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**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF CALIFORNIA**

REVAE JENSEN,

*Plaintiff*,

v.

S K SINGH INC. D/B/A JACK IN THE BOX,

*Defendant*.

**Civil Action No.: 5:20-cv-2570**

**COMPLAINT**

Plaintiff, REVAE JENSEN, by and through her undersigned counsel, EISENBERG & BAUM, LLP, for his Complaint against Defendant, S K SINGH INC., hereby alleges as follows:

## PRELIMINARY STATEMENT

1. Plaintiff, REVAE JENSEN, is a deaf individual who communicates primarily in American Sign Language ("ASL"), which is her expressed, preferred, and most effective means of communication. Defendant owns, operates, and/or leases a Jack in the Box restaurant located at 510 W Hamilton Ave, Campbell, CA 95008. When Plaintiff attempted to order food at Defendant's restaurant, Plaintiff was refused service and treated rudely by employees because of her disability. Through this discriminatory treatment, Plaintiff learned not only that Defendant's restaurant is inaccessible to deaf individuals, but that Defendant's employees and managers are inadequately trained and improperly informed about the communication rights and needs of deaf people.

2. Plaintiff brings this action to compel Defendant to cease unlawful discriminatory practices and implement policies and procedures that will ensure effective communication, full and equal enjoyment, and a meaningful opportunity to participate in and benefit from Defendant's restaurant services. Plaintiff seeks declaratory, injunctive, and equitable relief; compensatory and punitive damages; and attorneys' fees and costs to redress Defendant's unlawful discrimination on the basis of disability in violation of Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181 et seq.; the

Unruh Civil Rights Act ("Unruh Act"), Cal. Civ. Code § 51 and other state and common law causes of action.

## THE PARTIES

3. Plaintiff, REVAE JENSEN, brings this action and is an individual residing in Campbell, California. REVAE JENSEN is a profoundly deaf individual who primarily communicates in American Sign Language, and she is substantially limited in the major life activities of hearing and speaking within the meaning of federal and state anti-discrimination laws.

4. Defendant, S K SINGH INC. D/B/A JACK IN THE BOX owns, operates and/or leases a Jack in the Box restaurant located in Campbell, California. Defendant's restaurant is a public accommodation under federal and state antidiscrimination laws and is subject to the requirements thereof.

## JURISDICTION & VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 for Plaintiff's claims arising under federal law.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendant has sufficient contacts with this District to subject them to personal jurisdiction at the time this action is commenced, and the acts and omissions giving rise to this Complaint occurred within this District.

## STATEMENT OF FACTS

7. Upon information and belief, Defendant owns, operates and/or leases a Jack

in the Box restaurant located at 510 W Hamilton Ave, Campbell, CA 95008.

8. Plaintiff is a profoundly deaf individual whose first and primary language is American Sign Language, in which she communicates fluently.

9. On Aug 31, 2019 at approximately 4:00am, Plaintiff attempted to utilize the drive-thru of Defendant's Jack in the Box restaurant.

10. Defendant's drive-thru service is provided via specialized automobile driveway lanes which stretch around Defendant's restaurant. In order to obtain drive-thru service, Defendant's customers maneuver their automobiles into the drive-thru lane and then relay their food order to Defendant's employees via microphone. Customers then drive their car further along the lane and retrieve their food from windows on the side of Defendant's restaurant

11. Because Defendant's drive-thru ordering system requires a customer to utilize hearing and speaking through a microphone, Plaintiff drove to the drive-thru window and attempted to place her order from an employee at the window.

12. Plaintiff informed the employee that Plaintiff was deaf, could not hear, and told the employee her order.

13. Rather than accommodate Plaintiff's disability and allow her to place an order from the drive-thru window, the employee refused to serve Plaintiff.

14. Furthermore, the employee mocked Plaintiff's disability by gesturing fake sign language to Plaintiff and waving two middle fingers at Plaintiff.

15. Plaintiff's order was not processed, despite waiting for service at Defendant's drive-thru window for nearly two hours.

16. None of the employees working during the above-described incident attempted to communicate with Plaintiff in any way, leaving Plaintiff humiliated, frustrated, and confused.

17. Plaintiff's fourteen-year-old son, Malachi Jensen, was with Plaintiff and observed the above-described incident.

18. During the above-described incident, Defendant's restaurant was serving food exclusively through the drive-thru and customers were not permitted to physically enter to order food.

19. Based on the above-described incident, Defendant refuses to serve deaf individuals in the same manner in which they serve hearing (i.e., non-deaf) individuals.

20. Defendant's drive-thru ordering system, which requires a customer to utilize hearing and speaking, is inaccessible to deaf individuals. Based on the incidents described above, Defendant offers no accessible or alternative means for deaf individuals, including Plaintiff, to utilize the drive-thru in a manner equal to the service offered to hearing (i.e., non-deaf) individuals.

21. Defendant's conduct caused Plaintiff to be denied the full and equal enjoyment of Defendants' goods, services, facilities, privileges, advantages, and/or accommodations.

22. Defendant's discriminatory conduct caused Plaintiff to suffer emotional distress, including humiliation and frustration.

23. Defendant's Jack in the Box is in close vicinity to Plaintiff's home and Plaintiff wishes to be able to attend Defendant's Jack in the Box.

24. Plaintiff therefore continues to be harmed by Defendant's conduct.

**CLAIM 1: VIOLATIONS OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT**

25. Plaintiff repeats and realleges all preceding paragraphs in support of this claim.

26. At all times relevant to this action, Title III of the ADA, 42 U.S.C. § 12181, et seq., has been in full force and effect and has applied to Defendant's conduct.

27. At all times relevant to this action, the United States Department of Justice regulations implementing Title III of the ADA, 28 C.F.R. Part 36, have been in full force and effect and have applied to Defendant's conduct.

28. At all times relevant to this action, Plaintiff has been substantially limited in the major life activities of hearing and speaking, and is an individual with a disability within the meaning of the ADA, 42 U.S.C. § 12102(2).

29. Defendant owns, leases, and/or operates a place of public accommodation within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7)(D).

30. Title III of the ADA provides that "[n]o individual shall be discriminated

against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a).

31. Title III of the ADA further provides that "[i]t shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals." 42 U.S.C. § 12182(b)(1)(A)(ii)

32. Title III of the ADA further defines discrimination to include "a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services." 42 U.S.C. § 12182(b)(2)(A)(iii).

33. Title III of the ADA further defines discrimination to include "a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable," or "where an entity can demonstrate that the removal of a barrier . . . is not readily achievable a failure to make such goods, services, facilities, privileges, advantages, or accommodations available

through alternative methods if such methods are readily achievable." 42 U.S.C. § 12182(b)(2)(A)(iv–v).

34. Federal regulations implementing Title III of the ADA provide that "[a] public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities." 28 C.F.R. § 36.303(c).

35. Defendant discriminated against Plaintiff on the basis of disability, in violation of Title III of the ADA and its implementing regulations, as set forth above.

36. Plaintiff is therefore entitled to injunctive relief, as well as an award of attorneys' fees, costs, and disbursements pursuant to the ADA, 42 U.S.C. § 12188(a)(1).

**CLAIM 2: VIOLATIONS OF THE VIOLATIONS OF THE UNRUH CIVIL RIGHTS ACT**

37. Plaintiff repeats and realleges all preceding paragraphs in support of this claim.

38. The Unruh Act provides that "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Cal. Civ. Code § 51(b).

39. The Unruh Act further provides that "[a] violation of the right of any

individual under the federal Americans with Disabilities Act of 1990 (Public Law 101336) shall also constitute a violation of this section." Cal. Civ. Code § 51(f).

40. Defendant violated the Unruh Act by discriminating against Plaintiffs, and also by violating Plaintiffs' rights under the Americans with Disabilities Act.

41. Defendant has failed to implement policies, procedures, and training of staff necessary to ensure compliance with the Unruh Act.

42. Plaintiff is therefore entitled to injunctive relief; attorney's fees, costs, and disbursements; and compensatory damages for the injuries and loss they sustained as a result of Defendant's discriminatory conduct as hereinbefore alleged, pursuant to Cal. Civ. Code § 52.

