UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 17-1131-JFW(SKx)** Date: June 15, 2017

Title: Sean Gorecki *-v-* Hobby Lobby Stores, Inc.

PRESENT:
HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFF:	**ATTORNEYS PRESENT FOR DEFENDANT:**
None	None

PROCEEDINGS (IN CHAMBERS): **ORDER DENYING DEFENDANT HOBBY LOBBY STORES, INC.'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT [filed 5/12/17; Docket No. 35]**

On May 12, 2017, Defendant Hobby Lobby Stores, Inc. ("Hobby Lobby") filed a Motion to Dismiss Plaintiff's First Amended Complaint ("FAC"). On May 22, 2017, Plaintiff Sean Gorecki ("Plaintiff") filed his Opposition. On May 26, 2017, Hobby Lobby filed its Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's June 12, 2017 hearing calendar, and the parties were given advance notice. After considering the motion, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

Hobby Lobby operates department stores in California and other states. The company also operates a website, hobbylobby.com. By visiting the website, consumers can purchase an array of products on the website, some of which are also available in Hobby Lobby stores. In addition, consumers can use the website to search for store locations, view special pricing offers, obtain promotional coupons, and purchase gift cards. The website also features information about arts and crafts.

Plaintiff is a legally blind individual who resides in Los Angeles County in California. He cannot use a computer or access the Internet without the assistance of screen-reading software, so he uses a software program called Job Access With Speech ("JAWS"). JAWS is a popular, widely-used screen-reading software program that vocalizes the visual information contained on

websites. For JAWS to function properly, the information on a website must be capable of being rendered into text. If it is not, a visually impaired person cannot access the same information, products, and services contained on a website as non-visually impaired individuals.

According to Plaintiff, Hobby Lobby's website is not fully accessible to visually impaired individuals. Plaintiff contends he has visited the website on multiple occasions using his JAWS software. Although Plaintiff is proficient in JAWS, he has encountered several different access barriers on the website that have precluded him from fully accessing all of the goods and services available.

For example, Plaintiff tried to access a slide show on the website, but his JAWS software did not recognize it, so he could not pause the slide show or meaningfully interact with each slide. Plaintiff has also encountered multiple cursor traps while visiting the website and could not use the map in the find a store location feature. In addition, Plaintiff found the gift card page confusing and was unable to purchase products from the website because the checkout feature did not work properly. As a result of the numerous access barriers encountered by Plaintiff on Hobby Lobby's website, he contends he was denied full and equal access to the website and deprived of full and equal enjoyment of goods and services offered in Hobby Lobby's stores.

According to Plaintiff, Hobby Lobby could easily download from the Internet well-established guidelines that describe how to design, construct and maintain websites so they are accessible to visually impaired individuals. These guidelines contain protocols—such as adding alternative text to graphics, and ensuring all functions are accessible from a keyboard—that Hobby Lobby could incorporate into its website to make it fully and equally accessible to all consumers. Plaintiff contends that adding these features would not constitute an undue burden on Defendant or fundamentally alter the nature of its business.

Plaintiff alleges two causes of action against Defendant in the FAC: (1) violations of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12181, *et seq.*; and (2) violation of the Unruh Civil Rights Act (the "Unruh Act"), California Civil Code §§ 51 *et seq.* Plaintiff seeks statutory damages, declaratory relief, injunctive relief, and attorneys' fees and costs.

II. LEGAL STANDARD

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. "A Rule 12(b)(6) dismissal is proper only where there is either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Summit Tech., Inc. v. High-Line Med. Instruments Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). However, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and alterations omitted). "[F]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. *See, e.g.*,

Wyler Summit P'ship v. Turner Broad. Sys., Inc., 135 F.3d 658, 661 (9th Cir. 1998). "However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations." *Summit Tech.*, 922 F. Supp. at 304 (citing *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) cert. denied, 454 U.S. 1031 (1981)).

