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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity)
Commission,)
)
Plaintiff,)
)
and)
)
Steve Garcia by and through his)
guardian, Mary Ann Kluck by and)
through her guardian, Cristina)
Gutierrez-Walter, David Laborin, Juan)
Rivera by and through his guardian,)
)
Plaintiff-Intervenors,)
)
vs.)
)
Aztec Inn Properties, LLC., an Arizona)
Corporation, dba Clarion Hotel -)
Randolph Park; HSL Properties)
Financial Corporation, an Arizona)
Corporation)
)
Defendants)
)

CV 02-0324 TUC RCC
CONSENT DECREE

1 The United States Equal Employment Opportunity Commission (the
2 "Commission") filed this action against the Defendants Aztec Inn Properties, LLC
3 ("Defendant") and HSL Properties Financial Corporation, (collectively "Defendants")
4 under Title I and Title V of the Americans with Disabilities Act (ADA) of 1990 and Title
5 I of the Civil Rights Act of 1991 to correct alleged unlawful employment practices on
6 the basis of disability and to provide appropriate relief to Steve Garcia, Mary Ann
7 Kluck, Cristina Gutierrez-Walter, Juan Rivera and David Laborin ("Crew Members"),
8 who were adversely affected by such practices. The Complaint alleged that the Crew
9 Members had the terms and conditions of their employment altered, were denied
10 reasonable accommodations and were ultimately terminated because of their
11 disabilities, which include mental retardation and Down's Syndrome. In addition, the
12 Complaint alleged that Defendants unlawfully interfered with the rights of these
13 individuals which are granted or protected by the ADA.

14 The Court granted the Plaintiff-Intervenors leave to join in this action. The
15 Complaint in Intervention further alleged that the Defendants retaliated against the
16 Crew Members for opposing discrimination and terminated them.

17 The Commission and Plaintiff-Intervenors assert that all conditions precedent
18 to maintaining a an action against Defendant under the ADA were present, including
19 that an employment relationship existed between Defendant and the Crew Members
20 and that Defendant was a covered entity and covered employer under Sections
21 101(2) and (5) of the ADA, 42 U.S.C. §§ 12111(2) and (5).

1 Defendants deny that they discriminated against any person on the basis of
2 disability or any other reason and deny that they violated the Americans with
3 Disabilities Act, the Civil Rights Act, or any other laws. Defendants allege that they
4 entered into an agreement with Community Psychology and Educational Services
5 ("CPES") in 1995 for the express purpose of allowing CPES to place and supervise a
6 crew of disabled workers to provide housekeeping services at the Clarion Hotel -
7 Randolph Park (the "Hotel"), that Defendants continued that agreement for several
8 years, and that Defendants terminated that agreement because Defendants were not
9 satisfied with the quality of the services performed under the agreement and the
10 performance, conduct and attitude of CPES management. Defendants assert that
11 they are entering into this Consent Decree because they cannot afford the expense
12 of litigation.

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17 The Parties do not object to the jurisdiction of the Court over this action and
18 waive their rights to a hearing and the entry of findings of fact and conclusions of
19 law.

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21 In the interest of resolving this matter, and as a result of having engaged in
22 comprehensive settlement negotiations, the Parties agree that this action should be
23 finally resolved by entry of this Decree.

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25 It is **ORDERED, ADJUDGED AND DECREED:**

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27 1. ~~Excluding/including~~

28 ~~CPES/CPES/CPES~~

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[REDACTED]

[REDACTED]

[REDACTED]

This Consent Decree is not intended to limit the rights of any of the parties with respect to claims against anyone not a party to the Consent Decree.

[REDACTED]

[REDACTED]

INJUNCTION

3. Defendant and its officers, agents, employees, successors, and assigns both at the time that this Decree becomes effective and for the duration of this Decree, are enjoined from: (a) discriminating against any employee on the basis of disability; (b) altering the terms and conditions of any employee because of disability, and; (c) retaliating against any employee because he or she: (i) opposes or opposed discriminatory practices made unlawful by ADA; (ii) files or filed a charge of discrimination or assists, assisted, participates, or participated in the filing of a charge of discrimination; or (iii) assists, assisted, participates or participated in an investigation or proceeding brought under the Federal or State laws prohibiting discrimination or retaliation.

