

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

Christin Hebert and Corey Hebert,)	
on behalf of B.H, a minor,)	Case No:
)	
)	Judge:
)	
Plaintiffs,)	Magistrate Judge:
)	
v.)	
)	
CEC ENTERTAINMENT, INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

“I now lift my pen to sign this Americans with Disabilities Act and say: Let the shameful wall of exclusion finally come tumbling down. God bless you all.”

- President George H. W. Bush, July 26, 1990

Plaintiffs, Christin and Corey Hebert, on behalf of their minor son, B.H., sue CEC ENTERTAINMENT, INC. (“DEFENDANT”) for declaratory and injunctive relief, attorneys’ fees, and costs pursuant to Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*, and state as follows:

INTRODUCTION

1. Plaintiffs bring this action pursuant to Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*, on behalf of their minor son B.H., by virtue of the fact that Defendant refuses to make a reasonable accommodation to permit customers with medically diagnosed food allergies to bring outside food into its facilities for personal consumption.
2. Plaintiffs allege that Defendant’s refusal to make a reasonable accommodation to its policy

prohibiting individuals with medically diagnosed food allergies from bringing outside food to Defendant's Chuck E. Cheese's facilities violates Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*

3. Plaintiffs seek declaratory and injunctive relief, attorney's fees, and costs on behalf of their minor son B.H. to ensure that Defendant modifies its policy to accommodate individuals with medically diagnosed food allergies.

JURISDICTION AND PARTIES

4. This is an action for relief pursuant to Title III of the Americans With Disabilities Act, 42 U.S.C. § 12181 *et seq.* This Court is vested with original jurisdiction pursuant to 28 U.S.C. § 1331 and 1343.
5. Plaintiffs' claims on behalf of their minor son B.H. arose in this judicial district and Defendant does substantial business in this judicial district.
6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and/or omissions alleged herein occurred in this judicial district.
7. Plaintiffs and their minor son, B.H., are and, at all times relevant hereto, were residents of Lafayette Parish, Louisiana. Plaintiffs' minor son B.H. suffers from a medically diagnosed food allergy. Plaintiffs' minor son B.H. is a member of a protected class under the ADA, 42 U.S.C. § 12102 and the regulations implementing the ADA set forth at 28 CFR § § 36.101 *et seq.*
8. Upon information and belief, Defendant CEC Entertainment, Inc., is a for-profit corporation incorporated in the state of Kansas and doing business in Lafayette Parish, Louisiana.
9. Upon information and belief, Defendant is domiciled at 10510 Metcalf Lane, Overland

Park, Kansas, 66212.

10. Defendant owns and operates a national chain of child-centered facilities called Chuck E. Cheese's, including a location in Lafayette, Louisiana. Defendant offers food, entertainment, and similar goods and services to the general public at its Chuck E. Cheese's facilities. Defendant hosts birthday parties and other events for children at its facilities.
11. Plaintiffs' minor son B.H. has visited Defendant's Chuck E. Cheese's facility in Lafayette, Louisiana several times and wishes to visit the Chuck E. Cheese's facility again.
12. Defendant is obligated to comply with the ADA.

FACTUAL ALLEGATIONS

13. Defendant operates a chain of facilities called Chuck E. Cheese's throughout the United States, including the state of Louisiana. Defendant's website proudly states that Chuck E. Cheese's is a place "Where A Kid Can Be A Kid."¹ Indeed, Chuck E. Cheese heavily promotes its availability as a venue for children's' birthday parties on its website.²
14. In the United States, roughly 15 million Americans are afflicted with food allergies; food allergies affect approximately 1 in every 13 children (under 18 years of age) in the U.S.³ Food allergies among children increased approximately 50% between 1997 and 2011, but researchers have not yet determined the reason for the dramatic rise.⁴
15. Individuals with food allergies may have an autoimmune response to certain foods, the symptoms of which may include difficulty swallowing and breathing, asthma, and

¹ www.chuckecheese.com; last accessed March 22, 2016.

² *Id.*

³ www.foodallergy.org/facts-and-stats; last accessed March 22, 2016.

⁴ *Id.*

anaphylaxis.

16. It is medically necessary for individuals with food allergies like Plaintiffs' son, minor B.H., to avoid consuming foods that contain certain ingredients to which they are allergic. Certain individuals, like Plaintiffs' son, minor B.H., cannot safely consume many, **or any**, of the foods provided at Defendant's Chuck E. Cheese's facilities.
17. However, upon information and belief, Defendant has a nation-wide policy that prohibits customers from bringing outside food to Defendant's Chuck E. Cheese's facilities. Defendant's website states: "Unfortunately, **there are some items that are not allowed to a party in our locations like outside food** (other than cake or ice cream) piñatas, cups, or outside entertainment."⁵ (emphasis supplied).
18. Upon information and belief, Defendant does not provide any sort of exception or accommodation to this broad policy to permit individuals with medically diagnosed food allergies like Plaintiffs' minor son B.H. to bring their own food to Defendant's Chuck E. Cheese's facilities.
19. If individuals with food allergies like Plaintiffs' minor son B.H. consume the food offered at Defendant's Chuck E. Cheese's facilities, they risk becoming severely ill to the point of death.
20. Defendant is discriminating against Plaintiffs' minor son B.H. by refusing to make a reasonable modification to its policy prohibiting all customers, without a clear exception for individuals with medically diagnosed food allergies, from bringing outside food for personal consumption to Defendant's Chuck E. Cheese's facilities.

