

1 **VALENTI LAW APC**
2 Matthew D. Valenti (SBN 253978)
3 E-mail: mattvalenti@valentilawapc.com
4 5252 Balboa Avenue, Suite 700
5 San Diego, California 92117
6 Phone: (619) 540-2189

7
8
9 Attorney for Raul Uriarte-Limon
10

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 RAUL URIARTE-LIMON,

16 Plaintiff,

17 vs.

18 ACUTINTPROS, INC., a California
19 corporation; NABIL NASRE and
20 SUZAN H. NASRE as individuals and
21 as trustees of the NASRE NABIL &
22 SUZAN REV TR 12/22/05; and DOES
23 1-10,

24 Defendants.
25
26
27
28

Case No.:

COMPLAINT FOR:

DENIAL OF CIVIL RIGHTS AND
ACCESS TO PUBLIC FACILITIES
TO PHYSICALLY DISABLED
PERSONS IN VIOLATION OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, (42 U.S.C. §12101, *et*
seq.) AND THE UNRUH CIVIL
RIGHTS ACT, (CALIFORNIA CIVIL
CODE §51, *et seq.*)

DEMAND FOR JURY TRIAL

1 amend when the true names, capacities, connections, and responsibilities of the
2 Defendants and Does 1 through 10, inclusive, are ascertained.

3 4. Defendants own and owned the property located at 1700 W Foothill
4 Blvd, Suite A, Upland, CA 91786 (“Subject Property”) at all relevant times.

5 5. Defendants operate and operated a car tinting shop doing business as
6 AcuTintPro.com (“car tinting shop”), located at the Subject Property, at all
7 relevant times.

8 6. Plaintiff alleges that the Defendants have been and are the owners,
9 franchisees, lessees, general partners, limited partners, agents, trustees, employees,
10 subsidiaries, partner companies and/or joint ventures of each of the other
11 Defendants, and performed all acts and omissions stated herein within the course
12 and scope of such relationships causing the damages complained of herein.

13 **II. JURISDICTION AND VENUE**

14 7. This Court has subject matter jurisdiction over this action pursuant to
15 28 U.S.C. §1331 and §1343(a)(3) and (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, U.S.C. §12101, *et seq.*

17 8. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising out of the same nucleus of operative facts and arising out of the
19 same transactions, is also brought under California’s Unruh Civil Rights Act,
20 which expressly incorporates the Americans with Disabilities Act.

21 9. Venue is proper in this court pursuant to 28 U.S.C. U.S.C. §1391(b)
22 and is founded on the fact that the real property which is the subject of this action
23 is located in this district and that Plaintiff’s causes of action arose in this district.

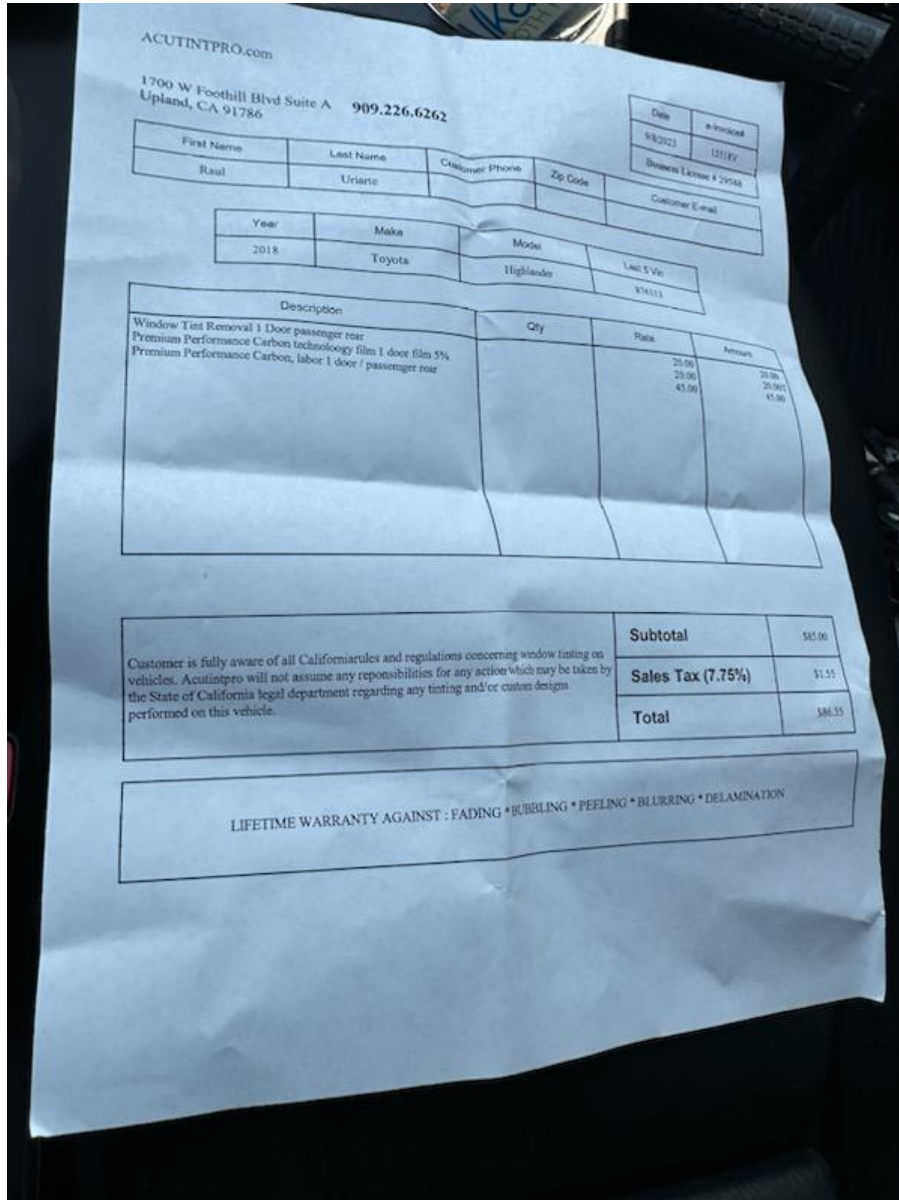
24 **III. FACTS**

25 10. Plaintiff uses a wheelchair for mobility.

26 11. Defendants’ business is open to the public, a place of public
27 accommodation, and a business establishment.

28

12. Plaintiff went to the car tinting shop on September 8, 2023 to have one of his car window's tinting replaced. The receipt he received for his purchase is shown in the photo below.



13. Unfortunately, during Plaintiff's visit, Defendants did not offer persons with disabilities equivalent facilities, privileges, advantages, and accommodations offered to other persons.

1 14. Plaintiff encountered barriers that interfered with and denied Plaintiff
2 the ability to use and enjoy the goods, services, privileges, advantages, and
3 accommodations offered by Defendants at the Subject Property.

4 15. These barriers violate one or more standards of the Americans with
5 Disabilities Act (“2010 ADA”) and/or the California Building Codes (“2022
6 CBC”).

7 16. Parking for patrons visiting the Subject Property is among the
8 facilities, privileges, advantages, and accommodations offered by Defendants.

9 17. According to the ADA National Network, “Designating accessible
10 parking is often readily achievable and is considered a top priority because it
11 enables many people with disabilities to ‘get in the door.’” ADA National Network
12 Accessible Parking Factsheet, 2017.

13 18. When parking is provided, there must be at least one accessible
14 parking space designated and marked for disabled persons. 2010 ADA §502 et
15 seq.; 2022 CBC 11B-502 et seq.

16 19. However, there is no accessible parking whatsoever for disabled
17 persons at the Subject Property.

18 20. There is no ADA compliant parking. ADA 2010 §502 et seq.; 2022
19 CBC 11B 502 et seq.

20 21. There is no ADA compliant parking signage. ADA 2010 §502.6; 2022
21 CBC 11B-502.6, 11B-703.7.2.1.

22 22. There is no sign in a conspicuous place at the entrance to the facility,
23 or immediately adjacent to on-site accessible parking and visible from each
24 parking space, stating that vehicles parked in designated accessible spaces not
25 displaying a disabled placard or license plate will be towed. 2022 CBC 11B-502.8.

26 23. There is also no marked path of travel from the parking area to the
27 entrance of the store, and the existing path of travel includes a concrete curb, with
28 no accessible ramp or curb cut provided. 2010 ADA Standards §206; 2010 ADA

1 Standards §303.4; 2010 ADA Standards §403.4; 2019 CBC 11B-206; 2022 CBC
2 11B-303.4; 2022 CBC 11B-403.4.

3 24. A photo taken on the day of Plaintiff’s visit which shows one or more
4 of these violations is below.



19 25. The barriers existed during Plaintiff’s visit to the Subject Property.
20 Plaintiff personally encountered these barriers.