1 **MONETARY RELIEF**

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3 4. Defendant shall pay the amount of \$50,000.00, which has been deposited
4 in the trust account of Defendant's counsel prior to the submission of this Decree to the
5 Court. The payment shall be made from the trust account of Defendant's counsel to be
6 distributed among the Plaintiff-Intervenors as set forth in Attachment A. For Plaintiff-
7 Intervenors Kluck and Garcia, the payment shall be made to the trustee of their Special
8 Needs Trust, as set forth in Attachment A. For Plaintiff-Intervenor Rivera, the payment
9 shall be made to the representative payee, as set forth in Attachment A.
10

11
12 . The payments represent settlement of compensatory damages. The compensation is
13 to paid within thirty (30) days of the entry of this Consent Decree, except that the
14 payments to be made to trustees shall be deposited into an escrow account and
15 disbursed to the trustees subject to an order of the Probate Court. By January 31, 2005,
16 Defendant shall issue United States Internal Revenue Service Form 1099 to each class
17 member for all such payments.
18

19
20 5. For attorney fees and costs, defendant shall pay the amount of \$13,500.00,
21 which has been deposited in the trust account of Defendant's counsel prior to the
22 submission of this Decree to the Court. Within thirty (30) days of the entry of this
23 Consent Decree, Defendant's counsel will mail to the Arizona Center for Disability Law,
24 100 N. Stone, Suite 305, Tucson, AZ 85701, a check from its trust account made
25 payable to the Arizona Center for Disability Law in the amount of \$13,500.00 for
26 payment of attorney's fees and costs of litigation.
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1 6. Simultaneous with the transmission of the checks sent pursuant to this
2 Consent Decree, copies of the check will be furnished to the Regional Attorney, Equal
3 Employment Opportunity Commission, Phoenix District Office, 3300 North Central
4 Avenue, Suite 690, Phoenix, Arizona 85012.
5

6 **OTHER RELIEF**
7

8 7. Within thirty (30) days of the date of the entry of this Consent Decree,
9 Defendant shall enter into a contract with a service-provider to utilize a crew of persons
10 with developmental disabilities to perform housekeeping services at the Hotel with a
11 provider on the list provided by the Arizona Center for Disability Law (ACDL) and
12 attached as Exhibit B, provided that the service-provider offers to Defendant a contract
13 that provides for housekeeping services to be provided to the Hotel under the following
14 conditions:
15

16 a. The service-provider shall provide a crew of disabled workers ("Crew") who
17 can, with or without reasonable accommodation, meet the Hotel's reasonable standards
18 for performance and conduct following a period of training and guidance about those
19 standards. Reasonable standards means the same standards that Defendant expects
20 of its housekeeping employees. At the commencement of the contract, Defendant shall
21 communicate its standards, in writing, to the service-provider, and all documents
22 containing those standards that are given to employees shall also be given to the service-
23 provider. Defendant may communicate additional information about its standards during
24 the performance of the contract and, upon written request by the service-provider, shall
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1 do so in writing.

2 b. The service-provider shall provide an on-site job coach/supervisor for the
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4 Crew during the hours that the Crew members are present at the Hotel;

5 c. The cost charged by the service-provider is approximately the same as the
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7 expense to Defendant to utilize a regular employee to perform the same housekeeping
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9 services, including the cost of wages, benefits and the per employee costs associated
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11 with paying an employee, such as payment of FICA, worker's compensation, and
12 providing fringe benefits; and

13 d. Defendant shall offer to the service-provider the opportunity to clean at least
14
15 10 rooms per day, unless the number of available rooms to be cleaned at the Hotel is
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17 fewer than 50, in which case Defendant shall offer the service-provider the opportunity
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19 to clean the same number of rooms as the average of the number of rooms that are
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21 assigned on that day to each housekeeper who is not a Crew Member; provided that the
22
23 number of rooms offered to the service-provider shall always be at least six, absent
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25 extenuating circumstances. Absent extenuating circumstances, the service-provider shall
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27 accept the number of rooms offered to it by Defendant, except that the service-provider
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shall not be obligated to accept more than ten rooms per day.

