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

SYLVIA CASAUS,  
Plaintiff,  
v.  
DATA CHECK OF NEVADA, LLC,  
Defendant.

Case No. 1:16-cv-00740-DAD-SAB  
ORDER REQUIRING PLAINTIFF TO EITHER  
FILE A MOTION FOR DEFAULT JUDGMENT  
OR SHOW CAUSE WHY THIS ACTION  
SHOULD NOT BE DISMISSED FOR FAILURE  
TO PROSECUTE WITHIN THIRTY DAYS  
ORDER VACATING OCTOBER 3, 2016  
SCHEDULING CONFERENCE

Plaintiff Sylvia Casaus filed this action on May 27, 2016. (ECF No. 1.) Plaintiff served the complaint on June 28, 2016. (ECF No. 5.) When Defendant failed to file an answer, Plaintiff requested entry of default and default was entered on July 28, 2016. (ECF Nos. 8, 9.)

Pursuant to Federal Rules of Civil Procedure 55, obtaining a default judgment is a two step process. Yue v. Storage Technology Corp., No. 3:07-cv-05850, 2008 WL 361142, \*2 (N.D.Cal. Feb, 11, 2008). Entry of default is appropriate as to any party against whom a judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure and where that fact is made to appear by affidavit or otherwise. Fed. R. Civ. P. 55(a). After entry of default, the plaintiff can seek entry of default judgment. Fed. R. Civ. P. 55(b)(1) and (2). “Default judgments are generally disfavored, and whenever it is reasonably possible, cases should be decided upon their merits.” In re Hammer,

1 940 F.2d 524, (9th Cir. 1991) (internal punctuation and citations omitted).

2 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules  
3 or with any order of the Court may be grounds for imposition by the Court of any and all  
4 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to  
5 control its docket and may, in the exercise of that power, impose sanctions where appropriate,  
6 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.  
7 2000).

8 Within thirty days from the date of service of this order, Plaintiff shall either file a motion  
9 for default judgment or show cause why this action should not be dismissed for Plaintiff’s failure  
10 to prosecute.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Within thirty days from the date of service of this order, Plaintiff shall file a  
13 motion for default judgment or a written response to the Court, showing cause  
14 within 30 days from service of this order why this action should not be dismissed  
15 for Plaintiff’s failure to prosecute;
- 16 2. Plaintiff’s failure to comply with this order shall result in a recommendation that  
17 this action be dismissed; and
- 18 3. The October 3, 2016 scheduling conference is vacated.

19 IT IS SO ORDERED.

20 Dated: September 21, 2016

  
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22 UNITED STATES MAGISTRATE JUDGE

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