

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT N. JOHNSON,

Plaintiff,

CIV. NO. S-08-1814 JAM GGH

VS.

TERA INVESTMENTS, INC., et al.,

Defendants.

ORDER

Plaintiff's motion for default judgment presently is calendared for hearing on 009. Having reviewed the record, the court has determined that oral argument of material assistance in determining the pending motion. Accordingly, the court will not hold oral argument, and will determine the motion on the record, including the report of the pending motion. See E.D. Cal. L.R. 78-230(h).

The court has reviewed the motion and supporting papers, and now determines that service on defendants Tera Investments, Inc. and Tera Properties, LLC appears to be improper as the agent for service of process was not served. Further, the affidavit of service is not signed. (Docket No. 10.) Because the service does not comply with Fed. R. Civ. P. 4, the court will vacate the entry of default and deny without prejudice the motion for default judgment.

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1 Accordingly, IT IS ORDERED that:

2 1. The January 22, 2009 hearing on the motion for default judgment is vacated.
3 2. The default entered October 14, 2008 is vacated.
4 3. Plaintiff's motion for default judgment is denied without prejudice.

5 DATED: January 15, 2009

6 /s/ Gregory G. Hollows

7 GREGORY G. HOLLOWS
8 U. S. MAGISTRATE JUDGE

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