8. This contract between the service-provider and Defendant shall provide, at
a minimum:

 a. The service-provider shall notify each Plaintiff-Intervenor in writing, to the
address furnished by counsel for Plaintiff-Intervenors, of the opportunity to join the Crew

1 and offer any of the Plaintiff-Intervenor who are interested a position if they are able to
2 perform the job duties with or without reasonable accommodations. The service-provider
3 may give a date by which Plaintiff-Intervenors must respond to the offer, which may not
4 be less than 15 calendar days.
5

6 b. Defendant shall cooperate with the service-provider in facilitating and
7 supporting training that the service-provider reasonably believes is appropriate for the
8 service-provider to provide to further the purposes of the contract providing for the
9 utilization of the Crew.
10

11 c. Prior to any cancellation of the contract, Defendant and the service-
12 provider agree to attempt to resolve any disputes informally, through a meeting or
13 exchange of correspondence;
14

15 i) If that is not successful, the parties agree to request the assistance
16 of a consultant provided by the state entity providing Extended
17 Employment Support Services (Arizona Division for Developmental
18 Disabilities) or providing vocational rehabilitation services (Arizona
19 Rehabilitation Services) at no cost to the parties.
20

21 ii) Finally, if that is not successful, the parties agree to mediate the
22 dispute through a free mediation service or one that does not
23 impose an unreasonable cost to the parties.
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25 iii) If a dispute is not resolved by mediation, Defendant may terminate
26 the contract with the service-provider, provided that Defendant
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makes a good faith effort to engage similar services from another service-provider for the remaining duration of this Consent Decree.

9. Nothing in this Consent Decree shall be interpreted either to establish or limit the rights of any Crew Member under to the ADA.

10. Nothing in this Consent Decree shall require Defendant to enter into an agreement with, to consider entering into any agreement with, or to utilize Community Psychology and Education Services, Ltd.

11. Defendant will institute and carry out policies and practices at the Hotel that help assure a work environment free from disability discrimination for its employees, that allow employees to raise concerns or complaints without retaliation about matters, whether alleged, perceived or actual, made unlawful by the ADA and that provides procedures for employees to request reasonable accommodations.

12. To further the purpose of Defendant being a model employer in the area of anti-discrimination and equal employment opportunity, within 60 (sixty) days of the entry of the decree, Defendant's Chief Executive Officer will appoint an appropriate and qualified employee to be responsible at the Hotel for (a) reviewing and, if necessary, revising Defendant's anti-discrimination policies; (b) receiving and investigating complaints of discrimination; (c) evaluating and, if appropriate, disciplining or terminating employees for violation of Defendant's discrimination policies; (d) evaluating employees in the area of anti-discrimination/equal employment opportunity policies; and (e) preparing reports to the Commission, as required by this Decree.

1 13. Defendant will provide training on disability discrimination and retaliation,
2 according to the following terms:
3

4 a. Defendant will arrange for and be financially responsible for a
5 consultant/lecturer(s) who will provide consultation and a training session for employees
6 of the Hotel. If a Crew is being utilized at the Hotel, the training session(s) shall be
7 provided jointly by the service-provider, the Arizona Center for Disability Law, and
8 counsel for Defendant, provided that the Arizona Center for Disability Law does not
9 charge a fee to Defendant for the training. If no Crew is being utilized, the training
10 session(s) shall be provided jointly by the Arizona Center for Disability Law, and counsel
11 for Defendant, also provided that the Arizona Center for Disability Law does not charge
12 a fee to Defendant for the training.
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16 b. The seminar training session shall be at least 90 minutes in length, including
17 15 minutes of questions and answers, and shall be conducted within four months of the
18 entry of this Decree. If a service-provider of a Crew of developmentally disabled
19 housekeepers believes that additional training is needed, Defendant shall cooperate in
20 facilitating reasonable training needs, up to and including a potential second training
21 session of up to 90 minutes in length. All of the Hotel's supervisory, management and
22 non-supervisory employees, shall attend the seminar session. Defendant shall also
23 provide notice and invite all Crew members and job coaching staff to attend the training.
24
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26 c. Defendant shall keep a written record of all employees who attend the
27 training. Defendant may at its election have duplicative sessions to accommodate
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1 staffing needs or videotape the training session. Defendant shall be responsible for any
2 additional costs to provide such duplicative or videotaped sessions.

3
4 d. During the first year, 2004, the seminar-training session shall be held within
5 four months of the consent decree being entered or within 30 days of a service-provider
6 placing a crew at the Hotel.

7
8 e. All personnel, designated in paragraph (b), shall both register and attend
9 the seminar-training session or view a videotape at the session. The registry of
10 attendance shall be retained by Defendant for the duration of the Decree.

11
12 f. The training will include the subject of what constitutes disability
13 discrimination, as well as retaliation for engaging in protected activity under the ADA.
14 In addition, if a crew of developmentally disabled workers is being utilized at the Hotel,
15 the training will cover the nature of developmental disabilities, the myths often associated
16 with these types of disabilities and possible reasonable accommodations available. The
17 training will also cover discrimination in the hiring, firing, compensation, assignment or
18 other terms, conditions or privileges of employment; the prevention of discrimination;
19 how to provide a work environment free from discrimination, harassment and retaliation;
20 and to whom and by what means employees may complain if they feel they have been
21 subjected to discrimination, harassment or retaliation in the workplace. The session shall
22 also review and explain Defendant's disability policies.

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26 14. During the live training session(s), the Hotel's General Manager will speak
27 to the employees about the discipline that can be taken against supervisors, managers
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1 and employees who commit acts of discrimination, harassment or retaliation or allow
2 discrimination, harassment or retaliation to occur in the workplace, the importance of
3 maintaining an environment free of discrimination, and Defendant's anti-discrimination
4 policies.

5
6 15. The Commission and the ACDL, at their discretion, may designate
7 representatives to attend in the seminar-training sessions. The representatives shall have
8 the right to participate in the sessions.
9

10 16. Within thirty days of the entry of this Decree, Defendant will review and,
11 if necessary, revise its written policies at the Hotel concerning discrimination and
12 retaliation to conform with the law and submit the policy for review to the Regional
13 Attorney of the Phoenix District Office of the EEOC. This written policy must include at
14 a minimum:
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16
17 a. A strong and clear commitment to a workplace free of disability
18 discrimination;
19

20 b. A clear and strong encouragement of persons who believe they have been
21 discriminated against to come forward;

22 c. A description of the consequences, up to and including termination, that
23 will be imposed upon violators of the policy;
24

25 d. A statement of the Hotel's intent to handle complaints of disability
26 discrimination as confidentially as appropriate under the circumstances;
27

28 e. An assurance of non-retaliation for persons who believe they have been

1 discriminated against and witnesses;

2 f. That discrimination on the basis of disability by all persons, including
3 management officials, supervisors, vendors, suppliers, third parties and customers, is
4 prohibited and will not be tolerated; and
5

6 g. The identification of specific alternative individuals, including managers with
7 their telephone numbers, to whom employees who have been subjected to disability
8 discrimination can report the discrimination and who have the authority to investigate
9 allegations of discrimination in a neutral and confidential manner.
10

11 h. An accommodation for persons who are developmentally disabled allowing
12 them an alternative method to make complaints.
13

14 i. A written statement that the employee may report the harassment to
15 designated person outside of their chain of management should the complainant believe
16 managers in the chain of command have a conflict of interest, are implicated in the
17 allegations, or may not adequately investigate the complaint.
18

19 j. Assurances that Defendant will investigate allegations of disability
20 discrimination promptly, fairly, reasonably and effectively by appropriate investigators
21 and that appropriate corrective action will be taken by Defendant to make victims whole
22 and to eradicate the discrimination; and
23

24 k. A written statement assuring employees who need a reasonable
25 accommodation to be able to make a complaint of discrimination or harassment or to
26 participate in the investigation process shall be provided and the manner in which those
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1 accommodations may be obtained. The statement shall also include a provision stating
2 that managers are not allowed to withdraw previously approved accommodations without
3 approval of the General Manager.
4

5 I. Information regarding the employee's right to file a charge of discrimination
6 with the EEOC or the Arizona Civil Rights Division.
7

8 17. These policies shall be posted in a prominent location at the Hotel. These
9 policies shall be transmitted to the Hotel's employees by its General Manager and
10 distributed to each current employee within thirty days of the entry of the Decree. These
11 policies shall be distributed to all new employees when hired. These policies also shall
12 be posted in a prominent place frequented by the employees. The Hotel shall make these
13 written policies available in alternative formats as necessary for persons with cognitive
14 and print disabilities that may prevent them from reading the policies. Alternative formats
15 will include but not be limited to an audiotape format. Crew members working under
16 paragraph 7 above will be provided with an audiotape and printed version of the policy.
17

18 18. Defendant shall institute a procedure which evaluates the General Manager,
19 managers, supervisors and applicable human resources personnel of the Hotel on their
20 performance in responding to complaints of discrimination and for their compliance with
21 EEO laws, including the ADA. The failure of such an employee to enforce the policies
22 and the anti-discrimination laws must result in appropriate disciplinary action.
23

24 19. Defendant shall promptly and appropriately investigate all complaints of
25 disability discrimination. The investigation must include a finding of whether
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1 discrimination occurred, a credibility assessment, if necessary; interviews of all potential
2 victims and witnesses identified; and concurrent notes of the investigation. Defendant
3 shall take immediate appropriate corrective action to make discrimination victims whole,
4 to discipline violators and to eradicate the discrimination.
5

6 20. Defendant shall not retain documents related to the investigation in any of
7 the complainant's personnel files. All disciplinary actions taken against employees for
8 violation of Defendant's policy will be retained in the violator's personnel file. In those
9 cases in which no conclusion could be reached on the allegations, the investigation
10 documents shall remain in the alleged violator's file.
11

12 **REPORTING BY DEFENDANT AND ACCESS BY EEOC**

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14
15 21. Defendant shall report in writing and in affidavit form to the Regional
16 Attorney of the Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690,
17 Phoenix, Arizona 85012, beginning six months from the date of the entry of this Decree,
18 and thereafter every six months for the duration of the Decree the following information:
19

20 a. Any changes, modifications, revocations, or revisions to its policies and
21 procedures which concern or affect the subject of disability discrimination and
22 retaliation.
23

24 b. The name, address, position, social security number and telephone number
25 of any individual who has brought allegations of discrimination and/or retaliation against
26 Defendant's personnel, formal or informal, including, but not limited to, management
27 officials, vendors, agents, employees and/or customers, during the six months preceding
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1 the report. The nature of the complaint, investigatory efforts made by Defendant and the
2 corrective action taken, if any, shall be specified;

3
4 c. The registry of persons attending the seminar(s) required in Paragraph 13
5 of this Decree and a list of current personnel employed by Defendant on the days of the
6 seminar-training sessions.

7
8 d. Confirmation that (i) the Notice required in paragraph 23 of this Decree
9 was posted and the location(s) where it was posted, and (ii) the policies required in
10 paragraph 14 were distributed to each current and new employee and posted.

11
12 22. The Commission, upon reasonable notice, shall have the right to enter and
13 inspect the Hotel to ensure compliance with this Decree and the ADA's prohibition of
14 disability discrimination, as well as retaliation.

15
16 23. Defendant will post the Notice contained in the attached Exhibit C at the
17 Hotel. The Notice will be posted in an appropriate place frequented by employees, for
18 the duration of this decree. The Notice shall be the same type, size, and style as Exhibit
19 C.
20

21 **Affidavit of Compliance**

22
23 24. Defendant will report in writing and in affidavit form to the Commission on
24 a semi-annual bases within six (6) months from the entry of this Decree. The affidavit
25 shall attest that Defendant has taken the action required with each and every provision
26 of this Consent Decree.
27

28 25. The Commission, upon reasonable notice shall have the right to enter and

1 inspect the Hotel's premises to ensure compliance with this Decree.
2
3 26. The duration of this Decree shall be twenty-four (24) months from the date
4 of its entry.
5 27. Except as set forth in paragraph 5, the parties shall bear their respective
6 attorneys' fees and costs incurred in this action up to the date of entry of this Decree.
7
8 28. This Court shall retain jurisdiction of this action for a period of twenty-four
9 (24) months after entry of the Decree. This Decree shall expire by its own terms at the
10 end of twenty-four (24) months after entry of the Decree, without further action by the
11 parties or the Court.
12
13 29. The Commission or Plaintiff-Intervenors may petition this Court for
14 compliance with this Decree at any time during which this Court maintains jurisdiction
15 over this action. Should the Court determine that Defendant has not complied with this
16 Decree, appropriate relief, including extension of this Decree for such period as may
17 be necessary to remedy its non-compliance may be ordered.
18
19 30. The parties agree that the entry of this Decree is subject to final approval
20 by the Probate Court of the settlement on behalf of protected persons Mary Ann Kluck,
21 Steven Garcia and Juan Rivera. The ACDL agrees that it will seek the Probate Court's
22 approval following the execution of the Consent Decree by the parties and prior to filing
23 the Consent Decree for final approval by the Court
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26 31. The parties agree to the entry of this decree subject to final approval by the
27 Court.
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DATED this _____ day of 2004.

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Raner C. Collins
U.S. District Court Judge

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APPROVED AND CONSENTED TO:

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Mary Jo O'Neill
Regional Attorney

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C. Emanuel Smith
Supervisory Trial Attorney

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Sally C. Shanley
Trial Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

20

21

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Phoenix District Office
Suite 690
3300 North Central Avenue
Phoenix, Arizona 85012
(602) 640-5061
Attorneys for Plaintiff

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Aztec Inn Properties, LLC
by Glenn Toyoshima

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Rose Daly-Rooney
J.J. Rico
ARIZONA CENTER FOR
DISABILITY LAW
100 N. Stone
Suite 305
Tucson, Arizona 85701
Telephone: (520) 327-9547
Attorneys for Plaintiff-Crew Members