

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Acosta v. Singh

Acosta · No. 1:24-cv-01437-JLT-HBK · Decided May 14, 2025

SUMMARY

The document contains Findings and Recommendations by a United States Magistrate Judge recommending that Plaintiff Jose Acosta’s motion for default judgment be granted against Jaswant Singh and Rajinder Kaur. It addresses proper service, the Eitel factors, claims under Title III of the Americans with Disabilities Act, the California Unruh Act, and California accessibility laws. The recommendations include \$4,000 in statutory damages, \$3,774.76 in attorney’s fees and costs, and injunctive relief requiring removal of specified accessibility barriers.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 14, 2025
DOCKET	1:24-cv-01437-JLT-HBK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for default judgment under Federal Rule of Civil Procedure 55(b)(2) after defendants were personally served, failed to answer or appear, and the clerk entered default. The magistrate judge issued findings and recommendations that the motion be granted, subject to review by the assigned district judge.
STANDARD OF REVIEW	A court may enter default judgment under Federal Rule of Civil Procedure 55(b)(2) after the clerk enters default, but must first determine that service was proper and then evaluate the six Eitel factors. Well-pleaded factual allegations, other than those concerning damages, are accepted as true after default; damages must be proven, and legal conclusions and inadequately pleaded facts are not admitted.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Jose Acosta v. Jaswant Singh, individually and doing business as Grant Market, Rajinder Kaur, individually and doing business as Grant

TOPICS

default judgment service of process ada / disability architectural barriers attorney fees

PRACTICE AREAS

Civil procedure Americans with Disabilities Act Disability access Default judgment
Attorney's fees and costs

QUESTIONS PRESENTED

1. Whether defendants were properly served and the clerk's defaults were lawfully entered.
2. Whether the six Eitel factors supported entry of default judgment.
3. Whether the complaint adequately stated claims under Title III of the ADA, the California Unruh Civil Rights Act, and California accessibility statutes.
4. Whether plaintiff was entitled to injunctive relief requiring removal of specified architectural barriers.
5. Whether plaintiff was entitled to \$4,000 in statutory damages and \$3,774.76 in attorney's fees, litigation expenses, and costs.

HOLDINGS

1. Defendants were properly served by personal service, and the clerk properly entered default against them.
2. The six Eitel factors overwhelmingly favored entry of default judgment.
3. The complaint adequately stated a prima facie Title III ADA discrimination claim based on alleged architectural barriers at a place of public accommodation.
4. The complaint adequately stated claims under the California Unruh Civil Rights Act and the cited California accessibility statutes.
5. Plaintiff was entitled to recommended injunctive relief requiring removal of the identified barriers within sixty days of the district court's order.
6. The court recommended an award of \$4,000 in Unruh Act statutory damages and \$3,774.76 in attorney's fees, litigation expenses, and costs.

KEY QUOTATIONS

“The court cannot enter default judgment if the defendants were not properly served.” (at 2)

“After the clerk enters a default, the court shall accept “as true all factual allegations in the complaint, except those as to the amount of damages.”” (at 5)

“To prevail on a Title III ADA claim, plaintiff “must establish that: (1) he is disabled within the meaning of the ADA; (2) [defendants] are a private entity that owns, leases, or operates a place of public

accommodation; and (3) [defendants] discriminated against him by denying him public accommodations because of his disability.”” (at 7)

“Cases should be decided upon their merits whenever reasonably possible.” (at 9)

FACTUAL BACKGROUND

Jose Acosta, who uses a wheelchair because a physical disability substantially limits his ability to walk, visited Grant Market in Fresno, California, intending to purchase refreshments and snacks. He alleged that faded accessible-parking markings, the absence of an access aisle, an obstructed route to the entrance, narrow interior aisles, and a transaction counter that was too high prevented or impeded equal access to the facility. Acosta alleged that he was deterred from returning but intended to return after the barriers were removed. Singh and Kaur, alleged owners, operators, or lessors of the market, were served but did not respond.

PROCEDURAL HISTORY

Plaintiff filed this action asserting claims under Title III of the Americans with Disabilities Act, the California Unruh Civil Rights Act, and California accessibility statutes. Defendants were personally served on December 12, 2024, but did not appear or answer. The clerk entered default on January 21, 2025, and plaintiff filed the motion for default judgment on April 21, 2025. The magistrate judge recommended entry of judgment for plaintiff, an award of statutory damages, attorney's fees and costs, and specified injunctive relief.

