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14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

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

17 STATE OF ARIZONA, *ex rel.* MARK
BRNOVICH, the Attorney General, and the
18 CIVIL RIGHTS DIVISION OF THE
ARIZONA DEPARTMENT OF LAW,

19 Plaintiff,

20 vs.

21
22 CITY OF TUCSON

23 Defendant.

Case No.:

CIVIL COMPLAINT

(Jury Trial Requested)

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1 Plaintiff, the State of Arizona, *ex rel.* Mark Brnovich, the Attorney General, and the Civil
2 Rights Division of the Arizona Department of Law (collectively, “the State”) alleges and states,
3 as follows:

4 INTRODUCTION

5 1. The State brings this public enforcement action under the Arizona Civil Rights
6 Act (“ACRA”) to correct unlawful employment practices, redress the injuries of aggrieved
7 parties, and vindicate the public interest.

8 2. The State brings this public enforcement action because Defendant City of Tucson
9 discriminated against employees based on disability and/or religion, and engaged in a pattern or
10 practice of discrimination against such employees, by subjecting them to different terms,
11 conditions, and privileges of employment in violation of A.R.S. § 41-1463(B)(1).

12 3. Defendant further discriminated against employees based on disability and/or
13 religion, and engaged in a pattern or practice of discrimination against such employees, by
14 limiting, segregating, or classifying them in a way that would deprive them, or tend to deprive
15 them, of employment opportunities or otherwise adversely affect their status as employees in
16 violation of A.R.S. § 41-1463(B)(2).

17 4. Defendant discriminated against employees based on disability and/or religion,
18 and engaged in a pattern or practice of discrimination against such employees, by retaliating
19 against them for engaging in statutorily protected activity in violation of A.R.S. § 41-1464(A).

20 JURISDICTION AND VENUE

21 5. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1481(D).

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

23 7. The Civil Rights Division of the Arizona Department of Law (the “Division”)
24 issued a timely charge of discrimination on August 31, 2021 pursuant to A.R.S. § 41-
25 1481(A),(B).

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1 8. On July 29, 2022, the Division issued a Reasonable Cause Determination,
2 pursuant to A.R.S. § 41-1481(B), finding that Defendant discriminated against employees with
3 disabilities and/or sincerely-held religious beliefs.

4 9. The Division endeavored to eliminate Defendant's unlawful employment
5 practices through informal methods of conference, conciliation, and persuasion with Defendant
6 pursuant to A.R.S. § 41-1481(B).

7 10. The parties have not entered into a conciliation agreement.

8 11. The State brings this Complaint pursuant to A.R.S. § 41-1481(D).

9 **PARTIES**

10 12. The Division is an administrative agency of the State of Arizona established by
11 A.R.S. § 41-1401 to administer and enforce the provisions of the ACRA, A.R.S. § 41-1401, *et*
12 *seq.*

13 13. The State brings this action on its own behalf and on behalf of employees with
14 disabilities and/or sincerely-held religious beliefs, who are aggrieved parties, pursuant to A.R.S.
15 § 41-1481(D).

16 14. Defendant is a municipal corporation with a principal place of business at 255
17 West Alameda Street in Tucson, Arizona.

18 15. At all relevant times to the allegations in this Complaint, Defendant employed
19 more than 4,000 employees.

20 16. At all relevant times to the allegations in this Complaint, Defendant was an
21 employer within the meaning of A.R.S. § 41-1461(7)(a).

22 17. At all relevant times to the allegations in this Complaint, Defendant employed
23 employees with disabilities and/or sincerely-held religious beliefs within the meaning of A.R.S.
24 § 41-1461(6)(a).

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1 25. Defendant did not consider the essential functions of its employees' job duties in
2 creating and implementing its August Directive, nor did it assess or monitor whether some
3 employees subjected to the vaccine directives were working, or able to work, remotely.

4 26. Defendant denied many accommodation and/or exemption requests submitted
5 pursuant to the August Directive, requiring employees who were denied to either submit another
6 accommodation and/or exemption request, or get vaccinated by October 5, 2021.

7 27. Employees who did not submit an additional accommodation and/or exemption
8 request or get vaccinated by October 5, 2021 were subject to unpaid suspensions of 40 hours or
9 more.

10 28. Defendant amended its August Directive on or around October 27, 2021,
11 providing until November 23, 2021 for employees to submit requests for religious
12 accommodation, disability accommodation, and/or medical exemption ("October Directive").

13 29. Upon information and belief, despite the October Directive's extension of time to
14 file requests for exemption or accommodation, Defendant upheld discipline for employees who
15 could not comply with Defendant's August Directive because of sincerely-held religious beliefs
16 and/or disability, but who allegedly missed the first deadline for requesting accommodation
17 and/or exemption from Defendant's vaccine directive.

18 30. Defendant did not consider the essential functions of its employees' job duties in
19 creating and implementing its October Directive, nor did it assess or monitor whether some
20 employees subjected to the vaccine directives were working, or able to work, remotely.

21 31. Employees who failed to comply with Defendant's October Directive were subject
22 to disciplinary action; including, but not limited to, unpaid suspensions of 40 hours or more or
23 termination.

24 32. Defendant delayed unpaid suspensions at its discretion; imposing or delaying them
25 based on Defendant's staffing needs throughout 2021 and 2022.

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1 33. Some employees have unpaid suspensions pending that Defendant has not yet
2 imposed.

3 34. Defendant's vaccine directives required employees with disabilities to submit
4 evidence from a medical provider to corroborate their need for medical exemption or reasonable
5 accommodation from Defendant's vaccine directives.

6 35. Defendant's vaccine directives required employees to submit a narrative
7 justification for their sincerely-held religious beliefs to corroborate their need for reasonable
8 accommodation based on religion from Defendant's vaccine directives.

9 36. Upon information and belief, Defendant subjected employees who could not
10 comply with Defendant's vaccine directives because of sincerely-held religious beliefs and/or
11 disability to discipline, including unpaid suspensions, because they required reasonable
12 accommodation to Defendant's vaccine directives.

13 37. Upon information and belief, Defendant subjected employees who submitted
14 timely accommodation and/or exemption requests to unpaid suspensions despite compliance
15 with Defendant's policies when, Defendant claimed, those requests were not supported by
16 adequate disclosure of the employee's disability and/or sufficient medical information.

17 38. Upon information and belief, Defendant subjected employees who submitted
18 timely accommodation and/or exemption requests to unpaid suspensions despite compliance
19 with Defendant's policies when, Defendant claimed, those requests were not supported by
20 adequate disclosure of the sincerity of the employee's religious belief.

21 39. Defendant used employees' purported failure to be vaccinated as a pretext to
22 subject employees who could not comply with Defendant's vaccine directives because of their
23 sincerely-held religious beliefs and/or disabilities to more onerous terms and conditions of
24 employment.

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1 40. Defendant provided employees who submitted proof of compliance with
2 Defendant's vaccine directives with multiple benefits and privileges that were denied to
3 similarly-situated employees who could not comply with Defendant's vaccine directives
4 because of sincerely-held religious beliefs and/or disability.

5 41. At least 377 employees requested medical exemption from Defendant's vaccine
6 directives.

7 42. At least 352 employees requested religious-based accommodation from
8 Defendant's vaccine directives.

9 43. Defendant provided employees who submitted proof of vaccination with
10 additional "pandemic leave" to recover from a COVID-19 infection or to quarantine if a family
11 member had a COVID-19 infection, while denying that same benefit to employees who engaged
12 in protected activity by seeking and receiving an approved accommodation and/or exemption to
13 Defendant's vaccine directives.

14 44. Defendant provided employees who submitted proof of vaccination with an 8-
15 hour "floating holiday," while denying that same benefit to employees who engaged in protected
16 activity by seeking and receiving an approved accommodation and/or exemption to Defendant's
17 vaccine directives.

