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3:04-CV-00370 CARLOCK V. COLLINS MOTOR CO

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O.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GAYNOR CARLOCK,

Plaintiff,

v.

COLLINS MOTORS, INC., ET AL.,

Defendants.

Civil No. 04CV0370-J (RBB)

ORDER

(1) GRANTING PARTIAL SUMMARY JUDGMENT ON CERTAIN ISSUES;

(2) DENYING SUMMARY JUDGMENT ON PLAINTIFF'S ADA AND RELATED STATE LAW CLAIMS; and

(3) TO SHOW CAUSE WHY PLAINTIFF'S ADA CLAIM SHOULD NOT BE DISMISSED AS MOOT.

Currently before the Court is Plaintiff Gaynor Carlock's ("Plaintiff) Motion for Summary Judgment or Partial Summary Judgment ("Motion") and Memorandum of Points and Authorities in support thereof. (Doc. Nos. 20, 21.) Defendant Collins Motors, Inc. ("Defendant") has filed a Memorandum of Points and Authorities in Opposition. (Doc. No. 34) Pursuant to Civil Local Rule 7.1.d.1, the Court decides the matter on the pleadings submitted and without oral argument. For the reasons set forth below, the Court (1) **GRANTS** in part and **DENIES** in part Plaintiff's

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Motion and (2) **ORDERS DEFENDANT TO SHOW CAUSE** why the case should not be dismissed as moot.

Background Facts

Plaintiff claims that since 1977, he has been a paraplegic who employs a wheelchair for mobility purposes. (Pl.'s Mem. of P. and A. at 1.) On or about January 12, 2004, Plaintiff alleges that he visited Defendant's used car dealership at El Cajon Boulevard in San Diego, California. (*Id.*; Def.'s Mem. of P. and A. at 1.) Defendants contend that Plaintiff was never actually on the premises of Defendants' car dealership. (*Id.*)

While at Defendant's used car dealership, Plaintiff claims to have noticed the following architectural barriers preventing his access onto the premises. (*Id.* at 2; Def.'s Mem. of P. and A. at 2.) Plaintiff claims that he felt "discouraged and chagrined" by the situation and felt "he was discriminated against because of his disability." (Pl.'s Mem. of P. and A. at 2.)

Plaintiff obtained an Americans with Disability Act ("ADA") consultant who wrote a complete report after investigating Defendant's used car dealership premises. (Pl.'s Mem. of P. and A. at 2.) The ADA consultant found the following ADA violations: (1) steps on the premises preventing Plaintiff from accessing the business office; (2) no van accessible parking on the premises; and (3) no appropriate disability signage on the premises. (*Id.*) Defendants claim that Plaintiff's expert lacks the requisite expertise under the ADA. (Def.'s Mem. of P. and A. at 3.)

Defendants claim that: (1) the door to the business building is always open and a mere call would result in accommodation of disabled persons; (2) there is no public parking on site for any patrons; and (3) their car dealership, as configured in 1955, meets ADA guidelines. (Def.'s Mem. of P. and A. at 2.)

Subsequently, Plaintiff filed the present suit against Defendant, alleging: (1) violations of the ADA; (2) violations of California Accessibility Laws; (3) violation of the California Unruh Civil Rights Act; (4) negligent infliction of emotional distress; (5) intentional infliction of emotional distress; and (6) declaratory relief. (*See generally*, Compl.) Plaintiff seeks general

damages, special damages, statutory damages, injunctive relief, attorney's fees and costs, treble damages, and punitive damages. (*Id.* at 15.)

Legal Standard

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is warranted when the moving party demonstrates that the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). One of the principal purposes of the rule is to dispose of factually unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

The party seeking summary judgment bears the initial burden of establishing the absence of a genuine issue of material fact. *Id.* at 323. If the moving party does not bear the burden of proof at trial, it need not produce evidence to negate the non-moving party's claim, but rather can satisfy the initial burden by demonstrating that the non-moving party failed to make a showing sufficient to establish an essential element of that party's case. *Id.* at 322-23; *Lujan v. National Wildlife Federation*, 497 U.S. 871, 885 (1990).

