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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 SCOTT JOHNSON,

12 Plaintiff,

13 v.

14 HAKMAT LABABEDY; J & K ATWAL,  
15 INC., a California Corporation; et al.,

16 Defendants.

No. 2:16-cv-0126 KJM AC

ORDER

17 Defendant Hakmat Lababedy (“defendant”) objects to proceeding with the scheduled  
18 Judgment Debtor Examination, indicating that he was never made aware of the default judgment  
19 proceedings. This is an Americans with Disabilities Act (“ADA”) and Unruh Act case alleging  
20 that defendants failed to provide accessible parking spaces, and accessible counter space, at a  
21 Circle 7 establishment.

22 For the reasons stated below, the Judgment Debtor Examination will be vacated to be reset  
23 in the future if necessary, and a status conference will be scheduled for February 22, 2017 at  
24 10:00 a.m., before the undersigned.

25 I. BACKGROUND

26 On January 21, 2016, plaintiff filed his complaint. He asserts that he served it, with a  
27 summons, on defendant on February 17, 2016. See ECF No. 7. On March 14, 2016, plaintiff  
28 filed a Proof of Service / Summons and Complaint. ECF No. 7. The Proof attests that plaintiff

1 (through his “Registered California process server”), made nine (9) separate, unsuccessful  
2 attempts to effect personal service of the summons and complaint on defendant at 8756 Royster  
3 Ct., Elk Grove, Sacramento, CA 95624-3073, which is asserted to be defendant’s residence. See  
4 ECF No. 7. On the last attempt, February 16, 2016 at 7:20 p.m., plaintiff asserts that he  
5 personally served the process on a person at defendant’s residence who identified herself as  
6 defendant’s wife. Id. The following day, plaintiff mailed the process to defendant’s residence,  
7 according to the Proof of Service. Id.

8 When defendant failed to respond to the complaint, plaintiff requested that the Clerk of  
9 the Court enter a default under Fed. R. Civ. P. (“Rule”) 55(a). ECF No. 8. The recitations of the  
10 Proof of Service having shown proper service on defendant under Rule 4(a)(1) and Cal. Code  
11 Civ. Proc. § 415.20(b), the Clerk of the Court granted the default. ECF No. 9. On September 13,  
12 2016, the court granted plaintiff’s Rule 55(b) motion for default judgment against defendant, and  
13 entered judgment. ECF Nos. 17, 18.

## 14 II. JUDGMENT DEBTOR EXAMINATION

15 On November 23, 2016, the undersigned ordered defendant to appear for a Judgment  
16 Debtor Examination on January 18, 2017. ECF No. 23. Defendant appeared and was sworn, but  
17 objected to the proceedings and requested a hearing before the undersigned. See ECF Nos. 25,  
18 26. At the hearing, defendant indicated that the only document he ever received in the case, other  
19 than the complaint, was the order to appear for the examination. He indicated that he did not  
20 know about the default proceedings, and argued that it was unfair to require him to proceed with  
21 the examination under these circumstances.

22 The undersigned explained to defendant that he was free to file a motion under “Rule 60”  
23 of the Federal Rules of Civil Procedure, to obtain relief from the default judgment. He was  
24 advised that it would be best to obtain help from an attorney in filing such a motion, if possible.  
25 Defendant has indicated a willingness to file such a motion, and plaintiff has offered no objection  
26 to a continuance to permit defendant to do so.

27 The court advised the parties that they were free to meet and confer in an attempt to  
28 resolve this matter. The court also directed plaintiff’s counsel to provide defendant with a copy


1 of the Motion for Default Judgment (ECF No. 13), the undersigned's Findings and  
2 Recommendations (ECF No. 16), and the court's order granting default judgment (ECF No. 17).

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4 III. CONCLUSION

5 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 6 1. The Judgment Debtor Examination, currently scheduled for January 18, 2017, is  
7 VACATED, to be reset at a future time as necessary;  
8 2. This matter is SET for a Status Conference on February 22, 2017 at 10:00 a.m., before the  
9 undersigned. Defendant is free to file a Rule 60 motion prior to that date.  
10 3. The Clerk of the Court is directed to serve a copy of this order on defendant Hakmat  
11 Lababedy at 8756 Royster Ct., Elk Grove, CA 95624-3073, and to add that  
12 address to the docket and the service list as defendant Lababedy's address.

13 DATED: January 18, 2017

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15 ALLISON CLAIRE  
16 UNITED STATES MAGISTRATE JUDGE  
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