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2   UNITED STATES DISTRICT COURT

3   NORTHERN DISTRICT OF CALIFORNIA

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SERGEI SARYTCHEV,
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                Plaintiff,   No. C 12-2284 PJH
7
        v.   **ORDER DENYING MOTION FOR**
8   **DEFAULT JUDGMENT AND STRIKING**
VICTOR KOROLEV, et al.,   **ANSWER**
9
                Defendants.
10 _____/

11   Before the court is plaintiff's motion for default judgment, filed on November 14,

12 2012. The court notes that default has been entered against all defendants as of July 23,

13 2012, and that this court's order of October 3, 2012 permitted plaintiff to file a motion for

14 default judgment if defendants did not move to set aside the default entered against them.

15 Defendants still have not moved to set aside the default. However, defendants have filed

16 an answer to plaintiff's amended complaint, and have also filed an opposition (albeit, an

17 untimely-filed opposition) to plaintiff's motion for default judgment. Based on these filings, it

18 does appear that defendants have shown an intent to defend the action. And given the

19 courts' strong public policy in favor of deciding cases on the merits, plaintiff's motion for

20 default judgment is hereby DENIED.

21   However, defendants still have not moved to set aside the defaults entered against

22 them. As a result, their answer was not properly filed, and is hereby STRICKEN under

23 Federal Rule of Civil Procedure 12(f). While defendants have shown an intent to defend

24 the action, they must follow the proper procedures in order to proceed. First, defendants

25 must move, under Rule 55(c), to set aside the default entered against them. Next,

26 assuming the default is set aside, defendants may re-file their answer. Defendants must

27 move to set aside the defaults by January 25, 2013. If defendants file anything other than a

28 motion to set aside the default, those filings will be stricken. And if defendants miss this

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1 second deadline for a motion to set aside the default, they risk default judgment being

2 entered against them.

3   **IT IS SO ORDERED**.

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5 Dated: January 4, 2013

6   PHYLLIS J. HAMILTON
                                        United States District Judge
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