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3 **UNITED STATES DISTRICT COURT**
4 **EASTERN DISTRICT OF CALIFORNIA**
5

6 **PETER STROJNIK, SR.,**

7 **Plaintiff**

8 v.

9 **THE VICTUS GROUP, INC. dba Sierra**
10 **Sky Ranch,**

11 **Defendant**

CASE NO. 1:18-CV-1620 AWI SKO

**ORDER ON FINDINGS AND
RECOMMENDATION, ORDER
DENYING MOTION FOR DEFAULT
JUDGMENT, and ORDER DISMISSING
COMPLAINT**

(Doc. Nos. 1, 11, 15)

12
13 This is a disability public accommodation case brought by Plaintiff Peter Strojnik
14 (“Strojnik”) against Defendant the Victus Group dba Sierra Sky Ranch (“SSR”). Strojnik filed his
15 Complaint in this Court on November 8, 2018 and alleged claims under Title III of the Americans
16 with Disabilities Act, the California Unruh Civil Rights Act, the California Disabled Persons Act,
17 and state law negligence. See Doc. No. 1.

18 On May 15, 2019, the Clerk entered default against Defendant. See Doc. No. 8.

19 On May 31, 2019, Plaintiff filed a motion for default judgment. See Doc. No. 11.
20 Defendant failed to file an opposition to the motion.

21 On September 9, 2019, the assigned magistrate judge issued a findings and
22 recommendations (“F&R”) that recommended granting the motion for default judgment in part.
23 See Doc. No. 15. The assigned magistrate judge directed Plaintiff to serve a copy of the F&R on
24 SSR and allowed the parties twenty-one (21) days in which to file objections. Id. The period for
25 filing objections has passed and no objections have been filed.

26 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
27 de novo review of the case. Having carefully reviewed the entire file, the Court respectfully
28 disagrees with the F&R that default judgement should be entered in this case.

1 Legal Standard

2 “As a general rule, default judgments are disfavored; cases should be decided upon their
3 merits whenever reasonably possible.” Westchester Fire Ins. Co. v. Mendez, 585 F.3d 1183, 1189
4 (9th Cir. 2009). In deciding whether to enter default judgment, a court should consider the
5 following factors: “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s
6 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action;
7 (5) the possibility of a dispute concerning material facts; (6) whether the default was due to
8 excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure
9 favoring decisions on the merits.” NewGen, LLC v. Safe Cig, LLC, 840 F.3d 606, 616 (9th Cir.
10 2016); Eitel v. McCool, 782 F.2d 1470, 1472 (9th Cir. 1986). Upon a clerk’s entry of default, “the
11 well-pleaded allegations of a complaint relating to liability are taken as true.” VLM Food Trading
12 Int’l, Inc. v. Illinois Trading Co., 811 F.3d 247, 255 (7th Cir. 2016); see Geddes v. United Fin.
13 Grp., 559 F.2d 557, 560 (9th Cir. 1977) (“The general rule of law is that upon default the factual
14 allegations of the complaint, except those relating to the amount of damages, will be taken as
15 true.”). “However, a defendant is not held to admit facts that are not well-pleaded or to admit
16 conclusions of law.” DirecTV, Inc. v. Huynh, 503 F.3d 847, 854 (9th Cir. 2007). Application of
17 the rules of pleading “require that the averments of the complaint sufficiently establish a basis for
18 judgment against the defendant.” Yamaguchi v. United States Dept. of the Air Force, 109 F.3d
19 1475, 1481 (9th Cir. 1997); Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1392-93 (9th
20 Cir. 1988). “[N]ecessary facts not contained in the pleadings, and claims which are legally
21 insufficient, are not established by default.” Cripps v. Life Ins. Co., 980 F.2d 1261, 1267 (9th Cir.
22 1992). Facts which are not established by the complaint, and claims which are not properly pled,
23 are not binding and cannot support default judgment. Alan Neuman, 862 F.2d at 1392; Danning v.
24 Lavine, 572 F.2d 1386, 1388 (9th Cir. 1978). The decision whether to enter default judgment is
25 discretionary with the district court. Alan Neuman, 862 F.2d at 1392.

26 Complaint’s Relevant Allegations

27 The Complaint alleges that Strojnik is legally disabled by virtue of a severe right-sided
28 neural foraminal stenosis with symptoms of femoral neuropathy, prostate and renal cancer, and a

1 degenerative right knee. These conditions substantially limits major life activities. Strojnik walks
2 with difficulty and pain and requires mobility accessible features at places of public
3 accommodation.

