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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON

Plaintiff,

v.

AJAY OIL INC., a California Corporation;
and DOES 1-10,

Defendants.

No. 2:16-cv-2892-TLN-EFB

FINDINGS AND RECOMMENDATIONS

This case is before the court on plaintiff's motion for default judgment.¹ ECF No. 8. For the reasons stated below, it is recommended that the motion be granted.²

I. Background

Plaintiff Scott Johnson filed this action against defendant Ajay Oil, Inc., alleging defendant violated the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq.*, and the California Unruh Civil Rights Act ("Unruh Act"). ECF No. 1. The docket reflects that on December 30, 2016, plaintiff served a copy of the summons and complaint on defendant's

¹ This case is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(19). *See* 28 U.S.C. § 636(b)(1).

² The court determined that oral argument would not materially assist in the resolution of the motion and the matter was ordered submitted on plaintiff's brief. *See* E.D. Cal. L.R. 230(g).

1 registered agent for service of process. ECF No. 4. Despite being properly served, defendant has
2 not responded to the complaint. Plaintiff requested entry of defendant's default, which the clerk
3 entered on January 24, 2017. ECF Nos. 5, 6. Plaintiff now moves for default judgment, seeking
4 \$4,000 in statutory damages under the Unruh Act, as well as injunctive relief and attorneys' fees
5 and costs. ECF No. 8.

6 According to the complaint, plaintiff is a quadriplegic and uses a wheelchair for mobility.
7 Compl. (ECF No. 1) ¶ 1. Defendant owns and operates a gas station located at 6306 Pony
8 Express Trail, Pollock Pines, California. *Id.* ¶ 2. The gas station is a place of public
9 accommodation. *Id.* ¶ 13. In July and October of 2016, plaintiff went to the gas station to shop.
10 *Id.* ¶ 12. During these visits plaintiff discovered that the gas station's facilities are not accessible
11 to persons with disabilities. Specifically, there are no ADA accessible parking spaces; paths of
12 access to merchandise are less than 36 inches in width and not wide enough for a wheelchair; the
13 restroom sink is mounted more than 34 inches above the floor and may not effectively be used by
14 wheelchair patrons; the sink's plumbing is not wrapped to guard against burns; and the entrance
15 door for the restroom is equipped with both a latch and a closer but lacks the required 12 inch
16 clearance to the strike side of the door. *Id.* ¶ 14-32. *See* 2010 ADA Accessibility Guidelines
17 § 208 (requiring at least one accessible parking space), § 403.5.1 (requiring the clear width of all
18 walking spaces be a minimum of 36 inches), § 404.2.4.1 (requiring front approach swinging
19 doors with a closer and a latch to have a minimum of 12 inches of clearance to the door's strike
20 side), § 606.3 (requiring rim of sinks to not surpass 34 inches above the floor), § 606.5 (requiring
21 restroom sink pipes be insulated to protect against contact).

22 II. Discussion

23 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a party
24 against whom a judgment for affirmative relief is sought who fails to plead or otherwise defend
25 against the action. *See* Fed. R. Civ. P. 55(a). However, "[a] defendant's default does not
26 automatically entitle the plaintiff to a court-ordered judgment." *PepsiCo, Inc. v. Cal. Sec. Cans*,
27 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002) (citing *Draper v. Coombs*, 792 F.2d 915, 924-25
28 (9th Cir. 1986)). Instead, the decision to grant or deny an application for default judgment lies

1 within the district court’s sound discretion. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.
2 1980). In making this determination, the court considers the following factors:

3 (1) the possibility of prejudice to the plaintiff, (2) the merits of
4 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4)
5 the sum of money at stake in the action, (5) the possibility of a dispute
6 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.

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

11 As a general rule, once default is entered, the factual allegations of the complaint are taken
12 as true, except for those allegations relating to damages. *TeleVideo Systems, Inc. v. Heidenthal*,
13 826 F.2d 915, 917-18 (9th Cir. 1987) (citations omitted). However, although well-pleaded
14 allegations in the complaint are admitted by defendant’s failure to respond, “necessary facts not
15 contained in the pleadings, and claims which are legally insufficient, are not established by
16 default.” *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992). A party’s
17 default conclusively establishes that party’s liability, although it does not establish the amount of
18 damages. *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (stating that although
19 a default established liability, it did not establish the extent of the damages).

