



1 without Plaintiff's permission. *Id.* at 3.

2 Plaintiff filed proofs of service indicating Defendants were each served with the summons  
3 and complaint on March 10, 2011. (Docs. 7-8). Plaintiffs contend that they have not received  
4 proper service because the summons and complaint were left with a waitress at their restaurant.<sup>1</sup>  
5 (Doc. 15) Defendants fail to explain why they believe that this service was improper or ineffective.  
6 Despite the service documents being left at their restaurant, Defendants failed to respond to the  
7 complaint within the time prescribed by the Federal Rules of Civil Procedure, and upon application  
8 of Plaintiff, and pursuant to Fed.R.Civ.P. 55(a), default was entered against Defendants on April 14,  
9 2011. (Doc. 10).

10 The Federal Rules of Civil Procedure govern the timing of pleadings to be filed by parties in  
11 an action before the Court. In general, a defendant must service an answer "within 21 days after  
12 being served with the summons and complaint." Fed.R.Civ.P. 12(a)(1)(A). Therefore, Defendants'  
13 answer to the complaint was due on March 31, 2011. Here, Defendants seek permission to file an  
14 untimely pleading responsive to the complaint. However, the Clerk has entered default against  
15 Defendants, and the "entry of default cuts off Defendants' rights to appear in the action, file  
16 counterclaims, or to present a defense." *Great. Am. Ins. Co. v. M.J. Menefee Constr., Inc.*, 2006 U.S.  
17 Dist. LEXIS 64902, at \*6 (E.D. Cal. Aug. 29, 2006), citing *Clifton v. Tomb*, 21 F.2d 893, 897 (4th  
18 Cir. 1927). Consequently, "a party in default is generally precluded from participating in the case  
19 until the entry of default has been set aside." *Joe Hand Productions v. Estrada*, 2011 U.S. Dist.  
20 LEXIS 35073, at \*2, n.1 (E.D. Cal. Mar. 31, 2011).

21 Currently, the Court has under submission Plaintiff's motion for default judgment. Thus, any  
22 action taken by Defendants at this time may be directed only toward addressing the entry of default.

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28 <sup>1</sup>Plaintiff's proofs of service indicate that service was accomplished through substitute service. (Docs. 7, 8)

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Accordingly, **IT IS HEREBY ORDERED:**

1. Defendants' request for an extension of time to file a pleading responsive to the complaint is **DENIED**.

IT IS SO ORDERED.

Dated: June 16, 2011

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE