

1

2

3

4

5

6

7

8

UNITED STATES DISTRICT COURT

9

FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 ROBERT LEVINE, et al.,

No. 2:15-cv-00002-WBS-AC

12 Plaintiffs,

13 v.

FINDINGS & RECOMMENDATIONS

14 SLEEP TRAIN, INC., et al.,

15 Defendants.

16

17 On October 7, 2015, the court held a hearing on plaintiffs' motion for default judgment
18 against defendant Coastal Breeze Limousine, LLC ("Coastal Breeze"). Celia McGuinness
19 appeared on behalf of plaintiffs Robert Levine and Veronica Guzman. Coastal Breeze failed to
20 appear. On review of the motions, the documents filed in support and opposition, upon hearing
21 the arguments of plaintiffs and counsel, and good cause appearing therefor, THE COURT FINDS
22 AS FOLLOWS:

23

PROCEDURAL HISTORY

24 Plaintiffs filed their original complaint on December 31, 2014. ECF No. 1. Defendant
25 Live Nation Entertainment, Inc. ("Live Nation") filed its original answer on February 2, 2015.
26 ECF No. 4. On February 13, 2015, plaintiffs filed proofs of service for all defendants. ECF Nos.
27 7-10. According to Coastal Breeze's proof of service, it was served by substitute service
28 pursuant to California Civil Procedure Code § 415.20(a) at 4878 Pasadena Ave., Sacramento, CA

1 95841.¹ ECF No. 9. On March 2, 2015, Sleep Train, Inc. (“Sleep Train”) filed its original
2 answer. ECF No. 13. On March 20, 2015, plaintiffs filed a request for entry of default against
3 Coastal Breeze, pursuant to Rule 55(a), Fed. R. Civ. P. ECF Nos. 19, 20. On March 23, 2015,
4 the Clerk entered the default. ECF No. 22. On May 13, 2015, plaintiffs filed proof of service of
5 their request for entry of default and the clerk’s entry of default upon Coastal Breeze. ECF No.
6 28. According to plaintiffs’ proof of service, the process server served Coastal Breeze in person
7 at its mailing address on May 7, 2015, at 4:15 p.m. by leaving copies of the request for entry of
8 default and the clerk’s entry of default with an unnamed staff supervisor. Id. The process server
9 also mailed copies of the summons and complaint to the same address on the same day. Id.

10 On July 23, 2015, plaintiffs filed a motion for leave to amend their complaint. ECF Nos.
11 34, 35. On August 20, 2015, the court granted plaintiffs’ motion, giving them twenty (20) days to
12 file an amended complaint. ECF No. 41. On August 25, 2015, plaintiffs filed the operative first
13 amended complaint. ECF No. 42. On September 4, 2015, plaintiffs filed a motion for default
14 judgment against Coastal Breeze, along with declarations from both plaintiffs in support. ECF

15 ¹ Section 415.20(a) states the following:

16 (a) In lieu of personal delivery of a copy of the summons and
17 complaint to the person to be served as specified in Section 416.10,
18 416.20, 416.30, 416.40, or 416.50, a summons may be served by
19 leaving a copy of the summons and complaint during usual office
20 hours in his or her office or, if no physical address is known, at his
21 or her usual mailing address, other than a United States Postal
22 Service post office box, with the person who is apparently in charge
23 thereof, and by thereafter mailing a copy of the summons and
24 complaint by first- class mail, postage prepaid to the person to be
25 served at the place where a copy of the summons and complaint
were left. When service is effected by leaving a copy of the
summons and complaint at a mailing address, it shall be left with a
person at least 18 years of age, who shall be informed of the
contents thereof. Service of a summons in this manner is deemed
complete on the 10th day after the mailing.

26 Plaintiffs state that the process server left the summons and complaint with Anolrey Svomilov,
27 the person in charge, at 4:10 p.m. on January 26, 2015. ECF No. 9. Two days later, the process
28 server mailed the documents to the aforementioned address. Id. Accordingly, plaintiffs properly
served Coastal Breeze pursuant to California law and the Federal Rules of Civil Procedure. See
Fed. R. Civ. P. 4(h)(1)(A), (e)(1).

1 Nos. 43–45. On September 8, 2015, Live Nation and Sleep Train both filed answers to plaintiffs’
2 amended complaint. ECF Nos. 49, 50.

