

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF CALIFORNIA

4 CHRIS LANGER,

5 Plaintiff,

6 vs.

7 GTAC, Inc., dba Fuel Systems
8 Parts; Alejandro Cueva; and Does
9 1-10,

Defendants.

Case No.: 14cv1071 BTM(WVG)

**ORDER GRANTING MOTION
FOR DEFAULT JUDGMENT
AGAINST GTAC, INC. AND
DENYING MOTION FOR
DEFAULT JUDGMENT
AGAINST DEFENDANT CUEVA**

10
11 Plaintiff Chris Langer has filed a motion for default judgment against
12 Defendants Alejandro Cueva and GTAC, Inc. ("GTAC"), dba Fuel Systems Parts.
13 Plaintiff's motion is **DENIED** as to Defendant Alejandro Cueva because the Court
14 has vacated the entry of default against Cueva. However, Plaintiff's motion is
15 **GRANTED** as to Defendant GTAC.

16
17 **I. BACKGROUND**

18 On April 29, 2014, Plaintiff filed this action. Plaintiff uses a wheelchair for
19 mobility and alleges that he was denied equal access to FSP Auto Service and
20 Parts Distributor ("FSP"), located at or about 7005 Alamitos Avenue, San Diego,

1 California, because there were no accessible parking spaces. In Plaintiff's
2 Second Amended Complaint ("SAC"), Plaintiff alleges violations of the Americans
3 with Disabilities Act, the Unruh Civil Rights Act, and the California Disabled
4 Persons Act, in addition to a negligence claim.

5 On September 24, 2014, Plaintiff requested entry of default against GTAC.
6 On September 25, 2014, the Clerk granted Plaintiff's request and entered default
7 against GTAC.

8 9 **II. STANDARD**

10 Entry of default judgment is governed by Federal Rule of Civil Procedure
11 55(b) and is left to the trial court's sound discretion. Aldabe v. Aldabe, 616 F.2d
12 1089, 1092 (9th Cir. 1980). After default has been entered, the well-pleaded
13 factual allegations of the complaint, except those relating to the amount of
14 damages, shall be taken as true. Geddes v. United Fin. Group, 559 F.2d 557,
15 560 (9th Cir. 1977). In determining damages, the court can rely on evidence
16 submitted by the plaintiff or may conduct a full evidentiary hearing. Fed. R. Civ.
17 P. 55(b)(2). A judgment by default shall not award damages that are different
18 from or exceed the amount requested in the plaintiff's complaint. Fed. R. Civ. P.
19 54(c).

20 Factors which may be considered by courts in exercising their discretion as

1 to whether to enter default judgment include: (1) the possibility of prejudice to
2 plaintiff; (2) the merits of plaintiff's substantive claims; (3) the sufficiency of the
3 complaint; (4) the sum of money at stake in the action; (5) the possibility of a
4 dispute concerning material facts; (6) whether the default was due to excusable
5 neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure
6 favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1472 (9th Cir.
7 1986).

8 9 **III. DISCUSSION**

10 Plaintiff seeks default judgment against GTAC. Plaintiff requests that the
11 Court issue injunctive relief, in addition to statutory damages, attorney's fees, and
12 costs totaling \$10,050.00. The Court grants Plaintiff's motion.

13 14 A. Eitel Factors

15 The Eitel factors weigh in favor of granting default judgment. The defaulting
16 defendant was properly served [Doc. 12] and given ample opportunity to respond
17 to the complaint but has failed to do so. There is no indication that the default
18 was due to excusable neglect. As discussed below, Plaintiff has meritorious
19 claims against GTAC, and will be left without an adequate remedy if default
20 judgment is not entered. The sum of money at stake in this litigation is only

1 \$10,050.00 and is not unreasonable in relation to the seriousness of the
2 defendant's conduct. Therefore, default judgment is appropriate.

3
4 B. Merits of Claims

5 1. Title III, ADA Claim

6 Title III of the ADA provides that “[n]o individual shall be discriminated
7 against on the basis of disability in the full and equal enjoyment of the goods,
8 services, facilities, privileges, advantages, or accommodations of any place of
9 public accommodation by any person who owns, leases (or leases to), or
10 operates a place of public accommodation.” 42 U.S.C. § 12182(a). To prevail on
11 an ADA claim, the plaintiff must establish: (1) he or she is disabled within the
12 meaning of the ADA; (2) the defendant is a private entity that owns, leases, or
13 operates a place of public accommodation; and (3) the plaintiff was denied public
14 accommodations by the defendant because of his or her disability. Molski v. M.J.
15 Cable, Inc., 481 F.3d 724, 730 (9th Cir. 2007).

16 Plaintiff cannot walk and uses a wheelchair for mobility. (Langer Decl. ¶ 2.)
17 Accordingly, Plaintiff is “disabled” within the meaning of the ADA, 42 U.S.C. §
18 12102(a)(1)(A).

19 FSP is a service establishment that qualifies as a place of public
20 accommodation. 42 U.S.C. § 12181(7)(F). The evidence shows that GTAC was

1 an owner of FSP. (Pl. Ex. 5.)

2 The third element – that the plaintiff was denied public accommodations on
3 the basis of disability – is satisfied if the defendant failed to remove architectural
4 barriers where such removal was readily achievable. 42 U.S.C. §
5 12182(b)(2)(A)(iv). The ADA Accessibility Guidelines (“ADAAG”) provide “the
6 objective contours of the standard that architectural features must not impede
7 disabled individuals’ full and equal enjoyment of accommodations.” Chapman v.
8 Pier 1 Imports (U.S.) Inc., 631 F.3d 939, 945 (9th Cir. 2011). Therefore, “if a
9 barrier violating these standards relates to a plaintiff’s disability, it will impair the
10 plaintiff’s full and equal access, which constitutes ‘discrimination’ under the ADA.”
11 Id. at 947.

12 Under both the 1991 and 2010 ADAAG standards, any business that
13 provides parking spaces must provide handicap parking spaces conforming to
14 the Guidelines’ specifications. 28 C.F.R. pt. 36, App. D, § 4.1.2(5); 36 C.F.R. pt.
15 1191, App. C, § 208. Under the 1991 standards, one in every eight accessible
16 spaces, but not less than one, shall be designated “van accessible.” 28 C.F.R.
17 pt. 36, App. D, §4.1.2(5)(b). Under the 2010 standards, at least one in every six
18 accessible parking spaces shall be a van parking space. 36 C.F.R. pt. 1191,
19 App. C § 208.2.4. When Plaintiff went to FSP in May of 2013, there was no

1 designated accessible parking for use by persons with disabilities. (Langer Decl.
2 ¶ 4; Taylor Decl. ¶ 3.)

3 Plaintiff alleges that removal of the architectural barriers was readily
4 achievable. (SAC ¶ 20.) This allegation is sufficient to satisfy Plaintiff's burden
5 of production on this issue. See Vogel v. Rite Aid Corp., 992 F. Supp. 2d 998,
6 1011 (C.D. Cal. 2014). Accordingly, Plaintiff has established a meritorious
7 claim under Title III of the ADA.

8

9 2. Unruh Civil Rights Act Claim

10 Plaintiff seeks statutory damages under the Unruh Civil Rights Act
11 ("UCRA"). Under the UCRA, the plaintiff is ordinarily entitled to an award of
12 statutory damages of no less than \$4,000 for each offense. Cal. Civ. Code §
13 52(a). Plaintiff requests a single statutory minimum penalty assessment of
14 \$4,000.

15 The UCRA incorporates the ADA, and a violation of the ADA is actionable
16 under California law. Cal. Civ. Code § 52(f). To recover statutory damages, a
17 plaintiff must show that a particular barrier personally affected him and denied
18 him full and equal access. Moeller v. Taco Bell Corp., 2012 WL 3070863, at *4
19 (N.D. Cal. 2012). "A violation personally encountered by a plaintiff may be
20 sufficient to cause a denial of full and equal access if the plaintiff experienced

1 difficulty, discomfort, or embarrassment because of the violation.” Cal. Civ. Code
2 § 55.56(c).

3 Plaintiff states that due to the lack of a single functioning compliant
4 handicap parking space, he was deterred from patronizing FSP. (Langer Decl.
5 ¶¶ 4-5.) This is sufficient evidence to support an award of statutory damages in
6 the amount of \$4,000.

7
8 C. Attorney’s Fees and Costs

9 Plaintiff requests an award of attorney’s fees in the amount of \$5,610 and
10 costs in the amount of \$440 (filing fee and service costs). On June 2, 2015, the
11 Court held a hearing regarding the requested attorney’s fees and costs.

12 A prevailing plaintiff is entitled to an award of attorney’s fees under both
13 Title III of the ADA and the UCRA. See 42 U.S.C. § 12205; Cal. Civ. Code §
14 52(a). Plaintiff requests attorney’s fees for 13.2 hours at the rate of \$425 an
15 hour. At the June 2 hearing, counsel for Plaintiff confirmed that 2.8 hours of the
16 requested 13.2 hours were spent opposing the motion to dismiss brought by
17 Cueva. Because this work did not relate to the defaulting defendant GTAC, the
18 Court will deduct 2.8 hours from the requested fees.

19 Otherwise, the Court finds that the amount of time expended on the case,
20 including drafting complaints and drafting the instant motion for default judgment,

1 was reasonable. The Court also finds that the hourly rate is reasonable given
2 Mark Potter's extensive expertise in the area of disability rights. (Potter Decl. ¶¶
3 6-8.) Therefore, the Court awards Plaintiff \$4,420 in attorney's fees (10.4 x
4 \$425).

5 The Court also awards Plaintiff costs in the amount of \$420. Plaintiff
6 originally requested \$440 in costs. However, as disclosed at the June 2 hearing,
7 \$20 of the requested costs were for service of process on Cueva.

8 Because the Court is awarding Plaintiff attorney's fees for preparing the
9 complaints and is awarding the \$400 civil filing fee, Plaintiff may not seek to
10 recover these amounts if Plaintiff ultimately prevails against defendant Cueva.

11
12 **IV. CONCLUSION**

13 For the reasons discussed above, Plaintiff's motion for default judgment is
14 **GRANTED** as to defendant GTAC, Inc., only. Plaintiff's motion is **DENIED** as to
15 defendant Cueva.

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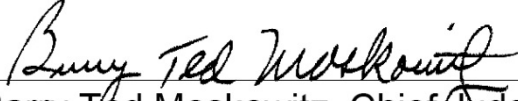
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1 The Court enters judgment in favor of Plaintiff and against GTAC, Inc., dba
2 Fuel Systems Parts, in the amount of \$8,840. The Court also orders GTAC, Inc.,
3 to provide and designate accessible parking in compliance with the ADAAG at
4 the property located at or about 7005 Alamos Avenue, San Diego, CA, 92154.

5 **IT IS SO ORDERED.**

6 Dated: June 3, 2015

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8 Barry Ted Moskowitz, Chief Judge
9 United States District Court
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