

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,
Plaintiff,
v.
MATEO DEVELOPMENT, LLC, et al.,
Defendants.

No. 2:14-cv-1942-KJM-KJN

ORDER AND FINDINGS AND
RECOMMENDATIONS

INTRODUCTION

Presently pending before the court is plaintiff Scott Johnson’s motion for default judgment against defendants Mateo Development, LLC (“Mateo”) and PKT Market, Inc. (“PKT”), who are the only named defendants in this action. (ECF No. 11.) After defendants failed to file an opposition to the motion in accordance with Local Rule 230(c), the motion was submitted on the record and written briefing pursuant to Local Rule 230(g). (ECF No. 14.)

For the reasons discussed below, the court now recommends that plaintiff’s motion for default judgment be GRANTED IN PART on the terms outlined below.

BACKGROUND

Plaintiff initiated this action on August 21, 2014, alleging violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. (“ADA”); California’s Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq.; the California Disabled Persons Act, Cal. Civ. Code §§

1 54 et seq.; as well as a negligence claim. (See generally Complaint, ECF No. 1 [“Compl.”].)
2 Plaintiff, a level C-5 quadriplegic who cannot walk, has significant manual dexterity impairments,
3 and uses a wheelchair and a specially-equipped van, alleged that defendants own, operate, and/or
4 lease a business establishment and place of public accommodation known as Skyway Market,
5 which is located at 3141 N Wilson Way in Stockton, California. (Compl. ¶¶ 1-3, 7.)
6 According to plaintiff, he visited, and made purchases at, the Skyway Market on three different
7 occasions in 2014, and encountered the following architectural barriers to access at the
8 establishment in violation of the ADA and the ADA Accessibility Guidelines: no accessible
9 handicap parking space (handicap parking spaces/signage and access aisle signage were allegedly
10 faded to oblivion) and no accessible transaction counter (transaction counter was allegedly 50
11 inches in height with no lowered, 36 inch portion of the counter for use by persons in
12 wheelchairs). (Id. ¶¶ 8-12, 15-17.) Plaintiff alleged that he frequently visits the Stockton area,
13 and that he had been deterred from patronizing the Skyway Market on several other occasions in
14 2014 because of his knowledge of the above-mentioned barriers. (Id. ¶ 11.) Plaintiff further
15 alleged that defendants had the means and ability to remove the barriers. (Id. ¶ 13.) Plaintiff’s
16 complaint sought *inter alia* injunctive relief; statutory damages; and attorneys’ fees, litigation
17 expenses, and costs of suit. (Id. at 7-8.)

18 Proofs of service filed in the record reflect that plaintiff, through a process server,
19 effectuated service of process on PKT by serving PKT’s agent for service of process on August
20 22, 2014, and on Mateo by serving Mateo’s agent for service of process on August 24, 2014.
21 (ECF Nos. 4, 5.) See Fed. R. Civ. P. 4(h); Cal. Civ. Proc. Code § 416.10.

22 On September 30, 2014, plaintiff requested that the Clerk of Court enter default against
23 defendants Mateo and PKT, and on October 1, 2014, the Clerk of Court entered their default.
24 (ECF No. 6, 7, 8.) The instant motion for default judgment followed. (ECF No. 11.)

25 Plaintiff’s motion for default judgment seeks injunctive relief for removal of unlawful
26 architectural barriers pursuant to the ADA; statutory damages pursuant to California’s Unruh
27 Civil Rights Act; and attorneys’ fees and costs pursuant to the ADA and California’s Unruh Civil

28 ///

1 Rights Act.¹

2 LEGAL STANDARDS

3 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a party
4 against whom a judgment for affirmative relief is sought who fails to plead or otherwise defend
5 against the action. See Fed. R. Civ. P. 55(a). However, “[a] defendant’s default does not
6 automatically entitle the plaintiff to a court-ordered judgment.” PepsiCo, Inc. v. Cal. Sec. Cans,
7 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002) (citing Draper v. Coombs, 792 F.2d 915, 924-25
8 (9th Cir. 1986)). Instead, the decision to grant or deny an application for default judgment lies
9 within the district court’s sound discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir.
10 1980). In making this determination, the court considers the following factors:

- 11 (1) the possibility of prejudice to the plaintiff, (2) the merits of
12 plaintiff’s substantive claim, (3) the sufficiency of the complaint,
13 (4) the sum of money at stake in the action[,] (5) the possibility of a
14 dispute concerning material facts[,] (6) whether the default was due
to excusable neglect, and (7) the strong policy underlying the
Federal Rules of Civil Procedure favoring decisions on the merits.

15 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Default judgments are ordinarily
16 disfavored. Id. at 1472.

17 As a general rule, once default is entered, well-pleaded factual allegations in the operative
18 complaint are taken as true, except for those allegations relating to damages. TeleVideo Sys., Inc.
19 v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing Geddes v. United Fin.
20 Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); accord Fair Housing of Marin v. Combs,
21 285 F.3d 899, 906 (9th Cir. 2002). In addition, although well-pleaded allegations in the
22 complaint are admitted by a defendant’s failure to respond, “necessary facts not contained in the
23 pleadings, and claims which are legally insufficient, are not established by default.” Cripps v.
24 Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d
25 1386, 1388 (9th Cir. 1978)); accord DIRECTV, Inc. v. Hoa Huynh, 503 F.3d 847, 854 (9th Cir.

27 ¹ Plaintiff’s motion does not seek any relief based on his claim for violation of the California
28 Disabled Persons Act or his negligence claim. As such, the court does not evaluate those claims
in resolving plaintiff’s motion.

1 2007) (stating that a defendant does not admit facts that are not well-pled or conclusions of law);
2 Abney v. Alameida, 334 F. Supp. 2d 1221, 1235 (S.D. Cal. 2004) (“[A] default judgment may not
3 be entered on a legally insufficient claim”). A party’s default does not establish the amount of
4 damages. Geddes, 559 F.2d at 560.

5 DISCUSSION

6 Appropriateness of the Entry of Default Judgment Under the Eitel Factors

7 1. *Factor One: Possibility of Prejudice to Plaintiff*

8 The first Eitel factor considers whether the plaintiff would suffer prejudice if
9 default judgment is not entered, and such potential prejudice to the plaintiff militates in favor of
10 granting a default judgment. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Here, plaintiff would
11 potentially face prejudice if the court did not enter a default judgment. Absent entry of a default
12 judgment, plaintiff would be without another recourse against defendants. Accordingly, the first
13 Eitel factor favors the entry of a default judgment.

14 2. *Factors Two and Three: The Merits of Plaintiff’s Substantive Claims and* 15 *the Sufficiency of the Complaint*

16 The court considers the merits of plaintiff’s substantive claims and the sufficiency of the
17 complaint together below because of the relatedness of the two inquiries. The court must
18 consider whether the allegations in the complaint are sufficient to state a claim that supports the
19 relief sought. See Danning, 572 F.2d at 1388; PepsiCo, Inc., 238 F. Supp. 2d at 1175.

20 a. ADA

21 Title III of the ADA provides that “[n]o individual shall be discriminated against on the
22 basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges,
23 advantages, or accommodations of any place of public accommodation by any person who owns,
24 leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).
25 Discrimination includes “a failure to remove architectural barriers . . . in existing facilities . . .
26 where such removal is readily achievable.” Id. § 12182(b)(2)(A)(iv); see also Chapman v. Pier 1
27 Imports (U.S.) Inc., 631 F.3d 939, 945 (9th Cir. 2011) (en banc). The ADA defines the term
28 “readily achievable” as “easily accomplishable and able to be carried out without much difficulty

1 or expense.” 42 U.S.C. § 12181(9).