3 UNDERLYING FACTS

4 Because default has been entered against Coastal Breeze, plaintiffs’ factual allegations are
5 taken as true in disposing of their motion for default judgment. See Geddes v. United Financial
6 Group, 559 F.2d 557, 560 (9th Cir. 1977); Microsoft Corp. v. Nop, 549 F. Supp. 2d 1233, 1235
7 (E.D. Cal. 2008).

8 Plaintiffs allege that on July 25, 2014, they drove to the Sleep Train Amphitheatre
9 (“Amphitheatre”) in Levine’s car to attend a concert. ECF No. 42 at 7. Levine is disabled, and
10 his car has a disability placard. Id. The Amphitheatre had 77 parking spaces designated for
11 people with disabilities, but they were all full. Id. Plaintiffs claim that this number is insufficient
12 for a venue of the Amphitheatre’s size. Id.

13 Because there were no more designated disabled parking spaces available, the
14 Amphitheatre’s parking agents directed plaintiffs to an area normally reserved for limousine
15 parking. Id. at 7–8. In plaintiffs’ motion for default judgment, they claim that after parking a
16 number of limousine drivers accosted them and demanded they move their car. ECF No. 43 at 3.
17 This fact is not alleged in plaintiffs’ amended complaint and accordingly, the court will not
18 consider it in determining whether plaintiffs have stated a claim. After attending the concert and
19 returning to their car, plaintiffs noticed that it was gone. ECF No. 42 at 8. According to
20 limousine drivers in the area at the time, the car had been towed at the request of drivers for
21 Coastal Breeze. Id. Plaintiffs, in their motion for default judgment, also claim that employees for
22 Coastal Breeze laughed at them when they returned to retrieve their car. ECF No. 43 at 3. Again,
23 this fact is not alleged in their amended complaint. Plaintiffs allege that in order to find their car
24 they had to engage in a search that took hours, resulting in discomfort and embarrassment. ECF
25 No. 42 at 8.

26 LEGAL STANDARDS

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

1 determination, the court considers the following factors:

2 (1) the possibility of prejudice to the plaintiff, (2) the merits of
3 plaintiff's substantive claim, (3) the sufficiency of the complaint,
4 (4) the sum of money at stake in the action, (5) the possibility of a
5 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.

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

10 As a general rule, once default is entered, the factual allegations of the complaint are taken
11 as true, except for those allegations relating to damages. Tele Video Systems, Inc. v. Heidenthal,
12 826 F.2d 915, 917–18 (9th Cir. 1987) (citations omitted). However, although well-pleaded
13 allegations in the complaint are admitted by defendant’s failure to respond, “necessary facts not
14 contained in the pleadings, and claims which are legally insufficient, are not established by
15 default.” Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992).

16 DISCUSSION

17 The court will recommend that plaintiffs’ motion for default judgment be denied because
18 plaintiffs do not allege facts sufficient to state a claim for violation of the Unruh Civil Rights Act
19 or the Americans with Disabilities Act (ADA) against Coastal Breeze.

20 Given the close relationship between the merits of plaintiffs’ substantive claims and the
21 sufficiency of the complaint, the second and third Eitel factors can be discussed jointly.
22 Effectively, factors two and three amount to a requirement that the allegations in the complaint be
23 sufficient to state a claim that supports the relief sought. See Danning v. Lavine, 572 F.2d 1386,
24 1388 (9th Cir. 1978); PepsiCo, Inc., 238 F. Supp. 2d at 1175.

25 Plaintiffs claim in their motion for default judgment that they have sufficiently alleged a
26 violation of California’s Unruh Civil Rights Act, Cal. Civ. Code § 51(f). ECF No. 43 at 2–3. As
27 counsel for plaintiffs noted at the hearing, plaintiffs’ Unruh claims are based on an alleged
28 violation of the ADA. See § 51(f) (“A violation of the right of any individual under the federal

1 Americans with Disabilities Act of 1990 (P.L. 101-3361) shall also constitute a violation of this
2 section.”). Plaintiff’s theory of liability as to Coastal Breeze is not clear from the complaint,
3 however. Indeed, plaintiffs do not differentiate between defendants when discussing their claims
4 in their amended complaint.

5 The most glaring defect in plaintiffs’ complaint, for present purposes, is that Coastal
6 Breeze is not the public accommodation to which plaintiffs are alleging they were denied access.
7 Plaintiffs’ ADA claim arises under Title III, which provides:

8 No individual shall be discriminated against on the basis of
9 disability in the full and equal enjoyment of the goods, services,
10 facilities, privileges, advantages, or accommodations of any place
of public accommodation by any person who owns, leases (or
leases to), or operates a place of public accommodation.

