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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

RICHARD WILLIFORD,	)	Case No.: 1:15-cv-00653- KJM - JLT
Plaintiff,	)	
v.	)	ORDER DENYING PLAINTIFF’S MOTION FOR
	)	DEFAULT JUDGMENT
PHILLIP HALL,	)	(Doc. 32)
Defendant.	)	
	)	
	)	

On two occasions, on May 14, 2015 and July 24, 2015, Defendants have filed motions to dismiss this action. (Docs. 10, 27) Nevertheless, now before the Court is Plaintiff’s motion for default judgment based upon his argument that because Defendant has failed to file an answer within the allowable deadline (Doc. 32 at 4), the Court should award default judgment; Plaintiff is mistaken.

While referencing Fed. R. Civ. P. 12, Plaintiff omits consideration of the portion of this Rule which determines a motion to dismiss may be filed—rather than filing an answer—such to preclude entry of default. The Rule reads, “Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion . . . . [¶] A motion asserting any of these defenses [set forth in subsection 12(b)] must be made before pleading if a responsive pleading is allowed.”

Moreover, the Court may award default judgment *only* after default has been entered. Fed. R. Civ. P. 55. Default has not been entered in this case and it will not be entered given Defendant is not in default.