43. Plaintiff is further entitled to seek and recover exemplary damages to rectify and deter Defendant's discriminatory conduct as hereinbefore alleged, pursuant to Cal. Civ. Code § 52.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff respectfully prays that this Court grant the following relief:

a. Enter a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, stating that Defendant's policies, procedures, and practices have subjected Plaintiff to unlawful discrimination in violation of Title III of the Americans with Disabilities Act, the Unruh Civil Rights Act, and the California Disabled Persons Act;

b. Issue an injunction forbidding Defendant from implementing or enforcing any policy, procedure, or practice that denies deaf or hard of hearing individuals, or their companions, meaningful access to and full and equal enjoyment of Defendant's facilities, services, or programs;

c. Issue an injunction ordering Defendant:

i. to develop, implement, promulgate, and comply with a policy prohibiting future discrimination against Plaintiff or other deaf or hard of hearing individuals by failing to provide effective communication;

ii. to develop, implement, promulgate, and comply with a policy to ensure that Defendants will consider the communication needs of deaf individuals who seek Defendants' goods and/or services and will affirmatively work with deaf individuals to provide effective auxiliary aids and services to make their services accessible;

iii. to train all its employees, staff, and other agents on a regular basis about the rights of individuals who are deaf or hard of hearing under the ADA, the Unruh Act, and the DPA

d. Award to Plaintiff:

i. Compensatory damages pursuant to the Unruh Act

ii. Punitive damages pursuant to the Unruh Act;

iii. Reasonable costs and attorneys' fees pursuant to the ADA and the

Unruh Act,

iv. Interest on all amounts at the highest rates and from the earliest dates allowed by law;

v. Any and all other relief that this Court finds necessary and appropriate.

Dated: April 14, 2020

Respectfully submitted,

By:

/s/ John K. Buche

John K. Buche (CA Bar No. 239477)
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*Attorneys for Plaintiff ReVae Jensen*

# CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

## I. (a) PLAINTIFFS

REVAE JENSEN,

**(b)** County of Residence of First Listed Plaintiff Santa Clara County
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*

Eisenberg & Baum, LLP
24 Union Square East, 4th Floor
New York, NY 10003; (212) 353-8700

Buche & Associates, P.C. (Local Counsel)
875 Prospect St., Suite 305
La Jolla, CA 92037; (858) 459-9111

## DEFENDANTS

S K SINGH INC. D/B/A JACK IN THE BOX

County of Residence of First Listed Defendant Santa Clara County
*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

## II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

## III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

*(For Diversity Cases Only)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated *or* Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated *and* Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

## IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

**CONTRACT**
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment Of Veteran's Benefits
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**TORTS**

**PERSONAL INJURY**
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury -Medical Malpractice

**PERSONAL INJURY**
- ☐ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

**PERSONAL PROPERTY**
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**CIVIL RIGHTS**
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities–Employment
- ☒ 446 Amer. w/Disabilities–Other
- ☐ 448 Education

**PRISONER PETITIONS**

**HABEAS CORPUS**
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

**OTHER**
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee–Conditions of Confinement

**FORFEITURE/PENALTY**
- ☐ 625 Drug Related Seizure of Property 21 USC § 881
- ☐ 690 Other

**LABOR**
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

**IMMIGRATION**
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC § 158
- ☐ 423 Withdrawal 28 USC § 157

**PROPERTY RIGHTS**
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent–Abbreviated New Drug Application
- ☐ 840 Trademark

**SOCIAL SECURITY**
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

**FEDERAL TAX SUITS**
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS–Third Party 26 USC § 7609

**OTHER STATUTES**
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC § 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

## V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation–Transfer
- ☐ 8 Multidistrict Litigation–Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 USC §§ 12181 et seq.

Brief description of cause:
Failure to provide accommodations to deaf individual

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, Fed. R. Civ. P.

**DEMAND $**

CHECK YES only if demanded in complaint:
**JURY DEMAND:** ☐ Yes ☒ No

## VIII. RELATED CASE(S), IF ANY *(See instructions):*

JUDGE

DOCKET NUMBER

## IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

**(Place an "X" in One Box Only)**

☐ **SAN FRANCISCO/OAKLAND** ☒ **SAN JOSE** ☐ **EUREKA-MCKINLEYVILLE**

**DATE** 04/14/2020

**SIGNATURE OF ATTORNEY OF RECORD** /s/ John K. Buche