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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

INTEGRATED SPORTS MEDIA, INC.,

Plaintiff,

No. C 10-3516 PJH

v.

ORDER

ERLINDA MARGARITA MENDEZ,

Defendant.
_____ /

Before the court is defendant's notice of motion and motion to dismiss. The motion to dismiss is procedurally deficient, as it fails to comply with Civil Local Rule 7-2 regarding notice requirements. Specifically, defendant's motion fails to comply with the local rule's requirement that all motions must be noticed for hearing not less than 35 days after service of the motion, and must further contain a noticed hearing date and time.

In addition, however, defendant's motion is substantively improper. On October 18, 2010, the clerk of the court entered default against defendant, and on December 16, 2010, plaintiff filed a motion for default judgment against defendant. That motion is pending before the Magistrate Judge in this action, and set for hearing on March 2. Since defendant's default has already been entered in this action, defendant's standing to seek a dismissal on the merits of the action is questionable.

For the foregoing reasons, the court hereby declines to set defendant's motion to dismiss on calendar for hearing or to rule on the motion at this time. If defendant wishes to proceed with her defense of the instant action and/or have the motion to dismiss heard by this court, defendant must first (1) file an opposition to the motion for default judgment; and then (2) seek to set aside the clerk's entry of default against defendant. No action will be

1 taken by the undersigned until defendant has first complied with these requirements.

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3 **IT IS SO ORDERED.**

4 Dated: February 15, 2011



PHYLLIS J. HAMILTON
United States District Judge

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