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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,
Plaintiff,
v.
ANDREW BAUER,
Defendant.

No. 2:14-cv-0871 KJM CKD

FINDINGS AND RECOMMENDATIONS

Presently before the court is plaintiff's motion for default judgment. This matter was submitted without oral argument. The undersigned has fully considered the briefs and record in this case and, for the reasons stated below, will recommend that plaintiff's motion for default judgment be granted.

Plaintiff is a permanently disabled wheelchair user. Defendant operates a car wash located in Citrus Heights, California. The complaint alleges that plaintiff visited the subject establishment in November, 2013 and encountered architectural barriers which denied him full and equal access.

The record reflects that defendant Andrew Bauer was properly served with process by personal service on April 11, 2014. Default was entered on June 12, 2014. Plaintiff thereafter filed a motion for default judgment with a proof of service reflecting service of the motion on defendant. Plaintiff seeks an entry of default judgment in the amount of \$4,000 pursuant to

1 California Civil Code section 52(a)¹ and attorney’s fees and costs in the amount of \$2,290.00 as
2 well as injunctive relief.²

3 Entry of default effects an admission of all well-pleaded allegations of the complaint by
4 the defaulted party. Geddes v. United Financial Group, 559 F.2d 557 (9th Cir. 1977). The court
5 finds the well pleaded allegations of the complaint state a claim for which relief can be granted.
6 Anderson v. Air West, 542 F.2d 1090, 1093 (9th Cir. 1976). The memorandum of points and
7 authorities and affidavits filed in support of the motion for entry of default judgment also support
8 the finding that plaintiff is entitled to the relief in the form of statutory damages, attorney’s fees
9 and injunctive relief requested in the prayer for default judgment, which does not differ in kind
10 from the relief requested in the complaint. Henry v. Sneiders, 490 F.2d 315, 317 (9th Cir.), cert.
11 denied, 419 U.S. 832 (1974). Plaintiff is entitled to statutory damages for each “offense,” i.e.,
12 each obstructed visit. See Lentini v. Cal. Ctr. for the Arts, 370 F.3d 837, 847 (9th Cir. 2004); see
13 also Feezor v. DeTaco, Inc., 431 F.Supp.2d 1088 (S.D. Cal. 2005). The amount of attorney’s fees
14 requested by plaintiff is reasonable. With respect to plaintiff’s claim for injunctive relief, the
15 court finds that defendant has failed to provide an accessible parking space, accessible door
16 hardware, accessible drinking fountain, accessible counter and an accessible restroom mirror, as
17 required by 28 Code of Federal Regulations, Part 36, Appendix D, (“ADAAG”). There are no
18 policy considerations which preclude the entry of default judgment of the type requested. See
19 Eitel v. McCool, 782 F.2d 1470, 1471-1472 (9th Cir. 1986) (factors that may be considered by the
20 court are possibility of prejudice to the plaintiff, merits of plaintiff’s substantive claim,
21 sufficiency of the complaint, sum of money at stake in the action; possibility of a dispute
22 concerning material facts; whether the default was due to excusable neglect, and strong policy
23 underlying the Federal Rules of Civil Procedure favoring decisions on the merits).

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26 ¹ The Unruh Civil Rights Act provides, in relevant part, for a minimum statutory damage amount
27 of \$4,000 per violation. Cal. Civ. Code § 52(a).

28 ² Plaintiff seeks injunctive relief requiring defendants to remove identified architectural barriers
only to the extent such alterations are readily achievable.

1 Accordingly, IT IS HEREBY RECOMMENDED that:

2 1. Plaintiff's motion for default judgment (ECF No. 7) against defendant be granted;

3 2. Plaintiff be awarded statutory damages in the amount of \$4,000.00 and attorney's fees
4 and costs in the amount of \$2,290.00, for the total sum of \$6,290.00.

5 3. Plaintiff be granted an injunction requiring defendant to provide readily achievable
6 property alterations to the property known as "Bauer's Car Wash" a facility located at 5927 San
7 Juan Ave., Citrus Heights, California that consist of the following, all in accordance with the
8 Americans With Disabilities Act of 1990 (ADA) and the Americans With Disabilities Act
9 Accessibility Guidelines (ADAAG) contained in 28 Code of Federal Regulations Part 36,
10 Appendix D: an accessible reserved handicapped parking space (ADAAG 4.1.2), accessible door
11 hardware (ADAAG 4.13.9), accessible drinking fountain (ADAAG 4.15), accessible counter
12 (ADAAG 7.2), and accessible restroom mirror (ADAAG 4.19.6).

13 4. The Clerk of Court be directed to close this case.

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

21 Dated: July 15, 2014

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23 _____
24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE

26 4 johnson-bauer.def

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