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13
14 IN THE UNITED STATES DISTRICT COURT
15
16 FOR THE DISTRICT OF ARIZONA

17 THE STATE OF ARIZONA *ex rel.* TERRY
18 GODDARD, the Attorney General; and THE
19 CIVIL RIGHTS DIVISION OF THE ARIZONA
20 DEPARTMENT OF LAW,

21 Plaintiff,

22 vs.

23 LA PALOMA FAMILY SERVICES, INC., an
24 Arizona corporation,

25 Defendant.

No. CV 08-127-TUC-JMR

FIRST AMENDED COMPLAINT
(Non-Classified Civil)

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

1 **INTRODUCTION**

2 This is an action brought under the Arizona Civil Rights Act (“ACRA”) to correct
3 unlawful employment practices, to provide appropriate relief to the charging party, and to
4 vindicate the public interest. Specifically, the State brings this matter to redress the injury
5 sustained when the Defendant refused to hire Linda Haley because of her disability, in
6 violation of the ACRA.

7 **JURISDICTION AND VENUE**

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

11 2. The State brings this action on its own behalf and on behalf of Linda Haley, the
12 aggrieved person.

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

14 4. Venue is proper in Pima County pursuant to A.R.S. § 12-401 because Defendant
15 operates its residential services for clients in residential service sites in Tucson.

16 **PARTIES**

17 5. At all relevant times, La Paloma Services, Inc. (“La Paloma” or “Defendant”)
18 was a non-profit Arizona corporation providing residential living services to youth and the
19 babies of minor girls in their charge. Specifically, La Paloma is a licensed and accredited
20 residential care agency in the State of Arizona and is an employer within the meaning of A.R.S.
21 § 41-1461(4).

22 6. At all relevant times, David T. Bradley was acting in the course and scope of his
23 duties as La Paloma’s President and Chief Executive Officer.

24 7. At all relevant times, Erin M. Lyons was acting in the course and scope of her
25 duties as La Paloma’s Director of Development and Quality Management.

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1 8. At all relevant times, Kelly Harshberger was acting in the course and scope of her
2 duties as La Paloma's Human Resource Manager.

3 9. The State brings this action on its own behalf and on behalf of Linda Haley, who
4 is an aggrieved person within the meaning of A.R.S. § 41-1481.

5 **BACKGROUND**

6 10. On November 7, 2006, Linda Haley filed a timely administrative complaint of
7 employment discrimination with the State's Compliance Section, in which she alleged that she
8 had been the victim of employment discrimination because of a disability based upon the
9 following facts.

10 11. Linda Haley is profoundly deaf.

11 12. As a result, Linda Haley is substantially limited in at least one major life activity,
12 including but not limited to hearing.

13 13. For communication purposes, Linda Haley uses her voice to speak to people who
14 can hear and uses American Sign Language to communicate with people who are deaf.
15 Although Ms. Haley can not hear speech, she uses speech reading, TTY, video relay, note
16 writing, interpreters, and other assistive technology to communicate with persons who do not
17 use sign language.

18 14. On or about August 30, 2006, Linda Haley applied for an advertised position as a
19 Behavioral Health Technician at La Paloma.

20 15. On or about September 6, 2006, Kelly Harshberger interviewed Ms. Haley for the
21 position.

22 16. Kelly Harshberger was aware that Linda Haley has the disability of profound
23 deafness because she contacted Ms. Haley via TTY to set up the interview and it was discussed
24 during the interview.

25 17. La Paloma's Position Description for the position of Behavioral Health
26 Technician lists preferred qualifications as follows: bachelor's degree in a behavioral health or

1 health related field; or bachelor's degree in any field plus one year experience in behavioral
2 health service delivery to children and adolescents.

3 18. Other minimum qualifications for the position of Behavioral Health Technician
4 lists minimum qualifications include the ability to work cooperatively with agency personnel at
5 all levels, willingness to adapt to constantly change environment, able to accept supervision and
6 support, demonstration of strong sense of self-identity; must be 21 years of age and must have
7 own transportation and hold a valid Arizona driver's license.

8 19. Linda Haley met or exceeded the preferred qualifications for the position of
9 Behavioral Health Technician because at all relevant times she had a bachelor's degree in
10 Human Services and Management and over a year of employment experience working either
11 with children and adolescents or in the behavioral health field.

12 20. Linda Haley could perform the essential functions of the Behavioral Health
13 Technician position with reasonable accommodations.

14 21. At all relevant times, the position of Behavioral Health Technician was a
15 continuously open position.

16 22. On September 7, 2006, La Paloma notified Ms. Haley that it had not chosen her
17 to fill the position of Behavioral Health Technician

18 23. Other candidates for the position of behavioral health technician who were
19 interviewed and offered a position as behavioral health technician between August and October
20 2006 did not meet the minimum or preferred qualifications for the position. These candidates
21 had no known disabilities.

