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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,
Plaintiff,
v.
HARJIT SINGH, et al.,
Defendants.

No. 2:17-cv-00368-TLN-KJN
ORDER AND FINDINGS AND
RECOMMENDATIONS
(ECF No. 19)

INTRODUCTION

Presently before the court is plaintiff Scott Johnson’s motion for default judgment against defendants Harjit Singh, Jasjit K. Singh, and Heli Villasenor. (ECF No. 19.) After defendants failed to file an opposition to the motion in accordance with Local Rule 230(c), the motion was submitted on the record and written briefing pursuant to Local Rule 230(g). (ECF No. 20.)

For the reasons discussed below, the court recommends that plaintiff’s motion for default judgment be GRANTED IN PART on the terms outlined below.

BACKGROUND

Plaintiff initiated this action on February 20, 2017, alleging violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. (“ADA”) and California’s Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq. (See generally Complaint, ECF No. 1 [“Compl.”].) Plaintiff, a level C-5 quadriplegic who cannot walk, has significant manual dexterity impairments,

1 and uses a wheelchair and a specially-equipped van, alleges that defendants owned or operated a
2 business establishment and place of public accommodation known as Smog Tech, which is
3 located at 430 N. Airport Way, Stockton, California. (Compl. ¶¶ 1-13.) According to plaintiff,
4 he patronized Smog Tech three times in 2015 and 2016, and encountered the following
5 architectural barriers to access at the establishment in violation of the ADA and the ADA
6 Accessibility Guidelines: no van accessible handicap parking, no accessible entrance door
7 hardware, and no accessible transaction counter. (Id. ¶¶ 18, 20-34) Plaintiff alleges that he
8 frequently visits the Stockton area, and that he was deterred from patronizing Smog Tech on
9 additional occasions because of his knowledge of the above-mentioned barriers. (Id. ¶¶ 36, 57.)
10 Plaintiff further alleges that defendants had the means and ability to remove the barriers. (Id.
11 ¶ 46.)

12 On February 24, 2017, plaintiff served process on defendant Heli Villasenor. (ECF No.
13 4.) On September 27, 2017, after obtaining a court order from the assigned district judge (ECF
14 No. 8), plaintiff served defendants Harjit Singh and Jasjit Singh by publication. (ECF No. 9.)
15 Plaintiff requested that the Clerk of Court enter default against defendants, and the Clerk entered
16 default as to Heli Villasenor on April 25, 2017, and entered default against Harjit Singh and Jasjit
17 Singh on August 12, 2019. (ECF Nos. 6, 17.) The instant motion for default judgment followed.
18 (ECF No. 19.)

19 Plaintiff's motion for default judgment seeks injunctive relief for removal of unlawful
20 architectural barriers pursuant to the ADA; statutory damages pursuant to California's Unruh
21 Civil Rights Act; and attorneys' fees and costs pursuant to the ADA and California's Unruh Civil
22 Rights Act.

23 LEGAL STANDARDS

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

1 (9th Cir. 1986)). Instead, the decision to grant or deny an application for default judgment lies
2 within the district court’s discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). In
3 making this determination, the court considers the following factors:

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

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

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

23 DISCUSSION

24 Appropriateness of the Entry of Default Judgment Under the Eitel Factors

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

26 The first Eitel factor considers whether the plaintiff would suffer prejudice if default
27 judgment is not entered, and such potential prejudice to the plaintiff militates in favor of granting
28 a default judgment. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Here, plaintiff would potentially

1 face prejudice if the court did not enter a default judgment. Absent entry of a default judgment,
2 plaintiff would be without another recourse against defendants. Accordingly, the first Eitel factor
3 favors the entry of a default judgment.

4 2. *Factors Two and Three: The Merits of Plaintiff's Substantive Claims and*
5 *the Sufficiency of the Complaint*

6 The court considers the merits of plaintiff's substantive claims and the sufficiency of the
7 complaint together because of the relatedness of the two inquiries. The court must consider
8 whether the allegations in the complaint are sufficient to state a claim that supports the relief
9 sought. See Danning, 572 F.2d at 1388; PepsiCo, Inc., 238 F. Supp. 2d at 1175.

10 a. ADA

11 Title III of the ADA provides that "[n]o individual shall be discriminated against on the
12 basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges,
13 advantages, or accommodations of any place of public accommodation by any person who owns,
14 leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a).
15 Discrimination includes "a failure to remove architectural barriers . . . in existing facilities . . .
16 where such removal is readily achievable." Id. § 12182(b)(2)(A)(iv); see also Chapman v. Pier 1
17 Imports (U.S.) Inc., 631 F.3d 939, 945 (9th Cir. 2011) (en banc). The ADA defines the term
18 "readily achievable" as "easily accomplishable and able to be carried out without much difficulty
19 or expense." 42 U.S.C. § 12181(9).

