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**United States District Court  
Central District of California**

GUILLERMO ROBLES,  
Plaintiff,

v.

YUM! BRANDS, INC. d/b/a PIZZA HUT,  
and DOES 1-10 inclusive,  
Defendants.

Case No 2:16-cv-08211-ODW(SS)

**ORDER DENYING DEFENDANT’S  
MOTION FOR SUMMARY  
JUDGMENT [28]**

**I. INTRODUCTION**

Plaintiff Guillermo Robles brings this action against Defendant Yum! Brands, Inc. d/b/a Pizza Hut (“Pizza Hut”) alleging that Pizza Hut violated the Americans with Disabilities Act of 1990 (“ADA”) and the Unruh Civil Rights Act (“UCRA”). (*See generally* First Am. Compl. (“FAC”), ECF No. 13.) Before the Court now is Pizza Hut’s Motion for Summary Judgment. (Mot., ECF No. 28.) For the reasons discussed below, the Court **DENIES** Pizza Hut’s Motion.<sup>1</sup>

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<sup>1</sup> After carefully considering the papers filed in support of the Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

## II. FACTUAL BACKGROUND

1  
2 Plaintiff Guillermo Robles is a blind person who uses screen-reading software to  
3 access websites and interact with mobile applications. (Decl. of Guillermo Robles  
4 (“Robles Decl.”) ¶¶ 2–4; ECF No. 34.) Plaintiff alleges that Pizza Hut failed to make  
5 its website and mobile application fully accessible and independently usable by Plaintiff  
6 and other blind or visually-impaired people. (FAC ¶¶ 2–3.) Plaintiff typically uses Job  
7 Access With Speech (“JAWS”) and Apple’s VoiceOver as screen-reading software  
8 programs to access online content. (See Plaintiff’s Statement of Genuine Issues of  
9 Material Facts (“PSGI”) ¶ 6, ECF No. 36; Robles Decl. ¶ 3.)

10 Plaintiff alleges that in 2016, he attempted to access PizzaHut.com to investigate  
11 its offerings for pizza delivery and pick-up. (Robles Decl. ¶ 6.) Plaintiff found that  
12 PizzaHut.com was “cluttered and difficult for [him] to understand using his screen-  
13 reader.” (Robles Decl. ¶ 7.) As a result, Plaintiff claims that he was prevented from  
14 finding the closest Pizza Hut store location, identifying coupons or offers available on  
15 the website, initiating an online order, selecting or customizing a pizza, and from  
16 independently, securely and privately completing his order. (*Id.* at 6.) Plaintiff alleges  
17 that the slide show on the website was inaccessible, that he was unable to register on  
18 the website to place an order because various edit fields were not labeled, and that he  
19 could not locate a specific Pizza Hut store using his screen-reader because the results  
20 were jumbled and difficult to understand. (*Id.* ¶¶ 8–10.) Plaintiff further claims that he  
21 encountered the same accessibility barriers on the Pizza Hut mobile application. (*Id.* ¶  
22 16.)

23 Plaintiff claims that he returned to PizzaHut.com on June 12, 2017 and  
24 discovered text on the homepage that provided a customer service number to call for  
25 individuals who were using a screen reader and having problems using the website. (*Id.*  
26 ¶ 18.) Plaintiff states that he called the number and waited on hold for forty-five minutes  
27 before he ended the call. (*Id.*) Plaintiff asserts that he has been deterred from returning  
28 to both PizzaHut.com and the Pizza Hut mobile application because of the access

1 barriers he encountered. (*Id.* ¶ 20.)

2 Pizza Hut claims that its website contains an “accessibility banner” that states:  
3 “If you are using a screen reader and are having problems using this website, please call  
4 800-948-8488 for assistance.” (Defendant’s Statement of Uncontroverted Facts in  
5 Support of Summary Judgment (“DSUF”) ¶ 1 (ECF No. 28-11); Decl. of Corey  
6 Williams (“Williams Decl.”) ¶¶ 2–3; ECF No. 28-2.) Through this number, Pizza Hut  
7 asserts that it provides “customer support with a live, customer service representative”  
8 that can assist a blind or visually impaired individual with the website. (DSUF ¶ 1;  
9 Williams Decl. ¶ 2.) Pizza Hut further states that “customers may also directly call their  
10 local Pizza Hut restaurant to order food, purchase goods, and/or ask questions.” (DSUF  
11 ¶ 4; Williams Decl. ¶ 6.) Plaintiff acknowledges that the accessibility banner appeared  
12 on PizzaHut.com after May 17, 2017, but disputes its existence on or prior to May 14,  
13 2017. (PSGI ¶ 1.)