21 26. These inaccessible conditions and barriers denied Plaintiff full and
22 equal access and caused him difficulty, discomfort, and embarrassment. Because of
23 the lack of compliant parking, Plaintiff was placed at risk of being blocked in by
24 other vehicles and unable to get out of his vehicle or get back into it. He was also
25 at greater risk of being hit by a car while transferring to and from his wheelchair.
26 Because of the lack of a compliant path of travel and lack of curb cut, Plaintiff had
27 great difficulty entering and exiting the store through the garage area.
28

1 27. These barriers denied Plaintiff full and equal access due to his
2 disability because, *inter alia*, they caused Plaintiff anxiety, difficulty, discomfort,
3 and embarrassment which patrons who do not use a wheelchair for mobility do not
4 suffer when they access the Subject Property.

5 28. Plaintiff intends to return to the Subject Property in the near future.
6 Plaintiff is currently deterred from returning because of the knowledge of the
7 barriers to equal access that relate to Plaintiff's disabilities which continue to exist
8 at Defendants' public accommodation facilities.

9 29. Plaintiff alleges that Defendants knew that the barriers prevented
10 equal access. Plaintiff further alleges that Defendants had actual or constructive
11 knowledge that the architectural barriers prevented equal access, and that the
12 noncompliance with the Americans with Disabilities Act and Title 24 of the
13 California Building Code regarding accessible features was intentional.

14 30. Defendants have obstructed or failed to maintain, in working and
15 useable conditions, those features necessary to provide ready access to persons
16 with disabilities. "A public accommodation shall maintain in operable working
17 condition those features of facilities and equipment that are required to be readily
18 accessible to and usable by persons with disabilities." 28 C.F.R. §36.211(a); 2022
19 CBC 11B-108.

20 31. The State of California Department of General Services, Division of
21 the State Architect (DSA) provides commentary to 2022 CBC 11B-108 as follows:

22 Features for accessibility must be permanently functional, unobstructed
23 and may not be removed. It is not sufficient to provide features such as
24 accessible routes, parking, elevators, ramps or signage if those features
25 are not maintained in a manner that enables individuals with disabilities
to use them.

26 DSA, 2019 California Access Compliance Advisory Reference Manual, p.84.

27 32. Defendants have the financial resources to remove these barriers
28 without much expense or difficulty in order to make their property more accessible

1 to their mobility impaired customers. The United States Department of Justice has
2 identified that these types of barriers are readily achievable to remove.

3 33. To date, Defendants refuse to remove these barriers, in violation of
4 the law, willfully depriving disabled persons including Plaintiff of important civil
5 rights.

6 34. On information and belief, Plaintiff alleges that the Defendants'
7 failure to remove these barriers was intentional because the barriers are logical and
8 obvious. During all relevant times Defendants had authority, control, and dominion
9 over these conditions and therefore the absence of accessible facilities was not a
10 mishap, but rather an intentional act.

11 35. The barriers to access are listed above without prejudice to Plaintiff
12 citing additional barriers to equal access by an amended complaint after inspection
13 by Plaintiff's Certified Access Specialist (CASp). *Oliver v. Ralphs Grocery Co.*,
14 654 F.3d 903 (9th Cir. 2011); *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9th Cir.
15 2008); *Chapman v. Pier One Imports (USA), Inc.*, 631 F.3d 939 (9th Cir. 2011).
16 All of these barriers to access render the premises inaccessible to physically
17 disabled persons who are mobility impaired, such as Plaintiff, are barriers Plaintiff
18 may encounter when he returns to the premises. All public accommodations must
19 be brought into compliance with all applicable federal and state accessibility
20 requirements.

21 **FIRST CAUSE OF ACTION**

22 Violation of the Americans With Disabilities Act of 1990

23 (42 U.S.C. §12101, *et seq.*)

24 (Against All Defendants)

25 36. Plaintiff alleges and incorporates by reference, as if fully set forth
26 again herein, each and every allegation contained in all prior paragraphs of this
27 complaint.

1 37. More than thirty years ago, the 101st United States Congress found
2 that although “physical or mental disabilities in no way diminish a person’s right to
3 fully participate in all aspects of society, yet many people with physical or mental
4 disabilities have been precluded from doing so because of discrimination...in such
5 critical areas as employment, housing, public accommodations, education,
6 transportation, communication, recreation, institutionalization, health services,
7 voting, and access to public services.” 42 U.S.C. §12101(a).

