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

SCOTT N. JOHNSON,

Plaintiff,

No. CIV S-10-3269 MCE GGH

vs.

MATSUI MANAGEMENT
CORPORATION,

Defendant.

ORDER and
FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff’s amended motion for default judgment against Matsui Management Corporation, filed May 27, 2011, was submitted without a hearing. Defendant filed no opposition. Upon review of the motion and supporting documents, the court finds that good cause to grant the motion is lacking.

Service on the defendant corporation appears to be improper. The proof of service indicates only that an individual named Tome Matsushashi, described as a “person in charge at time of service,” was the recipient of the papers delivered by the process server. See docket no. 5. In the case of a corporation, service must be effectuated in accordance with Fed. R. Civ. P. 4(h). Service of process in the state of California requires either service on an agent designated for service of process, a chief officer of the corporation, or someone authorized to

1 receive service of process; Cal. Code Civ. Proc. § 416.10; or, if none of those, by leaving a copy
2 of the summons and complaint during office hours with a “person who is apparently in charge,”
3 *and* thereafter mailing a copy of the summons and complaint by U.S. Mail. Cal. Code Civ. Proc.
4 § 415.20 (emphasis added). In this case, even if the individual who accepted service of process
5 did not meet the requirements set forth in § 416.10, there is no indication of follow-up service by
6 U.S. Mail pursuant to § 415.20.

7 Because service of summons does not comply with Fed. R. Civ. P. 4(h), the court
8 will vacate the entry of default inasmuch as service of summons has not yet been properly
9 effected.

10 For the foregoing reasons, IT IS HEREBY ORDERED that:

11 The default entered March 10, 2011 is vacated.

12 IT IS HEREBY RECOMMENDED:

13 Plaintiff’s amended motion for entry of default judgment, filed May 27, 2011,
14 (dkt. no.12), is denied without prejudice.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
17 one days after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge's Findings and Recommendations.” Any reply to the objections
20 shall be served and filed within fourteen days after service of the objections. The parties are
21 advised that failure to file objections within the specified time may waive the right to appeal the
22 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: September 16, 2011

24 /s/ Gregory G. Hollows
25 UNITED STATES MAGISTRATE JUDGE