14 Due to the accessibility barriers on PizzaHut.com and Pizza Hut’s mobile  
15 application, Plaintiff alleges that he has been denied the “full enjoyment” of Pizza Hut’s  
16 facilities, goods, and services. (FAC ¶¶ 27, 31.) Plaintiff also alleges that Pizza Hut’s  
17 website and mobile application do not comply with version 2.0 of the Web Content  
18 Accessibility Guidelines (“WCAG 2.0”). (*Id.* ¶¶ 21, 36.) However, in his Opposition  
19 to the instant Motion, Plaintiff contends that he is not seeking to enforce any particular  
20 standard, but rather he alleges that his difficulty accessing Pizza Hut’s website and  
21 mobile application violate the general accessibility mandate of the ADA. (Opp’n 6,  
22 ECF No. 31.)

23 As a result of Plaintiff’s inability to access Pizza Hut’s website and mobile  
24 application, Plaintiff has brought four causes of action: (1) Violation of the ADA, 42  
25 U.S.C. § 12181 *et seq.* (PizzaHut.com); (2) Violation of the ADA, 42 U.S.C. § 12181  
26 (mobile application); (3) Violation of the UCRA, California Civil Code § 51 *et seq.*  
27 (PizzaHut.com); and (4) Violation of the UCRA, California Civil Code § 51 *et seq.*  
28 (mobile application). (*See generally* FAC.)

1 On March 26, 2017, Pizza Hut moved for summary judgment, or in the  
2 alternative, dismissal or stay of the case. (ECF No. 28.) Plaintiff opposed Pizza Hut’s  
3 Motion on June 19, 2017, and Pizza Hut replied on June 26, 2017. (ECF Nos. 31, 38.)

### 4 III. REQUESTS FOR JUDICIAL NOTICE

5 In support of his Opposition, Plaintiff requests that the Court take judicial notice  
6 of the following documents:

- 7 • several court orders and records from *Juan Carlos Gil v. Winn-Dixie Stores, Inc.*,  
8 No. 16–23020–Civ–Scola (S.D. Fla. June 13, 2017); (Req. for Judicial Not.  
9 (“RJN”) Exs. 2–7, 10, ECF No. 35)
- 10 • a court order in *Gorecki v. Hobby Lobby Stores, Inc.*, No. 17–1131–JFW–SK  
11 (C.D. Cal. 2017); (RJN Ex. 1)
- 12 • the United States’ Statements of Interest in *David New v. Lucky Brand Dungarees*  
13 *Stores, Inc.*, Case No. 1:14-cv-20574-UU (S.D. Fla. Apr. 10, 2014) and *Nat’l*  
14 *Assn. of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196 (D. Mass. 2012); (RJN Exs.  
15 8, 9)
- 16 • a Consent Decree in *Nat’l Fed. Of the Blind, et al. United States of America v.*  
17 *HRB Digital LLC and HRB Tax Group, Inc.*, No. 1:13–CV–10799–GAO (entered  
18 March 25, 2014). (RJN Ex. 11.)

19 Pizza Hut opposes Plaintiff’s requests for judicial notice on the basis that the  
20 parties and courts in these cases were faced with different facts and issues than those  
21 presented in this case. (ECF No. 39.) Courts, however, regularly take judicial notice  
22 of proceedings in other courts. *See, e.g. Montantes v. Inventure Foods*, No. CV–14–  
23 1128–MWF (RZx), 2014 WL 3305578, at \*2 (C.D. Cal. July 2, 2014) (“Courts ... take  
24 judicial notice of proceedings in other courts ... if those proceedings have a direct  
25 relation to matters at issue.”) Therefore, the Court takes judicial notice of the above-  
26 referenced documents but not the facts contained therein. *Lee v. City of Los Angeles*,  
27 250 F.3d 668, 690 (9th Cir. 2001) (stating that judicial notice of public records is limited  
28 to the existence of the documents, not the truth of their contents).

1 Both Plaintiff and Pizza Hut submitted multiple notices of supplemental authority  
2 and requests for judicial notice after briefing on Pizza Hut’s Motion had closed and the  
3 Court took the matter under submission. (ECF Nos. 44–46, 48–56.) The Court  
4 considered the relevant cases and authority, as discussed further below.