8 38. In 1990 Congress also found that “the Nation’s proper goals regarding
9 individuals with disabilities are to assure equality of opportunity, full participation,
10 independent living, and economic self-sufficiency for such individuals,” but that
11 “the continuing existence of unfair and unnecessary discrimination and prejudice
12 denies people with disabilities the opportunity to compete on an equal basis and to
13 pursue those opportunities for which our free society is justifiably famous.” 42
14 U.S.C. §12101(a).

15 39. In passing the Americans with Disabilities Act of 1990, which was
16 signed into law by President George H. W. Bush on July 26, 1990 (hereinafter the
17 “ADA”), Congress stated as its purpose:

18 “It is the purpose of this Act

19 (1) to provide a clear and comprehensive national mandate for the
20 elimination of discrimination against individuals with disabilities;

21 (2) to provide clear, strong, consistent, enforceable standards
22 addressing discrimination against individuals with disabilities;

23 (3) to ensure that the Federal Government plays a central role in
24 enforcing the standards established in this Act on behalf of individuals
25 with disabilities; and

26 (4) to invoke the sweep of congressional authority, including the power
27 to enforce the fourteenth amendment and to regulate commerce, in
28 order to address the major areas of discrimination faced day to-day by
people with disabilities.”

1
2 42 USC §12101(b).

3 40. As part of the ADA, Congress passed “Title III – Public
4 Accommodations and Services Operated by Private Entities” (42 U.S.C. §12181 *et*
5 *seq.*). Title III of the ADA prohibits discrimination against any person “on the
6 basis of disability in the full and equal enjoyment of the goods, services, facilities,
7 privileges, advantages, or accommodations of any place of public accommodation
8 by any person who owns, leases (or leases to), or operates a place of public
9 accommodation.” 42 U.S.C. §12182(a).

10 41. The specific prohibitions against discrimination include, *inter alia*, the
11 following:

- 12 • 42 U.S.C. §12182(b)(1)(A)(ii): “Participation in Unequal Benefit. - It
13 shall be discriminatory to afford an individual or class of individuals,
14 on the basis of a disability or disabilities of such individual or class,
15 directly, or through contractual, licensing, or other arrangements, with
16 the opportunity to participate in or benefit from a good, service, facility,
17 privilege, advantage, or accommodation that is not equal to that
18 afforded to other individuals.”
- 19 • 42 U.S.C. §12182(b)(2)(A)(ii): “a failure to make reasonable
20 modifications in policies, practices, or procedures when such
21 modifications are necessary to afford such goods, services, facilities,
22 privileges, advantages, or accommodations to individuals with
23 disabilities...;”
- 24 • 42 U.S.C. §12182(b)(2)(A)(iii): “a failure to take such steps as may be
25 necessary to ensure that no individual with a disability is excluded,
26 denied service, segregated, or otherwise treated differently than other
27 individuals because of the absence of auxiliary aids and services...;”
- 28 • 42 U.S.C. §12182(b)(2)(A)(iv): “a failure to remove architectural
barriers, and communication barriers that are structural in nature, in
existing facilities... where such removal is readily achievable;”

- 42 U.S.C. §12182(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.”

42. Plaintiff is a qualified individual with a disability as defined in the Rehabilitation Act and in the Americans with Disabilities Act of 1990.

43. The acts and omissions of Defendants set forth herein were in violation of Plaintiff’s rights under the ADA and the regulations promulgated thereunder, 28 C.F.R. Part 36 *et seq.*

44. The removal of each of the physical and policy barriers complained of by Plaintiff as hereinabove alleged, were at all times herein mentioned “readily achievable” under the standards of §12181 and §12182 of the ADA. Removal of each and every one of the architectural and/or policy barriers complained of herein was already required under California law. Further, on information and belief, alterations, structural repairs or additions since January 26, 1993, have also independently triggered requirements for removal of barriers to access for disabled persons per §12183 of the ADA. In the event that removal of any barrier is found to be “not readily achievable,” Defendants still violated the ADA, per §12182(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages and accommodations through alternative methods that were “readily achievable.”

45. On information and belief, as of the date of Plaintiff’s encounter at the premises and as of the filing of this Complaint, Defendants’ actions, policies, and physical premises have denied and continue to deny full and equal access to Plaintiff and to other mobility disabled persons in other respects, which violate Plaintiff’s right to full and equal access and which discriminate against Plaintiff on the basis of his disabilities, thus wrongfully denying to Plaintiff the full and equal

1 enjoyment of the goods, services, facilities, privileges, advantages and
2 accommodations, in violation of 42 U.S.C. §12182 and §12183 of the ADA.

