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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**08/21/2023** at 08:00:00 AM

Clerk of the Superior Court  
By Sophia Felix, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**  
10

11 DOMINICK MARTIN, an individual,

12 Plaintiff,

13 v.

14 SYMPHONY ASSET POOL XXV LLC, a  
Delaware limited liability company; and DOES 1-  
15 10, inclusive,

16 Defendants.  
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Case No. 37-2023-00035668-CU-CR-CTL

**COMPLAINT**

1 Plaintiff Dominick Martin (“Plaintiff”) alleges the following upon information and belief based  
2 upon investigation of counsel, except as to plaintiff’s own acts, which plaintiff alleges upon personal  
3 knowledge:

#### 4 INTRODUCTION

5 1. As recently recognized by the Supreme Court of the United States, “The Internet’s  
6 prevalence and power have changed the dynamics of the national economy.” *South Dakota v.*  
7 *Wayfair, Inc.*, 138 S. Ct. 2080, 2097 (2018) (noting that in 1992, less than 2 percent of Americans had  
8 Internet access whereas today that number is about 89 percent). According to 2018 polling data, 89  
9 percent of American adults use the Internet.<sup>1</sup> Indeed, one federal district court has noted that “few  
10 areas are more integral to ‘the economic and social mainstream of American life,’ than the Internet’s  
11 websites.” *Del-Orden v. Bonobos, Inc.*, No. 17 Civ. 2744 (PAE), 2017 WL 6547902, at \*9 (S.D.N.Y.  
12 Dec. 20, 2017); *United States v. Peterson*, 248 F.3d 79, 83 (2d Cir. 2001) (“Computers and Internet  
13 access have become virtually indispensable in the modern world of communications and information  
14 gathering.”).

15 2. According to recent U.S. Census data, approximately 8 million Americans describe  
16 themselves as disabled because they are visually-impaired.<sup>2</sup> Thus, depriving blind persons of equal  
17 access to commercial websites on the internet would allow American businesses to treat blind persons  
18 as second-class citizens who can be segregated from the rest of American society, which is antithetical  
19 to the very purpose that motivated Congress to enact the Americans with Disabilities Act of 1990, 42  
20 U.S.C. § 12181 *et seq.* (“ADA”), almost three decades ago, as well as the enactment of California’s  
21 Unruh Civil Rights Act. “Congress found that ‘historically, society has tended to isolate and  
22 segregate individuals with disabilities, and, despite some improvements, such forms of discrimination  
23 against individuals with disabilities continue to be a serious and pervasive social problem.’ ” *Del-*

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25 <sup>1</sup> <http://www.pewinternet.org/fact-sheet/internet-broadband/> (last visited July 30, 2018). Indeed, 98 percent of adults  
between the ages of 18-29 use the Internet, and 97 percent of adults between the ages of 30-49 use the Internet. *Id.*

26 <sup>2</sup> In 2016, an estimated 7.7 million Americans reported having a visual disability.  
27 <http://www.disabilitystatistics.org/reports/acs.cfm?statistic=1>  
28 (last visited July 30, 2018). The statistics were calculated by the Cornell University Yang Tan Institute using the U.S.  
Census Bureau’s 2016 American Community Survey (ACS) Public Use Microdata Sample (PUMS) data. The estimate is  
based on a sample of 3,085,278 persons who participated in the 2016 ACS.

1 *Orden*, 2017 WL 6547902, at \*9 (quoting *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674-75, 121 S. Ct.  
2 1879 (2001) (quoting 42 U.S.C. § 12101(a)(2))). “Congress found that ‘physical or mental disabilities  
3 in no way diminish a person’s right to fully participate in *all aspects of society*, yet many people with  
4 physical or mental disabilities have been precluded from doing so because of discrimination.’” *Del-*  
5 *Orden*, 2017 WL 6547902, at \*9 (quoting 42 U.S.C. § 12101(a)(1)) (emphasis added in *Del-Orden*).  
6 “After thoroughly investigating the problem, Congress concluded that there was a ‘compelling need’  
7 for a ‘clear and comprehensive national mandate’ to eliminate discrimination against disabled  
8 individuals, and to integrate them ‘into the economic and social mainstream of American life.’” *PGA*  
9 *Tour*, 532 U.S. at 675 (quoting S. Rep. No. 101-116, p. 20 (1989); H.R. Rep. No. 101-485, pt. 2, p. 50  
10 (1990), U.S.C.A.N. 1990, pt. 2, pp. 303, 332). To remedy these ills, “Congress provided [a] broad  
11 mandate” in the ADA to effect the statute’s “sweeping purpose.” *Id.* “In a society in which business  
12 is increasingly conducted online, excluding businesses that sell services through the Internet from the  
13 ADA would[:] ‘run afoul of the purposes of the ADA and would severely frustrate Congress’s intent  
14 that individuals with disabilities fully enjoy the goods, services, privileges, and advantages *available*  
15 *indiscriminately to other members of the general public*’”. *National Ass’n of the Deaf v. Netflix, Inc.*,  
16 869 F. Supp. 2d 196, 200 (D. Mass. 2012) (emphasis added) (quoting *Carparts Distrib. Ctr. v. Auto*  
17 *Wholesaler’s Ass’n*, 37 F.3d 12, 20 (1st Cir. 1994)).

