

CALIFORNIA FEDERAL COURT HOLDS DOMINO'S WEBSITE VIOLATES THE ADA, LIMITS PENALTIES UNDER UNRUH ACT TO \$4,000

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A California federal district court has held that the website of Domino's Pizza violates the ADA, following a long saga that included the Ninth Circuit's reversal of the district court's prior dismissal of the case.

Judge Jesus Bernal of the Central District of California granted the motion for summary judgment by plaintiff Guillermo Robles on June 23, 2021, on grounds that Robles could not order a pizza from Domino's website using screen reader technology, and ordered Domino's to make the website accessible in accordance with the Web Content Accessibility Guidelines (WCAG), version 2.0. The court denied the plaintiff's motion for summary judgment as to Domino's app, however, finding that whether the app is currently accessible – and therefore whether the plaintiff's claim for injunctive relief under the ADA is moot – to be a disputed issue of fact.

The court also held that Domino's violated California's Unruh Act, which incorporates the ADA. In a bright spot for Domino's and other website accessibility defendants, however, Judge Bernal rejected the plaintiff's argument that he was entitled to \$4,000 in statutory damages under the Unruh Act for *each of his visits to Domino's website*, because each visit constituted a separate violation. Instead, the court held that Domino's inaccessible website constitutes a "single overarching violation," and that the plaintiff is limited to \$4,000 in Unruh Act penalties.

The court rejected Domino's argument that its phone line was an acceptable accessibility substitute for its web page and app, because the plaintiff had waited for more than 45 minutes before hanging up on at least two occasions. [The court's decision](#) leaves open the question of whether Domino's phone line otherwise would have been an acceptable accessibility substitute.

As we previously [reported](#), the Ninth Circuit in *Robles v. Domino's Pizza*, 913 F.3d 898 (9th Cir. 2019) held that Title III of the Americans with Disabilities Act (ADA) applies to Domino's website and app, and rejected the due process and primary jurisdiction challenges successfully raised by Domino's in the court below.

In considering the parties' cross-motions for summary judgment, Judge Bernal rejected Domino's argument that its website and app are not subject to the ADA because the brick and mortar store locations are owned by franchisees, and therefore there is no "nexus" to a place of public accommodation as required to state a violation of the ADA within the Ninth Circuit. Instead, the court agreed with the plaintiff, who argued that a defendant's ownership of the physical location is not required, and that the Ninth Circuit addressed this issue in holding that "[t]he alleged inaccessibility of Domino's website and app impedes access to the goods and services of its physical pizza franchises—which are places of public accommodation." *Robles*, 913 F.3d at 905.

In considering the plaintiff's motion for summary judgment, Judge Bernal noted that the plaintiff's expert had testified that the browser used by the plaintiff was outdated for purposes of using JAWS screen reader technology, but that Domino's expert had conceded using up-to-date technology that Domino's website was not fully accessible. The court therefore was not required to "wade into a sticky question: what level of technological capabilities is required of a blind website user such that the failure of JAWS technology is necessarily the fault of the website owner?" The court rejected Domino's argument that the plaintiff's claims as to its website were moot, since Domino's expert did not find the current website to be fully accessible.

BCLP has extensive experience defending companies against claims that their websites and apps are inaccessible in violation of the ADA. For questions or more information, or to schedule a webinar or presentation on this topic, please contact any of the attorneys listed.

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