4 SSR is a hotel in Oakhurst, California, and is a public accommodation for purposes of the
5 ADA. Strojnik lives in Maricopa County, Arizona. Strojnik intended to visit the Yosemite Area
6 and reviewed the following third-party booking websites regarding SSR: Hotels.com,
7 Expedia.com, Orbitz.com, Travelocity.com, and Priceline.com. The Complaint alleges that these
8 websites contained the same barrier: they did not “identify and describe accessible features in the
9 hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently
10 whether the hotel or guest room meets his accessibility needs.” This barrier allegedly denied
11 Strojnik equal access by failing to identify and the accessible features in sufficient detail to
12 reasonably permit Strojnik to independently assess whether the rooms meet his needs. The
13 Complaint also alleges that the third-party websites failed to make reservations for accessible
14 rooms available in the same manner as individuals who do not need accessible rooms.

15 After visiting the third-party booking websites, Strojnik visited SSR’s website and found the same
16 barriers existed, not enough information for independent determination of sufficient accessibility
17 and different methods of making reservations for accessible and non-accessible needs/rooms.

18 Strojnik reviewed SSR’s online information relating to accessibility or lack thereof,
19 including photographs of amenities. Online information and photographs revealed a number of
20 barriers. The Complaint includes ten photos that are black and white and grainy, most of which
21 are indecipherable. Under each photograph is a section entitled, “identification of specific barrier
22 in plain language,” and a section entitled, “the manner in which the barriers denied Plaintiff full
23 and equal use or access, and which deter Plaintiff from visiting the Hotel.” Under the latter
24 section, each entry reads: “Barrier denied Plaintiff full and equal access.” For the identification of
25 the specific barrier, the Complaints states: “no apparent accessible parking and no accessibility to
26 pool,” “no apparent accessible entry and improperly configured handrails,” “inaccessible check in
27 counter,” “improperly configured handrails on ramp,” “improperly configured handrails on stairs,”
28 “inaccessible bar,” “inaccessible bathroom,” “inaccessible pool (no lift),” “insufficient space

1 around bad and mattress too high,” and “stairs on accessible route.” As a result of these barriers,
2 Strojnik did not book a room at SSR and did not travel to Yosemite.

3 The Complaint alleges that removal of the barriers is readily achievable. Strojnik is
4 deterred from visiting SSR based on his knowledge that it is not compliant in relation to his
5 disability. Strojnik intends to visit SSR at a specific time when SSR becomes fully compliant with
6 the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

7 Discussion

8 Strojnik has filed many similar complaints alleging accessibility problems with various
9 hotels, including architectural barriers and websites problems. E.g. Strojnik v. San Diego Farah
10 Partners, L.P., 2020 U.S. Dist. LEXIS 36536 (S.D. Cal. Mar. 2, 2020); Strojnik v. IA Lodging
11 Napa First LLC, 2020 U.S. Dist. LEXIS 32075 (N.D. Cal. Feb. 25, 2020); Strojnik v. Bakersfield
12 Convention Center Hotel I, LLC, 2020 U.S. Dist. LEXIS 16339 (E.D. Cal. Jan. 30, 2020); Strojnik
13 v. Oranewood LLC, 2020 U.S. Dist. LEXIS 11743 (C.D. Cal. Jan. 22, 2020); Strojnik v. Resort
14 at Indian Springs, Inc., 2019 U.S. Dist. LEXIS (N.D. Cal. Dec. 19, 2019); Strojnik v. Four Sisters
15 Inns, Inc., 2019 U.S. Dist. LEXIS 212094 (C.D. Cal. Dec. 9, 2019); Strojnik v. Hotel Circle GL
16 Holdings, 2019 U.S. Dist. LEXIS 202591 (E.D. Cal. Nov. 21, 2019); Strojnik v. 1315 Orange
17 LLC, 2019 U.S. Dist. LEXIS 185481 (S.D. Cal. Oct. 25, 2019); Strojnik v. Pasadena Robles
18 Acquisition, LLC, 2019 U.S. Dist. LEXIS 213070 (C.D. Cal. Aug. 14, 2019). These cases involve
19 an alleged lack of details about the accessibility features of the hotel, as well as pictures of online
20 photos of various aspects of the hotels/rooms that allegedly constitute ADA barriers. In each of
21 the above cases, it was concluded that Strojnik had failed to allege standing under the ADA. The
22 Court agrees with the analyses of the above courts.¹

23 A plaintiff bringing suit under Title III of ADA may only obtain injunctive relief, no
24 monetary relief is available. See Wander v. Kaus, 304 F.3d 856, 858 (9th Cir. 2002). An ADA
25 Title III plaintiff may establish Article III constitutional standing by showing: (1) a likely injury
26 in the future related to the plaintiff’s disability (“injury in fact standing”), or (2) he was deterred
27

28 ¹ The Court notes that this body of case law had not developed by the time the F&R was issued, and thus, was not available to the Magistrate Judge.