18 3. Section 51(f) of the California Civil Code provides that a violation of the right of any  
19 individual under the ADA, shall also constitute a violation of the Unruh Civil Rights Act. A person  
20 who visits a business’s website with intent to use its services and encounters terms or conditions that  
21 exclude the person from full and equal access to its services has standing under the Unruh Act, with no  
22 further requirement that the person enter into an agreement or transaction with the business. *White v.*  
23 *Square, Inc.*, \_\_ P.3d \_\_, 2019 WL 3771912, at \*7 (Cal. Sup. Ct. Aug. 12, 2019).

24 4. Plaintiff is a blind individual who requires screen reading software to read website  
25 content and access the internet. Defendant Symphony Asset Pool XXV LLC (“Defendant”) maintains  
26 its website, <https://www.bluwatercrossing.com/> (the “Website”) in such a way that the Website  
27 contains numerous access barriers preventing Plaintiff, and other blind and visually-impaired  
28 individuals, from gaining equal access to the Website. Defendant’s denial of full and equal access to

1 its Website, and therefore its apartment complex and services offered thereby, are a violation of  
2 Plaintiff's rights under California's Unruh Civil Rights Act.

### 3 **JURISDICTION AND VENUE**

4 5. This Court has subject matter jurisdiction over this action. This Court has personal  
5 jurisdiction over Defendant because Defendant has conducted and continues to conduct substantial  
6 business in the State of California, and because Defendant's offending Website is available across  
7 California.

8 6. Venue is proper in this Court because Defendant conducts substantial business in this  
9 County, Defendant's principal place of business is located in this County, and because a substantial  
10 portion of the misconduct alleged herein occurred in the County of San Diego. Defendant operates an  
11 apartment complex in this County.

### 12 **PARTIES**

13 7. Plaintiff Dominick Martin resides in Orange County, California. Plaintiff is  
14 permanently blind and uses screen readers in order to access the internet and read website content. As  
15 detailed above, despite several attempts to use and navigate the Website, Plaintiff has been denied the  
16 full use and enjoyment of the facilities and services of the Website as a result of accessibility barriers  
17 on the Website. The access barriers on the Website have caused a denial of Plaintiff's full and equal  
18 access multiple times in the past, and deterred Plaintiff on a regular basis from accessing Defendant's  
19 Website. Similarly, at all relevant times the access barriers on the Website deterred Plaintiff from  
20 visiting Defendant's California apartment complex.

21 8. While Plaintiff genuinely wants to avail himself of Defendant's goods and services as  
22 offered on Defendant's Website, Plaintiff has a dual motivation: Plaintiff is also a "tester," which one  
23 federal court has defined to be "individuals with disabilities who visit places of public accommodation  
24 to determine their compliance with Title III [of the ADA]." *Harty v. Burlington Coat Factory of*  
25 *Penn., L.L.C.*, Civil Action No. 11-01923, 2011 WL 2415169, at \*1 n.5 (E.D. Pa. June 16, 2011).  
26 Indeed, it is widely accepted that "testers" such as Plaintiff advance important public interests and  
27 should be "praised rather than vilified." *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 954 (7th  
28 Cir. 2006). Plaintiff has filed multiple lawsuits against various operators of commercial websites

under the Unruh Civil Rights Act as part of Plaintiff's advocacy work on behalf of the civil rights of visually-impaired persons. Plaintiff intends to continue to engage in such advocacy work into the foreseeable future to ensure that Defendant's commercial Website and others are fully and equally enjoyable to and usable by visually-impaired persons, including himself.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant Symphony Asset Pool XXV LLC is a Delaware limited liability company with its principal place of business located in Rancho Santa Fe, California. Plaintiff is informed and believes, and thereon alleges, that Defendant owns and operates Bluwater Crossing located at 6790 Embarcadero Lane, Carlsbad, California. This location constitutes a place of public accommodation. Defendant's location provides to the public important goods and/or services.

