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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREN GILBERT,

Plaintiff,

v.

CHACKO AREECHIRAYIL THOMAS; T  
& T INVESTMENT GROUP, INC dba  
CHEVRON aka EMIL'S LIQUOR &  
SPORTSHOP,

Defendants.

No. 2:22-cv-01774-AC

FINDINGS AND RECOMMENDATIONS

This action was assigned to the undersigned pursuant to the court's automatic case assignment plan. See Local Rules, Appendix A, Subsection (m). Plaintiff has filed a motion for default judgment. ECF No. 13. This motion is before the undersigned pursuant to E.D. Cal. R. 302(c)(19). The motion was set to be heard on the papers. ECF No. 14. Defendants did not file an opposition or take any actions in this case. For the reasons stated below, the court recommends that plaintiff's motion be granted.

**I. Relevant Background**

As stated in his complaint (ECF No. 1), plaintiff is a person with physical disabilities, including limited ability to walk; he requires the use of a wheelchair, knee scooter, or prosthetic. ECF No. 1 at 2. Defendants Chacko Areechirayil Thomas and T&T Investment Group, Inc. dba

1 Chevron aka Emil’s Liquor & Sport Shop (hereinafter collectively referred to as “Defendants”)  
2 are alleged to be real property owners, operators, and/or lessors of the building/parcel located at  
3 1405 California Street, Escalon, California 95320 (“the Property”). Id. at 1. Plaintiff asserts that  
4 the Property contains a gas station and a business called Emil’s Liquor & Sports Shop, which is a  
5 facility open to the public, a place of public accommodation for nonresidential use, and a business  
6 establishment. Id. There is a parking lot on the Property. Id. at 3.

7 Plaintiff is a California resident who lives within fifteen miles of the Property and visited  
8 the Property on or about June 8, 2022, to purchase gasoline for his vehicle. Id. at 2. During the  
9 visit plaintiff alleges he encountered many accessibility problems. Id. at 3. In particular, the  
10 threshold at the shop entrance was too high, making it difficult for plaintiff to step over using his  
11 prosthetic leg. Id. Second, merchandise aisles lacked sufficient clear width, which made it hard  
12 for plaintiff to make his way around the store. Plaintiff knows that he cannot return to the  
13 Property using his wheelchair because the aisles are too narrow for his wheelchair to fit through.  
14 Id. Third, the interior of the restroom lacked sufficient clearances, making it hard for plaintiff to  
15 maneuver about inside and use the fixtures and accessories. Plaintiff knows that if he returns to  
16 the Property in the future using his wheelchair, he will not be able to use the restroom due to the  
17 lack of sufficient clear space. Id. Finally, plaintiff observed that the access aisle next to the  
18 designated accessible parking stall was too narrow to be van-accessible. He knows that if he  
19 returns while using his wheelchair he would not be able to deploy his wheelchair ramp which he  
20 requires to unload his wheelchair from his van. Id. Further, the designated accessible parking  
21 stall was located directly in front of the store entrance, and plaintiff knows that if his vehicle or  
22 any other vehicle was parked in the designated accessible parking stall, it would obstruct the route  
23 of travel to the store entrance which would make it difficult or impossible for plaintiff to make his  
24 way to the entrance using his wheelchair. Id. Plaintiff was, and continues to be, deterred from  
25 visiting the Property because of his awareness that the goods, services, facilities, privileges,  
26 advantages, and accommodations were and are unavailable to him due to his physical disabilities.  
27 Id. Plaintiff enjoys the goods and services offered at the Property, and will return to the Property  
28 once the barriers are removed. Id. at 4.

1 On October 6, 2022, plaintiff filed this action alleging violations of the Americans with  
2 Disabilities Act, 42 U.S.C. § 12101, et seq., the Unruh Civil Rights Act, Cal. Civ. Code § 51-  
3 53, and violations of California Health and Safety Code § 19955(a). ECF No. 1. The summons  
4 and complaint were timely served on defendants. ECF Nos. 5, 6. The clerk entered default as to  
5 all defendants. ECF Nos. 10, 11. On March 15, 2023, plaintiff moved for default judgment.  
6 ECF No. 13. The motion for default judgment was served on all defendants. ECF No. 13-7.  
7 Defendants did not appear to oppose the motion, and have not otherwise appeared or taken any  
8 action in this case.