**FACTUAL ALLEGATIONS APPLICABLE TO
PLAINTIFFS' MINOR SON, B.H.**

⁵ www.chuckecheese.com/faq; last accessed March 22, 2016.

21. Plaintiffs incorporate by reference all allegations set forth above.
22. Plaintiffs' minor son, B.H., suffers from a medically diagnosed food allergy. If B.H. comes into contact with certain types of food, including but not limited to dairy products, he risks having a life-threatening anaphylactic allergic reaction.
23. Defendant's Chuck E. Cheese's facilities are popular venues for children's birthday parties and similar events.
24. Plaintiffs' minor son B.H. has hosted and attended multiple birthday parties and field trips at Defendant's Chuck E. Cheese's facility located in Lafayette, Louisiana in the past. For those prior events, B.H. was permitted to bring outside food to the Chuck E. Cheese's facility that was safe for him to consume.
25. However, when B.H. visited the same Chuck E. Cheese's facility again on or about November 29, 2015, he was not permitted to bring outside food that was safe for him to consume into the facility. Plaintiffs asked the manager to make an accommodation to permit B.H. to bring his small, safe meal into the facility. The manager at the Chuck E. Cheese's facility refused to grant the accommodation and turned B.H. and his family away from the facility.
26. The manager suggested that B.H. would be able to eat the chicken nuggets served at the facility. However, when Plaintiffs later checked Defendant's website, they saw that the chicken nuggets contain dairy products. If Plaintiffs had permitted their son B.H. to consume the chicken nuggets as suggested by Defendant's manager, he would have become seriously ill, possibly to the point of death.
27. Plaintiffs asked Defendant's employees at the Chuck E. Cheese's facility why he was not permitted to bring outside food that was safe for his personal consumption to the facility

when he previously had been allowed to do so, but Defendant's employees did not provide an explanation other than to say that outside food was not permitted at the facility. They even accused Plaintiffs of "sneaking" food that was safe for B.H.'s consumption into his own birthday party.

28. Indeed, the "official" policy set forth on Defendant's website states: "Unfortunately, **there are some items that are not allowed to a party in our locations like outside food** (other than cake or ice cream) piñatas, cups, or outside entertainment."⁶ (emphasis supplied).
29. The policy as set forth does not make an exception for individuals with medically diagnosed food allergies. Plaintiffs' experience demonstrates that B.H. can never be certain that he will be permitted to bring outside food that is safe for his personal consumption into Defendant's Chuck E. Cheese's facility.
30. Defendant discriminated against B.H. by refusing to make a reasonable accommodation to its policy prohibiting outside food at its Chuck E. Cheese's facilities.

**COUNT I- VIOLATION OF TITLE III OF
THE AMERICANS WITH DISABILITIES ACT**

31. Plaintiffs incorporate by reference all allegations set forth above.
32. The Americans With Disabilities Act requires that a "public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities[.]" 28 C.F.R. § 36.302(a).
33. Under the ADA, disability means: "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an

⁶ www.chuckecheese.com/faq; last accessed March 22, 2016.

impairment; or (C) being regarded as having such an impairment.” “[M]ajor life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, **eating**, sleeping, walking, standing, lifting, bending, speaking, **breathing**, learning, reading, concentrating, thinking, communicating, and working,” as well as “the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, **digestive**, bowel, bladder, neurological, brain, respiratory circulatory, endocrine, and reproductive functions.” 42 U.S.C. § 12102(1) and (2). (emphasis supplied).

34. Medically diagnosed food allergies affect the major life activity of eating and impact the digestive system. An allergic reaction can also impact an individual’s life activity of breathing. These are bodily systems expressly included under the ADA.
35. Defendant’s Chuck E. Cheese’s facilities are places of public accommodation within the meaning of the ADA. 42 U.S.C. § 12181(7)(B).
36. Even though individuals like B.H. with food allergies can physically enter Defendant’s Chuck E. Cheese’s facilities, they cannot eat many, or any, of the foods sold at the facilities without risking illness or even death. Defendant’s menus are inaccessible to individuals with medically diagnosed food allergies like B.H., and individuals like B.H. are therefore deprived of the opportunity to dine at Defendant’s facilities in the same manners as non-disabled individuals.
37. Defendant is required under the ADA to make a reasonable modification to its policy to permit individuals with medically diagnosed food allergies to bring outside food for personal consumption into Defendant’s Chuck E. Cheese’s facilities so that the facilities are accessible to patrons with disabling food allergies.

38. Defendant's current broad policy against outside food discriminates against individuals with medically diagnosed food allergies in violation of Title III of the Americans With Disabilities Act.
39. Plaintiffs are entitled to an injunction enjoining Defendant's broad policy of prohibiting individuals with medically diagnosed food allergies from bringing outside food to Defendant's Chuck E. Cheese facilities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of their minor son, B.H., pray for relief as follows:

- A. For a Declaration that Defendant is in violation of Title III of the Americans With Disabilities Act;
- B. For an Order enjoining Defendant from prohibiting individuals like B.H. with medically diagnosed food allergies from bringing outside food for personal consumption to Defendant's Chuck E. Cheese's facilities;
- C. For an Order awarding reasonable attorney's fees, costs (including expert fees), and other expenses of suit;
- D. That this Court award such other and further relief as it deems necessary, just and proper.

Respectfully Submitted,

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