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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANCISCA MORALEZ,
Plaintiff,
v.
OKL CONSULTING GROUP, INC.,
Defendant.

Case No. [17-cv-05796-CRB](#)

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT**

Plaintiff Francisca Moralez seeks the entry of a default judgment against Defendant OKL Consulting Group (“OKL”). For the reasons that follow, the Court GRANTS the motion.

I. BACKGROUND

Moralez suffers from rheumatoid arthritis and uses a wheelchair for mobility. Compl. ¶ 8 (dkt. 1). Moralez contends that, on or about May 27, 2017, she visited a gas station called Gas of America in Antioch, California, which is owned and/or operated by OKL. Compl. ¶ 1. Moralez alleges that she was unable to find a van-accessible parking space and encountered an “excessively sloped” ramp, heavy front doors, and a transaction counter too high for her to easily reach. Compl. ¶ 10. She contends that these physical features of the gas station violate the Americans With Disabilities Act (“ADA”), 42 U.S.C. § 12182(a), and its California equivalents, see Cal. Civ. Code § 51; Cal. Health & Safety Code § 19955; Compl. ¶¶ 16-46.

Moralez filed a complaint against OKL on October 7, 2017. Compl. OKL failed to respond. The Clerk of the Court issued a Summons, (dkt. 5), and Moralez had the Summons served. (dkt. 9). OKL still failed to appear. Moralez then filed a Motion for

1 Entry of Default, (dkt. 10), which the Clerk’s Office granted, (dkt. 11). Morales has now
2 filed a Motion for Default Judgment requesting damages of \$4,000—the minimum
3 statutory amount under California law for civil rights or discrimination claims, see Cal.
4 Civ. Code § 52(a)—and an injunction requiring that within six months OKL modify its gas
5 station such that:

- 6 a) The required number of properly configured and
7 identified van-accessible parking stall(s), with access aisle on
8 the passenger side of the parking stall, shall be provided;
- 9 b) A properly configured curb ramp shall be provided
10 along the route of travel from the designated accessible parking
11 to the Facility entrance;
- 12 c) The operating pressure of the Facility entrance door
13 shall be properly adjusted and maintained; and
- 14 d) A properly configured accessible portion of the
15 transaction counter shall be provided.

16 (dkt. 12-7 at 1-2). She also seeks attorneys’ fees in the amount of \$3,281.55. Mot. at 7-9.
17 The Court held a hearing on October 26, 2018, at which OKL again failed to appear. (dkt.
18 16).

19 **II. LEGAL STANDARD**

20 Whether to grant a motion for the entry of a default judgment is within the
21 discretion of the trial court. See Lau Ah Yew v. Dulles, 236 F.2d 415, 416 (9th Cir. 1956).
22 Upon an entry of default by the Clerk, the factual allegations of the plaintiff’s complaint
23 will be taken as true, except those relating to the amount of damages. See Derek Andrew,
24 Inc. v. Poof Apparel Corp., 528 F.3d 696, 702 (9th Cir. 2008). In determining whether to
25 enter a default judgment, a court has “an affirmative duty to look into its jurisdiction over
26 both the subject matter and the parties,” In re Tuli, 172 F.3d 707, 712 (9th Cir. 1999),
27 including whether notice has been adequately given, see Omni Capital Int’l, Ltd. v. Rudolf
28 Wolff & Co., 484 U.S. 97, 104 (1987); Fed. R. Civ. P. 55(a); accord Dytch v. Bermudez,
2018 WL 2230945, at *2 (N.D. Cal. May 16, 2018), reconsideration denied, 2018 WL
3643702 (N.D. Cal. Aug. 1, 2018).

1 **III. DISCUSSION**

2 **A. Jurisdiction**

3 The Court has jurisdiction under 28 U.S.C. § 1331, as the Complaint alleges
4 violation of a federal statute, and supplemental jurisdiction under 28 U.S.C. § 1367 over
5 the pendant state law claims. See Compl. ¶ 3. Likewise, the Court has jurisdiction over
6 the parties, as OKL’s facility is located within this district and the plaintiff resides within
7 the district. See Compl. ¶¶ 7-8.

8 Morales’s proof of service indicates that on October 19, 2017, a process server
9 personally served Daven Loomba, who the process server indicated is a registered agent of
10 OKL, with a copy of the complaint and a variety of related documents. Summons at 1. At
11 the hearing on this motion, (dkt. 16), counsel for Morales stated that Loomba had indicated
12 to Morales’s agent that Loomba was, at least as of the summer of 2018, the owner of OKL,
13 but that he had entered into a management agreement with a third party that gave that third
14 party an option to purchase the facility. Morales’s counsel stated that his understanding
15 was that Loomba intended to sell the facility, but that, as of the summer of 2018, that
16 process was incomplete. Id.

