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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY MCGEE,
Plaintiff,
v.
THE CITY OF HERCULES, et al.,
Defendants.

Case No. [23-cv-05161-TSH](#)

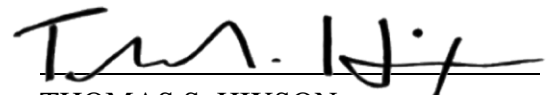
**ORDER DENYING MOTION FOR
ENTRY OF DEFAULT AND DEFAULT
JUDGMENT**

Re: Dkt. No. 26

Plaintiff Anthony McGee, who is representing himself, has filed a motion for entry of default and default judgment against Defendants The City of Hercules and Hercules Police Department. ECF No. 26. Pursuant to Federal Rule of Civil Procedure 55(a), default may be entered “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.” As Defendants filed an Answer (ECF No. 11) and are actively defending themselves in this matter, default is inappropriate. Further, entry of default is a prerequisite for bringing a motion for default judgment under Rule 55(b). *See Symantec Corp. v. Glob. Impact, Inc.*, 559 F.3d 922, 923 (9th Cir. 2009) (noting the two-step process under Rule 55 of entering default and then entering a default judgment); *Smith v. Woodward*, 2008 WL 2477382, at *1 (N.D. Cal. June 18, 2008) (denying default judgment motion as “premature because default had not been entered against Defendants.”). Accordingly, Plaintiff’s motion for default judgment is **DENIED**.

IT IS SO ORDERED.

Dated: May 9, 2024


THOMAS S. HIXSON
United States Magistrate Judge