11 42 U.S.C. § 12182(a); PGA Tour, Inc. v. Martin, 532 U.S. 661, 675–676 (2001) (“To effectuate
12 its sweeping purpose, the ADA forbids discrimination against disabled individuals in major areas
13 of public life, among them . . . public accommodations (Title III)”). Plaintiffs allege that they
14 were denied the full and equal enjoyment of the Amphitheatre because there were an insufficient
15 number of disabled parking spaces. ECF No. 42 at 14–17. These allegations could, conceivably,
16 form the basis of a cognizable claim against Sleep Train and/or Live Nation as the owners of the
17 Amphitheatre. However, these allegations cannot form the basis of a claim against Coastal
18 Breeze because plaintiffs do not allege they were denied full and equal access to Coastal Breeze’s
19 limousine service. See ECF No. 42 at 14–17. Although plaintiffs seem to be arguing that Coastal
20 Breeze is liable because it *caused* the ADA violation that ultimately took place, they cite no
21 authority that would support this kind of liability.

22 To the extent that plaintiffs are attempting to assert a separate claim for violation of the
23 Unruh Civil Rights Act against Coastal Breeze based on intentional discrimination, that claim
24 also fails. See Earll v. eBay, Inc., Case No. 5:11-cv-00262-JF (HRL), 2011 U.S. Dist. LEXIS
25 100360, at *7 (N.D. Cal. Sept. 6, 2011) (“A violation of the Unruh Act may be maintained
26 independent of an ADA claim where a plaintiff pleads ‘intentional discrimination in public
27 accommodations in violation of the terms of the Act.’” (quoting Munson v. Del Taco, Inc., 46
28 Cal. 4th 661, 668 (2009)). Plaintiffs never explicitly frame defendant’s actions as constituting

1 intentional discrimination, nor do they cite to any controlling case law. Accordingly, it is unclear
2 whether such a claim is even being asserted. To the extent that plaintiffs are asserting an Unruh
3 claim against Coastal Breeze based on intentional discrimination, their claim fails because
4 plaintiffs do not allege any facts showing their car was towed *because* Levine is disabled. The
5 facts far more plausibly suggest that Levine’s car was towed because Coastal Breeze drivers
6 believed they were entitled to the space regardless of who was parked there.

7 Plaintiffs also fail to establish that Guzman has standing because of her association with
8 Levine. To state a claim for violation of the ADA under Title III, a plaintiff must generally
9 establish that he or she is disabled and “was denied public accommodations by the defendant
10 because of her disability.” Molski v. M.J. Cable, Inc., 481 F.3d 724, 730 (9th Cir. 2007).
11 Plaintiffs argue that Guzman has standing to assert claims against defendants in light of 28 C.F.R.
12 § 35.130(g), which states that “[a] public entity shall not exclude or otherwise deny equal
13 services, programs, or activities to an individual or entity because of the known disability of an
14 individual with whom the individual or entity is known to have a relationship or association.”
15 ECF No. 1 at 4. Section 35.130(g) does not, however, affect whether Guzman has stated a claim
16 for violation of the ADA. In fact, § 35.130(g) does not even apply to private entities. 28 C.F.R. §
17 35.101 (“The purpose of this part is to effectuate subtitle A of title II of the Americans with
18 Disabilities Act of 1990 (42 U.S.C. 12131), which prohibits discrimination on the basis of
19 disability by public entities.”); § 35.130(g). Accordingly, the court finds that Guzman has not
20 stated a claim against Coastal Breeze because plaintiffs have not shown she is disabled or that she
21 was denied services because of her disability.

22 For the foregoing reasons, plaintiffs have not alleged facts sufficient to state a claim for
23 violation of Unruh Civil Rights Act or the ADA against Coastal Breeze and the court will
24 recommend that their motion for default judgment be denied. In light of the fact that the second
25 and third Eitel factors require the denial of plaintiff’s motion, the court declines to discuss the
26 remaining Eitel factors.

27 ///

28 ///

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


CONCLUSION

In accordance with the foregoing, THE COURT HEREBY RECOMMENDS that plaintiffs' motion for default judgment, ECF No. 43, be DENIED without prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within fourteen (14) days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order.

Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: October 14, 2015



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE