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CALIFORNIA COURT GRANTS NONSUIT IN WEBSITE ACCESSIBILITY TRIAL

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A California court has dismissed a website accessibility case shortly after commencing trial, issuing a *sua sponte* nonsuit on grounds that the defendant credit union's website is not subject to the ADA.

Martinez v. San Diego Credit Union, San Diego Superior Court Case No. 37-2017-00024673, would have been the only known website accessibility lawsuit to go to trial in the state of California. Instead, after commencing trial, the Court ordered the parties to submit trial briefs, inquired whether the parties would object to the Court issuing a *sua sponte* ruling at the outset of the case, and then granted the nonsuit. In so ruling, the Court advised the parties that it agreed with the defendant credit union's position that the complaint failed to state facts sufficient to constitute a cause of action, and that it wished to save plaintiff's counsel the expense of flying its expert witness from the East Coast.

Plaintiff had alleged violation of California's Unruh Act, which incorporates Title III of the Americans with Disabilities Act ("ADA"). Title III provides that:

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of 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). Title III defines the term "public accommodation" by listing twelve specific categories of private businesses that are covered. 42 U.S.C. § 12181(7).

The implementing regulations issued by the Department of Justice define the term "public accommodation" to mean "a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the" categories specifically listed in § 12181(7). 28 C.F.R. § 36.104.

Judge Ronald F. Frazier held that "to constitute a 'place of public accommodation' under Title III and its implementing regulations, a location must be (1) a facility that (2) falls within at least one of the

twelve specifically enumerated categories. Importantly, a location must meet both of these requirements to be a place of public accommodation."

In holding that defendant's website is not subject to the ADA, Judge Frazier noted that the Third, Sixth, Ninth, and Eleventh Circuits have held that the term "public accommodation" applies only to physical structures. Judge Frazier also noted that the Ninth Circuit, as the only Circuit Court to address whether websites are subject to the ADA, held in *Earll v. eBay, Inc.*, that the term "place of public accommodation" requires "'some connection between the good or service complained of and an actual physical place.'" (quoting *Weyer v. Twentieth Century Fox Film Corp.*) The Ninth Circuit concluded that "[b]ecause eBay's services are not connected to any 'actual, physical place[]," eBay is not subject to the ADA."

The plaintiff in the case against San Diego Credit Union, Roy Martinez, was represented by Pacific Trial Attorneys.

For questions or more information, contact the authors, Merrit Jones, Daniel Rockey, and Heather Goldman, or any member of our Retail team.

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