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990) (citations omitted). However, a court may consider material which is properly submitted as part of the complaint and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201 without converting the motion to dismiss into a motion for summary judgment. *See, e.g., id.*; *Branch v. Tunnel*, 14 F.3d 449, 454 (9th Cir. 1994).

Where a motion to dismiss is granted, a district court must decide whether to grant leave to amend. Generally, the Ninth Circuit has a liberal policy favoring amendments and, thus, leave to amend should be freely granted. *See, e.g., DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a court does not need to grant leave to amend in cases where the court determines that permitting a plaintiff to amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

III. DISCUSSION

Defendant moves to dismiss Plaintiff's causes of action for violations of the ADA and the Unruh Act on the grounds that Plaintiff's proposed injunction would violate Due Process. Alternatively, Defendant requests the Court invoke the primary jurisdiction doctrine and dismiss the FAC, without prejudice, pending further guidance from the Department of Justice ("DOJ") regarding the minimum standards for website accessibility.

A. The ADA and Website Accessibility

Title III of the ADA prohibits discrimination against disabled individuals in places of public accommodation. 42 U.S.C. § 12182(a). The statute provides: "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place or person who owns, leases (or leases to) or operates a place of public accommodation." *Id.* "Title III applies to the services of a place of public accommodation, not services in a place of public accommodation. To limit the ADA to discrimination in the provision of services occurring on the premises of a public accommodation would contradict the plain language of the statute." *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953 (N.D. Cal. 2006); *see also* 42 U.S.C. § 12182(a); *Robles v. Dominos Pizza*, 2017 WL 1330216, at *3 (C.D. Cal. March 20, 2017).

An entity is a "place of public accommodation" if its operations affect commerce and it falls within one of twelve specifically enumerated categories. 42 U.S.C. § 12181(7); 28 C.F.R. § 36.104. There is no dispute that Hobby Lobby's physical stores are a place of public accommodation. Plaintiff alleges that Hobby Lobby's website is a service, privilege, or advantage

of Hobby Lobby's stores and, therefore, subject to the ADA. FAC ¶ 12. For purposes of this motion, Defendant does not dispute Plaintiff's allegation.[1] *See* Mot. 3.

Discrimination occurs within the meaning of the ADA when a disabled individual is denied the opportunity to participate in programs or services, and when he or she is provided with separate, but unequal, goods or services. *See* 42 U.S.C. § 12182(b)(1)(A)(i-iii). To ensure disabled individuals have full and equal enjoyment of the goods and services of places that meet the definition of a public accommodation, the ADA requires "reasonable modification" of "policies, practices, and procedures," the provision of auxiliary aids to ensure effective communication with the disabled, and the removal of architectural and communications barriers. 42 U.S.C. § 12182(b)(2)(A)(ii-iv); *Target*, 452 F. Supp. 2d at 953. Thus, the ADA departs from "certain anti-discrimination statutes in requiring that places of public accommodation take affirmative steps to accommodate the disabled." *Target*, 452 F. Supp. 2d at 951; *see also* H.R. Rep. No. 101–485, pt. 2, at 104 (1990); 42 U.S.C. § 12182(b)(2)(A)(ii-iv).

The DOJ has explained in regulations implementing Title III that places that meet the definition of a public accommodation are obligated to "communicate effectively with customers who have disabilities concerning hearing, vision, or speech."[2] *Target*, 452 F. Supp. 2d at 953; *see also* 28 C.F.R. § 36.303(c). Examples of auxiliary aids and services that places of public accommodation may use to accomplish this directive include "screen reader software" and "other effective methods of making visually delivered materials available to individuals who are blind or have low vision." 28 C.F.R. § 36.303(b)(1),(2).