#### 5 IV. LEGAL STANDARD

6 Summary judgment is appropriate under Federal Rule of Civil Procedure 56 if  
7 the moving party demonstrates the absence of a genuine issue of material fact and  
8 entitlement to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
9 322 (1986). A fact is material when, under the governing law, the resolution of that fact  
10 might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
11 248 (1986). A dispute is genuine if “the evidence is such that a reasonable jury could  
12 return a verdict for the nonmoving party.” *Id.* at 249.

13 A party seeking summary judgment bears the initial burden to establish the  
14 absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. To satisfy this  
15 burden, the moving party may simply point to portions of pleadings, admissions,  
16 answers to interrogatories and depositions which, along with affidavits, show the  
17 absence of a genuine issue of material fact. *See id.* If the moving party satisfies its  
18 burden, the nonmoving party must produce specific evidence to show that a genuine  
19 dispute exists. Fed. R. Civ. P. 56(e).

20 “In ruling on a motion for summary judgment, the nonmoving party’s evidence  
21 is to be believed, and all justifiable inferences are to be drawn in that party’s favor.”  
22 *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999). However, the nonmoving party “must  
23 do more than simply show that there is some metaphysical doubt as to the material  
24 facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).  
25 “If the evidence is merely colorable, or is not significantly probative, summary  
26 judgment may be granted.” *Liberty Lobby*, 477 U.S. at 249–50 (citations omitted).

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## V. DISCUSSION

Pizza Hut moves for summary judgment on the grounds that (1) Plaintiff’s lawsuit violates Pizza Hut’s right to due process and should be dismissed pursuant to the Primary Jurisdiction Doctrine; (2) Pizza Hut’s website complies with the effective communications mandate of the ADA; (3) Plaintiff’s claim under the UCRA fails because he cannot prove intentional discrimination; and (4) Plaintiff has failed to provide “fair notice” of the alleged barriers on Pizza Hut’s website or mobile application. (Mot. 1.) In the alternative, Pizza Hut requests that the Court grant a stay of this case pending a ruling from the Ninth Circuit in another one of Plaintiff’s lawsuits against Domino’s Pizza, LLC. *See Robles v. Domino’s Pizza, LLC.*, Case No. CV-16-06599 SJO(SP<sub>x</sub>), 2017 WL 1330216 (C.D. Cal. Mar. 20, 2017).

### A. ADA’s Requirements for Internet Accessibility

Before turning to each of Pizza Hut’s arguments in favor of summary judgment, the Court will first address the applicability of the ADA’s requirements for websites.

Plaintiff claims that Pizza Hut failed to provide disabled individuals full and equal enjoyment of goods and services offered within its physical stores by not maintaining a fully accessible website and mobile application. (Opp’n 1.) The parties do not dispute that Plaintiff is disabled within the meaning of the ADA, nor do they contest whether Pizza Hut’s physical restaurants are places of public accommodation. (PSGI ¶ 5; *see generally* DSUF.) Thus, the focus of the parties’ dispute is whether Plaintiff was denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation under the ADA.

Congress enacted the ADA “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). Title III of the ADA provides that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of

1 public accommodation by any person who owns, leases (or leases to), or operates a  
2 place of public accommodation.” 42 U.S.C. § 12182(a). Section 12181 of the ADA  
3 defines a “place of public accommodation” as an entity whose operations affect  
4 commerce and falls within one of twelve enumerated categories. 42 U.S.C. § 12181(7)  
5 (listing twelve categories of physical, brick-and-mortar establishments open to the  
6 public at a specific location). The Ninth Circuit has held that to successfully assert a  
7 Title III claim, “some connection between the good or service complained of and an  
8 actual physical place is required.” *Weyer v. Twentieth Century Fox Film Corp.*, 198  
9 F.3d 1104, 1114 (9th Cir. 2000). However, “[t]he requirement that a place of public  
10 accommodation ... refer to a physical place does not preclude a plaintiff from  
11 challenging a business’ online offerings” under the ADA. *Reed v. CVS Pharmacy, Inc.*,  
12 No. CV 17-3877-MWF (SKx), 2017 WL 4457508, at \*3 (C.D. Cal. Oct. 3, 2017). As  
13 long as there is a “nexus”—some connection between the good or service complained  
14 of and an actual physical place, a plaintiff may challenge the digital offerings of an  
15 otherwise physical business. *Id.* at \*3 (citing *Weyer*, 198 F.3d at 1114).

16 Under the ADA, a disabled individual is discriminated against when that person  
17 is denied the opportunity to participate in programs or services of a place of public  
18 accommodation, or is provided separate, but unequal, goods or services. *See* 42 U.S.C.  
19 § 12182(b)(1)(A)(i-iii). To ensure that places of accommodation provide the disabled  
20 with the full and equal enjoyment of the goods and services they offer, the  
21 ADA requires “reasonable modification” of “policies, practices, and procedures,” and  
22 for places of public accommodation to make “auxiliary aids and services” available “to  
23 prevent exclusion, denial of services, segregation or different treatment.” *See* 42 U.S.C.  
24 § 12182(b)(1)(A)(ii-iii). Further, the DOJ, the agency that enforces the ADA, has  
25 promulgated regulations that require public accommodations to “furnish appropriate  
26 auxiliary aids and services where necessary to ensure effective communication” with  
27 disabled individuals. 28 C.F.R. § 36.303(c)(1). Auxiliary aids and services include  
28 “screen reader software, magnification software, optical readers ... or other effective

1 methods of making visually delivered materials available to individuals who are blind  
2 or have low vision.” 28 C.F.R. § 36.303(b)(2). Although “the regulations emphasize  
3 that ... no specific auxiliary aid or service is required in any given situation, whatever  
4 auxiliary aid or service the public accommodation chooses to provide must be  
5 effective.” *CVS Pharmacy, Inc.*, 2017 WL 4457508, at \*4.

6 The DOJ has “repeatedly affirmed that Title III [of the ADA] applies to websites  
7 that meet the definition of a public accommodation.” *See Gorecki v. Hobby Lobby*  
8 *Stores, Inc.*, CV 17-1131-JFW (SKx), 2017 WL 2957736, at \*4 (C.D. Cal. June 15,  
9 2017). In 2010, the DOJ published an Advanced Notice of Proposed Rulemaking  
10 (“ANPR”), where the DOJ acknowledged that the Internet did not exist when Congress  
11 enacted the ADA, and that neither the text of the ADA nor the promulgating regulations  
12 specifically address private websites. *Nondiscrimination on the Basis of Disability;*  
13 *Accessibility of Web Information and Services of State and Local Government Entities*  
14 *and Public Accommodations*, 75 FR 43460-01 (July 26, 2010). “Nevertheless, in its  
15 view, the statute’s broad and expansive nondiscrimination mandate reaches goods and  
16 services provided by covered entities on websites over the internet. *Hobby Lobby*  
17 *Stores, Inc.*, 2017 WL 2957736, at \*5 (citation omitted).

18 Here, it is undisputed that Pizza Hut’s website and mobile application include a  
19 restaurant locator. (*See Answer* ¶¶ 26, 27, ECF No. 18.) Plaintiff alleges that he was  
20 “deterred altogether from placing any sort of order for delivery or visiting the physical  
21 location to pick up his order” due to the barriers he encountered while attempting to  
22 access Pizza Hut’s website. (FAC ¶ 34.) Acknowledging the fact that Pizza Hut’s  
23 restaurants are physical, brick-and-mortar places, and that Pizza Hut’s website and  
24 mobile application are services provided by Pizza Hut, the Court finds that Pizza Hut’s  
25 website and mobile app are both subject to accessibility regulations under the ADA.

26 **B. Due Process**

27 Pizza Hut argues that this lawsuit violates its right to due process because there  
28 are no clear objective standards enabling Pizza Hut to ensure that its website is not



1 violating the ADA. (Mot. 7.) “Due Process requires that the government provide  
2 citizens and other actors with sufficient notice as to what behavior complies with the  
3 law. Liberty depends on no less.” *United States v. AMC Entertainment, Inc.*, 549 F.3d  
4 760, 768 (9th Cir. 2008). “[B]ecause we assume that man is free to steer between lawful  
5 and unlawful conduct, we insist that laws give the person of ordinary intelligence a  
6 reasonable opportunity to know what is prohibited, so that he may act accordingly.”  
7 *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). “Those regulated by an  
8 administrative agency are entitled to know the rules by which the game will be played.”  
9 *AMC Entertainment, Inc.*, 549 F.3d at 768 (quoting *Alaska Prof. Hunters Ass’n, Inc. v.*  
10 *FAA*, 177 F.3d 1030, 1035 (D.C. Cir. 1999)). For the reasons discussed below, the  
11 Court does not find Pizza Hut’s due process arguments persuasive.

