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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 HERTA CARTAGENA,

11 Plaintiff,

12 v.

13 LIPMENG HENG, et al.,

14 Defendants.

Case No. 1:16-cv-01072-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

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16 Plaintiff Herta Cartagena filed this action on July 26, 2016. (ECF No. 1.) Plaintiff
17 served the complaint on July 29, 2016. (ECF No. 4.) When Defendants failed to file an answer,
18 Plaintiff requested entry of default and default was entered on August 23, 2016. (ECF Nos. 8, 9.)

19 Pursuant to Federal Rules of Civil Procedure 55, obtaining a default judgment is a two-
20 step process. Yue v. Storage Technology Corp., No. 3:07-cv-05850, 2008 WL 361142, *2 (N.D.
21 Cal. Feb, 11, 2008). Entry of default is appropriate as to any party against whom a judgment for
22 affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal
23 Rules of Civil Procedure and where that fact is made to appear by affidavit or otherwise. Fed. R.
24 Civ. P. 55(a). After entry of default, the plaintiff can seek entry of default judgment. Fed. R.
25 Civ. P. 55(b)(1) and (2). “Default judgments are generally disfavored, and whenever it is
26 reasonably possible, cases should be decided upon their merits.” In re Hammer, 940 F.2d 524,
27 (9th Cir. 1991) (internal punctuation and citations omitted).

28 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these

1 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
2 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to
3 control its docket and may, in the exercise of that power, impose sanctions where appropriate,
4 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.
5 2000).

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

9 Accordingly, IT IS HEREBY ORDERED that:

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

16 IT IS SO ORDERED.

17 Dated: September 28, 2016

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20 UNITED STATES MAGISTRATE JUDGE

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