When Congress passed the ADA in 1990, the Internet was in its infancy. However, Congress intended that the ADA address not only physical barriers, but also communication barriers. *See* H.R. Rep. No. 101-485, pt. 2, at 108. Congress also intended that the ADA "keep pace with the rapidly changing technology of the times." *Id.* Congress also acknowledged that technological advances may "require public accommodations to provide auxiliary aids and services in the future which today would not be required because they would be held to impose undue burdens on such entities." *Id.*

B. Due Process Claim

Defendant contends the Court must dismiss Plaintiff's FAC because Plaintiff's proposed injunction would violate due process. Mot. 6. Defendant argues it has not had sufficient notice of the technical standards that would make its website fully compliant with the ADA. Mot. 13.

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[1] Defendant intends to move for summary judgment on this issue and will argue that the website operates independently from Hobby Lobby stores and, therefore, is not subject to the ADA.

[2] Congress delegated authority to promulgate regulations to implement Title III to the DOJ. 42 U.S.C. § 12186(b). The DOJ also has authority to issue technical assistance for compliance with the ADA and to seek enforcement of its regulations in federal court. *See* 42 U.S.C. §§ 12186(b), 12188(b), 12206. Accordingly, the DOJ's interpretations of the ADA are entitled to substantial deference. *See generally Auer v. Robbins*, 519 U.S. 452, 463 (1997); *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984).

According to Defendant, in the absence of the DOJ's final rules regarding website accessibility, "Plaintiff's request to impose liability under the ADA for Defendant's failure to make its website compatible" with JAWS screen reading software would "violate Defendant's right to constitutional due process." Mot. 9.

However, the Court disagrees. The lack of specific regulations does not eliminate Hobby Lobby's obligation to comply with the ADA or excuse its failure to comply with the mandates of the ADA. *See generally Reich v. Mont. Sulphur & Chem. Co.*, 32 F.3d 440, 444–45 (9th Cir. 2014) (explaining that although the Secretary of Labor could promulgate specific safety standards related to the Occupational Safety and Health Act, the regulations could only "amplify and augment" the statute's general duty clause and the absence of regulations did not displace the statutory mandate to provide a safe workplace); *see also Fortyune v. City of Lomita*, 766 F.3d 1098, 1105 (9th Cir. 2014).

1. The DOJ's Position on Accessibility

The DOJ has repeatedly affirmed that Title III applies to websites that meet the definition of a public accommodation. The DOJ first publicly stated its position on this issue in 1996 in a letter from Assistant Attorney General Deval Patrick responding to an inquiry by Senator Tom Harkin regarding the accessibility of websites to individuals with visual disabilities. *See* Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations, 75 Fed. Reg. 43, 460, 43, 464 (July 26, 2010). The department's position "that the accessibility requirements of the Americans with Disabilities Act already apply to private Internet Web sites and services" was also discussed at length in 2000 at a congressional hearing regarding the ADA's applicability to private websites.[3] *Applicability of the Americans with Disabilities Act (ADA) to Private Internet Sites: Hearing Before the Subcomm. On the Constitution of the H. Comm. on the Judiciary*, 106th Cong. 8 (2000) (statement of Hon. Charles Canaday, Chairman, H. Comm. S. Comm. on the Constitution). The DOJ has also filed amicus briefs and statements of interest in multiple lawsuits reiterating its position that the ADA applies to websites that meet the definition of a public accommodation and has initiated enforcement actions to force compliance. *See, e.g.,* Settlement Agreement, *United States and edX, Inc.* (April 2, 2015); Settlement Agreement, *United States of America and Ahold U.S.A., Inc. and Peapod, LLC* (November 14, 2014); Consent Decree, *Nat'l Fed. Of the Blind, et al. v. United*

[3] A number of witnesses from the public and private sectors, including computer programmers, professors, lawyers, and executive officers appeared at the hearing. The witnesses universally acknowledged that the DOJ had taken the position in 1996 that the ADA applies to websites and that it was "beyond dispute" that the ADA applies to places that meet the definition a of public accommodation and their online publications. *Applicability of the Americans with Disabilities Act (ADA) to Private Internet Sites: Hearing Before the Subcomm. On the Constitution of the H. Comm. on the Judiciary*, 106th Cong. 114 (2000). One speaker noted, "[a]lthough we know that the ADA does apply to a wide variety of private websites, no one has a very clear idea of what compliance may entail. It will be natural for litigants and courts, however, to look to what accessibility standards have been published with official support in deciding whether private sites are in compliance." *Id.*

States of America v. HRB Digital LLC and HRB Tax Group, Inc., No. 13-cv-10799 (March 25, 2014); Statement of Interest of the United States, *New v. Lucky Brand Dungarees Stores, Inc.*, 51 F. Supp. 3d 1284 (S.D. Fla. 2014); Statement of Interest of the United States, *Nat'l Assoc. of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196 (D. Mass 2012); Brief for United States of America as Amicus Curiae Supporting Appellant, *Hooks v. OKbridge, Inc.*, 232 F.3d 208 (5th Cir. 2000); *see also* Dkt. 37, Pl.'s Req. for Judicial Notice, Ex. A–D.

In 2010, the DOJ issued an Advance Notice of Proposed Rulemaking (the "ANPR") in which it, again, confirmed its position that the "ADA applies to websites of private entities that meet the definition of public accommodations." 75 Fed. Reg. 43, 464. The department explained that the Internet did not exist when Congress enacted the ADA; thus, neither the text of the ADA nor the promulgating regulations specifically address private websites. *Id.* at 46, 463. Nevertheless, in its view, "the statute's broad and expansive nondiscrimination mandate reaches goods and services provided by covered entities on [w]ebsites over the Internet." *Id.*

The DOJ also stated in the ANPR: "[i]t has been the policy of the United States to encourage self-regulation with regard to the Internet whenever possible and to regulate only where self-regulation is insufficient and where government involvement may be necessary." *Id.* (citation omitted). "For example . . . in the area of accessibility, the Web Accessibility Initiative of the W3C has created the Web Content Accessibility Guidelines." *Id.* "While voluntary standards have generally proved to be sufficient where obvious business incentives align with discretionary governing standards, for example, with respect to privacy and security standards designed to increase consumer confidence in e-commerce," "[i]t is clear that the system of voluntary compliance has proved inadequate in providing [w]ebsite accessibility to individuals with disabilities." *Id.* Because of these concerns, the DOJ sought to explore "whether rulemaking would be helpful in providing guidance as to how covered entities could meet preexisting obligations to make their websites accessible and in determining specific requirements or technical standards that could be adopted to provide the disability community consistent access." Ex. B, at 5; *see also* 75 Fed. Reg. 43, 464, 43,467.

The Court concludes based on the DOJ's statements and actions that Title III's general prohibition of discrimination on the basis of disability, and its requirements to provide appropriate auxiliary aids and services, where necessary to ensure effective communication, place an affirmative obligation on places that meet the definition of a public accommodation to ensure disabled individuals have as full and equal enjoyment of their websites as non-disabled individuals. *See also Target*, 452 F. Supp. 2d at 955 ("the Ninth Circuit has stated that the ordinary meaning of the ADA's prohibition against discrimination in the enjoyment of goods, services, facilities or privileges, is that whatever goods or services the place provides, it cannot discriminate on the basis of disability in providing enjoyment of the goods and services") (citing *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1113 (9th Cir. 2000).

2. Hobby Lobby Had Sufficient Notice of the DOJ's Position

Since 1996, the DOJ has not wavered from its view that the ADA applies to websites that meet the definition of a public accommodation. Nevertheless, Defendant asserts it "is not on notice of what is required" for its website "to comply with the ADA." Reply 2, n. 5. "Due process requires that the government provide citizens and other actors with sufficient notice as to what

behavior complies with the law." *US v. AMC Entm't, Inc.*, 549 F.3d 760, 768 (9th Cir. 2008). "Entities regulated by administrative agencies have a due process right to fair notice of regulators' requirements." *Fortyune v. City of Lomita*, 766 F.3d 1098, 1105 (9th Cir. 2014). The Court finds Defendant had sufficient notice of what was required to comply with the ADA because the DOJ has repeatedly stated that a website that meets the definition of a public accommodation must permit disabled individuals to have as full and equal enjoyment of the website as non-disabled individuals. *See also* 42 U.S.C. § 12182(a) (the ADA requires that disabled individuals be provided "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation").

Defendant's argument that *AMC* requires the Court dismiss this case is unpersuasive because *AMC* is factually and procedurally distinguishable. The court in *AMC* was reviewing whether a district court's comprehensive remedial plan was appropriate, after the DOJ had prevailed on its motion for summary judgment. *Id.* at 762. The Court concludes the breadth and depth of analysis required at that stage of the proceedings is far different than the scope of review in this case because the Court cannot consider or weigh evidence at the motion to dismiss stage. *E.g.*, *Target*, 452 F. Supp. 2d at 965. In addition, in *AMC*, the DOJ had promulgated specific regulations that required theater owners to provide wheelchair bound patrons in facilities with stadium seating with "lines of sight comparable to those for members of the public" and those regulations were ambiguous. 549 F.3d at 763. However, in this case, the DOJ's general website accessibility requirement is not ambiguous because the DOJ has not imposed any specific means by which entities must meet this requirement and facilities such as Hobby Lobby are free to decide how to comply with the ADA.

For over 20 years, the DOJ has consistently maintained that the ADA applies to private websites that meet the definition of a public accommodation. The department explained and clarified this position in 2010 in the publicly available ANPR. It is clear from the language in the ANPR that places that meet the definition of a public accommodation have a degree of flexibility in choosing how to comply with Title III's general requirements of nondiscrimination and effective communication — but, still, they must comply. 75 Fed. Reg. 43, 464, 43, 467; see also *Fortyune*, 766 F.3d at 1105 (finding a city had sufficient notice that accessible on-street parking was required when the DOJ included a statement in a publicly distributed supplement to a technical assistance manual confirming that "public entities have a general obligation to ensure that governmental services are reasonably accessible even when no technical specifications exist for a particular type of facility."). Accordingly, the Court finds Hobby Lobby had more than sufficient notice in 2010 to determine that its website must comply with the ADA.

The Court defers any further consideration of Hobby Lobby's due process argument because at this stage of the case it is premature to consider the remedies that may be imposed. *See Fortuyne*, 766 F.3d at 1104 n. 13; *see also AMC*, 549 F.3d at 768–70. If Plaintiff prevails, Hobby Lobby will have ample opportunity to present evidence of an appropriate remedy. When crafting a remedy, the Court will consider carefully "what level of accessibility" applies to Hobby Lobby's website. *Fortuyne*, 766 F.3d at 1104 n. 13.

C. Primary Jurisdiction

Defendant requests dismissal of Plaintiff's FAC pursuant to the primary jurisdiction doctrine pending further guidance from the DOJ regarding the minimum accessibility standards for websites. Reply 2. "The primary jurisdiction doctrine is a prudential doctrine under which courts may decide that the initial decision-making responsibility should be performed by the relevant agency rather than the courts." *Davel Commc'n, Inc. v. Qwest Corp.*, 460 F.3d 1075, 1086–87 (9th Cir. 2006). Whether to invoke the doctrine is "committed to the sound discretion of the court." *Syntek Semiconductor Co., Ltd. v. Microchip Tech. Inc.*, 307 F.3d 775, 781 (9th Cir. 2002). Although there is no "fixed formula" for applying the doctrine, "courts in this circuit typically look for four factors" when considering whether to exercise their discretion: "(1) the need to resolve an issue that (2) has been placed by Congress within the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory scheme that (4) requires expertise or uniformity in administration." *Davel*, 460 F.3d at 1086–87.

However, "[n]ot every case that implicates the expertise of federal agencies warrants invocation of primary jurisdiction." *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 760 (9th Cir. 2015). "Rather, the doctrine is reserved for a limited set of circumstances that requires resolution of an issue of first impression, or of a particularly complicated issue that Congress has committed to a regulatory agency." *Id.* (citing *Clark v. Time Warner Cable*, 523 F.3d 1110, 1114 (9th Cir. 2008)). Courts must also consider "whether invoking primary jurisdiction would needlessly delay the resolution of claims" before deciding to apply the doctrine. *Id.* (noting that, under the Ninth Circuit's precedent, "efficiency is the deciding factor in whether to invoke primary jurisdiction.").

Defendant argues the Court should invoke the primary jurisdiction doctrine because the DOJ has not issued a final rule addressing the level of accessibility that is required for websites that meet the definition of a public accommodation to comply with the ADA. *See* Mot. 9. For support, Defendant relies heavily on *Dominos*, arguing the issues there are virtually identical to the issues in this case. Mot. 9. The Court finds *Dominos* inapposite because the plaintiff there sought to "impose on all regulated persons and entities a requirement that they comply with the WCAG 2.0 Guidelines without specifying a particular level of success criteria." *Dominos*, 2017 WL 1330216, at *3. However, Plaintiff does not ask the Court to fashion a remedy that adopts a specific technical rule. Instead, he requests an order requiring Hobby Lobby to comply with the DOJ's directive to ensure disabled individuals have as full and equal enjoyment of its website as non-disabled individuals.[4] *See* Opp'n 5– 8, FAC ¶ at 33.

[4] The *Dominos* court acknowledged the importance of this distinction when it declined to follow the Magistrate Judge's decision in *Harvard* because the plaintiff in *Dominos*, unlike the plaintiff in *Harvard*, was asking the court to "require Defendant to comply with a particular – but not fully identified – web accessibility standard issued by a non-government entity that is subject to modification." *Dominos*, 2017 WL 1330216, at *3; *see also* R. & R. Regarding Defs.' Mot. to Stay or Dismiss, *Nat'l Ass'n of the Deaf v. Harvard Univ.*, No. 15-cv-30023-MGM, at *24 (D. Mass. February 9, 2016), ECF No. 50.

Despite Defendant's attempts to overly complicate the nature of Plaintiff's case, this is a relatively straightforward claim that Hobby Lobby failed to provide disabled individuals full and equal enjoyment of goods and services offered by its physical stores by not maintaining a fully accessible website. There is nothing unique about this case, as federal courts have resolved effective communication claims under the ADA in a wide variety of contexts—including cases involving allegations of unequal access to goods, benefits and services provided through websites. *See e.g.*, *Netflix*, 869 F. Supp. 2d at 205 n. 2; *Target*, 452 F. Supp. 2d at 946. The fact that the DOJ has announced it may issue specific technical requirements at some point in the future does not necessitate invoking primary jurisdiction.

The Court concludes that neither of the twin rationales underlying the primary jurisdiction doctrine—the promotion of uniformity in determining administrative questions and the need for highly specialized expertise—are present in this case. *See, e.g.*, R. & R. Regarding Defs.' Mot. to Stay or Dismiss, *Nat'l Ass'n of the Deaf v. Harvard Univ.*, No. 15-cv-30023-MGM, at *24 (D. Mass. February 9, 2016), ECF No. 50. Moreover, the potential for delay while the federal administrative rulemaking process proceeds is great. *Id.* Since the DOJ issued the ANPR in 2010, it has not taken any further action towards promulgating specific accessibility requirements and there is no reason to believe the department will issue rules any time in the near future. Therefore, the Court declines to invoke the primary jurisdiction doctrine.

IV. CONCLUSION

For the foregoing reasons, Hobby Lobby's Motion to Dismiss Plaintiff's FAC is **DENIED**.

IT IS SO ORDERED.

Initials of Deputy Clerk sr