12 **1. *The ADA Applies to Websites***

13 The Court finds that there is sufficient guidance with respect to ADA  
14 applicability to websites so that this litigation does not violate Pizza Hut’s due-process  
15 rights. “Since 1996, the DOJ has not wavered from its view that the ADA applies to  
16 websites that meet the definition of a public accommodation.” *Hobby Lobby Stores,*  
17 *Inc.*, 2017 WL 2957736, at \*5. In *Hobby Lobby*, the district court denied defendant  
18 Hobby Lobby’s motion to dismiss a legally blind plaintiff’s complaint alleging that  
19 Hobby Lobby’s website violated the ADA. *Id.* at \*1. Similar to Pizza Hut’s argument  
20 here, Hobby Lobby argued that the plaintiff’s case violated its due process rights  
21 because it did not have “sufficient notice of the technical standards that would make its  
22 website fully compliant with the ADA.” *Id.* at \*4. The *Hobby Lobby* court rejected this  
23 argument, stating that “the DOJ’s general website accessibility requirement is not  
24 ambiguous because the DOJ has not imposed any specific means by which entities must  
25 meet this requirement”—hence, places of public accommodation “are free to decide  
26 how to comply with the ADA.” *See id.* at \*6. The same conclusion holds true here.

27 The lack of specific guidelines from the DOJ does not excuse Pizza Hut from  
28 complying with the ADA’s general mandates. *See Fortyune v. City of Lomita*, 766 F.3d

1 1098, 1102 (9th Cir. 2014) (holding “[t]hat the lack of specific regulations cannot  
2 eliminate a statutory obligation” and rejecting the defendant’s due process argument  
3 that it lacked notice of its obligation to comply with the general mandate of the ADA to  
4 provide certain accommodations). Given the DOJ’s consistent position that the ADA  
5 applies to websites, the Court finds that Pizza Hut has had sufficient notice that its  
6 website must provide visually impaired individuals with full and equal access. *See* 42  
7 U.S.C. § 12182(a). Whether Pizza Hut’s digital offerings must comply with the WCAG  
8 or any other set of noncompulsory guidelines, is a question of remedy, not liability. *See*  
9 *CVS Pharmacy*, 2017 WL 4457508, at \*4. Furthermore, whether Pizza Hut has  
10 complied with the ADA’s general mandate that websites shall be equally accessible is  
11 a question of fact, as described below. Accordingly, Plaintiff’s Complaint, as plead,  
12 does not violate due process.

## 13 **2. *The Domino’s Pizza Decision***

14 Pizza Hut relies on a factually similar case brought by Plaintiff, *Robles v.*  
15 *Domino’s Pizza LLC*, to support its due process arguments. (Mot. 3–5); *see Robles v.*  
16 *Domino’s Pizza, LLC.*, Case No. CV 16-06599-SJO(SP<sub>x</sub>), 2017 WL 1330216, at \*5  
17 (C.D. Cal. Mar. 20, 2017). In *Domino’s Pizza LLC*, Plaintiff asserted the same four  
18 causes of action brought here, but against Domino’s. Plaintiff alleged that Domino’s  
19 website and mobile application were not fully accessible to himself and other visually-  
20 impaired people. *Id.* In particular, Plaintiff argued that Domino’s website and mobile  
21 application were not compatible with screen-reading software programs, “JAWS” and  
22 “VoiceOver.” *Id.* The court held that Plaintiff’s case could not proceed absent specific  
23 web accessibility standards under the ADA. *Id.* at \*8. The *Domino’s* court concluded  
24 that “[s]uch regulations and technical assistance are necessary for the [c]ourt to  
25 determine what obligations a regulated individual or institution must abide by in order  
26 to comply with Title III.” *Id.* The Court finds the *Domino’s Pizza* case is distinguishable  
27 because in *Domino’s*, Plaintiff was seeking to require the defendant to comply with the  
28 WCAG guidelines, which admittedly were not required by any DOJ regulations. *See*

1 *Domino’s Pizza*, 2017 WL 1330216 at \*5–6 (stating that “Plaintiff seeks to impose on  
2 all regulated persons and entities a requirement they ‘compl[y] with the WCAG  
3 guidelines’ ...”). Plaintiff does not seek to enforce any particular standard in this case.