10. Defendant also provides to the public the Website. The Website provides access to Defendant's apartment complex, location information for the apartment complex, descriptions of its floor plans, amenities and services, apartment availability, online rental application and many other benefits related to its facilities and services. The Website is a public accommodation within the definition of Title III of the ADA, 42 U.S.C. § 12181(7). *See* Guidance on Web Accessibility and the ADA ("Guidance") at <https://beta.ada.gov/web-guidance/> (last visited Mar. 25, 2022). The U.S. Department of Justice's Guidance repeatedly uses the phrase "businesses open to the public" in describing the meaning of the term "public accommodations" without regard to any connection with a physical location, and cites as "sample cases" its enforcement activities against website operators without regard to any purported connection with a physical location. *See, e.g., National Fed'n of the Blind, et al. v. HRB Digital LLC, et al.*, No. 1:13-cv-10799-GAO, ECF #60 at 2-3 ¶ 6 (D. Mass. Mar. 24, 2014) (stating that the United States alleges that the defendants "own and operate a website, which is a service establishment providing tax information, goods, and services to members of the public"); Settlement Agreement between the United States of America and Ahold USA, Inc. and Peapod, LLC dated November 17, 2014.

11. Defendant is a business that: (1) offers services to the public via its Website; (2) has a discrete, standalone location or identity via its Website; and (3) provides significant amounts of information to consumers on its Website, which is equivalent to or even more information than what

1 would be typically provided by either an on-site proprietor or its employees. As such, the Website has  
2 functions characteristically associated with either sales or service establishments within the meaning of  
3 42 U.S.C. § 12181(7)(E), (F). Indeed, the United States Department of Justice recently explained via  
4 an amicus brief that “the word ‘establishment’ suggests a substantial, standalone place of business.”  
5 Brief for the United States as Amicus Curiae filed in *Magee v. Coca-Cola Refreshments USA, Inc.*,  
6 No. 16-668, 2017 WL 3085074, at \*7 (U.S. July 19, 2017), which is available for downloading at:  
7 [https://www.justice.gov/sites/default/files/briefs/2017/07/21/16-668\\_magee\\_ac\\_pet.pdf](https://www.justice.gov/sites/default/files/briefs/2017/07/21/16-668_magee_ac_pet.pdf) (last visited  
8 Mar. 25, 2022).

9 12. The Website is also a “business establishment” within the meaning of the Unruh Act,  
10 Cal. Civil Code § 51(b).

11 13. The Website is a service, privilege, and advantage and accommodation of Defendant’s  
12 services and physical apartment complex locations. The Website is a service, privilege, advantage,  
13 and accommodation that is heavily integrated with its physical apartment complex locations, and  
14 provides advertising and marketing information helpful to influencing consumers to visit and/or apply  
15 to rent at its physical apartment complex locations.

16 14. At all relevant times, each and every Defendant was acting as an agent and/or employee  
17 of each of the other Defendants and was acting within the course and/or scope of said agency and/or  
18 employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or  
19 omissions complained of herein were alleged and made known to, and ratified by, each of the other  
20 Defendants (Symphony Asset Pool XXV LLC, and DOE Defendants will hereafter collectively be  
21 referred to as “Defendant”).

22 15. The true names and capacities of the Defendants sued herein as DOES 1 through 10,  
23 inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names.  
24 Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged  
25 herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and  
26 capacities of the DOE Defendants when such identities become known.

## 27 **FACTS**

28 16. The Internet has become a significant source of information, a portal and tool for

conducting business, and a means for doing everyday activities such as shopping, banking, etc. for both the sighted and blind, and/or visually-impaired persons.

17. Blind individuals may access websites by using keyboards in conjunction with screen-reading software that vocalizes visual information on a computer screen. Screen access software provides the only method by which a blind person may independently access the internet. Unless websites are designed to be read by screen reading software, blind persons are unable to fully access websites and the information, apartment complex and services, privileges, advantages, and accommodations contained thereon.

18. The international website standards organization, W3C, has published version 2.0 of the Web Content Accessibility Guidelines (“WCAG 2.0”). WCAG 2.0 are well-established, industry standard guidelines for ensuring websites are accessible to blind and visually-impaired people. These guidelines are successfully followed by numerous large business entities to ensure their websites are accessible. These guidelines recommend several basic components for making websites accessible including, but not limited to, adding invisible alternative text to graphics, ensuring that all functions can be performed using a keyboard and not just a mouse; ensuring that image maps are accessible, and adding headings so that blind people can easily navigate websites. Without these very basic components, a website will be inaccessible to a blind or visually-impaired person using a screen reader.

