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UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 SCOTT JOHNSON,

No. 2:14-cv-02078-WBS-AC

12 Plaintiff,

13 v.

ORDER AND FINDINGS &
RECOMMENDATIONS

14 AMRAT K. PATEL, et al.,

15 Defendants.

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18 Pending before the court is plaintiff's December 24, 2014, motion for default judgment
19 against defendants Amrat K. Patel and Damyanti A. Patel, located at America's Best Value Inn,
20 3951 Budweiser Ct., Stockton, California 95215-2301. ECF No. 13 at 2. The court has
21 determined that the matter shall be submitted upon the record and briefs on file and accordingly,
22 the date for hearing of this matter shall be vacated. E.D. Cal. R. 230(g). Upon review of the
23 docket, the motion for default judgment and all attached exhibits, THE COURT FINDS AS
24 FOLLOWS:

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PROCEDURAL BACKGROUND

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Plaintiff initiated this action on September 5, 2014, alleging violations of the Americans
with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq.*, the California Unruh Civil Rights
Act, the California Disabled Persons Act, Cal. Civ. § 54–54.8, and negligence. ECF No. 1 at 1,

1 5–9. Certificates of service filed September 25, 2014, demonstrate that copies of the summons
2 and complaint were served on defendants personally on September 18, 2014, at America’s Best
3 Value Inn, 3951 Budweiser Ct., Stockton, California 95215-2301. ECF Nos. 4 & 5. On October
4 30, 2014, at plaintiff’s request, the Clerk entered default as to both defendants. ECF No. 8. On
5 December 24, 2014, plaintiff filed the instant motion for default judgment, and served a copy of
6 the motion by mail on the defendant at America’s Best Value Inn, 3951 Budweiser Ct., Stockton,
7 California 95215-2301. ECF No. 13.

8 DISCUSSION

9 It is within the sound discretion of the district court to grant or deny an application for
10 default judgment. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). In making this
11 determination, the court considers the following factors:

12 (1) the possibility of prejudice to the plaintiff, (2) the merits of
13 plaintiff’s substantive claim, (3) the sufficiency of the complaint,
14 (4) the sum of money at stake in the action, (5) the possibility of a
15 dispute concerning the 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.

16 Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986). “In applying this discretionary
17 standard, default judgments are more often granted than denied.” Philip Morris USA, Inc. v.
18 Castworld Products, Inc., 219 F.R.D. 494, 498 (C.D. Cal. 2003) (quoting PepsiCo, Inc. v.
19 Triunfo-Mex, Inc., 189 F.R.D. 431, 432 (C.D. Cal. 1999)).

20 As a general rule, once default is entered, the factual allegations of the complaint are taken
21 as true, except for those allegations relating to damages. Tele Video Systems, Inc. v. Heidenthal,
22 826 F.2d 915, 917–18 (9th Cir. 1987) (citations omitted). However, although well-pleaded
23 allegations in the complaint are admitted by defendant’s failure to respond, “necessary facts not
24 contained in the pleadings, and claims which are legally insufficient, are not established by
25 default.” Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992).

26 A. The Americans with Disabilities Act

27 Title III of the ADA provides that “[n]o individual shall be discriminated against on the
28 basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges,

1 advantages, or accommodations of any place of public accommodation by any person who owns,
2 leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).
3 Discrimination includes “a failure to remove architectural barriers . . . in existing facilities . . .
4 where such removal is readily achievable.” *Id.* § 12182(b)(2)(A)(iv). Under the ADA, the term
5 readily achievable means “easily accomplishable and able to be carried out without much
6 difficulty or expense.” 42 U.S.C. § 12181(9).

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

16 Here, plaintiff alleges (1) that he is disabled, ECF No. 1 at 1; (2) that defendants’
17 business, America’s Best Value Inn, is a place of public accommodation, *id.* at 2–3; (3) that
18 plaintiff was denied access to defendants’ business because of plaintiff’s disability, *id.* at 3–4; and
19 (4) that defendant’s business has a number of architectural barriers (lack of properly configured
20 disabled parking space(s), and accessible ramps, entrances, counters, and rooms), *id.* at 6–8.¹