20 A. Americans with Disabilities Act

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). Under the ADA, the term
27 readily achievable means “easily accomplishable and able to be carried out without much
28 difficulty or expense.” 42 U.S.C. § 12181(9).

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

10 The complaint alleges that plaintiff is an individual with a disability, defendant is the
11 owner of the gas station, and that the gas station was not accessible due to a number of
12 architectural barriers. ECF No. 1 ¶¶ 1, 2-7, 13-32. Plaintiff further alleges that the removal of the
13 barriers he encounter is readily achievable. *Id.* at ¶ 39. Accepting these allegations as true, the
14 merits of plaintiff’s ADA claim and the sufficiency of the complaint weigh in favor of default
15 judgment.

16 Furthermore, many of the remaining *Eitel* factors weigh in favor of granting plaintiff’s
17 application for default judgment. Defendant was properly served a copy of the summons and
18 complaint, and plaintiff also served defendant with a copy of the instant motion. ECF No. 8-8.
19 Thus, it appears defendant’s failure to respond is not due to excusable neglect. The sum of
20 money at stake is relatively small and, when accepting plaintiff’s allegations as true, there is little
21 possibility of a dispute concerning material facts. *See, e.g., Elektra Entm’t Group Inc. v.*
22 *Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. 2005) (“Because all allegations in a well-pleaded
23 complaint are taken as true after the court clerk enters default judgment, there is no likelihood that
24 any genuine issue of material fact exists.”); *accord Philip Morris USA, Inc.*, 219 F.R.D. at 500;
25 *Cal. Sec. Cans*, 238 F. Supp. 2d at 1177. Furthermore, plaintiff would potentially face prejudice
26 if the court did not enter default judgment as defendant has failed to respond to plaintiff’s claims,
27 and without the entry of default judgment plaintiff will not be able to address his claims.

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1 Although there is a strong policy in deciding cases on the merits, district courts have concluded
2 with regularity that this policy, standing alone, is not dispositive, especially where a defendant
3 fails to appear or defend itself in an action. *Cal. Sec. Cans*, 238 F. Supp. 2d at 1177; *see*
4 *Craigslist, Inc. v. Naturemarket, Inc.*, 2010 WL 807446, at *16 (N.D. Cal. Mar. 5, 2010); *ACS*
5 *Recovery Servs., Inc. v. Kaplan*, 2010 WL 144816, at *7 (N.D. Cal. Jan. 11, 2010); *Hartung v.*
6 *J.D. Byrider, Inc.*, 2009 WL 1876690, at *5 (E.D. Cal. June 26, 2009).

7 Accordingly, plaintiff is entitled to default judgment on his ADA claim.

8 B. Unruh Civil Rights Act

9 The Unruh Civil Rights Act provides: “All persons within the jurisdiction of this state are
10 free and equal, and no matter what their sex, race, color, religion, ancestry, national origin,
11 disability, medical condition, marital status, or sexual orientation are entitled to the full and equal
12 accommodations, advantages, facilities, privileges, or services in all business establishments of
13 every kind whatsoever.” Cal. Civ. Code § 51(b). The Unruh Act permits statutory damages in
14 the amount of \$4,000 for each occasion the plaintiff is denied equal access. Cal. Civ. Code §
15 52(a). Significantly, any violation of the ADA necessarily constitutes a violation of the Unruh
16 Civil Rights Act. Cal. Civ. Code § 51(f); *see also Munson v. Del Taco, Inc.*, 46 Cal. 4th 661, 664
17 (2009).

18 Plaintiff’s Unruh Act claim is based on defendant’s alleged violation of the ADA. ECF
19 No. 1 ¶ 61 (“Because the defendant violated the plaintiff’s rights under the ADA, they also
20 violated the Unruh Civil Rights Act and are liable for damages.”). Accordingly, plaintiff is also
21 entitled to the \$4,000 in statutory damages he seeks for defendant’s violation of the Unruh Act
22 claim.

23 C. Attorneys’ Fees and Costs

24 Plaintiff also requests attorneys’ fees, investigator fees, service costs and filing fees.
25 (ECF No. 8), Ex. 1. He requests \$675 in filing fees and service and investigator costs, which the
26 court finds reasonable.

27 Plaintiff also seeks \$4,232.50 in attorneys’ fees. In determining the reasonableness of
28 attorneys’ fees, the Ninth Circuit uses the lodestar method. *Moreno v. City of Sacramento*, 534

1 F.3d 1106, 1111 (9th Cir. 2008). In applying the lodestar method, “a district court must start by
2 determining how many hours were reasonably expended on the litigation, and then multiply those
3 hours by the prevailing local rate for an attorney of the skill required to perform the litigation.”

4 *Id.*

5 Plaintiff seeks fees based on 3.9 hours at an hourly rate of \$425 for work performed by
6 attorney Mark Potter, 3.5 hours at a rate of \$425 for work performed by attorney Russel Handy,
7 0.5 hours at a rate of \$425 for work performed by attorney Phyl Grace, and 2.5 hours at a rate of
8 \$350 for work performed by attorney Dennis Price. ECF No. 8-4 at 8.

9 Although the court finds that the number of hours expended by counsel in handling this
10 matter appears reasonable, the hourly rates requested are excessive. The vast majority of recent
11 cases from this district have concluded that hourly rates of \$300 for Mr. Potter and Mr. Handy,
12 \$250 for Ms. Grace, and \$150 for Mr. Price are reasonable. *See, e.g., Johnson v. Hey Now*
13 *Properties, LLC*, No. 2:16-CV-02931 WBS KJN, 2019 WL 586753, at *3 (E.D. Cal. Feb. 13,
14 2019) (finding hourly rate of \$300 for Potter and Handy, \$250 for senior attorneys, and \$150 for
15 junior attorneys were reasonable); *Johnson v. Wen Zhi Deng*, No. 2:15-CV-02698 KJM EFB,
16 2019 WL 1098994, at *2 (E.D. Cal. Mar. 8, 2019) (holding that “the rates outlined in *Hey Now*
17 *Properties* are the appropriate, prevailing rates in this district . . .”); *Johnson v. Pizano*, 2019
18 WL 2499188, at *7 (E.D. Cal. June 17, 2019) (recommending “a reasonable hourly rate of \$300
19 per hour for attorneys Potter and Handy, \$250 for attorney Grace, and \$150 for the less
20 experienced associate, attorney Price.”); *Johnson v. Powers*, No. 2:15-cv-245 WBS AC (PS),
21 2019 WL 2386063, at *1 (E.D. Cal. June 5, 2019) (observing that the rates outlined in *Hey Now*
22 *Properties* are the rates typically awarded in ADA cases, but awarding fees at a slightly higher
23 rate because “counsel went above and beyond what is typically done in a disability access case.”);
24 *but see Johnson v. Bourbon Properties, LLC*, No. 2:14-cv-2949 MCE AC, 2019 WL 1426340, at
25 *3 (E.D. Cal. Mar. 29, 2019) (finding reasonable rates of \$325 per hour for Mr. Potter and \$175
26 per hour for Mr. Price). This court agrees with the those hourly rates.

27 Accordingly, the court finds the following rates and amounts to be reasonable. Plaintiff is
28 entitled to \$1170 (3.9 x \$300) for work performed by Mr. Potter, \$1,050 (3.5 x \$300) for work

1 performed by Mr. Handy, \$125 (0.5 x \$250) for work performed Ms. Grace, and \$375 (2.5 x
2 \$150) for work performed by Mr. Price, for a total award of \$2,720.

3 III. Conclusion

4 For the reasons stated above, it is hereby RECOMMENDED that:

- 5 1. Plaintiff's application for default judgment (ECF No. 8) be granted.
- 6 2. Plaintiff be awarded statutory damages in the amount of \$4,000.
- 7 3. Plaintiff be granted an injunction requiring defendant Ajay Oil Inc. to provide an
8 accessible restroom, parking space, and walkways in compliance with the Americans with
9 Disabilities Act Accessibility Guidelines.
- 10 4. Plaintiff be awarded attorneys' fees and costs in the amount of \$3,395.

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

18 DATED: August 8, 2019.

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20 EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE
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