

November 16, 2022

## Online Only Retailers Have a New Defense Against Website Accessibility Claims in California

By: [William Miller](#), [Anne Marie Ellis](#), and [David DeBerry](#)

On August 1, 2022, the California Court of Appeals issued the decision in *Martinez v. Cot'n Wash, Inc.* (2022) 81 Cal.App.5th 1026 [297 Cal.Rptr.3d 712]. In *Martinez*, the plaintiff claimed that Cot'n Wash's website (dropps.com) was inaccessible because it did not comply with the Web Content Accessibility Guidelines (WCAG) 2.1. Cot'n Wash disputed *Martinez's* claim, but also argued that California's Unruh Civil Rights Act did not apply because there was no evidence of intentional discrimination, and Title III of the ADA did not apply to Cot'n Wash because it was an online only business selling cleaning products to customers who order online, but without any retail or physical locations.

The Court of Appeals agreed with Cot'n Wash following existing precedent in the Ninth Circuit that Article III of the ADA applied only to businesses with a physical location or that had a nexus to a physical location. It should be noted that there is a split in the Circuits regarding this issue, with some Courts specifically finding that online only businesses are "places of public accommodation" within the meaning of Title III of the ADA. The *Martinez* court then went further and stated that the Plaintiff had failed to show that Cot'n Wash intended to discriminate against disabled individuals, and that a showing that Cot'n Wash's website only had an adverse impact on disabled individuals was insufficient.

After the *Martinez* case was decided Plaintiff's counsel immediately appealed the matter to the California Supreme Court. However, on November 9, 2022, the Court declined to hear the matter, establishing *Martinez* as binding precedent in California.

While the *Martinez* case provides defendants with new arguments that can dispose of website accessibility at an early stage in the litigation, it is limited to those business that can show an online only business. That being said, what constitutes a physical location and a nexus to a physical location is arguable, and will likely now be even more intensely litigated. Also, the *Martinez* case may be limited on its facts because the Plaintiff there was unable to plead or prove that Cot'n Wash knew that its website was inaccessible, and therefore would discriminate against someone with his particular disability. It seems likely that Plaintiff's counsel who practice in this area will take note of this issue and plead intentional discrimination with more particularity moving forward.

*Martinez* joins a growing list of cases at the state and federal level in California that appear to demonstrate a trend of increasing scrutiny of website accessibility cases (particularly those filed by serial plaintiffs). Only time will tell, but it is possible that the *Martinez* decision will have a chilling effect on the amount of website accessibility cases in California, and it certainly provides a new and potentially effective way of disposing of non-meritorious cases early in the lawsuit. This, of course, is critically important as

frequently these types of matters are more cost-effective to resolve than they are to litigate to completion, which has driven the rapid increase in these types of filings. Despite the favorable outcome for this defendant, businesses should take this opportunity to re-evaluate their website compliance, particularly if they have retail or physical locations.

If you have questions or need assistance, please contact one of the attorneys listed below.



**[William Miller](#)**

Shareholder  
(213) 891-5287  
[wmiller@buchalter.com](mailto:wmiller@buchalter.com)



**[Anne Marie Ellis](#)**

Shareholder  
(949) 224-6223  
[aellis@buchalter.com](mailto:aellis@buchalter.com)



**[David DeBerry](#)**

Attorney  
(949) 224-6275  
[ddeberry@buchalter.com](mailto:ddeberry@buchalter.com)

This communication is not intended to create or constitute, nor does it create or constitute, an attorney-client or any other legal relationship. No statement in this communication constitutes legal advice nor should any communication herein be construed, relied upon, or interpreted as legal advice. This communication is for general information purposes only regarding recent legal developments of interest, and is not a substitute for legal counsel on any subject matter. No reader should act or refrain from acting on the basis of any information included herein without seeking appropriate legal advice on the particular facts and circumstances affecting that reader. For more information, visit [www.buchalter.com](http://www.buchalter.com).