18 45. Defendant provided employees who submitted proof of vaccination with the
19 ability to travel outside of Pima County for job-related career enhancement opportunities, while
20 denying that same benefit to employees who engaged in protected activity by seeking and
21 receiving an approved accommodation and/or exemption to Defendant's vaccine directives.

22 46. Defendant claims its disparate treatment against employees who engaged in
23 protected activity were "incentives" for employees to get vaccinated.

24 47. Defendant's claimed "incentives" were provided to employees who were
25 vaccinated prior to Defendant's vaccine directives.

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1 48. Upon information and belief, Defendant's purported "incentives" were, severally
2 and collectively, coercive actions that punished employees who could not comply with
3 Defendant's vaccine directives because of a sincerely-held religious belief and/or disability.

4 49. Defendant required employees with approved accommodations to pay for their
5 own COVID-19 tests or apply to participate in a medical study at the University of Arizona for
6 free testing.

7 50. Certain employees with approved religious and/or medical accommodations
8 submitted to regular testing for the COVID-19 virus at the employees' own expense, despite the
9 fact that the testing was a required part of the Defendant's approved accommodation and a
10 condition of continued employment.

11 COUNT I

12 **Different Terms or Conditions of Employment in Violation of A.R.S. § 41-1463(B)(1)**

13 **(Discrimination based on Religion)**

14 51. The State realleges and incorporates by reference the allegations contained in
15 paragraphs 1 through 50 of this Complaint.

16 52. A.R.S. § 14-1463 prohibits an employer from discriminating against any
17 individual with respect to compensation, terms, conditions, or privileges of employment because
18 of religion.

19 53. In violation of A.R.S. § 41-1463(B)(1), Defendant engaged in unlawful
20 employment practices by discriminating against individuals with respect to terms, conditions,
21 or privileges of employment because of the individual's sincerely held religious belief, as a
22 result of Defendant's policies and practices.

23 54. In violation of A.R.S. § 41-1463(B)(1), Defendant engaged in unlawful
24 employment practices by disciplining employees due to their sincerely-held religious beliefs.

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1 62. In violation of A.R.S. § 41-1463(B)(1), Defendant engaged in unlawful
2 employment practices by disciplining employees who, because of their disability, requested
3 medical exemption or accommodation to Defendant’s August and/or October Directives.

4 63. By creating and implementing its August and October Directives, Defendant
5 engaged in a pattern or practice of discriminating against employees who, because of their
6 disability, requested medical exemption or accommodation to Defendant’s August and/or
7 October Directives; subjecting the group to different terms and conditions of employment.

8 64. Because Defendant subjected employees with disabilities who, because of their
9 disability, requested medical exemption or accommodation to Defendant’s vaccine directives to
10 different terms and conditions of employment, those employees suffered monetary damages in
11 excess of the Court’s minimum jurisdictional amount for which they should be compensated in
12 an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

13 65. To remedy the effects of Defendant’s discrimination, employees with disabilities
14 are entitled to affirmative relief under A.R.S. § 41-1481(G).

15 66. The State is entitled to injunctive relief and affirmative relief to remedy
16 Defendant’s actions pursuant to A.R.S. § 41-1481(G).

17 **COUNT III**

18 **Limiting, Segregating, or Classifying Employees in Violation of A.R.S. § 41-1463(B)(2)**
19 **(Discrimination based on Religion)**

20 67. The State realleges and incorporates by reference the allegations contained in
21 paragraphs 1 through 66 of this Complaint

22 68. A.R.S. § 14-1463(B)(2) prohibits an employer from limiting, segregating, or
23 classifying employees or applicants for employment in any way that would deprive or tend to
24 deprive any individual of employment opportunities or otherwise adversely affect the
25 individual's status as an employee because of their religious beliefs.

