

1 It has recently come to the attention of this court that the above address may not be Defendant
2 Edens/Anderson's residential address or his business address, but may be his wife's business
3 address. The proof of service is ambiguous in this regard. As such, it is not clear that Defendant
4 Edens/Anderson was properly served with the complaint under Rule 4(e) of the Federal Rules of
5 Civil Procedure. Plaintiff is also advised that the existing complaint does not explicitly list the
6 amount of damages she is seeking. This may be problematic since "[a] default judgment must not
7 differ in kind, form, or exceed in amount, what is demanded in the pleadings." Fed. R. Civ. P. 54
8 (c).

9 Accordingly, within **fifteen (15)** days of this order, Plaintiff shall submit a brief establishing
10 that the complaint, as well as notice of the amount and kind of damages being sought was properly
11 served on Defendant Edens/Anderson and that the default entered on October 1, 2008 (Doc. 50) was
12 properly issued. In the alternative, within **fifteen (15)** days, Plaintiff may inform the court that
13 service of the complaint and the amount of damages was not properly effectuated and file a Motion
14 to Vacate Default and a Motion to Withdraw the Motion for Default Judgment. Plaintiff shall then
15 personally serve Defendant Anderson/Edens with the complaint and with notice of the amount and
16 kind of damages sought no later than **February 28, 2009**. Plaintiff is advised that this court is not
17 inclined to grant default judgment if there is any ambiguity in whether Defendant Edens/Anderson
18 was properly served with these items.

19 The damages hearing set for **February 6, 2009 at 9:30 am** and the briefing schedule set forth
20 therein regarding attorney's fees is VACATED pending the resolution of this matter. Plaintiff shall
21 attempt to serve Defendant Edens/Anderson with any papers filed with this court regarding this issue
22 and submit proof of service. Alternatively, Plaintiff may explain what attempts at service were made
23 and why service was not possible.

24 IT IS SO ORDERED.

25 **Dated: January 13, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE