

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

BOARDS OF TRUSTEES OF THE  
ROOFERS LOCAL 27 HEALTH AND  
WELFARE TRUST FUND, et al.,

Plaintiffs,

v.

ABSOLUTE URETHANE,

Defendant.

Case No. 1:18-cv-00623-DAD-SAB

ORDER REQUIRING PLAINTIFFS TO  
EITHER FILE A MOTION FOR DEFAULT  
JUDGMENT OR SHOW CAUSE WHY THIS  
ACTION SHOULD NOT BE DISMISSED  
FOR FAILURE TO PROSECUTE

FOURTEEN DAY DEADLINE

Boards of Trustees of the Roofers Local 27 Health and Welfare Trust Fund, Roofers Local 27, Fresno Roofing Contractors Vacation Fund, and Roofers Local 27 Apprenticeship Training Fund (collectively “Plaintiffs”) filed this action on May 7, 2018 against Defendant Absolute Urethane. On June 7, 2018, the Clerk of the Court entered default against Defendant Absolute Urethane. As of this date, no motion for default judgment has been filed.

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

1 judgment. Fed. R. Civ. P. 55(b)(1) and (2). “Default judgments are generally disfavored, and  
2 whenever it is reasonably possible, cases should be decided upon their merits.” In re Hammer,  
3 940 F.2d 524, (9th Cir. 1991) (internal punctuation and citations omitted).

4 There has been no activity in in this action since the entry of default. The Court shall  
5 require Plaintiffs to either file a motion for default judgment or show cause why this action  
6 should not be dismissed for Plaintiffs’ failure to prosecute.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Within fourteen (14) days from the date of service of this order, Plaintiff shall  
9 either file a motion for default judgment or file a written response showing cause  
10 why this action should not be dismissed for Plaintiffs’ failure to prosecute; and
- 11 2. Failure to comply with this order shall result in a recommendation that this action  
12 be dismissed for failure to prosecute.

13 IT IS SO ORDERED.

14 Dated: August 28, 2018

15   
16 \_\_\_\_\_  
17 UNITED STATES MAGISTRATE JUDGE