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1 69. In violation of A.R.S. § 14-1463(B)(2), Defendant categorically denied
2 employment benefits like travel, educational opportunities related to travel, and certain types of
3 leave to employees with approved religious accommodations; thereby depriving or tending to
4 deprive those employees of employment opportunities.

5 70. In violation of A.R.S. § 14-1463(B)(2), Defendant categorically denied
6 employment benefits like travel, educational opportunities related to travel, holidays, and certain
7 types of leave to employees with approved religious accommodations; thereby adversely
8 affecting those employees' status as an employee.

9 71. By creating and implementing its August and October Directives, Defendant
10 engaged in a pattern or practice of discriminating against employees with sincerely-held
11 religious beliefs; classifying the employees in a way that would adversely affect their
12 employment based on their religious beliefs.

13 72. Defendant limited, segregated, or classified employees with sincerely-held
14 religious beliefs in a way that deprived them of equal employment opportunities or otherwise
15 adversely affected their status as employees because of their sincerely-held religious beliefs, and
16 those employees, as a result, suffered monetary damages in excess of the Court's minimum
17 jurisdictional amount for which they should be compensated in an amount to be determined at
18 trial pursuant to A.R.S. § 41-1481(G).

19 73. To remedy the effects of Defendant's discrimination, its employees are entitled to
20 affirmative relief under A.R.S. § 41-1481(G).

21 74. The State is entitled to injunctive relief and affirmative relief to remedy
22 Defendant's actions pursuant to A.R.S. § 41-1481(G).

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1 **COUNT IV**

2 **Limiting, Segregating, or Classifying Employees in Violation of A.R.S. § 41-1463(B)(2)**
3 **(Discrimination based on Disability)**

4 75. The State realleges and incorporates by reference the allegations contained in
5 paragraphs 1 through 74 of this Complaint

6 76. A.R.S. § 14-1463(B)(2) prohibits an employer from limiting, segregating, or
7 classifying employees or applicants for employment in any way that would deprive or tend to
8 deprive any individual of employment opportunities or otherwise adversely affect the
9 individual's status as an employee because of their disability.

10 77. In violation of A.R.S. § 14-1463(B)(2), Defendant categorically denied
11 employment benefits like travel, educational opportunities related to travel, and certain types of
12 leave to employees with disabilities who could not comply with Defendant's vaccine directive
13 because of their disabilities and requested medical exemption or accommodation to Defendant's
14 vaccine directives; thereby depriving or tending to deprive those employees.

15 78. In violation of A.R.S. § 14-1463(B)(2), Defendant categorically denied
16 employment benefits like travel, educational opportunities related to travel, holidays, and certain
17 types of leave to employees with disabilities who could not comply with Defendant's vaccine
18 directive because of their disabilities and requested medical exemption or accommodation to
19 Defendant's vaccine directives; thereby adversely affecting those employees' status as an
20 employee.

21 79. By creating and implementing its August and October Directives, Defendant
22 engaged in a pattern or practice of discriminating against employees with disabilities classifying
23 the employees in a way that would adversely affect their employment based on disability.

24 80. Defendant limited, segregated, or classified employees with disabilities who,
25 because of their disability, requested medical exemption or accommodation to Defendant's

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1 vaccine directives in a way that deprived them of equal employment opportunities or otherwise
2 adversely affected their status as employees because of their disabilities, and those employees,
3 as a result, suffered monetary damages in excess of the Court's minimum jurisdictional amount
4 for which they should be compensated in an amount to be determined at trial pursuant to A.R.S.
5 § 41-1481(G).

6 81. To remedy the effects of Defendant's discrimination, its employees are entitled to
7 affirmative relief under A.R.S. § 41-1481(G).

8 82. The State is entitled to injunctive relief and affirmative relief to remedy
9 Defendant's actions pursuant to A.R.S. § 41-1481(G).

10 **COUNT V**

11 **Retaliation in Violation of A.R.S. § 41-1464**

12 83. The State realleges and incorporates by reference the allegations contained in
13 paragraphs 1 through 82 of this Complaint.

