

Banking Operations & FinTech Update

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SHOULD YOUR WEBSITE BE ADA COMPLIANT?

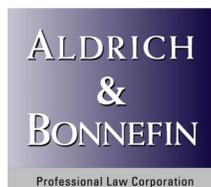
Among other things, the California Unruh Civil Rights Act (California Civil Code Section 51 *et seq.*) prohibits discrimination based on a person's disability. The law entitles such persons to full and equal access to places of public accommodation. Moreover, Civil Code Section 51(f) provides that a violation of any individual's rights under the federal Americans with Disabilities Act (ADA) constitutes a violation of Section 51.

Recently, a visually impaired individual filed suit in Los Angeles Superior Court against a restaurant, claiming that the restaurant's website violated the Unruh Act because the plaintiff could not fully use the website. In May 2018, the court granted summary judgment to that individual. *Thurston v. Midvale Corp. et al.*, Case No. BC663214 (Cal. Super. Ct., L.A. County, May 21, 2018). Thurston alleged that she was unable to read the menu or make reservations on the restaurant's website because it was "offered in an unreadable, graphic image." In response, the defendant relied on the Department of Justice's ADA regulations. Specifically, Midvale (which operates the restaurant) looked to Section 36.303(c) of the ADA regulations. In general, that section requires covered entities to provide auxiliary aids and services when needed to communicate effectively with individuals with disabilities. The

regulation lists suggested auxiliary aids such as brailled materials and displays, screen reader software, magnification software, optical readers, and secondary auditory programs. Midvale claimed that it provided an email and phone number on its website.

In its decision, the court first determined whether the restaurant's website qualified as a public accommodation under the ADA. The court stated that "[c]ourts are split on whether the ADA limits places of public accommodation to physical spaces," and noted that the Ninth Circuit (among other circuits) has concluded that places of public accommodation must be physical places. The court concluded in this case that the restaurant's website is a place of public accommodation under the ADA.

The court then determined whether providing an email or phone number complies with the ADA public accommodation provisions (42 USC Sections 12181-12189). The court concluded it did not. The court cited ADA Section 12182(a), which entitles people with disabilities to full and equal enjoyment of goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation. According to the court, providing only an email or phone number imposes a burden on visually impaired people because it requires them to wait for a response to an email or to call during business hours rather than to have access via a website like other sighted customers.



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The court granted Thurston's motion for summary judgement on the basis that Midvale failed to provide evidence that its website was accessible within ADA standards. The court ordered Midvale to pay statutory damages of \$4,000. Perhaps more interestingly, the court also ordered Midvale to bring its website into compliance with the Web Content Accessibility Guidelines 2.0AA (WCAG Guidelines) even though the plaintiff did not assert that Midvale was liable for violating the WCAG Guidelines. Rather, the plaintiff merely referred to the WCAG Guidelines in her complaint.

As an aside, recently 103 members of Congress sent a letter to Attorney General Jeff Sessions requesting the DOJ to provide guidance and clarity on how the ADA applies to websites. While the DOJ has yet to issue any guidance, and appears to be somewhat idle in this regard, California plaintiff attorneys are not.