1 from visiting the noncompliant public accommodation because he encountered barriers related to
2 his disability there (“deterrence standing”). See Chapman v. Pier 1 Imps. (U.S.), Inc., 631 F.3d
3 939, 949 (9th Cir. 2011). A plaintiff’s actual knowledge of a barrier, combined with an intent to
4 visit a public accommodation once it becomes complaint, may be sufficient to demonstrate
5 “deterrence” standing. See Civil Rights Educ. & Enforcement Ctr. V. Hospitality Properties Trust,
6 867 F.3d 1093, 1099 (9th Cir. 2017).

7 With respect to “injury in fact standing,” there are two basic problems with the Complaint.
8 First, the Complaint does not explain how Strojnik’s specific disability was affected by any of the
9 alleged barriers (both architectural and the websites) so as to deny him full and equal access. See
10 San Diego Farah, 2020 U.S. Dist. LEXIS 36536 at *2; IA Lodging Napa, 2020 U.S. Dist. LEXIS
11 32075 at *6-*8; Bakersfield Convention, 2020 U.S. Dist. LEXIS 16339 at *8-*10; Orangewood
12 LLC, 2020 U.S. Dist. LEXIS 11743 at *10-*23; Resort at Indian Springs, Inc., 2019 U.S. Dist.
13 LEXIS at *11-13; Four Sisters Inns, Inc., 2019 U.S. Dist. LEXIS 212094 at *7-*8; Hotel Circle
14 GL Holdings, 2019 U.S. Dist. LEXIS 202591 at *7-*11; 1315 Orange LLC, 2019 U.S. Dist.
15 LEXIS 185481 at *2-*6. Second, there are insufficient factual allegations that demonstrate
16 Strojnik is likely to return and encounter the barriers at SSR in the future. See IA Lodging Napa,
17 2020 U.S. Dist. LEXIS 32075 at *8-*10; Bakersfield Convention, 2020 U.S. Dist. LEXIS 16339
18 at *14-*15; Four Sisters Inns, Inc., 2019 U.S. Dist. LEXIS 212094 at *8-*11; Hotel Circle GL
19 Holdings, 2019 U.S. Dist. LEXIS 202591 at *12-*15; 1315 Orange LLC, 2019 U.S. Dist. LEXIS
20 185481 at *6; Pasadena Robles Acquisition, LLC, 2019 U.S. Dist. LEXIS 213070 at *5-*8.

21 With respect to “deterrence” standing, there are similar problems. First, the Complaint
22 does not adequately explain how the barriers relate to Strojnik’s specific disability. See San Diego
23 Farah, 2020 U.S. Dist. LEXIS 36536 at *2; IA Lodging Napa, 2020 U.S. Dist. LEXIS 32075 at
24 *10-*11; Orangewood LLC, 2020 U.S. Dist. LEXIS 11743 at *24; Resort at Indian Springs, Inc.,
25 2019 U.S. Dist. LEXIS at *15-16; Four Sisters Inns, Inc., 2019 U.S. Dist. LEXIS 212094 at *12;
26 Hotel Circle GL Holdings, 2019 U.S. Dist. LEXIS 202591 at *15. Second, there are insufficient
27 allegations of actual knowledge of the alleged architectural accommodations. Bakersfield
28 Convention, 2020 U.S. Dist. LEXIS 16339 at *16; Four Sisters Inns, Inc., 2019 U.S. Dist. LEXIS

1 212094 at *12; Pasadena Robles Acquisition, LLC, 2019 U.S. Dist. LEXIS 213070 at *10.
2 Strojnik submits pictures, but it is not clear what the source of the pictures are, whether the
3 pictures concern rooms that are intended to be ADA compliant, or whether Strojnik confirmed the
4 existence of the barrier with SRS. Thus, actual knowledge has not been adequately demonstrated.
5 Third, there are insufficient factual allegations that justify an inference that Strojnik would attempt
6 to book a room and stay with SSR if the barriers relating to his disability are actually remedied or
7 otherwise brought in to compliance with the ADA. See IA Lodging Napa, 2020 U.S. Dist. LEXIS
8 32075 at *10-*11; Bakersfield Convention, 2020 U.S. Dist. LEXIS 16339 at *16; Orangewood
9 LLC, 2020 U.S. Dist. LEXIS 11743 at *24-*28; Resort at Indian Springs, Inc., 2019 U.S. Dist.
10 LEXIS at *15-16; Four Sisters Inns, Inc., 2019 U.S. Dist. LEXIS 212094 at *12-*13; Hotel Circle
11 GL Holdings, 2019 U.S. Dist. LEXIS 202591 at *15-*16; Pasadena Robles Acquisition, LLC,
12 2019 U.S. Dist. LEXIS 213070 at *8-*11.