14 84. Under A.R.S. § 41-1464(A), it is an unlawful practice for an employer to
15 discriminate against any individual because that individual participated in protected activity by
16 requesting reasonable accommodations on the basis of disability or religion.

17 85. Defendant's employees with disabilities and/or sincerely-held religious beliefs
18 engaged in protected activity when they submitted requests for reasonable accommodation
19 and/or exemption to Defendant's vaccine directives.

20 86. Defendant imposed adverse employment actions on these employees with
21 disabilities and/or sincerely-held religious beliefs by suspending them without pay and denying
22 them employment benefits, including travel opportunities, educational opportunities related to
23 travel, holidays, and certain types of leave.

24 87. But for these employees with disabilities and/or sincerely-held religious beliefs
25 engaging in protected activity, Defendant would not have suspended them without pay.

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1 88. As a result of Defendant's discrimination and retaliation, employees with
2 disabilities and/or sincerely-held religious beliefs lost employment opportunities and suffered
3 monetary damages in excess of the Court's minimum jurisdictional amount for which they
4 should be compensated in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

5 89. To remedy the effects of Defendant's discrimination, its employees are entitled to
6 affirmative relief under A.R.S. § 41-1481(G).

7 90. The State is entitled to injunctive relief and affirmative relief to remedy
8 Defendant's actions pursuant to A.R.S. § 41-1481(G).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the State requests that this Court:

11 A. Enter judgment on behalf of the State, finding that Defendant subjected employees
12 with disabilities and/or sincerely-held religious beliefs to unlawful discrimination and retaliation
13 in violation of the ACRA;

14 B. Permanently enjoin Defendant, its successors, assigns, and all persons in active
15 concert or participation with Defendant, from engaging in any unlawful employment practice,
16 including different terms and conditions of employment, and retaliation that violates the ACRA;

17 C. Order Defendant to make its employees whole by providing employees with
18 disabilities and/or sincerely-held religious beliefs appropriate back pay and front pay, in addition
19 to pre- and post-judgment interest, in an amount to be determined at trial;

20 D. Order Defendant to institute, implement and enforce policies, practices and
21 programs that provide equal employment opportunities for employees with disabilities or
22 sincerely-held religious beliefs, and that eradicate the effects of its present unlawful employment
23 practices;

24 E. Order Defendant to provide remedial and additional training to their management,
25 supervisors, human resources personnel, and employees regarding disability-based and religion-

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1 based discrimination in the workplace and unlawful retaliation, including but not limited to
2 accommodation of disabilities and sincerely-held religious beliefs;

3 F. Order Defendant to provide remedial and additional training to the Tucson City
4 Council Members, including the mayor, regarding disability-based and religion-based
5 discrimination in the workplace and unlawful retaliation, including but not limited to
6 accommodation of disabilities and sincerely-held religious beliefs;

7 G. Order Defendant to issue a public statement apologizing to any Tucson employee
8 regarding disability-based and religion-based discrimination and retaliation in the workplace as
9 a result of Defendant's improper and illegal implementation and enforcement of its vaccine
10 directives;

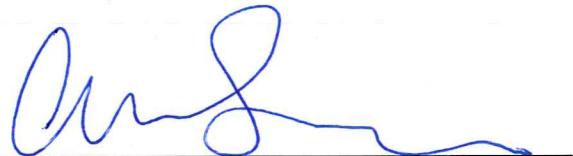
11 H. Issue an Order authorizing the State to monitor Defendant's compliance with the
12 ACRA;

13 I. Award the State its taxable costs incurred in bringing this action; and

14 J. Grant such other and further relief as this Court may deem just and proper in the
15 public interest.

16
17 DATED this 30th day of August, 2022.

18
19 MARK BRNOVICH
Attorney General

20
21 By: 
22 Angela Schultz
23 Arizona Civil Rights Division
24 Attorneys for the State
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