19. Defendant offers the Website, which provides, as set forth above, a breadth of information concerning its apartment complex, amenities and services, and many other benefits related to its apartment complex and services, and allows users to find Defendant’s location to visit.

20. Based on information and belief, it is Defendant’s policy and practice to deny blind users, including Plaintiff, equal enjoyment of and access to the Website. Due to Defendant’s failure and refusal to remove access barriers on the Website, Plaintiff and other blind and visually impaired individuals have been denied equal enjoyment of and access to the apartment complex and to Defendant’s other services, advantages, privileges, and accommodations offered to the public through the Website.

1           21. Defendant denies blind individuals equal enjoyment of and access to the apartment  
2 complex, services, privileges, advantages, and accommodations and information made available  
3 through the Website by preventing them from freely navigating the Website. The Website contains  
4 access barriers that prevent free and full use by Plaintiff and other blind persons using screen reading  
5 software.

6           22. The Website's barriers are pervasive and include, but are not limited to, the following:  
7 (1) Buttons must have discernible text, which is important because screen reader users are not able to  
8 discern the purpose of elements with role="link", role="button", or role="menuitem" that do not have  
9 an accessible name; (2) Certain ARIA roles must be contained by particular parent elements, which  
10 presents a problem because for each role, WAI-ARIA explicitly defines which child and parent roles  
11 are allowable and/or required. Elements containing ARIA role values missing required parent  
12 element role values will not enable assistive technology to function as intended by the developer.  
13 When it is necessary to convey context to the user of assistive technology in the form of hierarchy (for  
14 example, the importance of a parent container, item or sibling in a folder tree), and the hierarchy is not  
15 the same as the code structure or DOM tree, there is no way to provide the relationship information  
16 without the use of ARIA role parent elements; (3) Images must have alternate text. Screen readers  
17 have no way of translating an image into words that get read to the user, even if the image only  
18 consists of text. As a result, it's necessary for images to have short descriptive alt text so screen reader  
19 users clearly understand the image's contents and purpose. When you do not provide an acceptable  
20 alternative that works for their available sensory modalities, such as making an image accessible by  
21 providing a digital text description, screen readers cannot convert it into speech or braille to make it  
22 available by sound or touch; (4) <li> elements must be contained in a <ul> or <ol>, which is important  
23 because for a list to be valid, it must have both parent and child elements. Parent elements can either  
24 be a set of ul tags or a set of ol tags. Child elements must be declared inside of these tags using the li  
25 tag. Screen readers notify users when they come to a list, and tell them how many items are in a list.  
26 Announcing the number of items in a list and the current list item helps listeners know what they are  
27 listening to, and what to expect as they listen to it. If you don't mark up a list using proper semantic  
28 markup in a hierarchy, list items cannot inform the listener that they are listening to a list when no



parent is indicating the presence of a list and the type of list; (5) Text elements must have sufficient color contrast against the background, which presents a problem because Some people with low vision experience low contrast, meaning that there aren't very many bright or dark areas. Everything tends to appear about the same brightness, which makes it hard to distinguish outlines, borders, edges, and details. Text that is too close in luminance (brightness) to the background can be hard to read. There are nearly three times more individuals with low vision than those with total blindness. One in twelve people cannot see the average full spectrum of colors - about 8% of men and 0.4% of women in the US. A person with low vision or color blindness is unable to distinguish text against a background without sufficient contrast; and (6) Use aria-roledescription on elements with a semantic role, which presents a problem because inappropriate aria-roledescription attribute values that conflict with an element's implied or explicit role value can interfere with the accessibility of the web page. A conflicting aria-roledescription attribute value may result in no effect on the accessibility of the application and may trigger behavior that disables accessibility for entire portions of an application. When aria-roledescription> attributes are applied to HTML elements not in accordance with WAI-ARIA 1.1, semantics conflict between the aria-roledescription value and the implicit or explicit element role value which may result in assistive technology products reporting nonsensical user interface (UI) information that does not correctly represent the intended UI experience.

23. Due to the inaccessibility of the Website, blind and otherwise visually impaired customers who use screen readers are hindered from effectively browsing for Defendant's apartment complex, amenities and services, privileges, advantages, and accommodations that exist online unlike sighted users. If the Website were accessible, Plaintiff would independently and privately investigate Defendant's apartment complex, services, privileges, advantages, accommodations, and amenities, and found Defendant's location, as sighted individuals can and do.

