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

TIMOTHY MULGREW, JR.,

No. 2:14cv2998-MCE-CMK

Plaintiff,

vs.

ORDER

GREEN TREE SERVICING LLC,  
et al.,

Defendants.

\_\_\_\_\_/

Plaintiff, proceeding in propria persona, brings this civil action under 28 U.S.C. § 1332. Pending before the court is plaintiff motion for default judgment (Doc. 23). Plaintiff is requesting the court enter default judgment against the defendants for failure to timely respond to the complaint pursuant to Federal Rule of Civil Procedure 55.

A defendant is not in “default” unless he “has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.” Fed. R. Civ. Proc. 55(a). A party generally has 20 days after being served with the summons and complaint to file a responsive pleading. See Fed. R. Civ. Proc. 12(a). However, if the party has timely waived service under Rule 4(d), a responsive pleading is timely if filed within 60 days after the request for a waiver was sent. See id. The time for filing a responsive pleading may also be extended by stipulation or court order.

1 Once a responsive pleading is filed with the court, even if untimely, no default may be entered.  
2 Therefore, if an untimely responsive pleading is filed with the court prior to any request for entry  
3 of default, the defendant is no longer in default.

4 Here, plaintiff's motion was signed on July 14, 2016, and filed with the court on  
5 July 15, 2016. The court notes no proof of service is filed with the motion. However, the court  
6 received defendants' motion to dismiss on June 27, 2016. Thus, the defendants responded to the  
7 complaint prior to the request for default and no default may be entered at this time.

8 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for default (Doc.  
9 23) is denied.

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11 DATED: July 20, 2016

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13 **CRAIG M. KELLISON**  
14 UNITED STATES MAGISTRATE JUDGE

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