DISPOSITION

other

CASES CITED

- *Mason v. Genisco Tech. Corp.*, 960 F.2d 849, 851 (9th Cir. 1992)
- *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986)
- *Yoon Chul Yoo v. Arnold*, 615 F. App'x 868, 870 (9th Cir. 2015)
- *Strojnuk v. JW World Enters., Inc.* Best W. Bakersfield N., 2021 WL 22137, at *1 (E.D. Cal. Jan. 4, 2021)
- *Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1078 (C.D. Cal. 2012)
- *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980)
- *True Religion Apparel, Inc. v. Jet 2A*, 2009 WL 10671791, at *3 (C.D. Cal. Feb. 11, 2009)
- *Solis v. Orland Sand & Gravel Corp.*, 2013 WL 85403, at *3 (E.D. Cal. Jan. 8, 2013)
- *Wells Fargo Equip. Fin., Inc. v. Virk Sys., Inc.*, 2021 WL 347408, at *2 (E.D. Cal. Feb. 2, 2021)
- *Soto v. Rio Gary II, L.P.*, 2022 WL 112047, at *2 (C.D. Cal. Jan. 12, 2022)
- *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992)
- *Lopez v. Catalina Channel Express, Inc.*, 974 F.3d 1030, 1033 (9th Cir. 2020)
- *Trujillo v. GH Food Mart, Inc.*, 2020 WL 4697139, at *4 (E.D. Cal. Aug. 13, 2020)
- *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173, 1177 (9th Cir. 2021)
- *Gilbert v. HBA Enter., Inc.*, 2022 WL 2663761 (E.D. Cal. July 8, 2022)

- Trujillo v. GH Food Mart, Inc., 2022 WL 2236932
- Christofferson v. All Pure Pool Serv. of Cent. California, Inc., 2020 WL 3249323, at *19 (E.D. Cal. June 16, 2020)
- United Specialty Insurance Co. v. Saleh, 2016 WL 4434479, at *2 (E.D. Cal. Aug. 22, 2016)
- USA Truck, Inc. v. Jugan Express Inc., 2020 WL 2128387, at *2 (E.D. Cal. May 5, 2020)
- Wander v. Kaus, 304 F.3d 856, 858 (9th Cir. 2002)
- Kraus v. Rattu, 2020 WL 526105, at *5 (E.D. Cal. Feb. 3, 2020)
- Anglin v. Barron, 2017 WL 5713375, at *4 (E.D. Cal. Nov. 28, 2017)
- Parr v. L & L Drive-Inn Restaurant, 96 F. Supp. 2d 1065, 1088 (D. Haw. 2000)
- Whitaker v. Sheikh, 2020 WL 1262023, at *6 (E.D. Cal. Apr. 28, 2022)
- Castillo-Antonio v. Dabwan, 2022 WL 210395, at *7
- Pomponio v. Budwal, 2020 WL 3497007, at *6 (E.D. Cal. June 29, 2020)
- Vogel v. Harbor Plaza Ctr., LLC, 893 F.3d 1152, 1160 (9th Cir. 2018)
- McDonald v. Navy Exch. Serv. Command, 691 F. App'x 448, 449 (9th Cir. 2017)
- Trujillo v. 4B Market Incorporated, et al., 2022 WL 17667894 (E.D. Cal. Dec. 14, 2022)
- Trujillo v. La Valley Foods, Inc., 2017 WL 2992453, at *7 (E.D. Cal. July 14, 2017)
- Moralez v. 76 Orinda, 830 F. App'x 209, 210 (9th Cir. 2020)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

Acosta v. Singh

PER CURIAM.

1 2 3 4 5

6 UNITED STATES DISTRICT COURT

7 FOR THE EASTERN DISTRICT OF CALIFORNIA

8 9 JOSE ACOSTA, Case No. 1:24-cv-01437-JLT-HBK 10 Plaintiff, FINDINGS AND
RECOMMENDATIONS

THAT PLAINTIFF'S MOTION FOR

11 v. DEFAULT JUDGMENT BE GRANTED1

12 JASWANT SINGH, individually and dba OBJECTIONS DUE IN FOURTEEN DAYS

GRANT MARKET, RAJINDER KAUR,

13 individually and dba GRANT MARKET, (Doc. No. 10) 14 Defendants. 15 16 17 Pending
before the Court is Plaintiff's Motion for Default Judgment pursuant to Fed. R. 18 Civ. P. 55(b)
filed April 21, 2025. (Doc. No. 10, "Motion"). Defendants have not answered or 19 responded to
the Complaint, nor have they filed any opposition or taken any actions in this case. 20 The Court
found the Motion suitable for disposition without oral argument under Civil Local
21 Rule 230(g) and vacated the hearing scheduled for May 30, 2025. (Doc. No. 11). For the
reasons

22 set forth below, the undersigned recommends that Plaintiff's Motion for Default Judgment be
23 granted. 24 //// 25 //// 26 //// 27 1 This matter was referred to the undersigned pursuant to 28
U.S.C. § 636(b)(1)(B) and Local Rule 302 28 (E.D. Cal. 2019).

1 I. BACKGROUND

2 On January 23, 2020, Plaintiff Jose Acosta commenced this action by filing a Complaint 3
against Defendant Jaswant Singh, individually and doing business as Grant Market, and Rajinder 4
Kaur, individually and doing business as Grant Market (collectively referred to as "Defendants"),
5 pursuant to Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 et seq;
6 the California Unruh Act, California Civil Code § 51 et seq.; and California Health & Safety 7
Code §§ 19955, 19959. (Doc. No. 1, "Complaint"). Plaintiff seeks an award of statutory 8
damages, costs of suit, attorney's fees, litigation expenses, injunctive or preventative relief, and 9
interest at the legal rate from the date of filing of the Complaint. (Id. at 8-9). 10 The Complaint
sets forth the following facts in support of Plaintiff's claims. Plaintiff is a 11 person with physical
disabilities and is "substantially limited in his ability to walk," which 12 requires his use of a
wheelchair for mobility. (Id. at 2, ¶8). Defendants are the alleged owners, 13 operators, or lessors
of Grant Market (hereinafter referred to as "the Facility") which is located at 14 6945 W. Shields
Avenue, Fresno, California, 93723. (Id. at 1, ¶¶1-2 and 2, ¶7). The Facility is 15 open to the public
and intended for non-residential use, and its operation affects commerce. (Id., 16 at 2, ¶9). On or
about April 18, 2024, Plaintiff, who lives less than twenty miles from the 17 Facility, visited the
Facility to purchase refreshments and snacks, but "barriers" prevented him 18 from accessing their
"goods, services, privileges and accommodations." (Id. at 2-3, ¶10). 19 Specifically, the accessible
parking stall markings were extremely faded and the stall lacked an 20 access aisle, forcing
Plaintiff to unload from his vehicle in the path of vehicular traffic, Plaintiff 21 had to travel
through the vehicular drive to reach the entry walkway because the direct route was 22 obstructed;
the aisles inside the facility were too narrow for Plaintiff's wheelchair, he had to seek 23 help from
a cashier to get a soda because he could not navigate down the aisle; and the 24 transaction
counter was too high which made it difficult for Plaintiff to pay for his purchase from 25 his
wheelchair-seated position. (Id.). As a result, Plaintiff was deterred from visiting the Facility 26
but states he will return once the barriers are removed. (Id. ¶12). 27 Plaintiff filed proof of service
of summons for Defendant Jaswant Singh, individually and 28 doing business as Grant Market,
and Defendant Rajinder Kaur, individually and doing business as 1 Grant Market, on December
17, 2024. (Doc. Nos. 4, 5). Defendants never appeared or answered. 2 See docket. On January 20,
2025, Plaintiff requested the Clerk of Court enter a Rule 55(a) clerk's 3 default against
Defendants. (Doc. No. 6). The Clerk of Court entered the default on January 21, 4 2025. (Doc. No.
7). On April 21, 2025, Plaintiff filed the instant Motion seeking a default 5 judgment as to all
Defendants. (Doc. No. 10).

6 II. ANALYSIS

7 A. Legal Standard 8 Federal Rule of Civil Procedure 55(b)(2) allows the court to enter judgment

against a 9 party following the clerk of court's entry of default under 55(a). The court cannot enter default 10 judgment if the defendants were not properly served. *Mason v. Genisco Tech. Corp.*, 960 F.2d 11 849, 851 (9th Cir. 1992). If the court determines service was proper, the court is bound by to 12 undertake an analysis applying the "Eitel" factors enumerated in *Eitel v. McCool*, 782 F.2d 1470, 13 1471-72 (9th Cir. 1986) before entering a default judgment. Specifically, the court considers the 14 following factors: (1) the potential prejudice to the plaintiff, (2) the underlying claim's merits and 15 sufficiency, (3) the amount of money at stake, (4) the possibility of a factual dispute, (5) whether 16 the default resulted from excusable neglect, and (6) the court's overriding preference to issue 17 decisions on the merits. (*Id.*) 18 After the clerk enters a default, the court shall accept "as true all factual allegations in the 19 complaint, except those as to the amount of damages." *Yoon Chul Yoo v. Arnold*, 615 F. App'x. 20 868, 870 (9th Cir. 2015); Fed. R. Civ. P. 8(b)(6). Allegations about "the amount of damages must 21 be proven." *Strojnuk v. JW World Enterprises, Inc.* Best W. Bakersfield N., 2021 WL 22137, at *1 22 (E.D. Cal. Jan. 4, 2021). The court also does not accept facts that are not well pled or statements 23 that constitute conclusions of law. *Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 24 1078 (C.D. Cal. 2012). Ultimately, the decision of whether to grant a default judgment lies 25 within the discretion of the court. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). 26 B. The Eitel Factors 27 1. Defendants Were Properly Served with Process 28 Defendants were properly served, and the Clerk of Court lawfully entered defaults against 1 Defendants. (Docs. Nos. 4, 5, 7). Service is effectuated under Federal Rule of Civil Procedure 2 4(e) by "following state law for serving a summons . . . in the state where the district court is 3 located or where service is made," or by "delivering a copy of [the summons and complaint] to an 4 agent authorized by appointment or by law to receive service of process." California law permits 5 service of the summons and complaint by personal service or by leaving them with a "competent 6 member of the household or a person apparently in charge of his or her office [or] place of 7 business," among other methods. Cal. Code Civ. P. § 415.10-20. All methods require that the 8 service be handled by an individual who is not a party to the action. (*Id.*) 9 a. Jaswant Singh 10 The record reflects a registered process server personally served Defendant Jaswant Singh 11 on December 12, 2024. (Doc. No. 4). California permits service by personally serving a copy of 12 the summons and complaint on the defendant. See Cal. Civ. Proc. Code § 415.10; see also Fed. 13 R. Civ. P. 4(e). Therefore, because service on Jaswant Singh complies with California law and 14 the proof of service was filed, Defendant Jaswant Singh was properly served consistent with Fed. 15 R. Civ. P. 4. 16 b. Rajinder Kaur 17 The record reflects a registered process server personally served Defendant Rajinder Kaur 18 on December 12, 2024. (Doc. No. 5). California permits service by personally serving a copy of 19 the summons and complaint on the defendant. See Cal. Civ. Proc. Code § 415.10; see also Fed. 20 R. Civ. P. 4(e). Therefore, because service on Jaswant Singh complies with California law and 21 the proof of service was filed, Defendant Jaswant Singh was properly served consistent with Fed. 22 R. Civ. P. 4. 23 2. Application of the Six Eitel Factors 24 a. Potential Prejudice to Plaintiff 25 The Court first

considers whether Plaintiff will suffer prejudice if a default judgment is 26 not entered. When a defendant neglects to respond to a complaint, a plaintiff lacks means to 27 recover beyond a default judgment. *True Religion Apparel, Inc. v. Jet 2A*, 2009 WL 10671791, at 28 *3 (C.D. Cal. Feb. 11, 2009). Here, Plaintiff claims he wishes to patronize the Defendants' 1 Facility and will continue to suffer discrimination due to his disability without recourse against 2 the Defendants. The "[p]otential prejudice to the plaintiff militates in favor of granting default 3 judgment." *Solis v. Orland Sand & Gravel Corp.*, 2013 WL 85403, at *3 (E.D. Cal. Jan. 8, 4 2013). The first Eitel factor therefore weighs in favor of default judgment. 5 b. The Underlying Claim's Merits and Sufficiency 6 The court next weighs the merits and sufficiency of Plaintiff's Complaint. Default 7 judgment will only be granted if plaintiff's complaint states a claim that supports the desired 8 relief. *Wells Fargo Equip. Fin., Inc. v. Virk Sys., Inc.*, 2021 WL 347408, at *2 (E.D. Cal. Feb. 2, 9 2021). While well-plead "allegations in the complaint are admitted by a defendant's failure to 10 respond, 'necessary facts not contained in the pleadings, and claims which are legally insufficient, 11 are not established by default.'" *Soto v. Rio Gary II, L.P.*, 2022 WL 112047, *2 (C.D. Cal. Jan. 12 12, 2022) (citing *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992)). 13 Plaintiff's Complaint alleges Defendants violated Title III of the ADA, which provides 14 that in public places of accommodation "[n]o individual shall be discriminated against on the 15 basis of disability." 42 U.S.C. § 12182(a). To prevail on a Title III ADA claim, plaintiff "must 16 establish that: (1) he is disabled within the meaning of the ADA; (2) [defendants] are a private 17 entity that owns, leases, or operates a place of public accommodation; and (3) [defendants] 18 discriminated against him by denying him public accommodations because of his disability." 19 *Lopez v. Catalina Channel Express, Inc.*, 974 F.3d 1030, 1033 (9th Cir. 2020). 20 The ADA defines disability as "[a] physical or mental impairment that substantially limits 21 one or more major life activities ... [,] a record of such an impairment [,] or being regarded as 22 having such an impairment." 42 U.S.C. § 12102(1). Major life activities as defined by the ADA 23 include walking and standing. *Id.*, § 12102(2). Plaintiff represents he is "physically disabled" 24 and requires the use of a wheelchair for mobility. (Doc. No. 1 at 2, ¶8). Accepting the allegation 25 as true, Plaintiff is deemed to have physical impairment that substantially limits the major activity 26 of walking and standing and therefore is disabled within the meaning of the ADA. 27 Plaintiff, who lives less than twenty miles from the Facility, arrived at the Facility on or 28 about April 18, 2024, with the intention of patronizing the business. (*Id.* at 2-3, ¶10). Plaintiff 1 encountered three barriers: (1) the accessible parking stall markings were extremely faded and the 2 stall lacked an access aisle, forcing Plaintiff to unload from his vehicle in the path of vehicular 3 traffic, and Plaintiff had to travel through the vehicular drive the reach the entry walkway because 4 the direct route was obstructed; (2) the aisles inside the Facility were too narrow for Plaintiff's 5 wheelchair so he could not navigate around the store; and (3) the transaction counter at the 6 Facility was too high which made it difficult for Plaintiff to pay for his purchase from his 7 wheelchair-seated position. (*Id.*). As a result, the aforementioned barriers interfered with 8 Plaintiff's use and

