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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT N. JOHNSON,
Plaintiff,

No. CIV S-09-0714 GEB GGH

vs.

KIRK C. DOYLE,
Defendant.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff’s motion for default judgment against Defendant Kirk Doyle, filed October 2, 2009, was submitted without a hearing. Defendant filed no opposition. Upon review of the motion and supporting documents, and good cause appearing, the court issues the following findings and recommendations.

BACKGROUND

On March 16, 2009, plaintiff filed the underlying complaint in this action against defendant Kirk Doyle, who owns the property on which a retail store, “Julie’s Antiques,” is situated, at 625 Vernon Street, Roseville, California. See Complaint, at pp. 2-3; Trust Transfer Deed, attached as exhibit A to Complaint. Plaintiff alleges he visited the business in November 2008, on multiple occasions, but encountered architectural barriers in the form of the lack of “correct number and type of properly configured disabled parking space(s) including the lack of a van accessible disabled parking space [no disabled parking at all], accessible route, accessible

1 entrance, accessibility signage and striping...” Complaint, at p. 3. He asserts that these defects
2 constitute violations of the Americans With Disabilities Act and state law. The summons and
3 complaint were served by substituted service on Charles Vaughan, retail business owner on the
4 subject property on August 6, 2009.¹ Fed. R. Civ. P. 4(e)(1); Cal. Code Civ. Proc. § 415.20(a).
5 Pacific Atlantic Trading Co. v. M/V Main Express, 758 F.2d 1325, 1331 (9th Cir. 1985) (default
6 judgment void without personal jurisdiction). Defendant has failed to file an answer or otherwise
7 defend in this action. On September 24, 2009, the clerk entered default against defendant Kirk
8 Doyle.

9 The instant motion for default judgment and supporting papers were served on
10 defendant. Plaintiff seeks an entry of default judgment in the amount of \$8,000 pursuant to
11 California Civil Code section 52(a) as well as injunctive relief.²

12 DISCUSSION

13 Entry of default effects an admission of all well-pleaded allegations of the
14 complaint by the defaulted party. Geddes v. United Financial Group, 559 F.2d 557 (9th Cir.
15 1977). The court finds the well pleaded allegations of the complaint state a claim for which
16 relief can be granted. Anderson v. Air West, 542 F.2d 1090, 1093 (9th Cir. 1976). The
17 memorandum of points and authorities and affidavits filed in support of the motion for entry of
18 default judgment also support the finding that plaintiff is entitled to the relief requested. There
19 are no policy considerations which preclude the entry of default judgment of the type requested.
20 See Eitel v. McCool, 782 F.2d 1470, 1471-1472 (9th Cir. 1986). Plaintiff is entitled to statutory
21

22 ¹ The summons and complaint were thereafter mailed to defendant. (Dkt. #13.)

23 ² Cal.Civil Code § 52(a) provides: “Whoever denies, aids or incites a denial, or makes
24 any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every
25 offense for the actual damages, and any amount that may be determined by a jury, or a court
26 sitting without a jury, up to a maximum of three times the amount of actual damage but in no
case less than four 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.”

1 damages for each “offense,” i.e., each obstructed visit. Feezor v. DeTaco, Inc., 431 F.Supp.2d
2 1088 (S.D. Cal. 2005).

3 CONCLUSION

4 In view of the foregoing findings, it is the recommendation of this court that:

5 1. Plaintiffs’ motion for entry of default judgment be GRANTED as to Kirk
6 Doyle in the amount of \$8,000; and

7 2. Injunctive relief be granted against defendant Kirk Doyle requiring a properly
8 configured van accessible disabled parking space with an accessible route to an accessible main
9 entrance to the retail store known as “Julie’s Antiques,” located at 625 Vernon Street, Roseville,
10 California, in conformity with the Americans with Disabilities Act Accessibility Guidelines
11 (ADAAG) as set forth in 28 Code of Federal Regulations, Part 36.

12 These findings and recommendations are submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
14 fourteen days after being served with these findings and recommendations, any party may file
15 written objections with the court and serve a copy on all parties. Such a document should be
16 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the
17 objections shall be served and filed within seven days after service of the objections. The parties
18 are advised that failure to file objections within the specified time may waive the right to appeal
19 the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: 01/21/2010

21 /s/ Gregory G. Hollows

22 _____
23 GREGORY G. HOLLOWES
24 UNITED STATES MAGISTRATE JUDGE