4 Like the defendant in *Domino’s*, Pizza Hut contends that this lawsuit violates its  
5 right to due process because “the [ADA], as it currently stands, ‘fails to articulate  
6 comprehensible standards to which a person’s conduct must conform.’” (Mot. 7  
7 (quoting *Botosan v. Paul McNally Realty*, 216 F.3d 827, 836 (9th Cir. 2000).) Pizza  
8 Hut argues that Plaintiff’s case must fail because it is “exclusively premised” upon Pizza  
9 Hut’s failure to comply with version 2.0 of the WCAG and Apple iOS accessibility  
10 guidelines—standards that have not been promulgated by the DOJ. (*Id.*) As such, Pizza  
11 Hut argues that it is entitled to summary judgment because the DOJ has not required  
12 private businesses to comply with a specific accessibility standard within the WCAG.  
13 (*Id.*) However, Pizza Hut mischaracterizes Plaintiff’s allegations.

14 Plaintiff is not seeking to force Pizza Hut to comply with any particular set of  
15 guidelines within the WCAG, but rather, is challenging Pizza Hut’s compliance with  
16 the ADA “generally and without reference to a particular standard.” (Opp’n 2 n.3.)  
17 While the DOJ has consistently relied upon the WCAG guidelines to provide a roadmap  
18 of what would constitute an appropriate measure for website accessibility, Plaintiff is  
19 not required to show that Pizza Hut complied with any *specific guidelines*. *See, e.g.,*  
20 *Settlement Agreement Between the United States of America and EDX Inc.*, DJ No. 202-  
21 36-255 (Apr. 2, 2015), [https://www.ada.gov/edx\\_sa.htm](https://www.ada.gov/edx_sa.htm); *Settlement Agreement*  
22 *Between the United States of America and Ahold U.S.A., Inc. and Peapod, LLC*, DJ No.  
23 202-63-169 (Nov. 17, 2014), [https://www.ada.gov/peapod\\_sa.htm](https://www.ada.gov/peapod_sa.htm); *Settlement*  
24 *Agreement Between the United States of America and Carnival Corp.*, DJ No. 202-  
25 17M-206 (July 23, 2015), [https://www.ada.gov/carnival/carnival\\_sa.html](https://www.ada.gov/carnival/carnival_sa.html). Instead,  
26 Plaintiff need only demonstrate that Pizza Hut has not met its obligations under the  
27 ADA, or, at least, that there is a triable issue of fact supporting this theory. Therefore,  
28 Pizza Hut’s attempt to rely on the *Domino’s* case is misguided.

1 **C. Primary Jurisdiction Doctrine**

2 Pizza Hut requests that the Court should stay or dismiss Plaintiffs FAC pursuant  
3 to the primary jurisdiction doctrine pending further guidance from the DOJ regarding  
4 minimum accessibility standards for websites. (Mot. 9.) “The primary jurisdiction  
5 doctrine allows courts to stay proceedings or to dismiss a complaint without prejudice  
6 pending the resolution of an issue within the special competence of an administrative  
7 agency.” *Clark v. Time Warner Cable*, 523 F.3d 1110, 1114 (9th Cir. 2008). The  
8 doctrine “is to be used only if a claim ‘requires resolution of an issue of first impression,  
9 or of a particularly complicated issue that Congress has committed to a regulatory  
10 agency’ ...” *Id.* (quoting *Brown v. MCI WorldCom Network Servs.*, 277 F.3d 1166,  
11 1172 (9th Cir. 2002)). Whether to invoke the doctrine is within the sound discretion of  
12 the court. *Syntek Semiconductor Co., v. Microchip Tech. Inc.*, 307 F.3d 775, 781 (9th  
13 Cir. 2002). Although there is no “fixed formula” for applying the doctrine, the Ninth  
14 Circuit has provided a four factor test to guide a court’s discretion: “(1) the need to  
15 resolve an issue that (2) has been placed by Congress within the jurisdiction of an  
16 administrative body having regulatory authority (3) pursuant to a statute that subjects  
17 an industry or activity to a comprehensive regulatory authority that (4) requires  
18 expertise or uniformity in administration.” *Id.* (citing *United States v. Gen. Dynamics*  
19 *Corp.*, 828 F.2d 1356, 1362 (9th Cir. 1987)).

