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**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity  
Commission  
  
Plaintiff,  
  
vs.  
  
Aztec Inn Properties, LLC., an  
Arizona Corporation, dba Clarion  
Hotel - Randolph Park; HSL  
Properties Financial Corporation, an  
Arizona Corporation  
  
Defendants.

CIV 02-324 TUC RCC  
  
FIRST AMENDED COMPLAINT  
AND JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title I and Title V of the Americans with Disabilities Act (ADA) of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina Gutierrez, Juan Rivera and David Laborin, who were adversely affected by such practices. Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina Gutierrez, Juan Rivera and David Laborin had the terms and conditions of their employment altered, were denied reasonable accommodations and were ultimately terminated because of their disabilities, which include mental retardation and Down's Syndrome. In addition, Defendants unlawfully interfered with the rights of these individuals which are granted or protected by the ADA.

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2 JURISDICTION AND VENUE

- 3 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,  
4 1337, 1343 and 1345. This action is authorized and instituted pursuant to  
5 Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42  
6 U.S.C. § 12117(a), which incorporates by reference "Sections 706(f)(1) and  
7 (3) and 707" of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42  
8 U.S.C. "§§ 2000e-5(f)(1) and (3) and 2000e-6.and pursuant to Section 102  
9 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.
- 10 2. The employment practices alleged to be unlawful were committed within  
11 the jurisdiction of the United States District Court for the District of Arizona.

12 PARTIES

- 13 3. Plaintiff, the Equal Employment Opportunity Commission (the  
14 "Commission"), is the agency of the United States of America charged with  
15 the administration, interpretation and enforcement of Title I of the ADA and  
16 is expressly authorized to bring this action by Section 107(a) of the ADA,  
17 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1)  
18 and (3) and 707 of Title VII.", 42 U.S.C. §§ 2000e-5(f)(1) and 2000e-6." .
- 19 4. At all relevant times, Defendant, Aztec Inn Properties, LLC, an Arizona  
20 corporation dba Clarion Hotel - Randolph Park ("Clarion"), has continuously  
21 been doing business in the State of Arizona and the City of Tucson, and  
22 has continuously had at least 15 employees.
- 23 5. At all relevant times, Defendant, HSL Properties Financial Corporation, an  
24 Arizona corporation ("HSL") has continuously been doing business in the  
25 State of Arizona and the City of Tucson, and has continuously had at least  
26 15 employees.
- 27 6. At all relevant times, Defendants have continuously been employers  
28 engaged in an industry affecting commerce under Section 101(5) of the

1 ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C.  
2 § 12111(7), which incorporates by reference Sections 701(g) and (h) of  
3 Title VII, 42 U.S.C. §§ 2000e(g) and (h).

- 4 7. At all relevant times, Defendants have been covered entities under Section  
5 101(2) of the ADA, 42 U.S.C. § 12111(2).

6 STATEMENT OF CLAIMS

- 7 8. More than thirty days prior to the institution of this lawsuit, Steve Garcia,  
8 Mary Ann Kluck, Jenny Dapice and Christina Gutierrez filed charges with  
9 the Commission alleging violations of Title I and Title V of the ADA by  
10 Defendant Employers. All conditions precedent to the institution of this  
11 lawsuit have been fulfilled.

- 12 9. Since at least August, 1998, Defendants have engaged in unlawful  
13 employment practices at its Tucson location, in violation of Title I of the  
14 ADA, 42 U.S.C. §§ 12101 et seq. These practices include:

- 15 a. Altering the terms and condition of employment for Steve Garcia,  
16 Mary Ann Kluck, Jenny Dapice, Christina Gutierrez, Juan Rivera and  
17 David Laborin because of their disabilities, including but not limited  
18 to, reassigning them to different work locations, segregating them  
19 from the rest of the housekeeping staff for lunch breaks, excluding  
20 them from staff meetings and altering the tip practices and payment.  
21  
22 b. Failing to provide reasonable accommodations for the disabilities of  
23 Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina Gutierrez,  
24 Juan Rivera and David Laborin.  
25 c. Discharging Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina  
26 Gutierrez, Juan Rivera and David Laborin because of their  
27 disabilities.

- 28 10. In the alternative, since at least August, 1998, Defendants have engaged in

1 unlawful employment practices at its Tucson location, in violation of Section  
2 503(b) of the ADA, 42 U.S.C. §12203(b), by interfering with the rights of  
3 Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina Gutierrez, Juan  
4 Rivera and David Laborin granted or protected by the Americans with  
5 Disability Act.

6 11. The effect of the practices complained of in paragraphs 9 and 10 above  
7 has been to deprive Steve Garcia, Mary Ann Kluck, Jenny Dapice,  
8 Christina Gutierrez, Juan Rivera and David Laborin of equal employment  
9 opportunities and otherwise adversely affect their status as employees  
10 because of their disabilities.

11 12. The unlawful employment practices complained of in paragraphs 9 and 10  
12 were and are intentional.

13 13. The unlawful employment practices complained of in paragraphs 9 and 10  
14 above were and are done with malice or with reckless indifference to the  
15 federally protected rights of Steve Garcia, Mary Ann Kluck, Jenny Dapice,  
16 Christina Gutierrez, Juan Rivera and David Laborin.

17 PRAYER FOR RELIEF

18 Wherefore, the Commission respectfully requests that this Court:

- 19 A. Grant a permanent injunction enjoining Defendants, its officers,  
20 successors, assigns, and all persons in active concert or participation with  
21 it, from engaging in those actions alleged in paragraphs 9 and 10 and any  
22 other employment practice which discriminates on the basis of disability.
- 23 B. Order Defendants to institute and carry out policies, practices, and  
24 programs which provide equal employment opportunities for qualified  
25 individuals with disabilities, and which eradicate the effects of its past and  
26 present unlawful employment practices.
- 27 C. Order Defendants to make whole Steve Garcia, Mary Ann Kluck, Jenny  
28 Dapice, Christina Gutierrez, Juan Rivera and David Laborin, by providing

1 appropriate backpay with prejudgment interest, in amounts to be  
2 determined at trial, and other affirmative relief necessary to eradicate the  
3 effects of its unlawful employment practices, including but not limited to  
4 reinstatement of Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina  
5 Gutierrez, Juan Rivera and David Laborin.

6 D. Order Defendants to make whole Steve Garcia, Mary Ann Kluck, Jenny  
7 Dapice, Christina Gutierrez, Juan Rivera and David Laborin by providing  
8 compensation for past and future nonpecuniary losses resulting from the  
9 unlawful practices complained of in paragraphs 9 and 10 above, including  
10 emotional pain, suffering, inconvenience, loss of enjoyment of life, and  
11 humiliation, in amounts to be determined at trial.

12 E. Order Defendants to pay Steve Garcia, Mary Ann Kluck, Jenny Dapice,  
13 Christina Gutierrez, Juan Rivera and David Laborin punitive damages for  
14 its malicious and reckless conduct, as described in paragraphs 9 and 10  
15 above, in amounts to be determined at trial.

16 F. Grant such further relief as the Court deems necessary and proper in the  
17 public interest.

18 G. Award the Commission its costs.

19  
20 JURY TRIAL DEMAND

21 The Commission requests a jury trial on all questions of fact raised by its  
22 complaint.

23  
24 RESPECTFULLY SUBMITTED this \_\_\_\_ day of July, 2002

25 GWENDOLYN YOUNG REAMS  
26 Associate General Counsel

27 EQUAL EMPLOYMENT  
28 OPPORTUNITY  
COMMISSION

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