22 24. La Paloma imposed a qualification standard of "hearing" for the position of
23 behavioral health technician.

24 25. A qualification standard of "hearing" for the position of behavioral health
25 technician screens out otherwise qualified applicants who are deaf or hard of hearing.

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1 26. La Paloma asserts that it denied Linda Haley the employment opportunity of
2 behavioral health technician because employing a deaf person in that position would create a
3 direct threat to the health and safety of residents.

4 27. La Paloma denied Linda Haley the employment opportunity without engaging in
5 the interactive process with her to determine if there were reasonable accommodations that
6 would allow her to safely perform the job duties and reduce the perceived risk to an acceptable
7 level.

8 28. Pursuant to A.R.S. § 41-1481(B), the State issued a Cause Finding on October 30,
9 2007, finding reasonable cause to belief that Linda Haley is a qualified individual with a
10 disability who was denied employment by La Paloma because of her disability, in violation of
11 A.R.S. § 41-1463(B)(1) and (F)(4), (5), and (6).

12 29. The State, Linda Haley and La Paloma have not entered into a Conciliation
13 Agreement permitting the filing of this Complaint pursuant to A.R.S. § 41-1481(D).

14 **STATEMENT OF CLAIM**

15 **(Discrimination in Violation of A.R.S. § 41-1463(B))**

16 **UNLAWFUL REFUSAL TO HIRE AND FAILURE REASONABLY**
17 **ACCOMMODATE**

18 30. The State realleges and incorporates by reference the allegations contained in
19 paragraphs 1 through 29 of this Complaint.

20 31. Linda Haley is an individual with a disability within the meaning of ACRA.

21 32. Linda Haley was qualified to and can perform the essential functions of the
22 Supervisor position with or without reasonable accommodation(s).

23 33. La Paloma failed to hire Linda Haley because of her disability.

24 34. La Paloma imposed a qualification standard of "hearing" for the position of
25 Behavioral Health Technician that screened out Ms. Haley and has the effect of unlawfully
26 screening out the class of people who are deaf or hard of hearing.

1 35. La Paloma subsequently hired a non-deaf person for the position of Behavioral
2 Health Technician.

3 36. As a result of Defendant's discriminatory failure to hire, upon information and
4 belief, Linda Haley suffered a loss of wages, and is entitled to and should be compensated for
5 her back pay losses in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

6 37. Linda Haley also suffered a loss of an employment opportunity and is entitled to
7 a Behavioral Health Technician or comparable available position and any other equitable relief
8 the Court deems appropriate.

9 38. The State also is entitled to injunctive relief against Defendant's actions and
10 entitled to its costs pursuant to A.R.S. § 41-1481(J).

11 **PRAYER FOR RELIEF**

12 WHEREFORE, the State respectfully requests that this Court:

13 A. Enter judgment on behalf of the State, finding that Defendant unlawfully
14 discriminated against Linda Haley because of a disability, in violation of the ACRA.

15 B. Enjoin Defendant, its successors, assigns and all persons in active concert or
16 participation with Defendant, from engaging in any unlawful employment practice that
17 discriminates on the basis of disability in violation of the ACRA.

18 C. Order Defendant to make Linda Haley whole and award her back pay and
19 pecuniary damages in amounts to be determined at trial.

20 D. Order Defendant to hire Linda Haley as a Behavioral Health Technician or place
21 her in another, comparable, available position and provide any other equitable relief the Court
22 deems appropriate.

23 E. Order Defendant to make changes to its hiring and promotion policies and
24 procedures to eliminate its discriminatory qualification standard of "hearing" for the position
25 of Behavioral Health Technician to comply with ACRA.

26 F. Order the State to monitor Defendant's compliance with the ACRA.

1 G. Award the State its costs incurred in bringing this action, and its costs in
2 monitoring Defendant's future compliance with the ACRA.

3 H. Grant such other and further relief as this Court may deem just and proper in the
4 public interest.

5 Dated this 30th day of April, 2009.

6
7 TERRY GODDARD
8 Attorney General

9 By s/ Cathleen M. Dooley
10 Rose A. Daly-Rooney
11 Cathleen M. Dooley
12 Assistant Attorney General
13 Arizona Attorney General's Office
14 Civil Rights Division
15 Attorneys for Plaintiff

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on April 30, 2009, I electronically transmitted the attached document
18 to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of
19 Electronic Filing to the following CM/ECF registrants:

20 Troy P. Foster
21 Justin S. Pierce
22 Ford & Harrison, LP
23 2525 E. Camelback Road, Suite 450
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