In making its determination as to the moving party's initial burden, the court "may limit its review to the documents submitted for the purpose of summary judgment and those parts of the records specifically referenced therein." *Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026, 1030 (9th Cir. 2001). The court is not obligated to "scour the record in search of a genuine issue of triable fact." *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir. 1996) (citing *Richards v. Combined Ins. Co.*, 55 F.3d 247 251 (7th Cir. 1995)). If the moving party fails to discharge the initial burden, summary judgment must be denied and the court need not consider the nonmoving party's evidence. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159-160 (1970).

If the moving party meets the initial burden of establishing the absence of a genuine issue of material fact, then the burden shifts to the nonmoving party to "set forth specific facts showing there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). It is insufficient for the party opposing summary judgment to "rest on mere allegations or denials of his pleadings." *Id.* Rather, the party opposing summary judgment must "by her

own affidavits, or by 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P 56(e)). Genuine issues of material fact remain if the issues "can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson*, 477 U.S. at 250.

In considering a motion for summary judgment, the court must examine all the evidence in the light most favorable to the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). The court must not make credibility determinations, weigh any evidence, or draw inferences from the facts. *Anderson*, 477 U.S. at 256.

Discussion

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, and facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a). One such form of discrimination is the "failure to remove architectural barriers...in existing facilities...where such removal is readily achievable." *Id.* at (b)(2)(A)(iv). If removal of architectural barriers is not readily achievable, the owner or leaser of a public accommodation must make the "goods, services, facilities, privileges, or accommodations available through alternative methods if such methods are readily achievable." *Id.* at (v). "Readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. § 12181(9).

Plaintiff seeks summary judgment, or in the alternative, summary adjudication of certain facts. (Notice of Mot. at 1.) Plaintiff contends that following are undisputed material facts: (1) Plaintiff has standing to bring suit; (2) Defendant's car dealership is a public accommodation within the meaning of the ADA; (3) when Plaintiff visited Defendant business, there were architectural barriers preventing Plaintiff from entering in his wheelchair; and (4) modification under the ADA to correct these access violations is readily achievable. (Pl.'s Statement of Undisputed Facts at 1-2.) Defendant argues that summary judgment is not proper because Plaintiff lacks standing to bring suit and genuine issues of material fact remain regarding

whether Defendant violated the ADA. (Def.'s Mem. of P. and A. at 3-7.) For the reasons set forth below, the Court finds that partial summary judgment is appropriate as to certain issues, but summary judgment is not justified as to Plaintiff's claims because a genuine issue remains regarding Plaintiff's standing and other material facts in this case.

A. Plaintiff's Standing

Under Article III of the United States Constitution, federal courts may only adjudicate actual cases or controversies. *See* U.S. Const. Art. III, § 2. Actual case or controversy requires true adversarial interests giving rise to a clear and concrete conflict. *Flast v. Cohen*, 392 U.S. 83, 96-97 (1968). Article III requires that a plaintiff have standing to bring suit. *Id.* at 95. In addition, a plaintiff must maintain standing throughout the litigation. 15 Moore's Federal Practice § 101.32 (Matthew Bender 3d ed.). Otherwise, if a plaintiff loses standing at some point in the litigation, the case may become moot.[1] *See Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1990) (holding that parties must maintain a personal stake in the litigation throughout trial and appeal). If an action is moot, it fails to satisfy the case or controversy requirement of Article III. *See Flast*, 392 U.S. at 95. The standing inquiry may be initiated by the parties in a summary judgment motion. *See Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 889 (1990). In addition, the court is required sua sponte to examine jurisdictional issues such as standing. *See BC by & Through Powers v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999).

In order to establish standing to bring suit, a plaintiff bears the burden of showing: (1) injury-in-fact, or the invasion of a legally protected interest, that is both (a) concrete and particularized and (b) actual or imminent; (2) causal connection between the injury and the conduct complained of; and (3) likelihood that a favorable decision will redress the wrong. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). A plaintiff ultimately must do more than make allegations which, if true, would establish standing. Rather, a plaintiff bears the burden of proof at each stage of the litigation to establish those facts supporting standing. *Lujan*, 504 U.S. at 561; 15 Moore's Federal Practice at § 101.31.

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[1] Mootness has been described as "the doctrine of standing set in a time frame." *Nome Eskimo Community v. Babbitt*, 67 F.3d 813, 815 (9th Cir. 1995) (internal citations omitted).

The only remedy available for private plaintiffs under Title III of the ADA is injunctive relief, and not damages. *Id.* at § 12188(a) (stating that the available remedies are those set forth in section 2000a-3(a), which only provides for injunctive relief). A plaintiff is only entitled to injunctive relief if he is "being subjected to discrimination on the basis of disability...or...has reasonable grounds for believing [he] is about to be subjected to discrimination." *Id.* at (a)(1). When a plaintiff seeks injunctive relief, the Supreme Court has held that exposure to past illegal conduct does not give rise to an actual or imminent injury unless there are "'continuing, present adverse effects.'" *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-6 (1974)). In order to establish actual or imminent injury, a plaintiff must show that "'there is a real and immediate threat of repeated injury.'" *Id.* (quoting *O'Shea*, 414 U.S. at 496).

Within the specific context of the ADA, the Ninth Circuit has recognized injury-in-fact when a plaintiff is currently deterred from entering defendant-owned premises because of actual knowledge that such premises have access barriers. *Pickern v. Holiday Quality Foods, Inc.* 293 F.3d 1133, 1137-38 (9th Cir. 2002). In *Pickern*, plaintiff visited defendant-owned grocery store, encountered access barriers there, desired to return to the store, but was currently deterred from doing so because he knew there were access barriers. *Pickern*, 293 F.3d at 1136-37. The Ninth Circuit found that concrete and particularized injury existed because plaintiff himself was currently deterred from returning to store. *Id.* at 1137-38. Plaintiff's knowledge of access barriers and current deterrence was sufficient to give rise to actual and imminent injury. *Id.* at 1138. Specifically, the Ninth Circuit stated that "[s]o long as the discriminatory conditions continue, and so long as a plaintiff is aware of them and remains deterred, the injury under the ADA continues." *Id.* at 1137. *Pickern* also cites to *Dudley v. Hannaford Bros. Co.*, 146 F.Supp.2d 82, 86 (D. Me. 2001), which similarly held that a single past act of discrimination can provide grounds for standing under the ADA, as long as the lack of accommodation *continues to exist*. *Id.* at 1138.

However, where a plaintiff does not show that he is currently deterred from returning to defendant-owned premises, district courts have found that plaintiff lacks actual or imminent

injury required for standing. *See Moreno v. G&M Oil Co.*, 88 F.Supp2d 1116, 1116 (C.D. Cal. 2000) (holding plaintiff could not show actual injury against defendant's other gas stations because he did not claim he wanted to visit them); *see also Delil v. El Torito Rest.*, 1997 U.S. Dist. LEXIS 22788 (holding plaintiff could not show actual or imminent injury where she failed to allege she intended to return to defendant's restaurant).

Since the parties do not dispute the existence of causation and redressability, the Court will only address whether Plaintiff suffers from an injury-in-fact under the ADA. Plaintiff's Complaint alleges that on or around January 12, 2004, Plaintiff "patronized the premises" of Defendants' car dealership, tried to gain access to services there, encountered access barriers, and Plaintiff presently desires to return to Defendants' car dealership "without being discriminated against in the immediate future." (Compl. at §§ 7, 12.) In support of these allegations, Plaintiff points to his deposition testimony stating that he visited the premises of Defendants' car dealership on or about January 12, 2005, where he encountered stairs, became discouraged, and left the premises. (Pl.'s Reply at 1-2; Dep. of Gaynor Carlock at 26:14-28:21, Pl.'s Ex. 2.)

Plaintiff has alleged and set forth evidence that he was actually deterred from returning to Defendants' car dealership because of access barriers he personally encountered there. Plaintiff's Complaint was filed on February 20, 2004. The Court finds that at the time the Complaint was filed, Plaintiff was suffering from both concrete and particularized harm, and actual or imminent injury, sufficient to establish standing under the ADA. *See Pickern*, 293 F.3d at 1137-38. However, the Court has been alerted to the fact that since the filing of the Complaint, Defendants have engaged in subsequent remedial measures which may deprive Plaintiff of standing and render Plaintiff's ADA claim moot. Specifically, Plaintiff himself has introduced evidence to the Court that Defendants have made the following alterations to their car dealership premises: (1) changed the handle to the front door (Dep. of Richard Matthew Collins at 8:1, Pl.'s Ex. 5); (2) placed handrails on the steps (*Id.* at 8:17-23); (3) installed an aluminum plate at the threshold entrance to the business office (*Id.* at 9:11-15); (4) installed a "please ring for assistance" bell outside the front entrance (*Id.* at 9:20-22); (5) completed a ramp for