2 “To prevail on a Title III discrimination claim, the plaintiff must show that (1) [he or she]
3 is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases,
4 or operates a place of public accommodation; and (3) the plaintiff was denied public
5 accommodations by the defendant because of [his or her] disability.” Molski v. M.J. Cable, Inc.,
6 481 F.3d 724, 730 (9th Cir. 2007). Furthermore, “[t]o succeed on a ADA claim of discrimination
7 on account of one’s disability due to an architectural barrier, the plaintiff must also prove that:
8 (1) the existing facility at the defendant’s place of business presents an architectural barrier
9 prohibited under the ADA, and (2) the removal of the barrier is readily achievable.” Parr v. L &
10 L Drive-Inn Rest., 96 F. Supp. 2d 1065, 1085 (D. Haw. 2000); accord Hubbard v. 7-Eleven, Inc.,
11 433 F. Supp. 2d 1134, 1138 (S.D. Cal. 2006).

12 Here, plaintiff’s complaint alleges that: (1) he is disabled (see Compl. ¶ 1); (2) defendants
13 Mateo and PKT own, lease, and/or operate the Skyway Market, which is a place of public
14 accommodation (id. ¶¶ 2-3, 7); (3) plaintiff was denied full and equal access to Skyway Market’s
15 facilities, privileges, and accommodations because of plaintiff’s disability (id. ¶¶ 8, 11-12); (4)
16 Skyway Market contains specified architectural barriers – lack of an accessible handicap parking
17 space and lack of an accessible transaction counter – in violation of the ADA (id. ¶¶ 9-10, 14-18);
18 and (5) defendants had the means and ability to remove such barriers (id. ¶ 13). Because
19 plaintiff’s allegations are taken as true following the entry of default, the court concludes that
20 plaintiff has met his burden to state a prima facie Title III discrimination claim.

21 b. Unruh Civil Rights Act

22 The Unruh Civil Rights Act provides: “All persons within the jurisdiction of this state are
23 free and equal, and no matter what their sex, race, color, religion, ancestry, national origin,
24 disability, medical condition, genetic information, marital status, or sexual orientation are entitled
25 to the full and equal accommodations, advantages, facilities, privileges, or services in all business
26 establishments of every kind whatsoever.” Cal. Civ. Code § 51(b). As expressly provided by
27 statute, a violation of the ADA also constitutes a violation of the Unruh Civil Rights Act. Cal.
28 Civ. Code § 51(f); see also Munson v. Del Taco, Inc., 46 Cal. 4th 661, 664-65 (2009). Here,

1 because plaintiff's complaint properly alleges a prima facie claim under the ADA, plaintiff has
2 also properly alleged facts supporting a claim under the Unruh Civil Rights Act.

3 Accordingly, the second and third Eitel factors favor the entry of a default judgment.

4 3. *Factor Four: The Sum of Money at Stake in the Action*

5 Under the fourth factor cited in Eitel, "the court must consider the amount of money at
6 stake in relation to the seriousness of Defendant's conduct." PepsiCo, Inc., 238 F. Supp. 2d at
7 1176-77; see also Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 500 (C.D.
8 Cal. 2003). In this case, plaintiff seeks injunctive relief; statutory damages under the Unruh Civil
9 Rights Act corresponding to two (2) obstructed visits to the Skyway Market (\$4,000.00 minimum
10 statutory damages per visit, for a total amount of \$8,000.00); and attorneys' fees and costs in the
11 amount of \$3,925.00. Although the court more closely scrutinizes the requested statutory
12 damages, attorneys' fees, and costs below, the court does not find the overall sum of money at
13 stake to be so large or excessive as to militate against the entry of default judgment, particularly
14 when reduced for the reasons discussed below. Under these circumstances, the court concludes
15 that this factor favors the entry of a default judgment.

16 4. *Factor Five: The Possibility of a Dispute Concerning Material Facts*

17 The facts of this case are relatively straightforward, and the court may assume the truth of
18 well-pleaded facts in the complaint (except as to damages) following the clerk's entry of default.
19 Thus, there is no likelihood that any genuine issue of material fact exists. See, e.g., Elektra
20 Entm't Group Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D. Cal. 2005) ("Because all allegations in
21 a well-pleaded complaint are taken as true after the court clerk enters default judgment, there is
22 no likelihood that any genuine issue of material fact exists"); accord Philip Morris USA, Inc., 219
23 F.R.D. at 500; PepsiCo, Inc., 238 F. Supp. 2d at 1177. As such, the court concludes that the fifth
24 Eitel factor favors a default judgment.

25 5. *Factor Six: Whether the Default Was Due to Excusable Neglect*

26 In this case, there is no indication in the record that defendants' default was due to
27 excusable neglect. Despite having been properly served with plaintiff's complaint, the requests
28 for entry of default, and the instant motion for default judgment, defendants failed to appear in the

1 action. (ECF Nos. 4, 5, 6-2, 7-2, 11-14.) Thus, the record suggests that defendants have chosen
2 not to defend themselves in this action, and that the default did not result from excusable neglect.
3 Accordingly, this Eitel factor favors the entry of a default judgment.

4 6. *Factor Seven: The Strong Policy Underlying the Federal Rules of Civil*
5 *Procedure Favoring Decisions on the Merits*

6 “Cases should be decided upon their merits whenever reasonably possible.” Eitel, 782
7 F.2d at 1472. However, district courts have concluded with regularity that this policy, standing
8 alone, is not dispositive, especially where a defendant fails to appear or defend itself in an action.
9 PepsiCo, Inc., 238 F. Supp. 2d at 1177; see also Craiglist, Inc. v. Naturemarket, Inc., 694 F.
10 Supp. 2d 1039, 1061 (N.D. Cal. 2010). Accordingly, although the court is cognizant of the policy
11 in favor of decisions on the merits—and consistent with existing policy would prefer that this
12 case be resolved on the merits—that policy does not, by itself, preclude the entry of default
13 judgment.

14 In sum, upon consideration of all the Eitel factors, the court concludes that plaintiff is
15 entitled to a default judgment against defendants Mateo and PKT, and recommends that such a
16 default judgment be entered. All that remains is a determination of the specific relief to which
17 plaintiff is entitled.

18 Terms of the Judgment to Be Entered

19 After determining that a party is entitled to entry of default judgment, the court must
20 determine the terms of the judgment to be entered.

21 Because plaintiff satisfactorily alleged his ADA claim, the court recommends that plaintiff
22 be granted injunctive relief, as described below, to remedy the architectural barriers at issue –
23 lack of an accessible handicap parking space and lack of an accessible transaction counter.

24 Plaintiff also requests statutory damages in the amount of \$8,000.00, which corresponds to
25 two (2) obstructed visits to the Skyway Market (\$4,000.00 minimum statutory damages per visit).
26 Although Cal. Civ. Code § 52(a) may permit a plaintiff to obtain the minimum statutory damages
27 for each obstructed visit to a facility, a plaintiff cannot simply visit a facility more often to
28 increase the amount of potential statutory damages. In this case, plaintiff made no showing as to

1 why he continued to return to the Skyway Market after encountering the above-mentioned
2 architectural barriers during his first visit. For example, plaintiff has not shown that he lives or
3 works in the proximity of Skyway Market, making it particularly convenient for plaintiff to
4 patronize that facility as opposed to the scores of other convenience stores in Stockton; nor has
5 plaintiff shown that Skyway Market offers particularly unique goods not offered by other
6 convenience stores in Stockton. Plaintiff also did not allege that he returned to the Skyway
7 Market after having received good faith assurances from Skyway Market representatives that the
8 architectural barriers would be removed. In light of these deficiencies, as well as the judicially
9 noticed fact that plaintiff has filed numerous disability access lawsuits in this district against
10 businesses located in different parts of the Northern California region, therefore potentially
11 indicating that multiple visits may have been merely to increase alleged damages rather than out
12 of necessity, the court recommends that plaintiff only be awarded minimum statutory damages
13 corresponding to one (1) visit to the Skyway Market, i.e., \$4,000.00.

14 Finally, plaintiff requests attorneys' fees and costs. The statutes at issue specifically
15 contemplate the award of attorneys' fees and costs. See 42 U.S.C. § 12205; Cal. Civ. Code §
16 52(a). Thus, the only issue is whether the requested amount of attorneys' fees and costs
17 (\$3,925.00) is reasonable.

18 Plaintiff requests \$440.00 in filing fees and service costs, which are reasonable and
19 should be awarded. (ECF No. 11-4, ¶ 5.)

20 Plaintiff further indicates that plaintiff's counsel, Mark Potter, a partner at the Center for
21 Disability Access, who has been in practice for about 20 years with a practice dedicated
22 exclusively to disability-related issues, spent 8.2 hours on this case, billing at an hourly rate of
23 \$425.00, for a lodestar amount of \$3,485.00 in attorneys' fees. (ECF No. 11-4, ¶¶ 5-6.)
24 Although the number of hours spent on the case appears reasonable, the court finds Mr. Potter's
25 hourly rate of \$425.00 to be excessive in light of prevailing market rates in the Sacramento
26 Division of the Eastern District of California. Notably, another judge in this district recently
27 determined that an hourly rate of \$300.00 was appropriate for plaintiff's counsel, as a partner with
28 significant experience and expertise, in a routine disability access case. See Johnson v. Wayside

1 Property, Inc. et al., 2:13-cv-1610-WBS-AC, ECF No. 32. The court finds Wayside Property to
2 be persuasive, because it is a recent, comparable case from this district and involved a careful
3 consideration of prevailing market rates for routine disability access cases in the Sacramento
4 Division of the Eastern District of California. By contrast, plaintiff's reliance on fee awards in
5 the Central and Southern Districts of California, as well as certain California state courts, is
6 misplaced, because those fee awards are not instructive with respect to prevailing market rates in
7 this federal district. Instead, the court here likewise concludes that an hourly rate of \$300.00 is
8 appropriate, resulting in a fee award of \$2,460.00.

9 CONCLUSION

10 For the foregoing reasons, IT IS HEREBY RECOMMENDED that:

11 1. Plaintiff's motion for default judgment (ECF No. 11) be GRANTED IN PART.

12 2. Judgment be entered in plaintiff's favor and against the following defendants:

13 Mateo Development, LLC and PKT Market, Inc.

14 3. Plaintiff be awarded statutory damages in the amount of \$4,000.00.

15 4. Plaintiff be awarded attorneys' fees and costs in the amount of \$2,900.00.

16 5. Plaintiff be granted an injunction requiring defendants to provide readily
17 achievable property alterations in the form of accessible handicap parking and an accessible
18 transaction counter at the Skyway Market, located at 3141 N Wilson Way in Stockton, California,
19 in compliance with the ADA and the ADA Accessibility Guidelines.

20 6. The Clerk of Court be directed to vacate all dates and close this case.

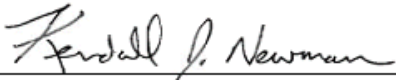
21 IT IS ALSO HEREBY ORDERED that plaintiff shall forthwith serve copies of this order
22 and findings and recommendations on defendants by U.S. mail at their last-known addresses.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
25 days after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned
27 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
28 shall be served on all parties and filed with the court within fourteen (14) days after service of the

1 objections. The parties are advised that failure to file objections within the specified time may
2 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
3 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

4 IT IS SO ORDERED AND RECOMMENDED.

5 Dated: January 8, 2015

6 
7 _____
8 KENDALL J. NEWMAN
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28