## 9 II. Motion

10 Plaintiff moves for default judgment on all claims seeks injunctive relief, statutory  
11 damages, attorneys' fees, litigation expenses, and costs. ECF No. 13-1 at 2.

## 12 III. Analysis

### 13 A. Legal Standard

14 Pursuant to Fed. R. Civ. P. 55, default may be entered against a party against whom a  
15 judgment for affirmative relief is sought who fails to plead or otherwise defend against the action.  
16 See Fed. R. Civ. P. 55(a). However, “[a] defendant’s default does not automatically entitle the  
17 plaintiff to a court-ordered judgment.” PepsiCo, Inc. v. California Sec. Cans, 238 F. Supp. 2d  
18 1172, 1174 (C.D. Cal. 2002) (citing Draper v. Coombs, 792 F.2d 915, 924–25 (9th Cir. 1986));  
19 see Fed. R. Civ. P. 55(b) (governing the entry of default judgments). Instead, the decision to  
20 grant or deny an application for default judgment lies within the district court’s sound discretion.  
21 Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). In making this determination, the court  
22 may consider the following factors:

23 the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s  
24 substantive claim, (3) the sufficiency of the complaint, (4) the sum  
25 of money at stake in the action, (5) the possibility of a dispute  
26 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.

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

1 As a general rule, once default is entered, well-pleaded factual allegations in the operative  
2 complaint are taken as true, except for those allegations relating to damages. TeleVideo Sys., Inc.  
3 v. Heidenthal, 826 F.2d 915, 917–18 (9th Cir. 1987) (per curiam) (citing Geddes v. United Fin.  
4 Grp., 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); see also Fair Hous. of Marin v. Combs,  
5 285 F.3d 899, 906 (9th Cir. 2002). Although well-pleaded allegations in the complaint are  
6 admitted by a defendant’s failure to respond, “necessary facts not contained in the pleadings, and  
7 claims which are legally insufficient, are not established by default.” Cripps v. Life Ins. Co. of N.  
8 Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d 1386, 1388 (9th  
9 Cir. 1978)); accord DIRECTV, Inc. v. Hoa Huynh, 503 F.3d 847, 854 (9th Cir. 2007) (“[A]  
10 defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law”)  
11 (citation and quotation marks omitted); Abney v. Alameida, 334 F. Supp. 2d 1221, 1235 (S.D.  
12 Cal. 2004) (“[A] default judgment may not be entered on a legally insufficient claim.”).

13 B. The Eitel Factors

14 a. Factor One: Possibility of Prejudice to Plaintiff

15 The first Eitel factor considers whether the plaintiff would suffer prejudice if default  
16 judgment is not entered, and such potential prejudice to the plaintiff weighs in favor of granting a  
17 default judgment. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Here, plaintiff would suffer  
18 prejudice if the court did not enter a default judgment. Absent entry of a default judgment,  
19 plaintiff would be without recourse for recovery. Accordingly, the first Eitel factor favors the  
20 entry of default judgment.

21 b. Factors Two and Three: Merits of Claims and Sufficiency of Complaint

22 The merits of plaintiff’s substantive claims and the sufficiency of the complaint are  
23 considered here together because of the relatedness of the two inquiries. The court must consider  
24 whether the allegations in the complaint are sufficient to state a claim that supports the relief  
25 sought. See Danning, 572 F.2d at 1388; PepsiCo, Inc., 238 F. Supp. 2d at 1175. Here, the merits  
26 of the claims and sufficiency of the complaint favor entry of default judgment.

27 Plaintiff brings three causes of action: violations of the Americans with Disabilities Act,  
28 42 U.S.C. § 12101, et seq. (“ADA”), the Unruh Civil Rights Act, Cal. Civ. Code § 51-53

1 (“UCR”), and Cal. Health & Safety Code § 19955(a). The merits of each of these claims are  
2 assessed below.