17 Federal Rule of Civil Procedure 4, which governs the service of summons, requires
18 only that the party effecting service make a “good faith effort to comply with the
19 requirements” imposed by Rule 4. Travelers Cas. & Sur. Co. of Am. v. Brenneke, 551
20 F.3d 1132, 1136 (9th Cir. 2009). Given that Morales gave notice to the registered agent of
21 OKL and that agent confirmed at the time of service that he was, in fact, the owner of the
22 facility, the Court concludes that this standard was met in this case. Thus, OKL was
23 adequately given notice. See Omni Capital Int’l, Ltd., 484 U.S. at 104.

24 **B. Entry of Default Judgment**

25 Having concluded that the Court has jurisdiction over this case, the Court now turns
26 to whether to enter default judgment in this case. In making that assessment, this Court
27 examines the following factors: (1) the possibility of prejudice to the plaintiff; (2) the
28 merits of the plaintiff’s substantive claims; (3) the sufficiency of the complaint; (4) the

1 sum of money at stake in the action; (5) the possibility of a dispute concerning material
2 facts; (6) whether the default was due to excusable neglect; and (7) the likelihood of
3 obtaining a decision on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.
4 1986).

5 Under the first factor, Morales would face possible prejudice without a default
6 judgment because “[w]ithout entry of default, [Morales] would have no other means of
7 recourse” against OKL. See Shaw v. Five M, LLC, 2017 WL 747465, at *3 (N.D. Cal.
8 Feb. 27, 2017). Absent an injunction, Morales would continue to face the barriers to entry
9 that she alleges that she faces at OKL’s facility. See Compl. ¶¶ 9-15. This factor thus
10 supports Morales’s claim.

11 The second and third factors turn on the merits of Morales’s claim; that is, whether
12 she has set forth adequate allegations that would, if true, entitle her to relief. Eitel, 782
13 F.2d at 1471-72. The ADA requires that the plaintiff show that (1) she is disabled, (2) the
14 facility in question is a “place of public accommodation,” and (3) the plaintiff faced
15 discrimination. 42 U.S.C. § 12182(a). As relevant here, the third prong of that inquiry
16 satisfied when (a) the facility in question has an “architectural barrier” that precludes
17 people with disabilities from enjoying equal access to the facility and (b) where removal of
18 those barriers “is readily achievable.” Id. at § 12182(b)(2)(A)(iv).

19 Morales has alleged sufficient facts to satisfy these requirements. First, she suffers
20 from rheumatoid arthritis and uses a wheelchair for mobility, and thus qualifies as
21 disabled. Compl. ¶ 8. Second, the facility in question is a gas station, which the ADA
22 expressly describes as a “place of public accommodation.” 42 U.S.C. § 12181(7)(F).
23 Third, she has alleged that the following architectural barriers violate the ADA: the lack of
24 van parking, see 2010 ADAAG Standards § 208.2.4, the excessively sloped ramp, id.
25 § 405.2, and the too-high service counter, id. § 904.4. She also alleges that the removal of
26 these barriers is readily achievable. Compl. ¶ 21. Morales has thus adequately alleged an
27 ADA violation. Moreover, because an ADA violation is a per se violation of the
28 California Uruh Act, she has also adequately alleged a violation of the Uruh Act. See Cal.

1 Civ. Code § 51(f); Lentini v. Cal. Ctr. For the Arts, Escondido, 370 F.3d 837, 847 (9th Cir.
2 2004) (“[A] violation of the ADA is, per se, a violation of the Unruh Act.”); Compl. ¶¶ 34-
3 41. Thus, the second and third factors, too, support Moralez’s motion for default
4 judgment.

5 The fourth factor examines the sum of money at stake in the action. Eitel, 782 F.2d
6 at 1471-72. Moralez seeks only the statutory minimum in damages: \$4,000. Mot. At 2;
7 see Cal. Civ. Code § 52(a). The sum of money at stake cannot be viewed as excessive.
8 See Shaw, 2017 WL 747465, at *4 (“When the amount is substantial or unreasonable,
9 default judgment is discouraged.”). This factor thus further supports Moralez’s claim.

10 Turning to the three remaining factors, there is no possibility of a dispute over
11 material facts—the fifth factor—because, upon an entry of default by the Clerk, the factual
12 allegations of the plaintiff’s complaint related to liability will be taken as true. See Derek
13 Andrew, Inc. v. Poof Apparel Corp., 528 F.3d 696, 702 (9th Cir. 2008); Eitel, 782 F.2d at
14 1471. Nor is there any reason to believe that OKL’s failure to appear was due to excusable
15 neglect—the sixth factor. Eitel, 782 F.2d at 1472. Moreover, although default judgments
16 are generally disfavored when a case may be decided on the merits, see Pena v. Seguros La
17 Comercial, S.A., 770 F.2d 811, 814 (9th Cir. 1985), OKL’s failure to appear has rendered
18 a decision on the merits impossible—the seventh factor. See Eitel, 782 F.2d at 1472.

19 Each of the Eitel factors thus weighs in favor of default judgment. In consequence,
20 the Court concludes that entry of default judgment in favor of Moralez is warranted in this
21 case. The Court thus GRANTS default judgment in favor of Moralez.

