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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,
Plaintiff,
v.
MAZYAR YAGHOUBIAN, et. al.,
Defendants.

No. 2:16-cv-02299-TLN-CKD

ORDER AND FINDINGS AND
RECOMMENDATIONS

Presently pending before the court is plaintiff Scott Johnson’s motion for default judgment against defendants Mazyar Yaghoubian, Chris Camp, Kareem Ahmed, and Bao Hoang.¹ (ECF No. 49.) Defendants have failed to file an opposition to the motion for default judgment in accordance with Local Rule 230(c). This motion came on regularly for hearing on October 18, 2017. (ECF No. 52.) Sara Gunderson appeared telephonically on behalf of plaintiff. Defendants did not appear. Upon review of the documents in support and opposition, upon hearing the arguments of counsel, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

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¹ The complaint names these four defendants, and Does 1–10. (ECF No. 1.) Plaintiffs do not seek default against Doe defendants, who remain unidentified. Accordingly, Doe defendants are dismissed.

1 I. BACKGROUND

2 Plaintiff initiated this action on September 27, 2016, alleging violations of the Americans
3 with Disabilities Act and the Unruh Civil Rights Act. (ECF No. 1.) Plaintiff, a level C-5
4 quadriplegic who cannot walk, has significant manual dexterity impairments, and uses a
5 wheelchair and a specially-equipped van, alleged that defendant Mazyar Yaghoubian owns the
6 real property located at or about 3811 Florin Road, Sacramento, California; that defendants Chris
7 Camp and Kareem Ahmed own Accessorize It (“Store”) at this location; and that defendant Bao
8 Hoang owns Donna’s Hair and Nails Parlor (“Parlor”) at this location. (Id. at 1–3.)

9 Plaintiff alleged that he went to the Store in June and July of 2016, intending to shop, and
10 that he went to the Parlor in July of 2016. (Id. at 4.) According to plaintiff, he encountered the
11 following architectural barriers to access at the property and establishments in violation of the
12 ADA and the ADA Accessibility Guidelines: no accessible handicap parking spaces, no
13 accessible walkways, and no accessible thresholds/entrances to the Store and Parlor. (Id. at 4–6.)
14 Plaintiff alleged that he frequently visits the Sacramento area, and that he had visited the business
15 on scores of occasions. (Id. at 6.) Plaintiff further alleged that he encountered barriers when he
16 purchased items in the store in June and July of 2016, and when he got his hair cut at the Parlor in
17 July of 2016. (Id.) Further, he claimed that he visited both businesses on two other occasions but
18 was deterred from going inside. (Id.) Additionally, plaintiff maintained that defendants had the
19 means and ability to remove these barriers to access. (Id. at 7.) Plaintiff’s complaint sought inter
20 alia injunctive relief; statutory damages; and attorneys’ fees, litigation expenses, and costs of suit.
21 (Id. at 11–12.)

22 All defendants were served between October 4, 2016 and November 11, 2016. (ECF Nos.
23 4–6, 9.) Defendants Hoang and Yaghoubian failed to appear, plead, or answer the complaint, and
24 plaintiff moved for entry of default against each. (See ECF Nos. 7, 16.) Accordingly, the Clerk
25 of the Court entered default as to defendants Hoang and Yaghoubian on November 10, 2016 and
26 December 7, 2016, respectively. (See ECF Nos. 8, 17.)

27 Thereafter, on December 16, 2016, defendants Camp and Ahmed filed an answer. (ECF
28 No. 20.) The court issued a pretrial scheduling order on February 23, 2017, setting forth

1 deadlines for discovery. (See ECF No. 24.) However, since filing their answer, Camp and
2 Ahmed have been entirely unresponsive to plaintiff and the court. As a result, plaintiff moved to
3 compel initial responses and initial disclosures. (ECF Nos. 26, 28.) The court granted each
4 motion, ordering Camp and Ahmed to serve initial responses and disclosures. (ECF Nos. 32, 39.)
5 The court also warned that failure to comply may result in their answer being stricken and default
6 being entered. (Id.) Camp and Ahmed did not comply with, or respond to, either order.

7 Plaintiff subsequently filed motions for Rule 37(b)(2)(A) & (C) sanctions, based on
8 Camp's and Ahmed's failure to serve initial responses and initial disclosures, as ordered. (ECF
9 Nos. 33, 42.) Camp and Ahmed failed to respond to these motions or to attend any hearings.
10 Thus, the court ordered Camp and Ahmed to pay \$650.00 in sanctions. (ECF No. 41.) Then,
11 after they remained unresponsive, the court struck their answer and ordered Camp and Ahmed to
12 pay \$580.00 to plaintiff in additional sanctions. (ECF No. 47.) On August 11, 2017, the Clerk of
13 the Court entered default against defendants Camp and Ahmed.

14 Thereafter, plaintiff brought the pending motion for default judgment against all named
15 defendants, through which he seeks injunctive relief for removal of unlawful architectural barriers
16 pursuant to the ADA; statutory damages pursuant to California's Unruh Civil Rights Act; and
17 attorneys' fees and costs pursuant to the ADA and California's Unruh Civil Rights Act. (See
18 ECF No. 49.)

19 II. LEGAL STANDARDS

20 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a party
21 against whom a judgment for affirmative relief is sought who fails to plead or otherwise defend
22 against the action. See Fed. R. Civ. P. 55(a). However, "[a] defendant's default does not
23 automatically entitle the plaintiff to a court-ordered judgment." PepsiCo, Inc. v. Cal. Sec. Cans,
24 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002) (citing Draper v. Coombs, 792 F.2d 915, 924-25
25 (9th Cir. 1986)). Instead, the decision to grant or deny an application for default judgment lies
26 within the district court's sound discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir.
27 1980). In making this determination, the court considers the following factors:

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

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

9 As a general rule, once default is entered, well-pleaded factual allegations in the operative
10 complaint are taken as true, except for those allegations relating to damages. TeleVideo Sys., Inc.
11 v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing Geddes v. United Fin.
12 Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); accord Fair Housing of Marin v. Combs,
13 285 F.3d 899, 906 (9th Cir. 2002). In addition, although well-pleaded allegations in the
14 complaint are admitted by a defendant's failure to respond, "necessary facts not contained in the
15 pleadings, and claims which are legally insufficient, are not established by default." Cripps v.
16 Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d
17 1386, 1388 (9th Cir. 1978)); accord DIRECTV, Inc. v. Hoa Huynh, 503 F.3d 847, 854 (9th Cir.
18 2007) (stating that a defendant does not admit facts that are not well-pled or conclusions of law);
19 Abney v. Alameida, 334 F. Supp. 2d 1221, 1235 (S.D. Cal. 2004) ("[A] default judgment may not
20 be entered on a legally insufficient claim"). A party's default does not establish the amount of
21 damages. Geddes, 559 F.2d at 560.

22 III. DISCUSSION

23 A. Appropriateness of the Entry of Default Judgment Under the Eitel Factors

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

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

1 property located at or about 3811 Florin Road, Sacramento, California, during plaintiff's visits
2 (id. at 2–5); (3) plaintiff was denied full and equal access to the Store's and Parlor's facilities,
3 privileges, and accommodations because of plaintiff's disability (id. at 6); (4) the property, Store,
4 and Parlor contain specified architectural barriers—lack of accessible handicap parking spaces,
5 lack of accessible walkways, and lack of accessible thresholds/entrances—in violation of the
6 ADA (id. at 5); and (5) defendants had the means and ability to remove such barriers (id. at 7).
7 Because plaintiff's allegations are taken as true following the entry of default, the court concludes
8 that plaintiff has met his burden to state a prima facie Title III discrimination claim.

9 b. Unruh Civil Rights Act

10 The Unruh Civil Rights Act provides: “All persons within the jurisdiction of this state are
11 free and equal, and no matter what their sex, race, color, religion, ancestry, national origin,
12 disability, medical condition, genetic information, marital status, or sexual orientation are entitled
13 to the full and equal accommodations, advantages, facilities, privileges, or services in all business
14 establishments of every kind whatsoever.” Cal. Civ. Code § 51(b). As expressly provided by
15 statute, a violation of the ADA also constitutes a violation of the Unruh Civil Rights Act. Cal.
16 Civ. Code § 51(f); see also Munson v. Del Taco, Inc., 46 Cal. 4th 661, 664-65 (2009). Here,
17 because plaintiff's complaint properly alleges a prima facie claim under the ADA, plaintiff has
18 also properly alleged facts supporting a claim under the Unruh Civil Rights Act.

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

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

21 Under the fourth factor cited in Eitel, “the court must consider the amount of money at
22 stake in relation to the seriousness of Defendant's conduct.” PepsiCo, Inc., 238 F. Supp. 2d at
23 1176-77; see also Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 500 (C.D.
24 Cal. 2003). In this case, plaintiff seeks injunctive relief; statutory damages under the Unruh Civil
25 Rights Act corresponding to three obstructed visits to the property, Store, and Parlor (\$4,000.00
26 minimum statutory damages per visit, for a total amount of \$12,000.00); and attorneys' fees and
27 costs in the amount of \$6,345.00. (ECF No. 49–1 at 12.) Although the court more closely
28 scrutinizes the requested statutory damages, attorneys' fees, and costs below, the court does not

1 find the overall sum of money at stake to be so large or excessive as to militate against the entry
2 of default judgment, particularly when reduced for the reasons discussed below. Under these
3 circumstances, the court concludes that this factor favors the entry of a default judgment.

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

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

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

14 In this case, there is no indication in the record that defendants' default was due to
15 excusable neglect. Despite having been properly served with plaintiff's complaint, the requests
16 for entry of default, and the instant motion for default judgment, defendants Yaghoubian and
17 Hoang failed to appear in the action. (See ECF Nos. 4, 7, 9, 17, 49.) Further, while defendants
18 Camp and Ahmed filed an answer (ECF No. 20), it was stricken after they failed to respond to
19 numerous motions and court orders. (See ECF Nos. 26, 28, 32, 33, 39, 41, 42, 47.) Moreover,
20 Camp and Ahmed have remained unresponsive after the entry of default against them (ECF No.
21 48), and after plaintiff filed the instant motion (ECF No 49). Thus, the record suggests that
22 defendants have chosen not to defend themselves in this action, and that the default did not result
23 from excusable neglect. Accordingly, this Eitel factor favors the entry of a default judgment.

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

26 "Cases should be decided upon their merits whenever reasonably possible." Eitel, 782
27 F.2d at 1472. However, district courts have concluded with regularity that this policy, standing
28 alone, is not dispositive, especially where a defendant fails to appear or defend itself in an action.

1 PepsiCo, Inc., 238 F. Supp. 2d at 1177; see also Craigslist, Inc. v. Naturemarket, Inc., 694 F.
2 Supp. 2d 1039, 1061 (N.D. Cal. 2010). Accordingly, although the court is cognizant of the policy
3 in favor of decisions on the merits—and consistent with existing policy would prefer that this
4 case be resolved on the merits—that policy does not, by itself, preclude the entry of default
5 judgment.

6 In sum, upon consideration of all the Eitel factors, the court concludes that plaintiff is
7 entitled to a default judgment against defendants and recommends that such a default judgment be
8 entered. All that remains is a determination of the specific relief to which plaintiff is entitled.

9 B. Terms of the Judgment to Be Entered

10 After determining that a party is entitled to entry of default judgment, the court must
11 determine the terms of the judgment to be entered. Because plaintiff satisfactorily alleged his
12 ADA claim, the court recommends that plaintiff be granted injunctive relief, as described below,
13 to remedy the architectural barriers at issue— lack of accessible handicap parking spaces, lack of
14 accessible walkways, and lack of accessible thresholds/entrances.

15 Plaintiff also requests statutory damages in the amount of \$12,000.00, which corresponds
16 to three obstructed visits to the Store and Parlor (\$4,000.00 minimum statutory damages per
17 visit). Although Cal. Civ. Code § 52(a) may permit a plaintiff to obtain the minimum statutory
18 damages for each obstructed visit to a facility, a plaintiff cannot simply visit a facility more often
19 to increase the amount of potential statutory damages. In this case, plaintiff made no showing as
20 to why he returned to the Store, after his initial visit. For example, plaintiff did not allege that he
21 returned after having received good faith assurances from defendants or their agents that the
22 architectural barriers were removed. In light of that deficiency, the court recommends that
23 plaintiff only be awarded minimum statutory damages corresponding to one visit each to the
24 Store and Parlor, i.e., \$8,000.00.

25 Finally, plaintiff requests attorneys' fees and costs. The statutes at issue specifically
26 contemplate the award of attorneys' fees and costs. See 42 U.S.C. § 12205; Cal. Civ. Code §
27 52(a). Thus, the only issue is whether the requested amount of attorneys' fees and costs
28 (\$6,345.00) is reasonable. Plaintiff requests \$480.00 in filing fees and service costs, which are

1 reasonable and should be awarded. (ECF No. 49-4 at 2.)

2 Plaintiff further indicates that plaintiff's counsel, Mark Potter, attorney at the Center for
3 Disability Access, who has been in practice for about 23 years with a practice dedicated
4 exclusively to disability-related issues, spent 13.8 hours on this case, billing at an hourly rate of
5 \$425.00, for a lodestar amount of \$5,865.00 in attorneys' fees. (Id. at 2–3.)

6 Although the number of hours spent on the case appears reasonable, the court finds Mr.
7 Potter's hourly rate of \$425.00 to be excessive in light of prevailing market rates in the
8 Sacramento Division of the Eastern District of California. Notably, another judge in this district
9 recently determined that an hourly rate of \$300.00 was appropriate for plaintiff's counsel, as a
10 partner with significant experience and expertise, in a routine disability access case. See Johnson
11 v. Wayside Property, Inc. et al., 2:13-cv-1610-WBS-AC, ECF No. 32. The court finds Wayside
12 Property to be persuasive, because it is a recent, comparable case from this district and involved a
13 careful consideration of prevailing market rates for routine disability access cases in the
14 Sacramento Division of the Eastern District of California. By contrast, plaintiff's reliance on fee
15 awards in the Central and Southern Districts of California, as well as certain California state
16 courts, is misplaced, because those fee awards are not instructive with respect to prevailing
17 market rates in this federal district. Instead, the court here likewise concludes that an hourly rate
18 of \$300.00 is appropriate, resulting in a fee award of \$4140.00.

19 IV. CONCLUSION

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

- 21 1. Plaintiff's motion for default judgment (ECF No. 49) be GRANTED IN PART.
- 22 2. Judgment be entered in plaintiff's favor and against defendants Mazyar
23 Yaghoubian, Chris Camp, Kareem Ahmed, and Bao Hoang.
- 24 3. Plaintiff be awarded statutory damages in the amount of \$8,000.00.
- 25 4. Plaintiff be awarded attorneys' fees and costs in the amount of \$4,620.00.
- 26 5. Plaintiff be granted an injunction requiring defendants to provide readily
27 achievable property alterations in the form of accessible handicap parking,
28 accessible walkways, and accessible thresholds/entrances to Accessorize It and

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Donna’s Hair and Nails Parlor, located at or about 3811 Florin Rd, Sacramento, California, in compliance with the ADA and the ADA Accessibility Guidelines.

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

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

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 and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served on all parties and filed with the court 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. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

Dated: October 23, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

14/16-2299,johnson v. yaghoubian. f&r default judgment