21 ¹ Plaintiff also asserts violations of the ADA based on defendants’ failure to adhere to the
22 California Building Code. ECF No. 1 at 6. In support of his proposition that failure to adhere to
23 the California Building Code can constitute a violation of the ADA, plaintiff points to the ADA
24 Accessibility Guidelines (“ADAAG”), 36 C.F.R., Part 1191, § 502.3.3, available at
25 <http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards-single-file#about>. *Id.* Section 502.3.3, which relates to the marking of
26 disabled parking spaces, states that “[t]he method and color of marking are not specified by these
27 requirements but may be addressed by State or local laws or regulations.” This does not, in and
28 of itself, mean that violations of State and local building regulations related to disability also
constitute violations of the ADA. *See Eiden v. Home Depot USA, Inc.*, No. CIVS04-977
LKK/CMK, 2006 WL 1490418, at *8 (E.D. Cal. May 26, 2006) (holding that the ADAAG
regulations do not create a cause of action based on failure to comply with the California Building
(continued...)

1 Plaintiff argues that whether the removal of these barriers is readily achievable is an affirmative
2 defense that is waived if not raised. ECF No. 13 at 6–7 (citing Wilson v. Haria and Gorgi Corp.,
3 479 F. Supp. 2d 1127, 1133 & n.7 (E.D. Cal. 2007)). The court finds that it does not need to
4 address the issue of whether the “ready achievability” of the barriers constitutes an affirmative
5 defense. Regardless, 28 C.F.R. § 36.304(b) specifically lists “[i]ninstalling ramps[,] . . .
6 [r]epositioning shelves[,] . . . [r]earranging . . . display racks, and other furniture[,] . . . [and]
7 [c]reating designated accessible parking spaces[.]” as examples of typical “steps to remove
8 barriers.” This means that the barriers cited by plaintiff are per se readily achievable and plaintiff
9 has therefore met his burden.

10 Because plaintiff’s allegations are taken as true on default, the court finds that plaintiff has
11 made out a prima facie Title III discrimination claim. Additionally, the court finds that the
12 majority of the Eitel factors weigh in favor of granting default judgment to plaintiff on that claim.
13 Therefore, the court recommends that plaintiff be granted default judgment against defendant on
14 his ADA claim and award plaintiff an injunction requiring defendant to provide the correct
15 number and type of properly configured disabled parking space(s) including a van accessible
16 disabled parking space, an accessible entrance, an accessible transaction counter, and accessible
17 rooms in accordance with the Americans with Disabilities Act of 1990 (ADA) and the Americans
18 with Disabilities Act Accessibility Guidelines (ADAAG) contained in 28 CFR Part 36. See 42
19 U.S.C. § 12188(a)(2) (authorizing injunctions under the ADA).

20 B. Unruh Civil Rights Act

21 The Unruh Civil Rights Act provides: “All persons within the jurisdiction of this state are
22 free and equal, and no matter what their sex, race, color, religion, ancestry, national origin,
23 disability, medical condition, marital status, or sexual orientation are entitled to the full and equal
24 accommodations, advantages, facilities, privileges, or services in all business establishments of
25 every kind whatsoever.” Cal. Civ. Code § 51(b). To prevail on his disability discrimination

26
27 Code). Accordingly, the court finds that plaintiff has not met his burden of establishing that
28 defendants’ building code violations necessarily create a cause of action for violation of the ADA.

1 claim under the Unruh Civil Rights Act, plaintiff must establish that (1) defendant denied plaintiff
2 the full and equal accommodations, advantages, facilities, privileges, or services; (2) a motivating
3 reason for defendant's conduct was plaintiff's disability, (3) plaintiff was harmed; and (4)
4 defendant's wrongful conduct was a substantial factor in causing plaintiff's injury. California
5 Civil Jury Instructions (CACI), No. 3020. A plaintiff who establishes a violation of the ADA
6 need not prove intentional discrimination under the Unruh Act. See Munson v. Del Taco, Inc., 46
7 Cal. 4th 661 (Cal. 2009) (interpreting Cal. Civ. Code § 51(f), which provides "A violation of the
8 right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336)
9 shall also constitute a violation of this section").

10 Here, because plaintiff's complaint properly sets out the necessary elements for his ADA
11 claim, plaintiff has also properly set out the necessary elements for his Unruh Civil Rights Act
12 claim. Therefore, and because there are no policy considerations which preclude the entry of
13 default judgment on this claim, Eitel, 782 F.2d at 1471-72, the court will recommend that
14 plaintiff's motion for default judgment on his Unruh Civil Rights Act claim be granted.

15 The Unruh Civil Rights Act provides for a minimum statutory damage amount of \$4,000
16 per violation, and "any attorney's fees that may be determined by the court in addition thereto."
17 Cal. Civ. Code § 52(a). Plaintiffs are entitled to recover the statutory minimum for each time: (1)
18 they are deterred from visiting a particular establishment due to defendant's noncompliance with
19 the Unruh Civil Rights Act, Lentini v. Cal. Ctr. for the Arts, 370 F.3d 837, 847 (9th Cir. 2004);
20 and (2) they "actually visit[] the offending establishment," Feezor v. Del Taco, Inc., 431 F. Supp.
21 2d 1088, 1090 (S.D. Cal. 2005). Plaintiff's motion seeks a damages award in the amount of
22 \$11,925 for violation of the Unruh Civil Rights Act, including two instances of visiting
23 defendants' business for statutory violations totaling \$8,000. ECF No. 13 at 5, 11-12. Plaintiff
24 alleges that he visited defendants' business and was denied equal access twice in April 2014, and
25 "several [unspecified] times thereafter." Id. at 5. Accordingly, the court will recommend that
26 plaintiff be awarded the minimum \$8,000 in statutory damages in accordance with his request for
27 the two instances he visited defendants' business during April of 2014.

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1 Plaintiff also requests \$3,925 in attorney's fees and costs under Title III of the ADA and
2 the Unruh Civil Rights Act. ECF No. 13 at 14–16; ECF No. 13-4 at 2–4. Attorney's fee awards
3 are calculated using the lodestar method whereby the hours reasonably spent in the litigation are
4 multiplied by a reasonable hourly rate. Ferland v. Conrad Credit Corp., 244 F.3d 1145, 1146–48
5 (9th Cir. 2001). The hourly rate is generally calculated “according to the prevailing market rates
6 in the relevant legal community.” Blum v. Stenson, 465 U.S. 886, 895 (1984). It is also the
7 general rule that the court will use the rates of attorneys practicing in the forum district. Gates v.
8 Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1993). Plaintiff requests attorney fees at an hourly
9 rate of \$425 for 8.2 hours of work, along with \$440 in filing fees and service costs. ECF No. 13-
10 4 at 3. Plaintiff claims that this is a fair rate for attorneys with similar experience in the area of
11 disability law, but does not address the prevailing market rates in the forum district. Id. at 3–4.
12 The court has found that the prevailing rate is \$250 per hour in the Sacramento division of the
13 Eastern District of California for similar services by lawyers of reasonably comparable skill,
14 experience, and reputation. See, e.g., Loskot v. D & K Spirits, LLC, 2:10-CV -0684 WBS DAD,
15 2011 WL 567364 at *5 (E.D. Cal. Feb. 15, 2011) (citing numerous Eastern District ADA cases
16 resolved on default judgment where \$250 was determined to be the reasonable rate).
17 Accordingly, the court will recommend that plaintiff be awarded \$2,490 in attorney fees and
18 costs, based on an hourly rate of \$250 along with \$440 in filing fees and service costs.²

19 Based on the foregoing, IT IS HEREBY ORDERED that the January 28, 2015, hearing on
20 plaintiff's motion for default judgment is vacated; and

21 IT IS HEREBY RECOMMENDED that:

- 22 1. Plaintiff's motion for default judgment on plaintiff's ADA claim and Unruh Civil
23 Rights Act claim, ECF No. 13, be granted;
- 24 2. Plaintiff be awarded statutory damages in the amount of \$4,000 and attorney's fees and


25 _____
26 ² Although plaintiff's Complaint contains claims for violation of the California Disabled Persons
27 Act and negligence, plaintiff does not address those claims in his Motion for Default Judgment.
28 Accordingly, the Court only reaches plaintiff's claims for violation of the ADA and the Unruh
Civil Rights Act.

1 costs in the amount of \$2,490; and

2 3. Plaintiff be granted an injunction requiring defendant to provide the correct number
3 and type of properly configured disabled parking space(s) including a van accessible disabled
4 parking space, an accessible entrance, an accessible transaction counter, and accessible rooms in
5 accordance with the ADA and the ADAAG.

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
8 days after being served with these findings and recommendations, any party may file written
9 objections with the court and serve a copy on all parties. Such a document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
11 within the specified time may waive the right to appeal the District Court's order. Turner v.
12 Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 DATED: January 21, 2015

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15 ALLISON CLAIRE
16 UNITED STATES MAGISTRATE JUDGE
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