CALIFORNIA COURT CURBS WEBSITE ACCESSIBILITY CLAIMS AGAINST ONLINE-ONLY BUSINESSES

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U.S. Complex Commercial Litigation and Disputes Alert

Title III of the Americans with Disabilities Act (ADA) prohibits private entities from discriminating against disabled individuals. Specifically, it prohibits a "place of public accommodation" from discriminating "on the basis of disability" and requires that businesses make their facilities accessible for "full and equal enjoyment."

Federal courts have long been split on whether online-only businesses are "places of public accommodation" under the ADA. In the Ninth Circuit, online-only businesses are not liable for violations of the ADA because the Ninth Circuit does not consider an online-only forum a "place of public accommodation" within the meaning of the law. To bypass unfavorable precedent in the Ninth Circuit, plaintiffs in California have filed thousands of lawsuits each year in state courts alleging stand-alone violations of state laws—such as the California Unruh Civil Rights Act (Unruh Act)—that are parallel to the ADA. Until recently, California appellate courts had not decided the issue of whether online-only businesses are "places of public accommodation" under the Unruh Act. As a result, California state courts, which were not bound by Ninth Circuit precedent, were free to decide for themselves whether Congress intended an online-only forum to be a "place of public accommodation" under the ADA. The inevitable result has been confounding inconsistency at the state level—one superior court judge was just as likely to dismiss an Unruh Act case against an online-only company as another superior court judge was to rule that the ADA did apply to a similar company's website.

This all changed last month, when the California Court of Appeal, in *Martinez v. Cot'n Wash, Inc.*, joined longstanding Ninth Circuit precedent by finding that online-only businesses are not "public accommodations" covered by Title III of the ADA. *Martinez v. Cot'n Wash, Inc.*, 81 Cal. App. 5th 1026 (2022).

SO WHAT DOES THIS MEAN?

For California business operating exclusively online businesses (i.e., online commerce that is not connected to an actual, physical building or facility), this ruling should limit the number of ADA accessibility suits filed in California under both the ADA and the Unruh Act.

In *Martinez*, the plaintiff alleged that the defendant violated the Unruh Act by intentionally maintaining a retail website that was inaccessible to the visually impaired. Plaintiff, who was visually impaired and used screen reader technology to access the Internet and read website content, alleged that the defendant's website did not support plaintiff's screen-reading software. Plaintiff notified the defendant that its website was not fully accessible to the visually impaired, and the plaintiff alleged that the defendant failed to take adequate action to correct these barriers even after being notified of the discrimination that such barriers cause.

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In California, a plaintiff can recover under the Unruh Act under two theories: (1) a violation of the ADA, or (2) denial of access to a business establishment based on intentional discrimination. The *Martinez* court denied the plaintiff's claim under both theories. On the first theory, the court looked to the language of Title III and the U. S. Department of Justice's 2022 guidance (which is silent on regulations regarding website accessibility), and it concluded that the phrase “place of public accommodation” could not be construed to mean retail websites that do not have any connection to a physical space. On the second theory, the court found that a company's failure to remedy known discriminatory effects of a facially neutral website is not sufficient, on its own, to establish intentional discrimination under the Unruh Act.

WHAT HAPPENS NEXT?

The plaintiff in *Martinez*, with support from counsel and “tester” plaintiffs (who go from website to website for the sole purpose of initiating lawsuits), will likely seek review with the California Supreme Court. Online-only businesses may also see a push by the plaintiffs' bar to make more aggressive allegations of intentional conduct in an attempt to meet the heightened threshold now set forth under *Martinez* with respect to intentional discrimination.

In the meantime, the *Martinez* decision should give California online-only businesses a break on these surf-by website accessibility lawsuits. If the California Supreme Court affirms, it will be a watershed moment for online-only companies doing business in California.

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