

1 into the instant action. The Court neither required Plaintiff to file an amended complaint consolidating
2 his allegations, nor did it order Defendants to file a consolidated answer. (ECF No. 40.)

3 On April 14, 2014, Plaintiff filed a motion for default judgment. Although difficult to discern,
4 it appeared that Plaintiff sought default judgment against Defendant Balcagon based on an apparent
5 belief that the Court has not screened the two joined cases and that Defendant Balcagon had not
6 submitted an answer to the joined cases. Plaintiff also claimed that Defendants had failed to comply
7 with discovery. (ECF No. 52.)

8 On April 16, 2014, the Court denied Plaintiff's motion for default judgment, noting that there
9 had been no entry of default against Defendant Balcagon. The Court also noted that Defendant
10 Balcagon had answered and appeared in this action, which rendered default unavailable. Additionally,
11 the Court clearly stated that it had not ordered a consolidated complaint or any answer to such
12 complaint. (ECF No. 54.)

13 Despite the Court's order denying default judgment, Plaintiff filed the instant motion for entry
14 of default against Defendants Balcagon, Perryman and Harder for failure to plead or otherwise defend
15 and for entry of default judgment. (ECF No. 63.)

16 Entry of default is appropriate as to any party against whom a judgment for affirmative relief is
17 sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure
18 and where that fact is made to appear by affidavit or otherwise. Fed. R. Civ. P. 55(a). After entry of
19 default, the plaintiff can seek entry of default judgment. Fed. R. Civ. P. 55(b)(1) and (2). "Default
20 judgments are generally disfavored, and whenever it is reasonably possible, cases should be decided
21 upon their merits." In re Hammer, 940 F.2d 524, 525 (9th Cir. 1991) (internal punctuation and
22 citations omitted).

23 Here, Plaintiff may not obtain entry of default or default judgment in this action. Defendant
24 Balcagon answered the complaint in this action on July 24, 2012. (ECF No. 12.) Prior to
25 consolidation, Defendants Perryman and Harder answered the complaint in 1:13-cv-00906 on October
26 16, 2013. (See Cranford v. Perryman, 1:13-cv-00906-LJO-BAM, ECF No. 17.) Following
27 consolidation, the Court did not order the filing of a consolidated complaint or an answer to any such
28 complaint. Defendants Balcagon, Perryman and Harder have all appeared and defended the

1 consolidated action. Thus, entry of default and default judgment are not available against these
2 defendants. Cf. Franchise Holding II, LLC v. Huntington Rests. Grp., Inc., 375 F.3d 922, 927–28 (9th
3 Cir.2004) (if party appeared, clerk’s entry of default void *ab initio*).

4 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s motion for entry of default and
5 default judgment, filed May 8, 2014, is DENIED.

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7 IT IS SO ORDERED.

8 Dated: May 15, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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