

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4  
5 SCOTT JOHNSON,  
6 Plaintiff,  
7 v.  
8 BYER PROPERTIES, L.P.,  
9 Defendant.

Case No. [17-cv-02135-BLF](#)

**ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S MOTION  
FOR DEFAULT JUDGMENT**

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11 Plaintiff Scott Johnson ("Plaintiff") moves for default judgment against Defendant Byer  
12 Properties, L.P. ("Defendant") in this action for violations of the Americans with Disabilities Act  
13 of 1990 and the California Unruh Civil Rights Act. *See* Mem. P. & A. ISO Appl. Default J.  
14 ("Mem."), ECF 16-1. The Court held a hearing on Plaintiff's motion on January 4, 2018.

15 At the hearing, the Court noted that although Plaintiff requests \$12,000 in statutory  
16 damages in his motion for default judgment, the Complaint itself only contains a prayer for \$4,000  
17 in statutory damages. *See* ECF 1 ("Compl.") at 8. In particular, Plaintiff's motion for default  
18 judgment asserts that although Plaintiff visited Defendant's property seven times, Plaintiff  
19 requests only three statutory penalty assessments of \$4,000 each for a total of \$12,000. *See* Mem.  
20 at 6. This representation, or any similar allegation, is entirely absent from the Complaint.  
21 Therefore, a due process issue exists because Defendant may have chosen to default based on the  
22 damages sought in the Complaint. "A default judgment must not differ in kind from, or exceed in  
23 amount, what is demanded in the pleadings." Fed. R. Civ. P. 54(c). As currently pled, Plaintiff has  
24 not proven entitlement to more than \$4,000 in statutory damages.


25 At the hearing, Plaintiff requested leave to amend the Complaint in order to allege that he  
26 seeks statutory penalty assessments of \$4,000 per violation, and to specify the number of  
27 violations for which he seeks to recover. The Court granted Plaintiff's request to amend and serve  
28 the amended complaint on Defendant.

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For the foregoing reasons, as well as those stated on the record at the hearing, Plaintiff's motion for default judgment is DENIED WITHOUT PREJUDICE. Plaintiff may file an amended complaint on or before February 5, 2018.

**IT IS SO ORDERED.**

Dated: January 4, 2018

  
BETH LABSON FREEMAN  
United States District Judge