**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA**

# Omaha Division

THE UNITED STATES OF AMERICA,

Plaintiff, v.

QUIKTRIP CORPORATION,

Defendant.

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) Civil Action No.

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# COMPLAINT

Plaintiff United States of America alleges as follows:

# Introduction

1. This is an action by the United States to enforce title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12181 - 12189, and its implementing regulation, 28

C.F.R. pt. 36. This action involves several hundred convenience stores and fuel service stations that are owned and operated by QuikTrip Corporation and that are not accessible to individuals with disabilities in violation of title III of the ADA (Title III).

# Jurisdiction

1. The Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 12188(b)(1)(B) and (b)(2) and 28 U.S.C. §§ 1331 and 1345. The Court may grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.
2. Venue lies in this District and this Division pursuant to 28 U.S.C. § 1391 because certain discriminatory events giving rise to this action occurred at convenience stores and fuel service stations

owned and operated by QuikTrip that are located in and around Omaha, Nebraska.

# The Defendant

1. Defendant QuikTrip Corporation (hereinafter, QuikTrip) has its principal place of business at 4705 S. 129th E. Avenue, Tulsa, Oklahoma 74134. QuikTrip is a private entity within the meaning of Section 301 of the ADA, 42 U.S.C. § 12181.
2. QuikTrip owns and operates several hundred convenience stores and fuel service stations located in numerous states, including Arizona, Georgia, Iowa, Illinois, Kansas, Missouri, Nebraska, Oklahoma, and Texas. Several of the convenience stores and fuel service stations that QuikTrip owns and operates also have attached truck stop and travel center facilities. These convenience stores and fuel service stations, including the truck stop and travel center facilities, are places of public accommodation within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7), and its implementing regulation at 28 C.F.R. § 36.104.
3. QuikTrip, and the convenience stores, fuel service stations, and truck stop and travel center facilities that QuikTrip owns and operates, are subject to the requirements of Title III of the ADA, 42 U.S.C. §§ 12181 - 12189, and the regulation implementing Title III of the ADA, 28 C.F.R. pt. 36.

# Title III of the ADA

1. Title III prohibits the failure to design and construct convenience stores, fuel service stations, and truck stop and travel center facilities built for first occupancy after January 26, 1993, to be readily accessible to and usable by individuals with disabilities in accordance with the ADA Standards for Accessible Design (ADA Standards), 28 C.F.R. pt. 36, app. A. 42 U.S.C. § 12183(a)(1); 28 C.F.R. §§ 36.401, 36.406(a).
2. Title III prohibits the failure to make alterations to convenience stores, fuel service stations, and truck stop and travel center facilities in such a manner that, to the maximum extent feasible, the altered portions of the facilities are readily accessible to and usable by individuals with disabilities in accordance with the ADA Standards. 42 U.S.C. § 12183(a)(2); 28 C.F.R. §§ 36.402, 36.403, 36.406(a). It also prohibits the failure to remove architectural barriers at such facilities where such removal is readily achievable. 42 U.S.C. § 12182(a)(2)(A)(iv); 28 C.F.R. § 36.304.
3. Title III prohibits discrimination against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of

convenience stores, fuel service stations, and truck stop and travel center facilities. 42 U.S.C. § 12182.

