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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARL L. JIMENA,

Plaintiff,

v.

UBS AG BANK, INC., SWITZERLAND
HEADQUARTERS , et al.,

Defendants.

) 1:07-cv-00367 OWW GSA
)
)

) ORDER DENYING PLAINTIFF’S MOTION
) TO SET FOR HEARING
) (Document 94)

Introduction

On January 31, 2008, Plaintiff filed a document entitled “Motion to Set for Hearing Doc. No. 80, 77, 78 and 49.” (Document 94.) Plaintiff moves this Court to set a hearing on the aforementioned docket numbers for February 15, 2008. The Court construes Plaintiff’s motion as a request to set a hearing on his “2nd Amended Motion for Entry of Default and Default Judgment by Court.” (Document 49.) For the reason set forth below, the Court hereby DENIES Plaintiff’s Motion to Set for Hearing. (Document 49.)

Discussion

Plaintiff requests a hearing on docket entries 80, 77, 78 and 49. Docket entry 49 is Plaintiff’s “2nd Amended Motion for Entry of Default and Default Judgment by Court,” which seeks entry of default and a default judgment by the Court against UBS AG (Zurich, Switzerland headquarters and Manhattan, New York Branch). The remaining docket entries--77, 78 and 80--

1 appear to be documents in support of Plaintiff's 2nd Amended Motion for Entry of Default and
2 Default Judgment by Court. Docket entry 80 is a document entitled "Plaintiff's Request for
3 Ruling on Offer of Evidence" and seeks a ruling on Plaintiff's offer of evidence in support of his
4 motion for entry of default and default judgment against UBS AG (document 49). Docket entry
5 77 is Plaintiff's "Offer of Evidence with Annex "A" Affidavit of Authentication" and docket
6 entry 78 is "Plaintiff's Affidavit Autenticating [sic] His Exhibits, Annex "A" to Offer of
7 Evidence."

8 Pursuant to Federal Rule of Civil Procedure 55, an order of default judgment may be
9 entered only against a defendant who has been defaulted for not appearing. In this instance, there
10 has been no entry of default against Defendant UBS AG by the Clerk of the Court pursuant to
11 Federal Rule of Civil Procedure 55(a). Accordingly, Plaintiff's motion for default judgment is
12 not appropriate for hearing at this time.

13 Based on the foregoing, Plaintiff's Motion to Set For Hearing Doc. No. 80, 77, 78 and 49
14 is DENIED.

15 IT IS SO ORDERED.

16 **Dated: February 8, 2008**

17 /s/ Gary S. Austin
18 UNITED STATES MAGISTRATE JUDGE
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