24. Despite several attempts to access the Website in recent months, the numerous access barriers contained on the Website have denied Plaintiff's full and equal access, and have deterred Plaintiff on a regular basis from accessing the Website. Similarly, based on the numerous access barriers contained on the Website, Plaintiff has been deterred from visiting Defendant's leasing office and/or accessing information concerning Defendant's apartment complex as Plaintiff would have been

1 able to do by using the Website. Plaintiff continues to attempt to utilize the Website and plans to  
2 continue to attempt to utilize the Website in the near future. Plaintiff's dignitary interest as a disabled  
3 person has been harmed by Defendant's actions.

4 **CAUSE OF ACTION**

5 **Violations of the Unruh Civil Rights Act, California Civil Code § 51 et seq.**

6 **(By Plaintiff Against All Defendants)**

7 25. Plaintiff incorporates by this reference the allegations contained in the preceding  
8 paragraphs above as if fully set forth herein.

9 26. California Civil Code § 51 et seq. guarantees equal access for people with disabilities to  
10 the accommodations, advantages, facilities, privileges, and services of all business establishments of  
11 any kind whatsoever. Defendant is systematically violating the Unruh Civil Rights Act, California  
12 Civil Code § 51 et seq.

13 27. Defendant's Bluwater Crossing location is a "business establishment" within the  
14 meaning of the California Civil Code § 51 et seq. Defendant generates millions of dollars in revenue  
15 from the sale of its goods and services in California through its location and related services and the  
16 Website. The Website is a service provided by Defendant that is inaccessible to patrons who are  
17 visually-impaired like Plaintiff. This inaccessibility has denied visually-impaired patrons full and  
18 equal access to the facilities and services that Defendant makes available to the non-disabled public.  
19 Defendant has violated the Unruh Civil Rights Act, California Civil Code § 51 et seq., in that  
20 Defendant has denied visually-impaired customers the services provided by the Website. These  
21 violations are ongoing.

22 28. Defendant's actions constitute intentional discrimination against Plaintiff on the basis  
23 of a disability in violation of the Unruh Civil Rights Act because Defendant has constructed a Website  
24 that is inaccessible to Plaintiff, knowingly maintains the Website in this inaccessible form, and has  
25 failed to take adequate actions to correct these barriers even after being notified of the discrimination  
26 that such barriers cause.

27 29. Defendant is also violating the Unruh Civil Rights Act because the conduct alleged  
28 herein likewise constitutes a violation of various provisions of the ADA, 42 U.S.C. § 12101 et seq.

1 Section 51(f) of the California Civil Code provides that a violation of the right of any individual under  
2 the ADA shall also constitute a violation of the Unruh Civil Rights Act.

3 30. The actions of Defendant were and are in violation of the Unruh Civil Rights Act,  
4 California Civil Code § 51 *et seq.*, and, therefore, Plaintiff is entitled to injunctive relief remedying the  
5 discrimination.

6 31. Plaintiff is also entitled to a preliminary and permanent injunction enjoining Defendant  
7 from violating the Unruh Civil Rights Act, California Civil Code § 51 *et seq.*, and requiring Defendant  
8 to take the steps necessary to make the Website readily accessible to and usable by visually-impaired  
9 individuals.

10 32. Plaintiff is also entitled to statutory minimum damages pursuant to California Civil  
11 Code § 52 for each and every offense. Plaintiff is also entitled to reasonable attorneys' fees and costs.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for relief and judgment as follows:

14 1. For a judgment that Defendant violated Plaintiff's rights under the Unruh Civil Rights  
15 Act, California Civil Code § 51 *et seq.*;

16 2. For a preliminary and permanent injunction requiring Defendant to take the steps  
17 necessary to make the Website, <https://www.bluwatercrossing.com/>, readily accessible to and usable  
18 by visually-impaired individuals; but Plaintiff hereby expressly limits the injunctive relief to require  
19 that Defendant expend no more \$20,000 as the cost of injunctive relief;

20 3. An award of statutory minimum damages of \$4,000 per violation pursuant to section  
21 52(a) of the California Civil Code;

22 4. For attorneys' fees and expenses pursuant to all applicable laws including, without  
23 limitation, California Civil Code § 52(a);

24 5. For pre-judgment interest to the extent permitted by law;

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1           6.       For costs of suit; and

2           7.       For such other and further relief as the Court deems just and proper.

3 Dated: August 20, 2023

PACIFIC TRIAL ATTORNEYS, APC

4  
5 By:   
6 Scott. J. Ferrell  
Attorneys for Plaintiff