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### ***SOUTHERN DISTRICT OF FLORIDA COURT ADOPTS WCAG GUIDANCE FOR WEBSITE ACCESSIBILITY***

The plaintiff, Juan Carlos Gil, brought a claim against Winn-Dixie Stores, Inc. under Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181-12189 (ADA), alleging that its website was inaccessible to the visually impaired. At trial, the issues in dispute were (1) whether Winn-Dixie’s website was subject to the ADA; (2) whether Gil, in light of his disability, was denied the full and equal enjoyment of “goods, services, facilities, privileges, advantages, or accommodations” offered through Winn-Dixie’s website; and (3) whether Winn-Dixie could implement reasonable modifications to its website. Following the non-jury trial, the Honorable Robert N. Scola, Jr. issued a verdict and order in favor of the plaintiff.<sup>1</sup>

Courts are split on the issue of whether and in what circumstances websites qualify as places of public accommodation. Some circuits have held that the goods and services provided must have a “significant nexus” to the business’s physical location in order to fall under the ADA. *See, e.g., Earl v. Ebay, Inc.* 599 Fed. App’x. 695, 696 (9th Cir. 2015). Other circuits have taken a broader stance, holding that intangible barriers are encompassed by the ADA if they restrict a disabled person’s ability to enjoy the defendant’s goods, services, and privileges. *See, e.g., Rendon v. Valleycrest Prods., Inc.*, 249 F.3d 1279, 1283 (11th Cir. 2002). Here, the court took the latter approach.

In analyzing Winn-Dixie’s website, the court examined whether or not it was “heavily integrated” with the company’s physical store locations (that is, whether the website operated as a “gateway” to the store). If the website was not sufficiently connected, then it would not fall under the ADA. The court found that Winn-Dixie’s website was sufficiently integrated because it offered services such as an online pharmacy management system, access to digital coupons, and a store-finding feature—all of which were services, privileges, advantages, and accommodations offered at its brick-and-mortar retail locations. Accordingly, Winn-Dixie’s website was subject to the ADA.

Next, the court assessed whether or not Gil was denied access to Winn-Dixie’s website. In so doing, the court noted that there are no specific federal mandates governing website accessibility and no enforceable regulations. The court found, however, that the Web Content Accessibility Guidelines (WCAG) are considered the industry standard and were adopted as an international standard in 2012. The federal government’s Access Board has also, in large part, adopted these guidelines. Accordingly, the court deferred to the WCAG 2.0 guidelines.

Based on the factual findings presented, the court held that the website was inaccessible to the visually impaired because screen reader software, such as JAWS, was not compatible or did not otherwise interface correctly with Winn-Dixie’s website. In fact, 90% of the website tabs did not work with screen reader software. Further, the website did not have an effective search function that other websites typically have available. Accordingly, Gil was limited in terms of what he could find or access through Winn-Dixie’s website.

Finally, the court assessed whether or not Winn-Dixie could implement reasonable modifications to its website. Based on expert analysis, Winn-Dixie needed to modify only one or two of its source codes in order to render it compliant, which would cost approximately \$37,000. And in this case, Winn-Dixie had *already* set aside \$250,000

for the modifications. In light of this, the court held that the proposed modifications were reasonable<sup>2</sup> and that Gil was entitled to injunctive relief. Winn-Dixie was required to implement remediation measures in conformity with the WCAG 2.0 Guidelines.

Since the law is not well settled as to whether and how a website may be rendered ADA compliant and since there are still no binding federal regulations, companies may want to review the WCAG 2.0 Guidelines and audit their websites to determine if any modifications are warranted.

~ By *Kelly M. Peña, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*

#### **Endnotes**

- 1 See *Gil v. Winn-Dixie Stores, Inc.*, --F. Supp. 3d--, 2017 WL 2547242 (S.D. Fla. 2017). The matter is currently on appeal before the Eleventh Circuit Court of Appeals under case number 17-13467.
- 2 Even if it were to cost \$250,000, the court opined that the modifications would still be reasonable because Winn-Dixie spent \$2 million in 2015 to open the website and \$7 million in 2016 to revamp it.



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