22 **C. Remedies**

23 The question, then, becomes what remedies are appropriate in this matter. As
24 mentioned above, Moralez seeks damages only under California law, which provides a
25 minimum statutory damage amount of \$4,000. Cal. Civ. Code § 52(a). Moralez seeks
26 only that minimum. Mot. at 6. As it is the statutory minimum, the Court GRANTS
27 damages in the amount of \$4,000.

28 Moralez also seeks an injunction requiring that within six months the defendant

1 make various structural changes to remedy the architectural barriers she identifies. (dkt.
2 12-7 at 1-2). Injunctions may be granted in situations of default judgment, see Craigslist,
3 Inc. v. 3taps, Inc., 2015 WL 5921212, at *3 (N.D. Cal. Oct. 11, 2015), and are appropriate
4 when a party demonstrates “(1) that it has suffered an irreparable injury; (2) that remedies
5 available at law . . . are inadequate to compensate for that injury; (3) that, considering the
6 balance of hardships between the plaintiff and defendant, a remedy in equity is warranted;
7 and (4) that the public interest would not be disserved by a permanent injunction.” N.
8 Cheyenne Tribe v. Norton, 503 F.3d 836, 843 (9th Cir. 2007).

9 The ADA permits injunctive relief to remedy injuries imposed by architectural
10 barriers. 42 U.S.C. § 12188(a)(2); see also Chapman v. Pier 1 Imports (U.S.) Inc., 631
11 F.3d 939, 951 (9th Cir. 2011). California law also permits plaintiffs to seek injunctions for
12 disability law violations. Cal. Civ. Code. § 55.

13 Morales alleges that the continued barriers to her access to and use of OKL’s
14 facility have deterred her from using the facility, Compl. ¶ 12, and thus that she faces
15 irreparable harm that damages are insufficient to remedy. With regard to the balance of
16 the hardships and the public interest that would be served by an injunction, the injunction
17 Morales seeks corresponds with the ADA and California law violations that she has
18 alleged, and thus does not impose requirements above what these ADA and California
19 laws require. See (dkt. 12-7 at 1-2). This Court cannot conclude that “the public interest
20 would be disserved by a permanent injunction” requiring compliance with the law. See
21 Norton, 503 F.3d at 843. The Court thus GRANTS Plaintiff’s motion for an injunction.

22 **D. Attorneys’ Fees**

23 Finally, Morales seeks attorneys’ fees. Mot. at 7-9. Attorneys’ fees are permitted
24 under both the ADA, 42 U.S.C. § 12205, and California law, Cal. Civ. Code § 55.
25 Morales seeks attorneys’ fees based on a calculation of \$495 per hour for her attorney,
26 Zachary Best, and \$150 and \$120, respectively, for his two paralegals, as well as costs and
27 litigation expenses in the amount of \$466.05. Mot. at 9. This Court has recently granted
28 attorneys’ fees based on these rates to this attorney. See Trujillo v. Orozco, 2018 WL

1 1142311, at *3 (N.D. Cal. Mar. 2, 2018); cf. Hensley v. Eckerhart, 461 U.S. 424, 433
2 (1983) (holding that attorneys’ fees calculations must be based on a “reasonable hourly
3 rate”). The Court thus concludes that this fee request is not unreasonable. Nor does the
4 Court determine that the total amount requested—\$3,281.44—is exorbitant. See (dks. 12-
5 1, 12-2, 12-3, 12-4, 12-5). The Court thus GRANTS Moralez’s motion for attorneys’ fees.

6 **IV. CONCLUSION**

7 For the foregoing reasons, the Court GRANTS Moralez’s Motion for Default
8 Judgment and ORDERS that:

- 9 1. Judgment is hereby entered against Defendant OKL Consulting Group based on
10 Moralez’s claims under the Americans With Disabilities Act, California Civil Code
11 § 51.5, and California Health and Safety Code § 19955(a).
- 12 2. Plaintiff Moralez is entitled to recover \$4,000 in damages and \$3,281.44 in
13 attorneys’ fees from Defendant OKL Consulting
- 14 3. Defendant OKL Consulting is hereby ordered, within six months, to modify its gas
15 station such that:
 - 16 a) The required number of properly configured and
17 identified van-accessible parking stall(s), with access aisle on
18 the passenger side of the parking stall, shall be provided;
 - 19 b) A properly configured curb ramp shall be provided
20 along the route of travel from the designated accessible parking
21 to the Facility entrance;
 - 22 c) The operating pressure of the Facility entrance door
23 shall be properly adjusted and maintained; and
 - 24 d) A properly configured accessible portion of the
25 transaction counter shall be provided.
- 26 4. Plaintiff Moralez is to serve notice of this order upon (1) the registered agent of
27 OKL Consulting and (2) on the person currently operating the facility pursuant to
28 the management agreement about which the Plaintiff informed the Court at the
hearing on October 26, 2018, (dkt. 16).

Should Defendant OKL Consulting wish to challenge default judgment in this matter, it
may do so in a timely manner.

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IT IS SO ORDERED.

Dated: November 5, 2018



CHARLES R. BREYER
United States District Judge