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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 SAMUEL LEON,

12 Plaintiff,

13 v.

14 DATA CHECK OF AMERICA,

15 Defendant.

Case No. 1:16-cv-00744-LJO-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

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

21 Pursuant to Federal Rules of Civil Procedure 55, obtaining a default judgment is a two
22 step process. Yue v. Storage Technology Corp., No. 3:07-cv-05850, 2008 WL 361142, *2
23 (N.D.Cal. Feb, 11, 2008). Entry of default is appropriate as to any party against whom a
24 judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided
25 by the Federal Rules of Civil Procedure and where that fact is made to appear by affidavit or
26 otherwise. Fed. R. Civ. P. 55(a). After entry of default, the plaintiff can seek entry of default
27 judgment. Fed. R. Civ. P. 55(b)(1) and (2). "Default judgments are generally disfavored, and
28 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
20 IT IS SO ORDERED.

21 Dated: September 21, 2016


UNITED STATES MAGISTRATE JUDGE