

"DRIVE-BY" ADA LAWSUITS: THE CITIES STRIKE BACK

LEGAL ALERT

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BY DAN BALLESTEROS & ALEXANDER RAMON | APRIL 21, 2022

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By Daniel W. Ballesteros & Alex H. Ramon

Serial plaintiffs have filed and continue to file Title III Americans with Disabilities Act (ADA) based lawsuits throughout the Bay Area, even during the pandemic. These claims are generally referred to as “Drive-By” lawsuits, because the person filing the lawsuit may never even get out of their vehicle, but their employee or agent will come onto a business’s property with a tape measure or a level, observe some alleged violation of the ADA and then file a lawsuit against the business operating the facility and landowner. California has taken steps to curtail the impact of these lawsuits through various amendments to the Unruh Civil Rights Act. Serial filers have circumvented these procedural safeguards by filing their ADA lawsuits in California’s federal courts. By doing so, the serial filers are able to seek injunctive relief and attorney’s fees under the ADA and also statutory damages of \$4,000 per occurrence under the Unruh Civil Rights Act.

The District Attorneys' offices for San Francisco and Los Angeles have sued Potter Handy LLP's attorneys involved in their "drive-by" lawsuits.

The law requires that the plaintiff in an ADA lawsuit must have personally encountered barriers prohibited by the ADA, and the plaintiff must intend to return to the business. The District Attorneys' offices allege that Potter Handy attorneys, on behalf of serial plaintiffs such as Brian Whitaker and Orlando Garcia, knew that their clients did not personally encounter barriers prohibited by the ADA and that their clients did not intend to return to those businesses. The purpose of these allegations was to ensure these actions remain in Federal Court and thereby avoid stricter procedural scrutiny under the Unruh Civil Rights Act in California State Court.

Although this development signals a step in the right direction towards reforming the ADA and Unruh Civil Rights Act to counteract abuse, this lawsuit is not a silver bullet ending frivolous ADA claims.

Moreover, this lawsuit does not address the rising trend of ADA claims against websites. **Click here to watch our video on this trend.**

The single most critical component of any defense to these claims is compliance and certification by a Certified Access Specialist that the premises or website are in compliance.

The second best defense is the ability to challenge the factual basis of the allegations to determine whether the Plaintiff actually visited the property/business and encountered the barriers of which they complain.

To ensure the momentum behind your recovery from the lockdown is not disrupted, be sure to act quickly if one has already been filed. Hoge Fenton's Business Litigation Practice Group has significant experience defending clients against these "Drive-By" ADA lawsuits.

Our Business Litigators



Dan Ballesteros is an aggressive litigator who has successfully represented brokers, sellers, and buyers in cases involving the nondisclosure of defective conditions, mortgage brokers and lenders in serial ADA litigants, against misrepresenting borrowers as well as wrongful foreclosure actions, owners in cases involving partition, possession and nuisance, neighbors in cases involving prescriptive easements, boundary line disputes and encroachment, individual members of LLCs and partnerships regarding issues of governance and control of profits, and tort claims by and against third parties.



Alexander Ramon is a member of the firm's Business Litigation group. He assists clients with disputes ranging from general business, complex civil, commercial landlord-tenant, employment, and trade secrets litigation to contractual disputes, judgment enforcement, and professional liability. Alex is located in our Silicon Valley office. Prior to joining Hoge Fenton, he was an associate at Greenfield Draa & Harrington LLP, a business litigation firm in San Jose, where he worked with institutional and individual clients to manage all aspects of litigation from inception to resolution.

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