

SUPREME COURT DENIES REVIEW IN WEBSITE ACCESSIBILITY CASE AGAINST DOMINO'S PIZZA

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Businesses should expect that lawsuits and demand letters alleging that their websites violate the Americans with Disabilities Act (“ADA”) will continue to increase in the wake of the United States Supreme Court’s October 7, 2019 decision denying Domino’s Pizza’s (“Domino’s”) petition for a writ of certiorari in the *Robles v. Domino’s Pizza* case. The Supreme Court’s decision to deny certiorari to Domino’s petition will send the lawsuit back to the United States District Court for the Central District of California to be tried on its merits.

Guillermo Robles (“Robles”) filed this lawsuit in September 2016 alleging, in part, that Domino’s website contained barriers to accessibility in violation of the ADA. Robles alleged that he unsuccessfully tried to order custom pizza online from a nearby Domino’s location. Robles sought, in part, a permanent injunction requiring Domino’s website to comply with the Web Content Accessibility Guidelines (“WCAG”) 2.0.

In March 2017, the District Court dismissed the case, without prejudice, based upon the primary jurisdiction doctrine, which allows courts to stay or dismiss lawsuits pending the resolution of an issue by a government agency, because absent “regulations and technical assistance” from the Department of Justice (“DOJ”), Domino’s due process rights would be violated. The District Court, however, also held that Title III of the ADA applied to Domino’s website.

On January 15, 2019, the Ninth Circuit reversed the District Court’s order. The Ninth Circuit agreed with the District Court that the ADA applies to Domino’s website and mobile application, citing that the ADA applies to “services *of* a place of public accommodation, not services *in* a place of public accommodation.” The Ninth Circuit also emphasized that there existed a “nexus between Domino’s website and app and physical restaurants.”

The Ninth Circuit, however, disagreed with the District Court’s application of the primary jurisdiction doctrine because “[w]hether Domino’s website and app are effective means of communication is a fact-based inquiry within a court’s competency.” The Ninth Circuit also found that “at least since 1996, Domino’s has been on notice that its online offerings must effectively communicate with its disabled customers and facilitate ‘full and equal enjoyment’ of Domino’s goods and services.” The Ninth Circuit found that Domino’s received fair notice of its legal duties and obligations, which is

sufficient due process under the Constitution, even in the absence of specific regulations from the DOJ.

The Supreme Court's refusal to take up Domino's petition for certiorari means that the Ninth Circuit's opinion stands and that businesses will have to continue to navigate the differing views of the circuits as to whether there must be a nexus between the website and a brick and mortar store, and in at least the Ninth Circuit, businesses will not be able to rely on the primary jurisdiction defense in such lawsuits.

Bryan Cave Leighton Paisner has extensive experience defending companies against website accessibility claims and regularly offers webinars on the topic to assist our clients in assessing compliance with the ADA.

If you would like to schedule a similar webinar or presentation, or for more information on website accessibility or defending against such claims, please contact any of the attorneys listed.

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Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com

[+1 415 675 3435](tel:+14156753435)

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