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

9 SCOTT N. JOHNSON,

10 Plaintiff,

CIV. NO. S- 08-1814 JAM GGH

11 vs.

12 TERA INVESTMENTS, INC., et al.,

13 Defendants.

ORDER

14 _____/
15 Plaintiff's motion for default judgment presently is calendared for hearing on
16 January 22, 2009. Having reviewed the record, the court has determined that oral argument
17 would not be of material assistance in determining the pending motion. Accordingly, the court
18 will not entertain oral argument, and will determine the motion on the record, including the
19 briefing in support of the pending motion. See E.D. Cal. L.R. 78-230(h).

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

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Accordingly, IT IS ORDERED that:

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

DATED: January 15, 2009

/s/ Gregory G. Hollows

GREGORY G. HOLLOWS
U. S. MAGISTRATE JUDGE

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