

1 and where that fact is made to appear by affidavit or otherwise. See Fed. R. Civ. P. 55(a). Default
2 judgment may be entered by the Clerk if the plaintiff's claims are for a sum certain or a sum that can be
3 made certain by computation. Fed. R. Civ. P. 55(b)(1). In all other cases, the party must apply to the
4 court for a default judgment. Fed. R. Civ. P. 55(b)(2).

5 Plaintiff seeks default judgment against Defendant under Rule 55(b)(2). Plaintiff argues that he
6 is entitled to default judgment because Defendant failed to comply with the court's order requiring
7 Defendant to file a Response to the Second Amended Complaint within thirty days. Plaintiff asserts that
8 the court issued its order on February 23, 2009, and Defendant was required to file a Response on or
9 before March 23, 2009. Plaintiff argues that Defendant's Response was untimely because Defendant did
10 not file an Answer until March 25, 2009.

11 Plaintiff has incorrectly computed the thirty-day time period within which Defendant was
12 required to file a Response. The court's order required Defendant to file a Response to the Second
13 Amended Complaint "within thirty (30) days of the date of service of th[e] order." Doc. 108 at 2:3-5.
14 Examination of the court's record shows that Magistrate Gary L. Austin signed the order on February
15 23, 2009, but the order was not entered on the record or served until February 24, 2009. See Court
16 Docket. Thirty days from February 24, 2009 is March 26, 2009. Defendant filed an Answer to the
17 Second Amended Complaint on March 25, 2009. Therefore, Defendant filed a Response twenty-nine
18 days from the date of service of the court's order, within the court's thirty-day deadline.

19 **III. CONCLUSION AND ORDER**

20 The court finds that because Defendant filed a timely Response to the Second Amended
21 Complaint, Plaintiff is not entitled to default judgment against Defendant under Rule 55. Accordingly,
22 IT IS HEREBY RECOMMENDED that Plaintiff's motions for default judgment against Defendant D.
23 Ortiz be denied.

24 These Findings and Recommendations will be submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**
26 after being served with these Findings and Recommendations, Plaintiff may file written objections with
27 the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
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1 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may
2 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: September 9, 2009

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE