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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK MALIFRANDO,

Plaintiff,

v.

REAL TIME RESOLUTIONS, INC., et
al.,

Defendants.

No. 2:16-cv-0223 TLN GGH PS

ORDER

Defendant Real Time Resolution Inc.’s motion to dismiss presently is calendared for hearing on October 6, 2016. Having reviewed the record, the court has determined that oral argument would not be of material assistance in determining the pending motion. Accordingly, the court will not entertain oral argument, and will determine the motion on the record, including the briefing in support of and in opposition to the pending motion. See E.D. Cal. L.R. 230(g).

Plaintiff’s motion for default judgment is noticed for hearing on October 13, 2016. Because the motion was defectively noticed less than twenty-eight days prior to the hearing as E.D. Cal. L.R. 230(b) requires, it will be vacated from the calendar. The motion will also be denied without prejudice as prematurely filed. This court’s order of July 14, 2016 provided in part:

Within **twenty-eight (28)** days of this order, plaintiff shall file a request for entry of default with the Clerk for defendant Long Beach Mortgage Company pursuant to Fed. R. Civ. P. 55(a).

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Within **twenty-eight (28)** days after default has been entered, plaintiff shall file a motion for default judgment in accordance with Rule 55(b)(2). Failure to file these pleadings will result in a recommendation that this defendant be dismissed from the action.

Plaintiff has not filed a request for entry of default by the Clerk with supporting affidavit, as required by Fed. R. Civ. P. 55(a). Plaintiff will be given a final opportunity to comply with the court's directive before defendant Long Beach Mortgage Company is dismissed from the action.

Accordingly, IT IS ORDERED that:

1. The October 6, 2016 hearing on defendant Real Time Resolution Inc.'s motion to dismiss, (ECF No. 20), filed September 6, 2016, is vacated from the October 6, 2016 calendar and the motion is submitted on the record.
2. Plaintiff's motion for default judgment, (ECF No. 25), is vacated from the calendar for October 13, 2016; and denied without prejudice.
3. Within **twenty-eight (28)** days of this order, plaintiff shall file a request for entry of default with the Clerk for defendant Long Beach Mortgage Company pursuant to Fed. R. Civ. P. 55(a). Within **twenty-eight (28)** days after default has been entered, plaintiff shall file a motion for default judgment in accordance with Rule 55(b)(2). Failure to file these pleadings will result in a recommendation that this defendant be dismissed from the action.

Dated: September 26, 2016

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

GGH:076/Maliforando0223.vac