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3 IN THE UNITED STATES DISTRICT COURT  
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7 HENRY STUCKEY, et al.,

No. C 11-05196 SI

8 Plaintiffs,

**ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DISMISSING PLAINTIFFS'  
COMPLAINT WITH PREJUDICE**

9 v.

10 LUCAS, et al.,

11 Defendants.

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12 Currently before the Court are plaintiffs' "motion for a default judgment" (Dkt. 42), "motion for  
13 an order" (Dkt. 48), and Magistrate Judge Joseph C. Spero's September 12, 2012, Report and  
14 Recommendation (Dkt. 51).

15 On July 5, 2012, the Clerk of the Court entered a default against defendants. On July 24,  
16 plaintiffs filed a motion for a default judgment. On September 12, 2012, Judge Spero issued a Report  
17 and Recommendation that plaintiffs' motion for default be denied and that the case against defendants  
18 be dismissed in its entirety, with prejudice. On September 17, 2012, plaintiffs filed objections to Judge  
19 Spero's Report and Recommendation, primarily on the basis that plaintiffs "won the above case" when  
20 the Court entered default against defendants on July 5, 2012.

21 As Judge Spero's Report and Recommendation makes clear, a defendant's default does not  
22 automatically entitle the plaintiff to a court-ordered default judgment. *See Draper v. Coombs*, 792 F.2d  
23 915, 924-25 (9th Cir. 1986). "Granting or denying a motion for default judgment is a matter within the  
24 court's discretion." *Landstar Ranger, Inc. v. Parth Enterprises, Inc.*, 2010 WL 2889490, at \*2 (C.D.  
25 Cal. Jul. 19, 2010) (quoting *Elektra Entertainment Group Inc. v. Bryant*, 2004 WL 783123, at \*1 (C.D.  
26 Cal. Feb. 13, 2004)). Where service on defendant is proper, the Court considers a series of factors to  
27 determine whether default judgment is appropriate. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th  
28 Cir. 1986). Judge Spero's Report and Recommendation carefully considered these factors and concluded

1 that plaintiffs' complaint fails to state any claims whatever. Judge Spero found that plaintiffs' federal  
2 claim fails as a matter of law and plaintiffs allege no facts whatsoever to support their state law claims.  
3 See Dkt. 48 at 5-7. This Court has reviewed plaintiffs' motions and Judge Spero's Report and  
4 Recommendation, and finds that plaintiffs fail to state a claim for the reasons stated in the Report and  
5 Recommendation. Accordingly, the Court ADOPTS the Report and Recommendation and DISMISSES  
6 the case WITH PREJUDICE. Plaintiffs' remaining motions are terminated as moot. This Order  
7 resolves Docket Nos. 42, 48, and 51.

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9 **IT IS SO ORDERED.**

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11 Dated: November 27, 2012



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SUSAN ILLSTON  
United States District Judge