3 46. Defendants' actions continue to deny Plaintiff's rights to full and
4 equal access and discriminated and continue to discriminate against him on the
5 basis of his disabilities, thus wrongfully denying to Plaintiff the full and equal
6 enjoyment of Defendants' goods, services, facilities, privileges, advantages and
7 accommodations, in violation of the ADA, 42 U.S.C. §12182.

8 47. Further, each and every violation of the Americans With Disabilities
9 Act of 1990 also constitutes a separate and distinct violation of California Civil
10 Code §51(f), §52, §54(c) and §54.1(d), thus independently justifying an award of
11 damages and injunctive relief pursuant to California law, including but not limited
12 to Civil Code §54.3 and §55.

13 **SECOND CAUSE OF ACTION**

14 Violation of the Unruh Civil Rights Act

15 (California Civil Code §51, *et seq.*)

16 (Against All Defendants)

17 48. Plaintiff alleges and incorporates by reference, as if fully set forth
18 again herein, each and every allegation contained in all prior paragraphs of this
19 complaint.

20 49. California Civil Code §51 provides that physically disabled persons
21 are free and equal citizens of the state, regardless of their medical condition or
22 disability:

23 All persons within the jurisdiction of this state are free and equal, and
24 no matter what their sex, race, color, religion, ancestry, national origin,
25 **disability, or medical condition** are entitled to full and equal
26 accommodations, advantages, facilities, privileges, or services in all
business establishments of every kind whatsoever.

27 California Civil Code §51(b) (emphasis added).
28

1 50. California Civil Code §51.5 also states, in part: “No business,
2 establishment of any kind whatsoever shall discriminate against...any person in
3 this state on account” of their disability.

4 51. California Civil Code §51(f) specifically incorporates (by reference)
5 an individual’s rights under the ADA into the Unruh Act.

6 52. California Civil Code §52 provides that the discrimination by
7 Defendants against Plaintiff on the basis of his disability constitutes a violation of
8 the general antidiscrimination provisions of §51 and §52.

9 53. Each of Defendants’ discriminatory acts or omissions constitutes a
10 separate and distinct violation of California Civil Code §52, which provides that:

11 Whoever denies, aids or incites a denial, or makes any discrimination
12 or distinction contrary to section 51, 51.5, or 51.6 is liable for each and
13 every offense for the actual damages, and any amount that may be
14 determined by a jury, or a court sitting without a jury, up to a maximum
15 of three times the amount of actual damage but in no case less than four
16 thousand dollars (\$4,000), and any attorney’s fees that may be
determined by the court in addition thereto, suffered by any person
denied the rights provided in Section 51, 51.5, or 51.6.

17 54. Any violation of the Americans with Disabilities Act of 1990
18 constitutes a violation of California Civil Code §51(f), thus independently
19 justifying an award of damages and injunctive relief pursuant to California law,
20 including Civil Code §52. Per Civil Code §51(f), “A violation of the right of any
21 individual under the Americans with Disabilities Act of 1990 (Public Law 101-
22 336) shall also constitute a violation of this section.”

23 55. The actions and omissions of Defendants as herein alleged constitute a
24 denial of access to and use of the described public facilities by physically disabled
25 persons within the meaning of California Civil Code §51 and §52.

26 56. The discriminatory denial of equal access to and use of the described
27 public facilities caused Plaintiff difficulty, discomfort, and embarrassment.
28

1 2. Retain jurisdiction over the Defendants until such time as
2 the Court is satisfied that Defendants’ unlawful policies, practices, acts
3 and omissions, and maintenance of physically inaccessible public
4 facilities and policies as complained of herein no longer occur, and
5 cannot recur;

6 3. Award to Plaintiff all appropriate damages, including but
7 not limited to actual and statutory damages according to proof;

8 4. Award to Plaintiff all reasonable attorney fees, litigation
9 expenses, and costs of this proceeding pursuant to 42 U.S.C §12205 and
10 California Civil Code §52; and

11 5. Grant such other and further relief as this Court may deem
12 just and proper.

13
14 DATED: October 7, 2023

VALENTI LAW APC

15
16 By: /s/ Matthew D. Valenti

17 Matthew D. Valenti
18 Attorney for Plaintiff Raul Uriarte-
19 Limon
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiff hereby demands a trial by jury for all claims and issues for which a jury is permitted.

DATED: October 7, 2023

VALENTI LAW APC

By: /s/ Matthew D. Valenti

Matthew D. Valenti
Attorney for Plaintiff Raul Uriarte-Limon

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28