wheelchair access (*Id.* at 10:6-16); and (6) installed signage indicating no public parking is available (*Id.* at 11:11-20). (*See* Pl.'s Mem. of P. and A. at 5.) It appears, according to the evidence submitted by Plaintiff himself, that the access barriers deterring Plaintiff from returning to Defendants' car dealership have largely been removed. Thus, the Court finds reason to question whether Plaintiff currently has reason to be deterred from returning to the premises. If Plaintiff is no longer currently deterred, he would lack the actual and imminent harm required for injury-in-fact and would therefore lack standing to continue litigation of this suit. *See Pickern*, 293 F.3d at 1137-38. Such a loss of standing would render Plaintiff's ADA claim moot.[2] *See Lewis*, 494 U.S. at 477-78.

Accordingly, the Court **DENIES** summary judgment on the grounds that a genuine issue remains as to whether Plaintiff currently has standing to pursue his ADA claim.

Furthermore, pursuant to its independent obligation to examine standing, the Court also **ORDERS PLAINTIFF TO SHOW CAUSE WHY PLAINTIFF'S ADA CLAIM SHOULD NOT BE DISMISSED AS MOOT**, as follows:

(1) The parties shall file and serve to opposing parties briefing on the extent to which subsequent remedial measures have removed the access barriers alleged in the Complaint, ***on or before April 18, 2005.***

(2) The parties shall file and serve to opposing parties any Reply on such briefing ***on or before April 25, 2005.***

B. Whether Defendants' Car Dealership is a Public Accommodation Under the ADA

Under 42 U.S.C. § 12181(7), a public accommodation is defined as an entity whose operation "affect[s] commerce." A specific listing of private businesses constituting public accommodations includes any "sales or rental establishment." 42 U.S.C. § 12181(7)(E). "Commerce" is defined as "travel, trade, traffic, commerce, transportation, or communication" among several states, between a foreign country and any state, or between points in the same state but through another state or territory. *Id.* at (1)(A)-(C).

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[2] At present, the Court does not have sufficient evidence to verify whether all of the access barriers potentially deterring Plaintiff have been removed. Without such evidence, the Court cannot determine at this time that Plaintiff's suit is in fact moot.

Defendants argue that their car dealership is not a public accommodation because it does not "affect commerce." (Def.'s Mem. of P. and A. at 4.) In support of this argument, Defendants present no evidence and simply cite to *Jankey v. Twentieth Century Fox Film Corp.*, 212 F.3d 1159 (9th Cir. 2000). However, *Jankey* stands for the proposition that an establishment that is specifically listed in 42 U.S.C. § 12181(7)(E) is not automatically a public accommodation. 212 F.3d at 1161. *Jankey* holds even a particular type of establishment that is listed must also be open to the public in order to constitute a public accommodation. *Id.* *Jankey* does not discuss which types of establishments do or do not "affect commerce." *See generally, id.*

The Court finds that Defendants' used car dealership constitutes a public accommodation. *See* 42 U.S.C. § 12181(7)(E). Presumably, Defendants' establishment is engaged in the commercial activity of selling used cars to the public. This sale clearly affects "commerce" within the meaning of the ADA, since purchasers of Defendants' cars are free to drive across state lines. Defendants have not set forth any evidence to show that their car dealership does not affect commerce or is not open to the public. (*See generally*, Def.'s Mem. of P. and A.) Defendants also have not cited any legal authority establishing that a used car dealership, open to the public, does not "affect commerce." (*See generally, id.*)

Accordingly, the Court **GRANTS** partial summary judgment, finding that Defendants' car dealership is a public accommodation under the ADA.

