

March 2021

On January 25, 2021, the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court's dismissal of Plaintiff Brian Whitaker's claims made against Tesla, Inc. under the Americans with Disabilities Act ("ADA"). *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173 (9th Cir. 2021). Tesla was represented by Burnham Brown partner Rohit Sabnis and firm senior associate Arthur Gaus.

Central District of California

Whitaker's complaint filed in the Central District alleged that he uses a wheelchair and that he visited a Tesla showroom where he allegedly encountered inaccessible service counters that denied him full and equal access. Tesla moved to dismiss pursuant to Federal Rule 12(b)(6) for failure to state a claim under the pleading standards set forth by the Supreme Court in *Iqbal* and *Twombly*. Tesla argued that Whitaker failed to allege how barriers at the showroom prevented him from accessing Tesla's facility and which service counter or counters were actually deficient. The District Court granted Tesla's motion and dismissed the complaint. Whitaker appealed after declining the court's invitation to amend.

Ninth Circuit

In its published [opinion](#) issued following oral argument, the Ninth Circuit noted that *Iqbal/Twombly* require well pleaded facts and not legal conclusions. While Whitaker's complaint alleged that Tesla "failed to provide accessible service counters," these allegations did little more than recite the elements of an ADA claim and fell short of putting Tesla on notice of how the counters prevented Whitaker from full and equal access to the Tesla facility: Were the service counters too low? Or too high? Were they positioned in an area that was inaccessible for another reason. Without these facts, the District Court correctly concluded that the complaint failed to state a claim for relief.

The Court rejected Whitaker's arguments that civil rights litigants are entitled to a more lenient pleading standard and that he was entitled to rely on discovery to fill in the gaps left by his complaint's general allegations. The Court also did not find persuasive Whitaker's assertion that

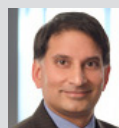
requiring ADA plaintiffs to provide factual support of inaccessibility will allow defendants to remedy the barriers identified in their complaints and render them moot. The Court said that "defendants should be encouraged to remove barriers" and that this "is an important objective of the ADA."

Finally, and to address confusion among some lower courts, the Court addressed Whitaker's attempt to rely on its holding in *Skaff v. Meridien*, 506 F.3d 832 (9th Cir. 2007) in support of the argument that a complaint need only recite the elements of an ADA claim in order to survive a Rule 12(b)(6) motion. The Court rejected this claim noting that *Skaff* addressed Article III standing and not the standard for pleading a claim upon which relief can be granted. In addition, *Skaff* predates *Iqbal* and cites a notice pleading standard that *Iqbal/Twombly* rejected. The Court noted that its en banc decision in *Chapman v. Pier I Imports (U.S.) Inc.*, 631 F.3d 939 (9th Cir. 2011) describes in detail the standard for pleading standing to pursue an ADA claim.

Conclusion

The Ninth Circuit's decision makes clear that ADA plaintiffs must plead sufficient facts, and not mere legal conclusions, to support their claims. In particular, they must provide sufficient facts alleging how an alleged barrier they personally encountered denied them full and equal access.

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