20 However, “[n]ot every case that implicates the expertise of federal agencies  
21 warrants invocation of primary jurisdiction.” *Astiana v. Hain Celestial Group, Inc.*,  
22 783 F.3d 753, 760 (9th Cir. 2015). “Common sense tells us that even when agency  
23 expertise would be helpful, a court should not invoke primary jurisdiction when the  
24 agency is aware of but has expressed no interest in the subject matter of the litigation.”  
25 *Id.* Further, primary jurisdiction is not necessary “when a referral to the agency would  
26 significantly postpone a ruling that a court is otherwise competent to make.” *Id.*  
27 (citation omitted).

28

1 Here, Pizza Hut argues the question of website accessibility “is better left to the  
2 DOJ given its potential nationwide impact.” (Mot. 11.) Pizza Hut correctly  
3 acknowledges that “the DOJ has been evaluating the appropriateness of [establishing  
4 comprehensive guidelines for website accessibility standards] for several years.” (*Id.*)  
5 In its ANPR, The DOJ announced that it was “considering revising the regulations  
6 implementing Title III of the ADA in order to establish requirements for making the  
7 goods, services, ... accommodations, or advantages offered by public accommodations  
8 via the Internet, specifically sites on the World Wide Web [] accessible to individuals  
9 with disabilities.” *Nondiscrimination on the Basis of Disability; Accessibility of Web*  
10 *Information and Services of State and Local Government Entities and Public*  
11 *Accommodations*, 75 FR 43460-01 (July 26, 2010). Over seven years later, in  
12 December of 2017, the DOJ formally announced that it would be withdrawing the  
13 ANPR, effective December 26, 2017. *Nondiscrimination on the Basis of Disability;*  
14 *Notice of Withdrawal of Four Previously Announced Rulemaking Actions*, 82 FR 60932  
15 (December 15, 2017).

16 The DOJ’s recent Notice of Withdrawal is a strong indication that the DOJ  
17 currently lacks an interest in specific requirements for website accessibility under the  
18 ADA. Additionally, given the significant amount of time that has already elapsed since  
19 2010’s ANPR, the Court finds a referral to the DOJ would significantly postpone a  
20 ruling that the Court is competent to make. *See Astiana*, 783 F.3d at 760.

21 Moreover, Defendant’s primary jurisdiction argument has been rejected by other  
22 courts in this District. *See, e.g., Gorecki*, 2017 WL 2957736, at \*7 (refusing to invoke  
23 the primary jurisdiction doctrine pending further guidance from the DOJ regarding  
24 minimum accessibility standards for websites); *see also CVS Pharmacy*, 2017 WL  
25 4457508, at \*7 (declining to apply the primary jurisdiction doctrine, and holding that  
26 “[a] determination of liability does not necessarily require the [c]ourt to master  
27 complicated web standards, but rather asks the [c]ourt to make exactly the same sort of  
28

1 accessibility determinations that it regularly makes when evaluating the accessibility of  
2 physical locations.”).

3 The Court finds that this case is not unique, “as federal courts have resolved  
4 effective communication claims under the ADA in a variety of contexts—including  
5 cases involving allegations of unequal access to goods, benefits and services provided  
6 through websites.” *See Hobby Lobby*, 2017 WL 2957736, at \*7 (citing *Nat’l Ass’n of*  
7 *the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d. 196 (D. Mass. 2012)). In line with other courts  
8 in this circuit and elsewhere, the Court declines to apply the primary jurisdiction  
9 doctrine.

10 **D. “Effective Communications” Mandate of the ADA**

11 Pizza Hut argues its website and mobile app do not violate the ADA because they  
12 satisfy the ADA’s effective communication mandate. (Mot. 17.) Under the “effective  
13 communication” provision of the ADA, a public accommodation is required to “furnish  
14 appropriate auxiliary aids and services where necessary to ensure effective  
15 communication with individuals with disabilities.” 28 C.F.R. § 36.303.

16 “A public accommodation shall take those steps that may be  
17 necessary to ensure that no individual with a disability is  
18 excluded, denied services, segregated or otherwise treated  
19 differently than other individuals because of the absence of  
20 auxiliary aids and services, unless the public accommodation can  
21 demonstrate that taking those steps would fundamentally alter  
22 the nature of the goods, services, facilities, privileges,  
23 advantages, or accommodations being offered or would result in  
24 undue burden, i.e. significant difficulty or expense.”

