

California Appellate Court Adopts Broad Standing for Claims Based on Asserted ADA Violations



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The California Supreme Court recently issued a ruling in *White v. Square, Inc.* that suggested standing to assert claims against websites for violations of the Unruh Civil Rights Act will be interpreted very broadly. In a case filed by a vision-impaired plaintiff against a restaurant, a California appellate court has now concluded that the broad standing suggested in *White* applies to disability discrimination claims under Unruh for website noncompliance. Given the recent positive judgments for plaintiffs in these cases, entities with an online presence should ensure that their websites comply with the accessibility requirements of state and federal law.

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In *Thurston v. Midvale Corp.*, No. B291631 (Cal. Ct. App. Sept. 3, 2019), the California appellate court affirmed summary judgment in favor of the vision-impaired plaintiff, finding that she had standing to sue the defendant restaurant for operating a website that the plaintiff's screen-reader software was unable to read and that the website failed to comply with California discrimination law, which in this context adopts the federal Americans With Disabilities Act. The website allowed users to reserve a table 24 hours a day, but did not afford the same benefit to website visitors who used screen-reader software. Although the website provided a telephone number that the plaintiff could have used to make a reservation, she would have been limited to making reservations only during the restaurant's hours of operation. The plaintiff filed a complaint against the restaurant's owner, asserting that its website violated the Unruh Civil Rights Act, which adopted the ADA.

The trial court granted summary judgment in favor of the plaintiff. On appeal, the appellate court found that the plaintiff had standing to bring the claims under the Unruh Act, concluding that the recent rule articulated by the California Supreme Court in *White* applied to online businesses, and a plaintiff visiting a website with the intent to use its services was "for purpose of standing, equivalent to presenting oneself for services at a brick-and-mortar store."

The appellate court also affirmed the trial court's holding that there were no triable issues of fact as to whether offering an alternative method of reserving by telephone was an appropriate auxiliary aide. The court agreed that requiring the plaintiff to contact the restaurant by telephone imposed an inappropriate burden on her because she had to wait for a response during normal business hours, while sighted users were not faced with such a restriction.

The California Court of Appeal's ruling confirms that, for now, California courts will apply the broad Unruh Act standing requirements to website accessibility compliance cases. This opinion further cements the need for entities to take steps to ensure that their websites operate in compliance with the ADA and state law. Businesses should aim to conform their websites to the WCAG 2.0 guidelines that have been widely adopted as the standard that enables visually impaired individuals to participate equally in a website's products and services. The opinion does not, however, address the concern that experts could have different opinions on whether a website complies with the WCAG 2.0 guidelines, which is just one of many concerns expressed by those seeking guidance from the Department of Justice.

Although the appellate ruling directly addressed the application of *White v. Square, Inc.*, it still leaves open several potential defenses to be explored in future actions. For example, the appellate court declined to address whether a website that is not connected to a brick-and-mortar location would be susceptible to ADA-based Unruh claims, since that “hypothetical” was not at issue with the subject website, which was integrated into a brick-and-mortar location. Likewise, there was no factual analysis of whether a round-the-clock answering service, whether by phone or email, to provide a real-time response to reservation requests could have rendered moot the plaintiff’s claims. Indeed, given the fast pace of developing case law in this area, there remain many defenses for website operators that have not yet been fully evaluated by the courts on their merits.