3 *1. ADA Claim*

4 “Title III of the ADA prohibits discrimination in public accommodations....” Kohler v.  
5 Bed Bath & Beyond of California, LLC, 780 F.3d 1260, 1263 (9th Cir. 2015). The elements of a  
6 Title III claim are: (1) plaintiff is disabled within the meaning of the ADA; (2) the defendant is a  
7 private entity that owns, leases, or operates a place of public accommodation; and (3) the plaintiff  
8 was discriminated against by the defendant because of plaintiff’s disability. 42 U.S.C. §  
9 12182(a); Arizona ex rel. Goddard v. Harkins Amusement Enterprises, Inc., 603 F.3d 666, 670  
10 (9th Cir. 2010). Discrimination, in this context, includes “a failure to remove architectural  
11 barriers ... in existing facilities ... where such removal is readily achievable.” 42 U.S.C. §  
12 12182(b)(2)(A)(iv).

13 Plaintiff has adequately alleged that he is disabled within the meaning of the ADA and  
14 that defendants are operating a place of public accommodation. ECF No. 1 at 2. Plaintiff alleges  
15 the Property was constructed after January 26, 1993 – independently triggering access  
16 requirements under Title III of the ADA. Id. at 6. The ADA also prohibits designing and  
17 constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to,  
18 and usable by, individuals with disabilities when it was structurally practicable to do so. 42  
19 U.S.C. § 12183(a)(1). Id. Plaintiff alleges that the Property was not made accessible, despite the  
20 fact that it was structurally practicable to make it accessible, because the aisles were arranged in  
21 an inaccessible manner, there was a high threshold at the entry of the store, the restroom lacked  
22 sufficient clearances, and the parking was not van accessible. Id. at 3. The merits of plaintiff’s  
23 case thus favor entry of default judgment.

24 *2. The Unruh Act*

25 Under California’s Unruh Act, “[a] violation of the right of any individual under the  
26 federal Americans with Disabilities Act of 1990...shall also constitute a violation of this section.”  
27 Cal. Civ. Code § 51(f). In addition, the Unruh Act independently prohibits discrimination, if it is  
28 done in contravention of Section 51. Cal. Civ. Code § 52(a). Section 52(a) provides for statutory

1 damages of no less than \$4,000 for each violation, and attorney’s fees. Id.

2 Because plaintiff has shown that defendants are in violation of Title III of the ADA, he  
3 has also shown that defendants are in violation of the Unruh Civil Rights Act. Lentini v.  
4 California Ctr. for the Arts, Escondido, 370 F.3d 837, 847 (9th Cir. 2004) (“a violation of the  
5 ADA is, per se, a violation of the Unruh Act”). Plaintiff is therefore entitled to a default  
6 judgment on this claim.

7 3. California Health and Safety Code § 19955(a)

8 Plaintiff’s complaint alleges a claim under Cal. Health & Safety Code § 19955(a), a  
9 California law requiring public accommodations to guarantee access to physically handicapped  
10 persons. ECF No. 1 at 1. This claim is not analyzed here because plaintiff did not properly move  
11 for default judgment as to this claim – it is not addressed in the motion. ECF No. 13-1; See  
12 Design Collection, Inc. v. Body Shop of Am, Inc., No. CV 13-9000 FMO (SHX), 2014 WL  
13 12616611, at \*1 (C.D. Cal. Mar. 19, 2014) (a motion for default judgment should include, inter  
14 alia, “the legal authority that sets out the elements of the causes of action upon which plaintiff  
15 seeks default judgment”); See also, United States v. Graf, 610 F.3d 1148, 1166 (9th Cir. 2010)  
16 (“Arguments made in passing and not supported by citations to the record or to case authority are  
17 generally deemed waived.”).

18 c. Factor Four: The Sum of Money at Stake in the Action

19 Under this Eitel factor, “the court must consider the amount of money at stake in relation  
20 to the seriousness of Defendant’s conduct.” PepsiCo, Inc., 238 F. Supp. 2d at 1176–77. Plaintiff  
21 seeks \$4,000.00 in statutory damages, and \$2,722.28 in attorney’s fees and costs. ECF No. 13-1  
22 at 9. The complaint offers no information about the defendants’ financial condition, so the court  
23 cannot tell if this is a significant amount of money to defendants. However, there is no evidence  
24 that defendants took any action after being served with the summons and complaint in order to  
25 avoid a judgment of this size. This factor accordingly weighs in favor of a default judgment.

26 d. Factor Five: Possibility of Dispute Concerning Material Facts

27 The facts of this case are relatively straightforward, and plaintiff has provided the court  
28 with well-pleaded allegations supporting its claims and affidavits in support of its allegations.

1 Here, the court may assume the truth of well-pleaded facts in the complaint (except as to  
2 damages) following the clerk's entry of default and, thus, there is no likelihood that any genuine  
3 issue of material fact exists. See, e.g., Elektra Entm't Grp. Inc. v. Crawford, 226 F.R.D. 388, 393  
4 (C.D. Cal. 2005) ("Because all allegations in a well-pleaded complaint are taken as true after the  
5 court clerk enters default judgment, there is no likelihood that any genuine issue of material fact  
6 exists."); accord Philip Morris USA, Inc., 219 F.R.D. at 500; PepsiCo, Inc., 238 F. Supp. 2d at  
7 1177.

8 e. Factor Six: Whether Default Was Due to Excusable Neglect

9 Upon review of the record before the court, there is no indication that the default was the  
10 result of excusable neglect. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Plaintiff served the  
11 defendants with the summons and complaint. ECF Nos. 5, 6. Moreover, plaintiff served  
12 defendants by mail with notice of its application for default judgment. ECF No. 13-7. Despite  
13 ample notice of this lawsuit and plaintiff's intention to seek a default judgment, defendants failed  
14 to defend themselves in this action. Thus, the record supports a conclusion that the defendants  
15 have chosen not to defend this action, and not that the default resulted from any excusable  
16 neglect. Accordingly, this Eitel factor favors the entry of a default judgment.

17 f. Factor Seven: Policy Favoring Decisions on the Merits

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

25 Upon consideration of the Eitel factors, the court concludes that plaintiff is entitled to the  
26 entry of default judgment against defendants and makes a recommendation to that effect. What  
27 remains is the determination of the amount of damages to which plaintiff is entitled.

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1 C. Terms of Judgment

2 Plaintiff requests statutory damages and attorney's fees under Title III of the ADA and the  
3 Unruh Civil Rights Act, along with injunctive relief.

4 I. *Attorney's Fees*

5 Attorney's fee awards are calculated using the "lodestar" method whereby the hours  
6 reasonably spent in the litigation are multiplied by a reasonable hourly rate. Ferland v. Conrad  
7 Credit Corp., 244 F.3d 1145, 1149 n.4 (9th Cir. 2001) (per curium). The hourly rate is generally  
8 calculated "according to the prevailing market rates in the relevant community." Blum v.  
9 Stenson, 465 U.S. 886, 895, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984). It is also the general rule  
10 that the court will use the rates of attorneys practicing in the forum district. Gates v. Deukmejian,  
11 987 F.2d 1392, 1405 (9th Cir. 1992).

12 Plaintiff requests attorney fees at an hourly rate of \$300 for 4.3 hours of work, plus  
13 paralegal fees at an hourly rate of \$115 for 5.4 hours of work, totaling \$2,722.28. ECF No. 13-1  
14 at 9. Plaintiff cites prior case law from this district using these rates specifically for herself and  
15 for her experienced paralegals. Block v. Starbucks Corp., No. 1:15-cv-00991-DAD-CKD, 2018  
16 WL 4352906, at \*7 (E.D. Cal. Sept. 11, 2018); Vickers v. Vallejo Furniture Galleries, Inc., No.  
17 2:20-cv-00068-JAM-AC, 2020 U.S. Dist. LEXIS 81759 (E.D. Cal. May 8, 2020). Based on this  
18 case law, the affidavits presented and the detailed billing statement (ECF No. 13-3), the  
19 undersigned also finds these rates and hours to be reasonable.

20 Plaintiff also seeks \$811.28 in costs and litigation expenses. ECF No. 13-1 at 9. Section  
21 12205 of the ADA provides that a district court, "in its discretion, may allow the prevailing party,  
22 other than the United States, a reasonable attorney's fee, including litigation expenses, and costs."  
23 42 U.S.C. § 12205. The statutory provisions of the ADA provide direct authority for the award of  
24 expert witness fees as litigation expenses under the ADA. See Lovell v. Chandler, 303 F.3d  
25 1039, 1058 (9th Cir. 2002). The costs here include expenses for the court filing fee, costs of  
26 service, and pre-filing investigation, which are compensable pursuant to 42 U.S.C. § 12205 and  
27 Lovell, 303 F.3d at 1058. ECF No. 13-1 at 9. Plaintiff's request for costs in the amount of  
28 \$811.28 for litigation costs and expenses is appropriate.



1           Accordingly, the undersigned will recommend that plaintiff be awarded a total of  
2 \$2,722.28 for attorneys’ fees and costs.

3                           2. *Statutory Damages*

4           The Unruh Civil Rights Act provides for, among other things, minimum statutory  
5 damages of \$4,000 per violation. Cal. Civ. Code § 52(a); Grove v. De La Cruz, 407 F. Supp. 2d  
6 1126, 1133 (C.D. Cal. 2005) (the Unruh Act “provides for statutory damages up to a maximum of  
7 three times the actual damages but no less than \$4,000 for each instance of discrimination”).  
8 Plaintiff asserts that he is entitled to \$4,000.00, in statutory damages pursuant to the Cal. Civ.  
9 Code § 52(a). ECF No. 13-1 at 7. Plaintiff has sufficiently alleged facts indicating that he visited  
10 the Property on one occasion and encountered barriers that interfered with his ability to use and  
11 enjoy the goods, services, privileges, and accommodations offered each time. ECF No. 21. Thus,  
12 plaintiff is entitled to \$4,000 in statutory damages. Guedoir, 218 F. Supp. 3d at 1103.

13                           3. *Injunctive Relief*

14           Plaintiff’s complaint seeks an injunction requiring defendants to make changes and  
15 accommodations at the subject facility in a manner that achieves compliance with federal and  
16 state regulations. ECF No. 13-1 at 7. As the factual allegations in the complaint are taken as true,  
17 plaintiff is entitled to injunctive relief as requested pursuant to both state and federal law. See  
18 Wander v. Kaus, 304 F.3d 856, 858 (9th Cir. 2002) (“Damages are not recoverable under Title III  
19 of the ADA—only injunctive relief is available for violations of Title III.”).

20   **IV. Conclusion**

21           The Clerk of Court is DIRECTED to assign a District Judge to this case. For the reasons  
22 explained above, it is hereby RECOMMENDED THAT:

- 23           1. Plaintiff’s March 15, 2023, motion for default judgment (ECF No. 13) be GRANTED;  
24           2. The court enter judgment against the defendants on the complaint’s claims in the  
25 amount of \$6,722.28 (comprising \$4,000 in statutory damages and \$2,722.28 in attorney’s fees  
26 and costs);

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1           3. Defendants make changes and accommodations at the subject at the Property located at  
2 or about 1405 California Street, Escalon, California 95320, in compliance with the Americans  
3 with Disabilities Act Accessibility Guidelines.

4           4. This case be closed.

5           These findings and recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
7 after being served with these findings and recommendations, any party may file written  
8 objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a  
9 document should be captioned “Objections to Magistrate Judge’s Findings and  
10 Recommendations.” Any response to the objections shall be filed with the court and served on all  
11 parties within fourteen days after service of the objections. Local Rule 304(d). Failure to file  
12 objections within the specified time may waive the right to appeal the District Court’s order.  
13 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998), as amended on denial of reh’g (Nov. 24,  
14 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

15 DATED: May 8, 2023

16   
17 ALLISON CLAIRE  
18 UNITED STATES MAGISTRATE JUDGE  
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