20 "To prevail on a Title III discrimination claim, the plaintiff must show that (1) [he or she]
21 is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases,
22 or operates a place of public accommodation; and (3) the plaintiff was denied public
23 accommodations by the defendant because of [his or her] disability." Molski v. M.J. Cable, Inc.,
24 481 F.3d 724, 730 (9th Cir. 2007). Furthermore, "[t]o succeed on a ADA claim of discrimination
25 on account of one's disability due to an architectural barrier, the plaintiff must also prove that:
26 (1) the existing facility at the defendant's place of business presents an architectural barrier
27 prohibited under the ADA, and (2) the removal of the barrier is readily achievable." Parr v. L &
28 L Drive-Inn Rest., 96 F. Supp. 2d 1065, 1085 (D. Haw. 2000); accord Hubbard v. 7-Eleven, Inc.,

1 433 F. Supp. 2d 1134, 1138 (S.D. Cal. 2006).

2 Here, plaintiff's complaint alleges that: (1) he is disabled (see Compl. ¶ 1); (2) defendants
3 own, lease, and/or operate Smog Tech, which is a place of public accommodation (id. ¶¶ 2-13);
4 (3) plaintiff was denied full and equal access to Smog Tech's facilities, privileges, and
5 accommodations because of plaintiff's disability (id. ¶¶ 18-35, 57); (4) Smog Tech contains
6 specified architectural barriers—no van accessible handicap parking, no accessible entrance door
7 hardware, and no accessible transaction counter—in violation of the ADA (id. ¶¶ 49-56); and
8 (5) defendants had the means and ability to remove such barriers (id. ¶ 46). Because plaintiff's
9 allegations are taken as true following the entry of default, the court concludes that plaintiff has
10 met his burden to state a *prima facie* Title III discrimination claim.

11 b. Unruh Civil Rights Act

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

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

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

24 Under the fourth Eitel factor, "the court must consider the amount of money at stake in
25 relation to the seriousness of Defendant's conduct." PepsiCo, Inc., 238 F. Supp. 2d at 1176-77;
26 see also Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 500 (C.D. Cal. 2003).
27 In this case, plaintiff seeks injunctive relief; statutory damages under the Unruh Civil Rights Act
28 totaling \$8,000.00; and attorneys' fees and costs in the amount of \$5,657.72. Although the court

1 more closely scrutinizes the requested statutory damages, attorneys' fees, and costs below, the
2 court does not find the overall sum of money at stake to be so large or excessive as to militate
3 against the entry of default judgment, particularly when reduced for the reasons discussed below.
4 Under these circumstances, the court concludes that this factor favors the entry of a default
5 judgment.

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

7 Because the court may assume the truth of well-pleaded facts in the complaint (except as
8 to damages) following the clerk's entry of default, there is no likelihood that any genuine issue of
9 material fact exists. See, e.g., Elektra Entm't Group Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D.
10 Cal. 2005) ("Because all allegations in a well-pleaded complaint are taken as true after the court
11 clerk enters default judgment, there is no likelihood that any genuine issue of material fact
12 exists"); accord Philip Morris USA, Inc., 219 F.R.D. at 500; PepsiCo, Inc., 238 F. Supp. 2d at
13 1177. As such, the court concludes that the fifth Eitel factor favors a default judgment.

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

15 In this case, there is simply no indication in the record that defendants' default was due to
16 excusable neglect. Accordingly, this Eitel factor favors the entry of a default judgment.

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

19 "Cases should be decided upon their merits whenever reasonably possible." Eitel, 782
20 F.2d at 1472. However, district courts have concluded with regularity that this policy, standing
21 alone, is not dispositive, especially where a defendant fails to appear or defend itself in an action.
22 PepsiCo, Inc., 238 F. Supp. 2d at 1177; see also Craigslist, Inc. v. Naturemarket, Inc., 694 F.
23 Supp. 2d 1039, 1061 (N.D. Cal. 2010). Accordingly, although the court is cognizant of the policy
24 in favor of decisions on the merits—and consistent with existing policy would prefer that this
25 case be resolved on the merits—that policy does not, by itself, preclude the entry of default
26 judgment.

27 In sum, after considering and weighing all the Eitel factors, the court concludes that
28 plaintiff is entitled to a default judgment against defendants, and recommends that such a default

1 judgment be entered. All that remains is a determination of the specific relief to which plaintiff is
2 entitled.

3 Terms of the Judgment to Be Entered

4 After determining that a party is entitled to entry of default judgment, the court must
5 determine the terms of the judgment to be entered.

6 Because plaintiff sufficiently alleged his ADA claim, the court recommends that plaintiff
7 be granted injunctive relief, as described below, to remedy the architectural barriers at issue.

8 Plaintiff also requests statutory damages in the amount of \$8,000.00: \$4,000.00 from
9 Harjit and Jasjit Singh jointly and severally, and \$4,000.00 from Heli Villasenor. Plaintiff
10 reasons that he is entitled to two statutorily-authorized \$4,000.00 awards because “a civil penalty
11 can be assessed against each law-breaking defendant.” (ECF No. 19-1 at 8.) However, plaintiff
12 puts forth no case involving an owner and an operator each being assessed \$4,000.00 in statutory
13 damages. On the contrary, courts generally award only a single \$4,000.00 statutory penalty
14 where multiple defendants who own or operate a business are held liable for an ADA violation.
15 See, e.g., Love v. Kim, 2019 WL 8167926, at *1 (C.D. Cal. Oct. 18, 2019) (declining to award
16 the requested \$8,000.00 and instead awarding plaintiff “\$4,000 in statutory damages under the
17 Unruh Act, assessed jointly and severally, against the two defendants”); Johnson v. Express Auto
18 Clinic, Inc., 2019 WL 2996431, *8 (N.D. Cal. 2019) (entering judgment of “\$4,000 in statutory
19 damages” in case where multiple defendants operated a non-compliant gas station); Johnson v.
20 Ramirez Ltd. P’ship, 2019 WL 2315290, *8 (E.D. Cal. 2019) (“award[ing] a total of \$4,000 in
21 statutory damages, as authorized by the Unruh Civil Rights Act, Cal. Civ. Code § 52(a), jointly
22 and severally against the defendants” where defendants owned non-compliant café).
23 Accordingly, the court recommends that plaintiff only be awarded statutory damages of \$4,000.00
24 against all defendants jointly and severally.

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 (\$5,657.72) is reasonable.

1 Plaintiff requests \$813.72 in filing fees, service costs, and investigator costs, which are
2 reasonable and should be awarded. (ECF No. 19-3 at 9.)

3 Plaintiff seeks attorneys' fees based on 2.1 hours of work for Phyl Grace at an hourly rate
4 of \$550.00; 1.1 hours of work for Mark Potter at a rate of \$595.00 ; and 5.1 hours of work for
5 Russell Handy at a rate of \$595.00. (ECF No. 19-3 at 9-11.) In total, plaintiff is requesting
6 \$4,844.00 in attorneys' fees. (Id.)

7 Although the number of hours spent on the case appear reasonable, the court finds the
8 attorneys' hourly rates of \$550.00 and \$595.00 to be excessive in light of prevailing market rates
9 in the Sacramento Division of the Eastern District of California. Notably, another judge in this
10 district recently determined that an hourly rate of \$300.00 and \$250.00 was appropriate for
11 plaintiff's counsel in a routine disability access case. See Johnson v. Patel, 2020 WL 550194, at
12 *4 (E.D. Cal. Feb. 4, 2020); accord Johnson v. Hey Now Properties, LLC, 2019 WL 586753, at
13 *3 (E.D. Cal. Feb. 13, 2019). The court finds Patel to be persuasive, because it is a recent,
14 comparable case from this district and involved a careful consideration of prevailing market rates
15 for routine disability access cases in the Sacramento Division of the Eastern District of California.
16 By contrast, plaintiff's reliance on fee awards in the Central and Southern Districts of California,
17 as well as certain California state courts, is misplaced, because those fee awards are not
18 instructive with respect to prevailing market rates in this federal district.¹ Having considered the
19 affidavits provided by plaintiff, the nature of this case and the legal work that was done, and the
20 prevailing rate in this district, the court concludes that hourly rates of \$300.00 and \$250.00 are
21 appropriate, resulting in a fee award of \$2,385.00.

22 CONCLUSION

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

- 24 1. Plaintiff's motion for default judgment (ECF No. 19) be GRANTED IN PART.
- 25 2. Judgment be entered in plaintiff's favor and against defendants.
- 26 3. Plaintiff be awarded statutory damages in the amount of \$4,000.00 against all

27 ¹ Plaintiff states that "this very court . . . awarded the plaintiff's requested hourly rates" and
28 subsequently cites to a case from Central District of California. (ECF No. 19-1 at 19.)

1 defendants jointly and severally.

2 4. Plaintiff be awarded attorneys' fees and costs in the amount of \$3,198.72 against
3 all defendants jointly and severally.

4 5. Plaintiff be granted an injunction requiring defendants to provide readily
5 achievable property alterations in the form of van accessible handicap parking, accessible
6 entrance door hardware, and an accessible transaction counter at the business establishment
7 named Smog Tech, located at 430 N. Airport Way, Stockton, California in compliance with the
8 ADA and the ADA Accessibility Guidelines.


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

10 IT IS ALSO HEREBY ORDERED that plaintiff shall forthwith serve a copy of this order
11 and findings and recommendations on defendants by U.S. mail at their last-known address(es).

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
14 days after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
17 shall be served on all parties and filed with the court within fourteen (14) days after service of the
18 objections. The parties are advised that failure to file objections within the specified time may
19 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
20 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

21 IT IS SO ORDERED AND RECOMMENDED.

22 Dated: May 27, 2020

23 
24 _____
25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE

27 /368.singh
28