enjoyment of the goods, services, privileges, advantages, and accommodations 9 at the Facility and deterred him from visiting the Facility. (Id. at 3). 10 Plaintiff claims he is disabled under the ADA and his depiction of the Facility is one of 11 public accommodation. Despite the Facility being a place of public accommodation, Plaintiff was 12 unable to access the Facility's services due to architectural barriers. Such barriers to access are 13 "discrimination" under the ADA. 42 U.S.C. § 12182(b)(2)(A)(iv). Because these facts are taken 14 as true following Defendants' entry of default, Plaintiff has stated a prima facie Title III 15 discrimination claim. 16 Plaintiff's Complaint is similarly sufficient under the other statutes also cited in his 17 Complaint. Under California's Unruh Civil Rights Act, "disabled" people are "entitled to the full 18 and equal accommodations, advantages, facilities, privileges, or services in all business 19 establishments of every kind whatsoever." Cal Civ. Code, § 51(b). California Health and Safety 20 Code § 19955 mandates that all public accommodations constructed in California comply with 21 the requirements of California Government Code § 4450, which states that all "sidewalks, curbs, 22 and related facilities ... shall be accessible to and usable by persons with disabilities." Cal. Gov. 23 Code, § 4450(a). California Health and Safety Code § 19959 requires non-exempt public 24 accommodations constructed prior to July 1, 1970 that are later altered or structurally repaired to 25 comply with the California Health and Safety Code. Plaintiff's Complaint alleges he was denied 26 equal accommodation to Defendants' businesses despite California law requiring they be 27 accessible to him. Plaintiff has therefore adequately stated a claim under these laws. 28 While Plaintiff's Complaint is largely boilerplate, his allegations are taken as true due to 1 Defendants' default. Therefore, Plaintiff sufficiently pled his claims and demonstrated that they 2 have merit. *Trujillo v. GH Food Mart, Inc.*, 2020 WL 4697139, at *4 (E.D. Cal. Aug. 13, 2020). 3 Plaintiff's Complaint meets the low bar to put Defendants on notice by providing enough factual 4 details to determine how he was denied full and equal enjoyment of the Facility. See *Whitaker v. 5 Tesla Motors, Inc.*, 985 F.3d 1173, at 1177 (9th Cir. 2021) (holding that a complaint cannot recite 6 legal conclusion and the elements of an ADA claim but must put a defendant on notice by 7 alleging sufficient factual details to determine how a plaintiff was denied full and equal 8 enjoyment of the premises); see also *Gilbert v. HBA Enter., Inc.*, 2022 WL 2663761 (E.D. Cal. 9 Jul. 8, 2022); *Trujillo*, 2022 WL 2236932. As such, the second Eitel factor weighs in favor of 10 default judgment. 11 c. The Amount of Money at Stake 12 Plaintiff seeks a default judgment of \$4,000.00 plus \$3,744.76 in attorney's fees and costs. 13 Default judgment is "is disfavored where large amounts of money are involved." *Christofferson 14 v. All Pure Pool Serv. of Cent. California, Inc.*, 2020 WL 3249323, at *19 (E.D. Cal. June 16, 15 2020), report and recommendation adopted sub nom. *Christofferson, v. All Pure Pool Serv. of 16 Cent. California, Inc*, WL 3819413 (E.D. Cal. July 8, 2020). Given the rather modest sum and 17 attorney's fees requested, the Court finds the third factor weighs in favor of default judgment. 18 d. The Possibility of a Factual Dispute 19 The Clerk of Court's entry of default requires this Court to accept Plaintiff's well-pled 20 factual allegations as true. Despite being properly served,

Defendants have failed to appear, 21 answer, or otherwise respond. Thus, the only facts before the Court are those presented by 22 Plaintiff in the Complaint, which are well-pled and must be accepted as true. There is 23 accordingly no factual dispute. *United Specialty Insurance Co. v. Saleh*, 2016 WL 4434479, at 24 *2 (E.D. Cal. Aug. 22, 2016). Thus, the fourth Eitel factor does not preclude entry of a default 25 judgment. 26 e. Whether the Default Resulted from Excusable Neglect 27 Defendants were properly served yet none have appeared since service was effectuated. 28 When service is proper it suggests there was not excusable neglect. *USA Truck, Inc. v. Jugan 1 Express Inc.*, 2020 WL 2128387, at *2 (E.D. Cal. May 5, 2020), report and recommendation 2 adopted, 2020 WL 3451580 (E.D. Cal. June 24, 2020). The Court therefore finds this fifth Eitel 3 factor weighs in favor of default judgment. 4 f. The Court's Overriding Preference to Issue Decisions on the Merits 5 Eitel emphasizes that "[c]ases should be decided upon their merits whenever reasonably 6 possible." 782 F.2d at 1472. Here, with no appearance from Defendants, there is no reasonable 7 possibility of deciding this matter on the merits. Because this sixth and each of the above Eitel 8 factors overwhelmingly weigh in favor default judgment, the undersigned recommends the 9 district court grant Plaintiff's Motion for Default Judgment. 10 3. Terms of the Judgment and Proof of Damages 11 a. Injunctive Relief 12 Plaintiff seeks injunctive relief requiring Defendants to make a change and alteration to 13 their businesses. (Doc. No. 10-1 at 5-7). For Title III ADA violations "only injunctive relief is 14 available." *Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002). Injunctive relief "may be granted 15 when architectural barriers at defendant's establishment violate the ADA." *Kraus v. Rattu*, 2020 16 WL 526105, at *5 (E.D. Cal. Feb. 3, 2020), report and recommendation adopted, 2020 WL 17 1274269 (E.D. Cal. Mar. 17, 2020). Plaintiff alleges the Facility was designed or constructed 18 after January 26, 1993; therefore the 1991 ADA Standards for Accessible Design apply for 19 purposes of determining whether a barrier existed. (Doc. No. 1 at 5, ¶23). However, because any 20 remedial work to the Facility will occur after March 15, 2012, Plaintiff submits the 2010 21 standards govern any injunction. (Doc. No. 10-1 at 5). 22 A plaintiff bears the initial burden to "plausibly show how the cost of removing the 23 architectural barrier at issue does not exceed the benefits under the circumstances. *Lopez*, 974 24 F.3d at 1038. A plaintiff is not required to give precise cost estimates or give specific designs for 25 the proposed accommodations. *Id.* Plaintiff identifies three barriers: a lack of a properly 26 identified accessible parking stall connected to the Facility entrance via an accessible route 27 without obstacle, inaccessible routes through the interior of the Facility, and an inaccessible sales 28 counter in the Facility. (Doc. No. 10-1 at 5-6). As an initial matter, "Plaintiff's allegation that the 1 removal of barriers is readily achievable is sufficient at this juncture." *Anglin v. Barron*, 2017 2 WL 5713375, at *4 (E.D. Cal. Nov. 28, 2017) (collecting cases). Moreover, the undersigned 3 finds removal of these barriers is readily achievable within the meaning of the ADA. See 28 4 C.F.R. § 36.304(b) (examples of readily achievable steps to remove barriers include 5 "repositioning shelves"; "rearranging tables, chairs, vending machines, display racks, and other 6 furniture"; and "creating designated accessible

parking spaces”); see also *Parr v. L & L Drive-Inn 7 Restaurant*, 96 F. Supp. 2d 1065, 1088 (D. Hi. 2000) (finding that creating an accessible route 8 from the accessible parking spaces to the building entrance as readily achievable); *Whitaker v. 9 Sheikh*, 2020 WL 1262023, at *6 (E.D. Cal. Apr. 28, 2022) (“Courts regularly treat overly high 10 sales counters as falling within § 36.304(b)(3)’s example of repositioning shelves.”); *Castillo- 11 Antonio v. Dabwan*, 2022 WL 210395, at *7 (finding plaintiff adequately pled removal of 12 barriers, including height of the service counter and narrow aisle width, is readily achievable). 13 Accepting Plaintiff’s allegations as true and considering Defendants’ nonresponse, the 14 undersigned finds Plaintiff is entitled to the requested injunctive relief requested. The 15 undersigned accordingly recommends injunctive relief requiring Defendants, within sixty (60) 16 days of the district court’s order, to remove the barriers by providing: (1) a properly configured 17 accessible parking stall connected to the Facility entrance via an accessible route as required by 18 1991 ADAAG § 4.6; (2) accessible routes of travel down the merchandise aisles as required by 19 1991 ADAAG § 4.3.3; and (3) an accessible sales and service counter as required by 1991 20 ADAAG § 7.2. 21 b. Statutory Damages 22 California’s Unruh Act provides “that a plaintiff subjected to discrimination is entitled to 23 recover \$4,000.00 for each occasion on which the plaintiff was denied equal access.” *Pomponio 24 v. Budwal*, 2020 WL 3497007, at *6 (E.D. Cal. June 29, 2020), report and recommendation 25 adopted, WL 5764376 (E.D. Cal. Sept. 28, 2020); Cal. Civ. Code § 52(a). Here, the Court 26 recommends granting Plaintiff a default judgment on his Unruh Act claim. Plaintiff alleges he 27 was denied equal access when he visited the Facility on April 18, 2024. Accordingly, the 28 1 undersigned recommends Plaintiff be awarded \$4,000.00 in statutory damages. 2 c. Attorney’s Fees and Costs of Litigation 3 Both the ADA and the California Health and Safety Code permit the recovery of 4 attorney’s fees and costs upon receiving injunctive relief. 42 U.S.C. § 12205; California Civil 5 Code § 54.3; *Pomponio*, 2020 WL 3497007 at *6. Attorney’s fee awards are calculated using the 6 lodestar method, which multiplies the numbers of hours reasonably spent on the matter with a 7 reasonable hourly rate. *Vogel v. Harbor Plaza Ctr., LLC*, 893 F.3d 1152, 1160 (9th Cir. 2018). 8 When “calculating a fee applicant’s lodestar, a court has discretion to exclude hours that were not 9 reasonably expended by counsel. *McDonald v. Navy Exch. Serv. Command*, 691 F. App’x 448, 10 449 (9th Cir. 2017) (internal quotations omitted). 11 Plaintiff’s counsel seeks an award of \$3,014.502 for total billable time spent by the Moore 12 Law Firm, plus \$760.26 for costs and litigation expenses. (Doc. No. 10-1 at 7-9). The billable 13 time encompasses (1) \$1,830.00 for 6.1 hours worked by attorney Tanya E. Moore at an hourly 14 rate of \$300; and (2) \$1,184.50 for 10.3 hours worked by paralegal Whitney Law at an hourly of 15 \$115. (Doc. No. 10-1 at 8-9; Doc. No. 10-3 at 2-4). 16 i. Billable Time 17 Plaintiff’s counsel provided the Court with the time entries detailing the firm’s efforts in 18 this matter. (Doc. No. 10-3 at 2-4). Those entries do not indicate time was unreasonably 19 expended. While certain paralegal entries include calendaring deadlines, these tasks were 20 dependent upon a review of the Court’s Orders; and thus, do not appear to justify reductions as 21 merely clerical

functions. The Court previously recognized in December 2022 that a paralegal 22 hourly rate of \$115.00 was reasonable. *Trujillo v. 4B Market Incorporated, et al.*, 2022 WL 23 17667894 (E.D. Cal. Dec. 14, 2022); findings and Recommendations adopted in full, 2022 WL 24 18027841 (E.D. Cal. Dec. 30, 2022). Similarly, this Court additionally has previously determined 25 2 Plaintiff's Motion repeatedly miscalculates the paralegal Whitney Law's billable time as totaling 26 \$1,154.50 for 10.3 hours at the hourly rate of \$115.00. (See Doc. No. 10-1 at 8-9). However, the "inventory of time" submitted at Exhibit A supports the proper calculation of \$1,184.50 for Ms. Law's 27 billable time. (Doc. No. 10-3 at 2-4, Ex. A). Thus, correct total award for billable time spent by the Moore Law Firm is \$3,014.50. And the correct total award sought for attorney's fees and costs is 28 \$3,774.76. 1 in December 2020 that a \$300.00 hourly rate was reasonable where the lead attorney has 2 considerable experience in ADA matters. *Id.* Ms. Moore has been an attorney for over 20 years 3 with the last 10 years specially practicing in "disability access litigation." (Doc. No. 10-2 at 2). 4 Because both the time spent and rate requested are reasonable, the undersigned recommends 5 Plaintiff's counsel be awarded \$3,014.50 in attorney's fees. 6 ii. Litigation Expenses and Costs 7 Plaintiff moves to recover litigation expenses and costs of \$760.26. (Doc. No. 10-3 at 6- 8 11). Plaintiff has attached receipts for the court filing fee, a pre-filing investigation, and process 9 server fees, which are recoverable under the ADA. *Trujillo v. La Valley Foods, Inc.*, 2017 WL 10 2992453, at *7 (E.D. Cal. July 14, 2017); *Morales v. 76 Orinda*, 830 F. App'x 209, 210 (9th Cir. 11 2020); 42 U.S.C. § 12205. The receipts include: (1) invoice dated December 16, 2024 for \$41.30 12 by One Legal Process for service on Rajinder Kaur (Doc. No. 10-3 at 6); (2) invoice dated 13 December 16, 2024 for \$87.76 charged by One Legal Process for the service on Jaswant Singh 14 (Doc. No. 10-3 at 7); (3) receipt dated November 22, 2024 for \$405.00 for this Court's filing fees 15 (Doc. No. 10-3 at 9); and (4) invoice dated November 16, 2024 for \$226.20 by Aurele Ventures 16 LLC for a pre-filing investigation. (Doc. No. 10-2 at 3; Doc. No. 10-3 at 11). These receipts total 17 \$760.26. Accordingly, the Court recommends that Plaintiff be awarded the sum of \$760.26 for 18 litigation expenses and costs. 19 Below is a summary of the total amount in attorney fees and costs the undersigned 20 recommends be awarded to Plaintiff's counsel: 21 22 Professional Hourly Rate Hours Total 23 Ms. Tanya E. Moore \$300 6.1 \$1,830.00 24 Ms. Whitney Law \$115 10.3 \$1,184.50 25 Costs and Expenses \$760.26 26 Total \$3,774.76 27 28 1 Accordingly, it is ORDERED: 2 Plaintiff must mail a copy of these findings and recommendations to defendants at their 3 last known address and file with the court proof of service within fourteen (14) business days of 4 the date of this order. 5 It is further RECOMMENDED: 6 Plaintiff's Motion for Default judgment (Doc. No. 10) be GRANTED as follows; 7 1. Judgment be entered in Plaintiff's favor and against Defendants; 8 2. Plaintiff be awarded statutory damages in the amount of \$4,000; 9 3. Plaintiff be awarded attorney's fees, litigation expenses and costs in the amount of 10 \$3,774.76; and 11 4. Defendants be required within sixty (60) days of the district court's order, to remove 12 the barriers by providing: (1) a properly configured accessible parking stall

connected 13 to the Facility entrance via an accessible route as required by 1991 ADAAG § 4.6; and 14 (2) accessible routes of travel down the merchandise aisles as required by 1991 15 ADAAG § 4.3.3; and (3) an accessible sales and service counter as required by 1991 16 ADAAG § 7.2.

17 NOTICE TO PARTIES

18 These Findings and Recommendations will be submitted to the United States District 19 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 20 after being served with a copy of these Findings and Recommendations, a party may file written 21 objections with the Court. Id.; Local Rule 304(b). The document should be captioned, 22 “Objections to Magistrate Judge’s Findings and Recommendations” and shall not exceed fifteen 23 (15) pages. The Court will not consider exhibits attached to the Objections. To the extent a party 24 wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its 25 CM/ECF document and page number, when possible, or otherwise reference the exhibit with 26 specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by 27 the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 28 1 | 636(b)(1)(C). A party’s failure to file any objections within the specified time may result in the 2 | waiver of certain rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). 3 “[

Dated: _ May 14, 2025 Wile. Th. PoareA Hack

5 HELENA M. BARCH-KUCHTA

‘ UNITED STATES MAGISTRATE JUDGE

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