25 *Id.*

26 Pizza Hut argues that it complies with this provision because it allows visually  
27 impaired customers to call a phone number where “customer service can provide  
28 assistance with Defendant’s websites” and that, with this phone number, a visually  
impaired customer can “call their local Pizza Hut restaurant to order food, purchase  
goods, and/or ask questions.” (Mot. 19.) Pizza Hut contends that the DOJ has  
“endorsed” this approach in the ANPR, which states that “covered entities with

1 inaccessible Web sites may comply with the ADA’s requirement for access by  
2 providing an accessible alternative, such as a staffed telephone line, for individuals to  
3 access the information, goods, and services of their Web site.” (Mot. 19 (citing  
4 *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and*  
5 *Services of State and Local Government Entities and Public Accommodations*, 75 FR  
6 43460-01 (July 26, 2010).) Conspicuously, Pizza Hut’s Motion omitted the fact that  
7 the ANPR states that “[i]n order for an entity to meet its legal obligation under the ADA,  
8 an entity’s alternative must provide an **equal degree of access** in terms of hours of  
9 operations and range of information, options and services available.” *Id.* (emphasis  
10 added). As stated above, while no specific auxiliary aid or service is required in any  
11 given situation, whatever auxiliary aid or service public accommodation chooses to  
12 provide must be effective. *CVS Pharmacy, Inc.*, 2017 WL 4457508 at \*3. In other  
13 words, Pizza Hut cannot simply post a customer service phone number on its website  
14 and claim that it is in compliance with the ADA unless it shows that a visually impaired  
15 customer “will not be excluded, denied services, segregated or otherwise treated  
16 differently” from non-visually impaired customers who are able to enjoy full access to  
17 Pizza Hut’s website. *See id*; *see also Baughman v. Walt Disney World Co.*, 685 F.3d  
18 1131, 1135 (9th Cir. 2012) (“The ADA guarantees the disabled more than mere access  
19 to public facilities; it guarantees them ‘full and equal enjoyment.’”).

20 Plaintiff argues that Pizza Hut has not conclusively established that its customer  
21 service phone number provides an equal degree of access to information, options and  
22 services available on the website or mobile app. First, Plaintiff argues that there are  
23 certain coupons, promotions, and benefits that are only accessible when paid for on  
24 Pizza Hut’s website or mobile application. (Manning Decl. ¶ 14, Ex. E, ECF No. 32-  
25 5.) Second, Plaintiff introduced evidence that he was unable to use the phone number  
26 to any success, because when tried to call that number, he was placed on hold for 45  
27 minutes before he finally ended the call. (Robles Decl. ¶ 18.) Plaintiff also argues that  
28 Pizza Hut has not demonstrated that use of the phone number will “protect the privacy

1 and independence of the user with a disability.” (Opp’n 21.) The Court is persuaded  
2 that these arguments reflect the presence of genuine issues of material fact as to whether  
3 Pizza Hut’s website complies with the “effective communication” provision of the  
4 ADA. Therefore, summary judgment is not appropriate.

5 **E. Unruh Act Claim**

6 Pizza Hut argues that, because Plaintiff cannot base his UCRA claim upon the  
7 ADA, his UCRA claim may only be maintained if he pleads and proves “intentional  
8 discrimination in public accommodations in violation of the terms of the Act.” (Mot.  
9 22 (quoting *Munson v. Del Taco, Inc.*, 46 Cal. 4th 661, 668 (2009)).) However, the  
10 Ninth Circuit has held that “no showing of intentional discrimination is required where  
11 the Unruh Act violation is premised on an ADA violation.” *Lentini v. Cal. Center for*  
12 *the Arts, Escondido*, 370 F.3d 837, 847 (9th Cir. 2004). Because Plaintiff’s UCRA  
13 claim is premised on a violation of rights under the ADA, Plaintiff does not need to  
14 plead or prove intentional discrimination. (See FAC ¶ 63 (“Defendant is also violating  
15 the UCRA, Civil Code § 51 *et seq.* because the conduct alleged herein violates various  
16 provisions of the ADA, 42, U.S.C. § 12101 *et. seq.*.) Because there is a triable issue  
17 as to whether Pizza Hut has violated the ADA, the Court cannot grant summary  
18 judgment on the UCRA claim.

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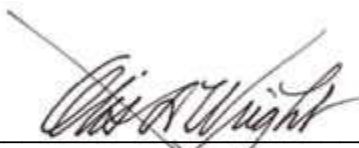
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**VI. CONCLUSION**

For the foregoing reasons, the Court **DENIES** Defendant Pizza Hut's Motion for Summary Judgment or, in the Alternative, Dismissal or Stay. (ECF No. 28.)

**IT IS SO ORDERED.**

January 24, 2018



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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**