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

Rouben Odell Boulware,  
Plaintiff,  
vs.  
Ervin Jr., et al.,  
Defendants.

No. CV05-01565-ROS

**ORDER**

The Court has reviewed Plaintiff’s Motion for Entry of Default Judgment by the Clerk. (Doc. 38). Under Federal Rule of Civil Procedure 55, such a motion will only be considered if the Clerk of the Court has entered a default against some or all of the defendants. The Court will construe Plaintiff’s Motion as a both an Application for Default under Fed. R. Civ. P. 55(a) and a Motion for a Default Judgment under Fed. R. Civ. P. 55(b).

The Court will direct the Clerk of the Court to enter default as to all Defendants who have been served but have not yet answered or otherwise responded to Plaintiff’s Amended Complaint. Default will not be entered as to Defendant Ervin. Defendant Ervin filed an Answer (Doc. 39), and has shown good cause to be given leave to file it in an untimely manner.

Defendant’s Motion for a Default Judgment, however, will be denied without prejudice. Once the Clerk enters default as to the served Defendants who have not appeared, Plaintiff may file a Motion for a Default Judgment as to those Defendants.


1           **IT IS ORDERED** Plaintiff's Application for Entry of Default (Doc. 38) **IS**  
2 **GRANTED IN PART.** The Clerk of the Court is directed to enter default as to all  
3 Defendants who have been served but have not answered the Amended Complaint or  
4 otherwise appeared.

5           **FURTHER ORDERED** Plaintiff's Motion for Default Judgment (Doc. 38) **IS**  
6 **DENIED.**

7           **FURTHER ORDERED** Defendant Ervin has the Court's leave to file an untimely  
8 answer. Defendant Ervin's September 30, 2009 Answer (Doc. 29) stands.

9           DATED this 8<sup>th</sup> day of April, 2010.

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Roslyn O. Silver  
United States District Judge