# Defendant's Discriminatory Actions

1. QuikTrip's convenience stores, fuel service stations, and truck stop and travel center facilities are constructed and altered based on protoype design plans and share common, and often identical, architectural elements and features.
2. Between early September and mid-October 2009, the United States conducted surveys of 21 QuikTrip convenience stores and fuel service stations in five states, within geographically dispersed locations in three of QuikTrip designated regional markets, including surveys of newly constructed, altered, and existing facilities. Three of the 21 facilities surveyed have truck stop and travel center facilities in addition to the convenience store and fuel service station facilities. Surveys were conducted at the following locations:
3. QuikTrip's Des Moines Division (Nebraska and Iowa):
   1. 715 S. Saddle Creek Road, Omaha, Nebraska 68106
   2. 4212 S. 84th Street, Omaha, Nebraska 68127
   3. 8727 Maple Street, Omaha, Nebraska 68134
   4. 1704 S. 72nd Street, Omaha, Nebraska 68124
   5. 6045 L Street, Omaha, Nebraska 68117
   6. 1749 W. Broadway, Council Bluffs, Iowa 51501
4. QuikTrip's St. Louis Division (Missouri and Illinois):
   1. 10845 Lilac Drive, Bellefontaine Neighbors, Missouri 63137 (Includes Truck Stop Facilities)
   2. 850 McNutt Street, Herculaneum, Missouri 63048 (Includes Trust Stop Facilities)
   3. 8334 Highway N, Lake St. Louis, Missouri 63367
   4. 608 McCambridge Ave., Madison, Illinois 62060
   5. 1117 Camp Jackson Road, Cahokia, Illinois 62206 c. QuikTrip's Atlanta Division (Georgia):
5. 5705 Fulton Industrial Blvd., S.W., Atlanta, Georgia 30336 (Includes Truck Stop Facilities)
6. 1836 Briarcliff Rd., N.E., Atlanta, Georgia 30324
7. 761 Sidney Marcus Blvd., N.E., Atlanta, Georgia 30324
8. 4050 Buford Highway, N.E., Atlanta, Georgia 30345
9. 6901 Peachtree Industrial Blvd., Atlanta, Georgia 30360
10. 1910 Lawrenceville Highway, Decatur, Georgia 30033
11. 3930 Flat Shoals Pkwy., Decatur, Georgia 30034
12. 5390 Riverdale Road, College Park, Georgia 30349
13. 3875 S. Cobb Drive, Smyrna, Georgia 30082
14. 7130 Mableton Pkwy., S.E., Mableton, Georgia 30126
15. Upon information and belief, including information obtained during the surveys of 21 QuikTrip facilities by the United States, Defendant has discriminated and continues to discriminate against individuals with disabilities in violation of Title III of the ADA, its regulation, and the ADA Standards by failing to provide and maintain the following accessible elements, among others, at its facilities, which are based on a prototype design:
    1. Accessible routes do not exist to connect buildings, facilities, elements, and spaces; they do not, to the maximum extent feasible, coincide with the route for the general public; they have excessive abrupt changes in level; and/or they have slopes and cross slopes that are too steep;
    2. Ramps have excessive rises; they do not have appropriate landings; they do not have appropriate handrails; they have slopes and cross slopes that are too steep; and/or they do not have adequate edge protection;
    3. Curb ramps have slopes and cross slopes that are too steep; they have inadequate clear passage width; their surfaces are not stable, firm, and slip-resistant; their flared sides have slopes that are too steep; they are constructed using a "built-up" design and project into vehicular traffic lanes; they lack detectable warnings; and/or they can be obstructed by parked vehicles;
    4. Too few designated accessible parking spaces are provided; they are not located on the shortest accessible route of travel to an accessible entrance; they have slopes and cross slopes that are too steep; and/or they lack adequate signage reserving them for use by individuals with

disabilities;

* 1. Fuel, water, and air dispensers have controls and operating mechanisms such as buttons and levers that are too high or otherwise beyond the reach ranges of individuals who use wheelchairs; they require tight grasping, pinching, or twisting of the wrist to operate; they lack the required clear floor space for a forward or parallel approach by a person using a wheelchair; and/or these elements are not located on accessible routes;
  2. Signage is mounted too high or too low;
  3. Entrance doors have excessive thresholds;
  4. Interior doors have excessive thresholds; have door closers that close the doors too quickly; and/or require too much opening force;
  5. Single user and multi-stall toilet rooms and elements such as toilets, urinals, lavatories, and controls and operating mechanisms are inaccessible because they lack the required clear floor space; they lack the required size and arrangement of accessible toilet stalls; toilet stalls have doors with hardware that requires grasping, twisting, or pinching; grab bars are incorrectly mounted or have the wrong dimensions; lavatories have exposed hot water pipes and other surfaces that can cause injuries; faucets and flush controls do not have accessible designs; mirrors are mounted too high; and/or controls and operating mechanisms, such as paper towel and types of dispensers, are mounted beyond the reach ranges of individuals who use wheelchairs and require tight grasping, pinching, or twisting of the wrist to operate;
  6. Shelving and counters are mounted too high;
  7. Food, drink, tableware, and condiment dispensers are mounted beyond the reach ranges of individuals who use wheelchairs;
  8. Ground and floor surfaces have excessive abrupt changes in level, and/or they are not stable, firm, and slip-resistant; and
  9. Objects, such as signs and lamps, protrude excessively from walls at locations where they are not detectable by blind individuals using a cane.

1. Upon information and belief, Defendant has discriminated against individuals with disabilities in violation of Title III of the ADA and its regulation by
   1. Engaging in a policy and practice of failing to design and construct convenience stores, fuel service stations, truck stops, and travel centers to be readily accessible to and usable by individuals with disabilities in violation of 42 U.S.C. § 12183(a)(1) and 28 C.F.R. §§ 36.401, 36.406;
   2. Engaging in a policy and practice of failing to make alterations to convenience stores, fuel service stations, truck stops, and travel centers so they are readily accessible to and usable by individuals with disabilities to the maximum extent feasible in violation of 42 U.S.C. § 12183(a) (2) and 28 C.F.R. §§ 36.402, 36.403, and 36.406;
   3. Engaging in a policy and practice of failing to remove architectural barriers in existing facilities in accordance with 42 U.S.C. § 12182(b)(2)(A)(iv) and 28 C.F.R. § 36.304 or to otherwise make its goods, services, facilities, privileges, advantages, and accommodations available through alternative methods pursuant to 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305; and
   4. Otherwise discriminating against individuals with disabilities in violation of 42

U.S.C. § 12182 and the Title III implementing regulation.

1. The Attorney General has reasonable cause to believe that Defendant's conduct constitutes:
   1. A pattern or practice of discrimination within the meaning of 42 U.S.C. § 12188(b) (1)(B)(i) and 28 C.F.R. § 36.503(a); and
   2. Unlawful discrimination that raises an issue of general public importance within the meaning of 42 U.S.C. § 12188(b)(1)(B)(ii) and 28 C.F.R. § 36.503(b).

# Complainants

1. Thomas Ware is a Korean War Veteran who has extreme difficulty walking and ambulating and often uses a wheelchair. Mr. Ware experienced acts of discrimination by Defendant at QuikTrip locations in La Vista, Nebraska, a suburb of Omaha.
2. John K. Shannahan, also a Veteran, has difficulty walking and requires accessible elements to ambulate. Mr. Shannahan experienced acts of discrimination by QuikTrip at several QuikTrip locations in Omaha, Nebraska.
3. Messrs. Ware and Shannahan are persons with disabilities within the meaning of the ADA, as amended, 42 U.S.C. § 12102.
4. Messrs. Ware and Shannahan visited several QuikTrip locations in the Omaha region but were unable to either use, or use in a nondiscriminatory manner, QuikTrip facilities because of inaccessible elements and the failure to maintain accessible features, including parking, curb ramps, and routes.
5. QuikTrip's discriminatory actions have harmed Mr. Ware, Mr. Shannahan, and other individuals.

# Prayer for Relief

WHEREFORE, Plaintiff United States of America prays that this Court enter an order that grants the following relief:

* 1. Declares that the discriminatory practices, policies, procedures, and administrative methods of QuikTrip Corporation, as set forth above, violate Title III of the ADA, 42 U.S.C. §§ 12181-12189, and its implementing regulation at 28 C.F.R. pt. 36;
  2. Enjoins QuikTrip, its officers, agents, and employees, and all other persons and entities in active concert or participation with QuikTrip, from discriminating on the basis of disability;
  3. Orders QuikTrip to bring its convenience stores and gasoline service stations within the requirements of Title III of the ADA, its implementing regulation at 28 C.F.R. pt. 36, and the Standards for Accessible Design at Appendix A to the regulation;
  4. Orders QuikTrip to design and construct new facilities, to make alterations, and to remove barriers to access by individuals with disabilities in accordance with 42 U.S.C. §§ 12182(b) (1)(A)(i), 12183(a)(1) - (2), and the Title III implementing regulation at 28 C.F.R. pt. 36, including the Standards for Accessible Design at Appendix A to the regulation;
  5. Orders QuikTrip to provide its services, facilities, privileges, advantages, and accommodations to persons with disabilities in a nondiscriminatory manner, including providing them in the most integrated setting appropriate to the needs of the individual and to make such modifications as are necessary to prevent segregation of persons with disabilities;
  6. Awards monetary damages to Mr. Ware, Mr. Shannahan, and other persons aggrieved by QuikTrip's discriminatory actions to compensate them for the discrimination they experienced;
  7. Assesses a civil penalty against QuikTrip as authorized by 42 U.S.C. § 12188(b)(2)

to vindicate the public interest;

* 1. Orders such other appropriate relief as the interests of justice may require in the opinion of this Honorable Court.

The United States of America hereby requests that trial of the above and foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

Date:

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ERIC H. HOLDER, JR.\*\*

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\*\* Thomas E. Perez and John L. Wodatch are signing in their official capacity as the Assistant Attorney General of the Civil Rights Division and Chief of the Disability Rights Section, respectively, and do not wish to receive electronic notice in this case. The same also applies to others listed with asterisks, who have not signed.

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