

Client Alert

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Websites Hit with Demand Letters on Accessibility Issues Despite Courts' Rejection of Claim

By David F. McDowell

In recent weeks, numerous businesses have received letters asserting that their websites are not accessible to persons with disabilities, in violation of the Americans with Disabilities Act and California's Unruh Act. These letters threaten litigation and warn of large penalty claims under the Unruh Act. What these letters do not report is that California courts have repeatedly rejected claims that the ADA and Unruh require accessible websites, including a recent dismissal order from Judge David Carter of the Central District of California.

In *Jancik v. Redbox*, plaintiff claimed that Redbox Digital's online streaming video service violated the law by not being accessible to deaf consumers. The court rejected the claim, finding that "Redbox Digital's website, which offers Redbox Instant, is not a 'place of public accommodation.'" (*Jancik*, Slip Op. at p. 11.) The court followed up by holding that Jancik's Unruh Act claims cannot proceed separately from his ADA claim. (*Id.* at p. 12.) This decision followed an earlier decision in *Cullen v. Netflix* dismissing ADA and Unruh Act claims on identical grounds.

In light of these decisions, website operators need not fall prey to demand letters threatening action without immediate payment of penalties and attorney's fees. Existing law does not support the claims.

While Ninth Circuit law does not presently allow a claim, website accessibility remains a hot topic among governmental regulators, disability access advocates, and plaintiffs' counsel. Just recently, the Department of Justice announced that long-delayed regulations phasing in standards for websites would be delayed until, at least, next March. Those delays, however, have not prevented the law from evolving rapidly and applicable standards may be different outside California and the Ninth Circuit. Understanding where the law is and where it is likely to move will allow companies to make better decisions about their investments in websites and mobile applications. As one of the leaders in understanding and addressing accessibility issues in the digital world, we can help guide you through the complex and evolving landscape.

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