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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,

Plaintiff,

v.

ELK HORN GAS INC.,

Defendant.

No. 2:14-cv-00798-MCE-DB

MEMORANDUM AND ORDER

This lawsuit was brought by Plaintiff Scott Johnson (“Plaintiff”) under the provisions of both the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”), and California’s Unruh Civil Rights and Disabled Persons Acts (Cal. Civ. Code §§ 51-53, 54-54.8)¹ on grounds that Defendant Elk Horn Gas, Inc. (“Elk Horn”) failed to provide a compliant accessible parking space and transaction counter at its Elkhorn Shell service station located at 4261 Elkhorn Blvd in North Highlands, California.

Presently before the Court is Plaintiff’s Motion for Summary Judgment which seeks both an order that the disability access deficiencies be rectified, as well as money damages in the amount of \$8,000.00. Defendant Elk Horn has failed to oppose the Motion. As set forth below, Plaintiff’s Motion is GRANTED.²

¹ Plaintiff also alleges a state common law claim for negligence in his Fourth Cause of Action.

² Having determined that oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs in accordance with E.D. Local Rule 230(g).

1 claim or defense—on which summary judgment is sought.”); see also Allstate Ins. Co. v.
2 Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995). The standard that applies to a
3 motion for partial summary judgment is the same as that which applies to a motion for
4 summary judgment. See Fed. R. Civ. P. 56(a); State of Cal. ex rel. Cal. Dep’t of Toxic
5 Substances Control v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998) (applying summary
6 judgment standard to motion for summary adjudication).

7 In a summary judgment motion, the moving party always bears the initial
8 responsibility of informing the court of the basis for the motion and identifying the
9 portions in the record “which it believes demonstrate the absence of a genuine issue of
10 material fact.” Celotex, 477 U.S. at 323. If the moving party meets its initial
11 responsibility, the burden then shifts to the opposing party to establish that a genuine
12 issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith
13 Radio Corp., 475 U.S. 574, 586-87 (1986); First Nat’l Bank v. Cities Serv. Co., 391 U.S.
14 253, 288-89 (1968).

15 16 ANALYSIS

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18 Plaintiff’s moving papers meet his initial burden in showing entitlement to
19 summary judgment against Defendant Elk Horn on grounds that its service station
20 contained the access barriers delineated above. That showing shifts the burden, under
21 the Matsushita analysis cited above, to Defendant Elk Horn to show that genuine
22 material issues of fact indeed exist. Defendant Elk Horn has failed to meet that burden,
23 and in the absence of any showing whatsoever in that regard, Plaintiff is entitled to
24 summary judgment as requested.

25 Plaintiff’s Motion was initially scheduled to be heard on May 4, 2017. Defendant
26 Elk Horn, although represented by counsel, failed to file a timely opposition to
27 Defendant’s Motion in advance of that hearing date as required by E.D. Local
28 Rules 230(c) and 260(b). By Minute Order dated April 26, 2017, the Court notified

1 Defendant Elk Horn of that deficiency and vacated the May 4, 2017 hearing date. ECF
2 No. 46. The Court also issued an Order to Show Cause (“OSC”) as to why Plaintiff’s
3 Motion should not be granted, and judgment entered in Plaintiff’s favor, given that failure.
4 Defendant Elk Horn was ordered to respond to the OSC within ten days following the
5 date the Minute Order was electronically filed and was advised that failure to do so
6 would result in judgment being entered in Plaintiff’s favor without further notice. Id.

7 Plaintiff filed no response whatsoever to the Court’s Order. Given that failure, and
8 because Defendant Elk Horn has failed to raise any triable issue of fact to counter
9 Plaintiff’s prima facie showing that he is entitled to partial summary judgment, Plaintiff’s
10 Motion will be granted.³

11
12 **CONCLUSION**

13
14 For the reasons set forth above, Plaintiff’s Motion for Summary Judgment (ECF
15 No. 39) is GRANTED.

16 IT IS SO ORDERED.

17 Dated: October 5, 2017

18 
19 MORRISON C. ENGLAND, JR.
20 UNITED STATES DISTRICT JUDGE

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³ Additionally, given Defendant Elk Horn’s failure to file any opposition, or respond to the Court’s
28 OSC order, dismissal under 41(b) for failure to comply with the both Rule 56 and the Court’s Local Rules
in this regard, constitutes yet another ground for dismissal.