C. Whether Architectural Barriers Existed At Defendants' Car Dealership

Plaintiff alleges that at the time Plaintiff attempted to enter Defendants' car dealership, the premises had architectural barriers, such as steps barring Plaintiff's access to the business office and lack of van accessible parking. (Pl.'s Mem. of P. and A. at 4.) In support of these allegations, Plaintiff points to an ADA Report by Defendants' designated expert ("Defendants' ADA Report") and an ADA Report by Plaintiff's designated expert ("Plaintiff's ADA Report"). (*See id.*) Defendants' ADA Report states that Defendant's car dealership had the following "conditions": (1) "non-compliant steps and landing leading to the entrance door" and (2) "parking lot fails to have a tow-a-way warning sign and an appropriate van accessible parking stall." (Def.'s ADA Report at 4, Pl.'s Ex. 4.) Plaintiff's ADA Report cites violations in (1)

inadequate structure of the threshold entrance; (2) lack of signage at the entrance indicating disability accessibility; and (3) lack of handrails in the stairways. (Pl.'s ADA Report at 40-44, Pl.'s Ex. 1.) Plaintiff also points to subsequent remedial measure undertaken by Defendant as evidence that the access violations previously existed. (Pl.'s Mem. of P. and A. at 5-6.)

In response, Defendants contend that subsequent remedial measures are inadmissible and that no public parking is available for any patrons. (Def.'s Mem. of P. and A. at 4; Decl. of Matthew Collins ¶ 4.) The Court agrees with Defendants' contention that the subsequent remedial measures are inadmissible for purposes of showing Defendants' culpability, and will not consider them in this context. *See* Fed. R. Evid. 407. The Court also finds a genuine issue of fact remains regarding whether public parking is available on Defendants' premises.

Defendants also point to the deposition testimony of their expert, Robert Novick, stating that the "conditions" listed in Defendants' ADA Report do not necessarily indicate ADA violations, and that the possible remedies listed were mere "suggestions and not required." (Dep. of Robert Novick at 31:15-25, Def.'s Ex. 2.) However, whether the architectural barriers actually violated the ADA is a separate issue from whether the architectural barriers existed. For instance, architectural barriers may exist even without violating the ADA because their removal is not readily achievable and defendants employ alternative methods of providing access to disabled patrons. *See* 42 U.S.C. 12182(b)(2)(A). Defendants have failed to rebut Plaintiff's evidence that Defendants' premises had architectural barriers at the time of Plaintiff's attempted entry. Other than evidence that Defendants' car dealership does not offer public parking, Defendants do not address the existence of the architectural barriers listed in the two ADA Reports. (*See generally*, Def.'s Mem. of P. and A.)

Accordingly, the Court **GRANTS** partial summary judgment, finding that at the time of Plaintiff's visit, Defendants' premises had the following architectural barriers: (1) inadequate structure of the threshold entrance; (2) lack of signage at the entrance indicating disability accessibility; (3) lack of handrails in the stairways; and (4) lack of signage indicating public parking was unavailable.

D. Whether Removal of Barriers was "Readily Achievable"

Even if architectural barriers exist, a defendant has only violated the ADA if either (1) the removal of barriers is "readily achievable" or (2) if removal is not readily achievable, the defendant failed to engage in "alternative methods" that are "readily achievable," to permit access to disabled patrons. 42 U.S.C. § 12182(b)(2)(A)(iv), (v). "Readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." *Id.* at § 12181(9). In determining whether removal or alternative methods are "readily achievable," the court is to consider (1) the nature and cost of the required action; (2) the overall financial resources of the facility, including the effect on expenses and resources, and any other impact the required action would have on the facility; (3) the overall financial resources of the covered entity, including the overall size of the business, number of employees, and number, type, and location of facilities; and (4) the type of operation of the covered entity, including the composition, structure, and functions of the workforce of the entity. *Id.* at 12181(9)(A)-(D).

Plaintiff contends that Defendants' subsequent remedial measures show that removal of barriers were "readily achievable."[3] (Pl.'s Mem. of P. and A. at 7.) As evidentiary support, Plaintiff points to Defendant Matthew Collins' deposition testimony stating that after the filing of the suit, he made alterations to his premises pursuant to the recommendations given by Defendants' expert, Robert Novick.[4]

In response, Defendants essentially argue both that removal of barriers is not readily achievable and that Defendants engaged in alternative methods to allow access to disabled patrons. Defendants point to the deposition testimony of their expert, Mr. Novick, implying that removal of barriers might not have been readily achievable. (Def.'s Mem. of P. and A. at 5.) Mr.

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[3] Although evidence of subsequent remedial measures is not admissible to show negligence, culpable conduct, defects in product or product design, or need for warning or instruction, such evidence is admissible "when offered for another purpose." Fed. R. Evid. 407. Thus, evidence of subsequent remedial measure is admissible to determine whether removal of architectural barriers is readily achievable.

[4] These alterations include: (1) changed the handle to the front door (Dep. of Richard Matthews Collins at 8:1, Pl.'s Ex. 5); (2) handrails placed on the steps (*Id.* at 8:17-23); (3) aluminum plate at the threshold entrance to the business office (*Id.* at 9:11-15); (4) a "please ring for assistance" bell outside the front entrance (*Id.* at 9:20-22); (5) completion of a ramp for wheelchair access (*Id.* at 10:6-16); and (6) signage indication no public parking is available (*Id.* at 11:11-20).

Novick testified that "there's not, in my observation, adequate area to make the office in this case accessible without interfering with the business of the facility." (Dep. of Robert Novick at 31: 15-18, Def.'s Ex. 2.) Mr. Novick further testified that after considering "whether or not...[Defendants' car dealership] is the kind of business that a disabled individual would approach and look for a vehicle that would necessarily support his personal needs", he "didn't feel like...anything was required." (*Id.* at 36:2-9.)

Although there is evidence that Defendants removed some barriers on their premises, this fact merely proves that removal of some barriers is possible; it does not conclusively prove that removal of all barriers was "readily achievable." At present, this Court does not have sufficient evidence regarding the relevant factors for making such a determination. For instance, the Court is unaware of the overall financial resources of Defendants' car dealership, the impact that removal of barriers has on the facility, the overall size of Defendants' car dealership, the number of employees, or the composition, structure, and functions of Defendants' workforce. Based on Mr. Novick's deposition testimony and the lack of sufficient evidence relating to all factors relevant to the "readily achievable" analysis, the Court finds a genuine issue of fact remains whether the removal of barriers was indeed "easily accomplishable and able to be carried out without much difficulty or expense." *See* 42 U.S.C. § 12181(9).

Moreover, Defendants present evidence that alternative methods allowing disability access are employed, since the door to the business office is always open, their business is conducted both in the office and out on the lot, and a disabled patron need only call out and seek assistance. (Def.'s Mem. of P. and A. at 4; Decl. of Matthew Collins ¶¶ 8, 9.) Defendant Matthew Collins states "[w]e are in the business of buying and selling cars and certainly if someone advised us they were interested in a vehicle we would do whatever it would take to accommodate them. We certainly can fill paper work out in the lot as well as in our office." (*Id.* ¶ 9.) Based on these statements by Defendant Matthew Collins, the Court finds a genuine issue of fact remains as to whether Defendants employed alternative methods to provide access to disable patrons.

Accordingly, the Court **DENIES** Plaintiff's motion for summary judgment on the ADA claim. Moreover, Plaintiff presents no independent arguments for summary judgment on his state law claims, but rather merely refers to his ADA claim summary judgment argument. (*See* Pl.'s Mem. of P. and A. at 8-9.) Thus, the Court **DENIES** summary judgment on Plaintiff's state law claims as well.

Conclusion and Order

For the reasons set forth above, the Court: (1) **GRANTS PARTIAL SUMMARY JUDGMENT** on the following issues: (a) Defendants' car dealership is a "public accommodation" under the ADA and (b) Defendants' car dealership premises did have architectural barriers at the time of Plaintiff's visit on or around January 12, 2004; and (2) **DENIES SUMMARY JUDGMENT ON PLAINTIFF'S ADA AND RELATED STATE LAW CLAIMS.**

The Court further **ORDERS PLAINTIFF TO SHOW CAUSE WHY PLAINTIFF'S ADA CLAIM SHOULD NOT BE DISMISSED AS MOOT**, as follows:

(a) The parties shall file and serve to opposing parties briefing on the extent to which subsequent remedial measures have removed the access barriers alleged in the Complaint, ***on or before April 18, 2005***; and

(b) The parties shall file and serve to opposing parties any Reply on such briefing ***on or before April 25, 2005.***

IT IS SO ORDERED.

Dated: 3-28-05

NAPOLEON A. JONES, JR.
United States District Judge

cc: Magistrate Judge Brooks
All Counsel of Record