

## **Banking Operations & FinTech Update**

**MARCH 2019**

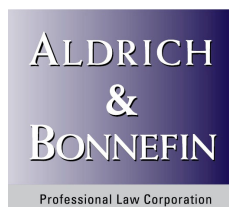
### **ADA WEBSITE LAWSUITS REMAIN A HOT TOPIC**

Recent industry reports indicate that litigation alleging Americans with Disabilities Act (ADA) website violations will increase during 2019. Banks and credit unions may continue to be vulnerable.

In a recent California case, *Robles v. Domino Pizza, LLC*, 2019 U.S. App. LEXIS 1292 (9th Cir., Jan. 15, 2019), the plaintiff (Robles) a visually impaired person, appealed a district court's dismissal of his complaint. In this case, Robles alleged Domino's Pizza violated the ADA for failing to make their website and mobile apps fully accessible to him. Specifically, Robles made two failed attempts to order online a customized pizza from Domino's. Robles contended that he could not order the pizza because Domino's failed to design their website and app so his software could read them. Domino's Pizza filed a motion to dismiss, arguing that applying the ADA to their website and apps violated their due process rights because the Department of Justice had yet to provide formal guidance on the Web Content Accessibility Guidelines (WCAG) 2.0. The district court agreed and granted Domino's motion to dismiss.

On January 15, 2019, the Ninth Circuit reversed and remanded the district court's decision. The Ninth Circuit held that the district court erred in holding that imposing liability on Domino's would violate their due process because the DOJ failed to issue guidelines. The appellate court stated that the statute was not vague, and that Domino's received fair notice that its website and app must provide effective communication and facilitate "full and equal enjoyment" to Domino's disabled customers. The Ninth Circuit explained that the Fourteenth Amendment right to due process only requires that Domino's receives fair notice of its legal duties to comply with the ADA. Additionally, the court stated that "as a general matter, the lack of specific regulations cannot eliminate statutory obligations." The court concluded that the Constitution does not require Congress or the DOJ to spell out how Domino's should fulfill their obligations to comply with the ADA. The court reversed and remanded the case to the district court to determine if Domino's website and app provide effective communication and full and equal enjoyment of its products and services.

Considering this case, financial institutions should be aware that websites and mobile apps continue to be under ADA scrutiny.



**The Banking & Business Law Firm**

www.ablawyers.com 949.474.1944

18500 Von Karman Ave., Suite 300, Irvine, California 92612

**Authors: Keith R. Forrester, Esq. and Anne M. McEvilly, Esq.**