13 If there is not Article III constitutional standing, the Court lacks subject matter jurisdiction.
14 See Naruto v. Slater, 888 F.3d 418, 425 n.7 (9th Cir. 2018); Maya v. Centex Corp., 658 F.3d 1060,
15 1067 (9th Cir. 2011). Without subject matter jurisdiction, the Court cannot issue an order granting
16 default judgment. See Hmong v. Lao People's Democratic Republic, 748 F. App'x 136, 137 (9th
17 Cir. 2019); Hofelich v. Lacy, 616 F. App'x 310, 311 (9th Cir. 2015).

18 Further, the Complaint seeks statutory damages, treble damages, punitive damages,
19 compensatory damages, and injunctive relief. Because only injunctive relief is available under the
20 ADA, see Wander, 304 F.3d at 858, all monetary claims arise only under state law. As part of the
21 motion for default judgment, Strojnik requested \$32,000 in statutory damages and \$15,000 in
22 punitive damages. See Doc. No. 11 at p.10. Also, Plaintiff request injunctions through California
23 state law that would actually close SSR until SSR became sufficiently accessible. No such relief
24 is requested under the ADA. Under 28 U.S.C. § 1367(c)(2), district courts may decline to exercise
25 supplemental jurisdiction over a state law claim where the state law claim “substantially
26 predominates over the [federal claim].” 28 U.S.C. § 1367(c)(2). Given the amount and nature of
27 the total relief requested, the Court concludes that Strojnik’s three California state law claims
28 substantially predominate over the single ADA claim. See Armstrong v. Nan, 679 F. App'x 582

1 (9th Cir. 2017); Schutz v. Cuddeback, 262 F.Supp.3d 1025, 1030 (S.D. Cal. 2017); Organization
2 for the Advancement of Minorities v. Brick Oven Rest., 406 F.Supp.2d 1120, 1131 (S.D. Cal.
3 2005); Molski v. Hitching Post 1 Restaurant, Inc., 2005 U.S. Dist. LEXIS 39959, *22-*23 (C.D.
4 Cal. May 25, 2005); see also Whitaker v. Bold Will Hold, LLC, 2019 U.S. Dist. LEXIS 226931,
5 *12-*13 (C.D. Cal. Nov. 18, 2019). It is appropriate to decline supplemental jurisdiction over
6 Strojnik’s state law claims.

7 Finally, apart from the lack of subject matter jurisdiction, there are pleading problems. A
8 complaint may not simply recite the elements of a cause of action, rather a complaint must contain
9 sufficient allegations of underlying facts to give fair notice and to enable the opposing party to
10 defend itself effectively. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Levitt v. Yelp! Inc., 765
11 F.3d 1123, 1135 (9th Cir. 2014). The factual allegations that are taken as true must plausibly
12 suggest entitlement to relief, such that it is not unfair to require the opposing party to be subjected
13 to the expense of discovery and continued litigation. Iqbal, 556 U.S. at 678-79; Levitt, 765 F.3d at
14 1135.

15 Here, the pictures submitted by Strojnik do not plausibly demonstrate discriminatory
16 barriers. The vast majority of pictures are indecipherable, there is no explanation of how or why
17 something is a barrier under the ADAAG, and, as discussed above, there are insufficient factual
18 allegations of how any alleged barrier affects Strojnik’s disability. Cf. Oliver v. Ralphs Grocery
19 Co., 654 F.3d 903, 908 (9th Cir. 2011) (“Where the claim is one of discrimination under the ADA
20 due to the presence of architectural barriers at a place of public accommodation, [the grounds on
21 which the claim rests\ are the allegedly non-compliant architectural features of the facility. Thus .
22 . . each feature must be alleged in the complaint.”). Further, simply alleging without elaboration
23 that some feature denies full and equal access is an insufficient legal conclusion. There must be
24 sufficient factual allegations or explanations as to how the barrier operates to deny the plaintiff full
25 and equal access. Therefore, the pictures and their captions are too conclusory to constitute well-
26 pleaded facts in support of a Title III ADA claim. See id.; see also Molski v. M.J. Cable, Inc., 481
27 F.3d 724, 730 (9th Cir. 2007) (setting the three basic elements of an ADA Title III claim). More
28 factual allegations are necessary for every barrier that affects Strojnik’s disability.

