008, OCCAC’s attorney, Albert B. Lassen (“Lassen”)
4 informed Kreeger that raising the kitchen sink and counters was not practically possible, even if
5 Kreeger agreed to do it at her expense because when she leaves, OCCAC would then be
6 responsible for replacing them again to the design level. Lassen further stated: “If you have
7 multiple disabilities which prevent you from occupying this house it may not be an appropriate
8 residence for you”

9 13. On or about July 31, 2008, Kreeger filed a timely complaint of housing
10 discrimination with the State’s Civil Rights Division pursuant to A.R.S. § 41-1491.22(C), in
11 which she alleged that she had been the victim of disability discrimination by Defendant.

12 14. The Division investigated Kreeger’s complaint pursuant to A.R.S. § 41-
13 1491.24(B).

14 15. At the conclusion of the investigation, the Division issued a finding (“the Cause
15 Finding”) that reasonable cause exists to believe that Defendant discriminated against Kreeger
16 based on disability, in violation of the AFHA due to failure to grant a reasonable modification
17 and failure to engage in the interactive process adequately with respect to Kreeger’s request for
18 modification of the height of the kitchen sink and counters.

19 16. The State issued the Cause Finding on February 27, 2009. Since that time,
20 Kreeger and Defendant OCCAC have not entered into a conciliation agreement. Having
21 exhausted administrative requirements, the State is authorized to file this Complaint pursuant to
22 A.R.S. §§ 41-1491.29(D) and 41-1491.34(A).

23 **COUNT ONE**

24 **[Discrimination in Violation of A.R.S. § 41-1491.19 of AFHA]**

25 17 Plaintiff realleges and incorporates by reference the allegations contained in
26 paragraphs 1 through 16 of this Complaint.

1 18. Kreeger's rental unit at Rockin R Ranch is a dwelling within the meaning of
2 A.R.S. § 41-1491(7)(a) of AFHA.

3 19. Kreeger has a disability within the meaning of A.R.S. § 41-1491(5).

4 20. Kreeger informed OCCAC of Kreeger's disability, and requested that the kitchen
5 sink and counters be raised 2" as a reasonable modification for Kreeger's disability.

6 21. Under A.R.S. § 41-1491.19(B)(1), a person may not discriminate against any
7 person in the terms, conditions or privileges of sale or rental of a dwelling or in the provision
8 of services or facilities in connection with a dwelling because of a disability of that person.

9 22. Under A.R.S. § 41-1491.19(E)(1), discrimination includes a refusal to permit, at
10 the expense of the disabled person, reasonable modifications of existing premises occupied or
11 to be occupied by the person if the modifications may be necessary to afford the person full
12 enjoyment of the premises, provided that, in the case of a renter, the landlord may, where it is
13 reasonable to do so, condition permission for a modification on the renter agreeing, to restore
14 the interior of the premises to the condition that existed before the modification, reasonable
15 wear and tear excepted.

16 23. Defendant OCCAC refused to permit, at Kreeger's expense, a reasonable
17 modification of raising the kitchen sink and counter heights 2", or to condition permission for
18 the modification on Kreeger agreeing to restore the interior of the premises to the condition
19 that existed before the modification, reasonable wear and tear excepted. The requested
20 modification was necessary to afford Kreeger full enjoyment of the premises. Defendant
21 OCCAC also failed to adequately engage in the interactive process with respect to this
22 modification request.

23 24. Upon information and belief, as a result of discrimination by Defendant, Kreeger
24 suffered physical pain, emotional distress, inconvenience, embarrassment, humiliation, denial
25 of civil rights, and monetary damages in an amount to be determined at trial.
26

