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

SCOTT JOHNSON,  
Plaintiff,  
  
v.  
  
FONG LO, KA WAI YIP, TONY LAM  
NGUYEN, and HANKEE II  
RESTAURANT, INC.,  
  
Defendants.

Case No. 21-cv-05910-MMC

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
APPLICATION FOR DEFAULT  
JUDGMENT; DIRECTIONS TO  
CLERK; VACATING HEARING**

United States District Court  
Northern District of California

Before the Court is plaintiff Scott Johnson's ("Johnson") Application for Default Judgment, filed and served February 25, 2022, by which said defendant seeks default judgment against defendants Ka Wai Yip ("Yip"), Tony Lam Nguyen ("Nguyen"), and Hankee li Restaurant, Inc. ("Hankee li"). No response has been filed. The Court, having read and considered the papers filed in support of the Application, deems the matter suitable for determination thereon, VACATES the hearing scheduled for May 13, 2022, and rules as follows.

In his Complaint, Johnson, a "California resident with physical disabilities" who "uses a wheelchair for mobility," alleges he visited, on four occasions, Kim Anh Spa, Han Kee Restaurant, and Pinoy Lechon BBQ & Grill, businesses located adjacent to one another on Tully Road in San Jose, California. (See Compl. ¶¶ 1, 2, 12.) According to Johnson, Kim Anh Spa is owned by defendant Nguyen (see Compl. ¶¶ 4-5), Han Kee Restaurant is owned by defendant Hankee li (see Compl. ¶¶ 6-7), and all three businesses he visited are located on real property owned by former defendant Fong Lo

1 (see Compl. ¶¶ 2-3).<sup>1</sup> Johnson alleges that, on the dates he visited the above-referenced  
 2 businesses, he encountered "barriers," such as a lack of "wheelchair accessible parking"  
 3 and a lack of "wheelchair accessible bathrooms." (See Compl. ¶¶ 18-19.) Based  
 4 thereon, Johnson asserts two Causes of Action, titled, respectively, "Violation of the  
 5 Americans with Disabilities Act" and "Violation of the Unruh Civil Rights Act."

6 Upon entry of default, the factual allegations in a complaint, other than those  
 7 pertaining to the amount of damages, are "taken as true." See Geddes v. United  
 8 Financial Group, 559 F.2d 557, 560 (9th Cir. 1977). Here, the Court, having assumed as  
 9 true the factual allegations in the Complaint, finds Nguyen, as owner of Kim Anh Spa,  
 10 and Hankee li, as owner of Han Kee Restaurant, violated the Americans with Disabilities  
 11 Act ("ADA") (see Compl. ¶¶ 1, 12-16, 20-21, 25-26, 30-31, 36, 45-46, 49-53), and,  
 12 consequently, the Unruh Civil Rights Act ("Unruh Act"), see Cal. Civ. Code § 51(f)  
 13 (providing "[a] violation of the right of any individual under the [ADA] shall also constitute  
 14 a violation of [the Unruh Act]"). As to Yip, however, the Court finds Johnson has not  
 15 established a violation of the ADA or the Unruh Act, as the Complaint includes no factual  
 16 allegations as to said defendant, let alone factual allegations sufficient to support a  
 17 finding that Yip violated the ADA or the Unruh Act. See Cripps v. Life Ins. Co. of North  
 18 America, 980 F.2d 1261, 1267-68 (9th Cir 1992) (reversing default judgment where  
 19 plaintiff failed to allege facts sufficient to state a cognizable claim against defendant).

20 The Court next considers Johnson's requests for relief as they pertain to Nguyen  
 21 and Hankee li, specifically, his requests for (1) injunctive relief under the ADA, (2)  
 22 damages under the Unruh Act (3) an award of attorney's fees under either the ADA or the  
 23 Unruh Act, and (4) an award of costs and expenses under the ADA.

24 First, with respect to injunctive relief under the ADA, the Court, by order filed April  
 25 5, 2022, found Johnson had failed to establish his entitlement to such relief, but afforded

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27 <sup>1</sup> By order filed January 14, 2022, Johnson's claims against Fong Lo were  
 28 dismissed for failure to effectuate timely service.

1 him leave to file a supplemental brief for purposes of identifying the specific injunctive  
2 relief sought and, to the extent his request was based on requirements set forth the  
3 "2010 Standards," establishing their applicability to the three remaining defendants.<sup>2</sup> In  
4 response, Johnson filed a supplemental brief identifying the specific injunctive relief  
5 sought and stating he sought such relief solely based on requirements contained in the  
6 2010 Standards; Johnson failed, however, to address in any manner how those  
7 Standards apply to any defendant. Accordingly, to the extent Johnson seeks injunctive  
8 relief, the Application will be denied.

9 Next, with respect to the request for damages under the Unruh Act, the Court  
10 finds, for the reasons stated in the Application (see Pl.'s Appl. 20:4-23, 22:23-23:12),  
11 Johnson is entitled to a monetary award of \$4,000 as against Nguyen and a monetary  
12 award of \$4,000 as against Hankee li. See Cal. Civ. Code § 52(a) (providing defendant  
13 who violates Unruh Acct is liable for "actual damages that may be determined . . . but in  
14 no case less than four thousand dollars (\$4,000)").

15 With respect to attorney's fees, the Court finds Johnson is entitled under the Unruh  
16 Act to an award in the amount he seeks, specifically, \$2,525, the hourly rates requested  
17 and the number of hours expended on the matter being reasonable. See id. (providing  
18 defendant who violates Unruh Act is liable for "any attorney's fees that may be  
19 determined by the court").

20 Lastly, Johnson's request for an award of "litigation expenses and costs" under the  
21 ADA (see Pl.'s Appl. at 31:3-8) will be denied, as Johnson has not shown he is entitled to  
22 relief under the ADA, and, consequently, is not a prevailing party as to his ADA claim.  
23 See, e.g., Midgett v. Tri-County Metropolitan Transportation Dist., 254 F.3d 846, 851-52  
24 (9th Cir. 2001) (affirming summary judgment in favor of defendant where plaintiff failed to

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26 <sup>2</sup> As explained in greater detail in the Court's Order of April 5, 2022, the federal  
27 regulations comprising the 2010 Standards only apply to buildings constructed or altered  
28 on or after March 15, 2010, and the Complaint includes no factual allegations to support  
a finding that the buildings Johnson visited had been constructed or altered on or after  
March 15, 2010.

1 establish entitlement to any remedy under ADA). As Johnson is the prevailing party  
2 against defendants Nguyen and Hankee li on his claim under the Unruh Act, however,  
3 Johnson may file with the Clerk of Court a bill of costs to recover his taxable costs. See  
4 Civil L.R. 54-1(a).

5 **CONCLUSION**

6 For the reasons stated, Johnson's Application for Default Judgment is GRANTED  
7 in part and DENIED in part, as follows:

8 1. To the extent Johnson seeks, as against Nguyen and Hankee li, an award of  
9 damages under the Unruh Act, the Application is hereby GRANTED, and Johnson is  
10 awarded the sum of \$4,000 as against Nguyen, and the sum of \$4,000 as against  
11 Hankee li.

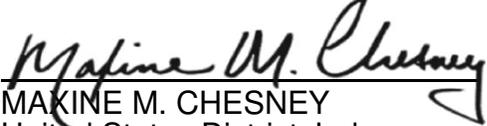
12 2. To the extent Johnson seeks, as against Nguyen and Hankee li, an award of  
13 attorney fees under the Unruh Act, the Application is hereby GRANTED, and Johnson is  
14 awarded the sum of \$2,525, jointly and severally, as against Nguyen and Hankee li

15 3. In all other respects, the Application is hereby DENIED.

16 The Clerk of Court is DIRECTED to enter judgment in conformity with the above.

17 **IT IS SO ORDERED.**

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19 Dated: May 9, 2022

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21 MAKINE M. CHESNEY  
22 United States District Judge  
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United States District Court  
Northern District of California