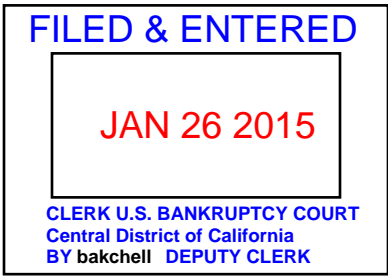


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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re  
JULIO CAESAR AGUILAR  
Debtor.  
  
SATI WAHJOEDI,  
Plaintiffs,  
  
vs.  
JULIO CAESAR AGUILAR,  
Defendant.

Case No. 2:14-bk-24673-RK  
Chapter 7  
Adv No. 2:14-ap-01689-RK

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS AND ORDERING  
DEFENDANT TO ANSWER**

Pending before the court is the Motion of Defendant Julio Caesar Aguilar to Dismiss Adversary Proceeding. ECF 11. Plaintiff Sati Wahjoedi filed a timely opposition on January 9, 2015, which argued, among other things, that the motion should be denied because it was untimely filed . ECF 14 at 9:25-10:6. The motion was set for hearing on January 27, 2015. The court having reviewed the moving and opposing papers relating to the motion finds that oral argument on the motion is unnecessary, dispenses with oral argument, takes the motion under submission, vacates the hearing on the motion on January 27, 2015 and rules as follows.

1 The court agrees with Plaintiff that the motion should be denied because it was  
2 untimely filed in violation of the order approving the stipulation to vacate default entered  
3 on December 8, 2014 that defendant had two weeks to file a responsive pleading, which  
4 would have been December 22, 2014.

5 Plaintiff filed the complaint in this adversary proceeding on October 29, 2014.  
6 ECF 1. Plaintiff served copies of the summons and complaint on Defendant on October  
7 29, 2014. ECF 3 and 4. Pursuant to Rule 7012(a) of the Federal Rules of Bankruptcy  
8 Procedure, Defendant was required to serve a responsive pleading by November 28,  
9 2014. Defendant did not serve a responsive pleading by the due date, and Plaintiff  
10 requested entry of default against defendant, which was entered by the Clerk of Court on  
11 December 1, 2014. ECF 5 and 6. Plaintiff and Defendant subsequently stipulated to  
12 vacate the entry of default, and the court entered an order approving that stipulation on  
13 December 8, 2014. ECF 8 and 9. The order approving the stipulation vacated the  
14 default and provided that "Defendant will have 2-weeks from the date of entry of this  
15 order to file a responsive pleading." ECF 9 at 2:6-7. Because the order was entered on  
16 December 8, 2014, a responsive pleading was due to be filed by Defendant on  
17 December 22, 2014. The instant motion to dismiss was filed and served on December  
18 23, 2014, making it untimely in violation of the order approving the stipulation entered on  
19 December 8, 2014, and thus, is a failure to plead or otherwise defend within the time  
20 allotted under Rule 12 of the Federal Rules of Civil Procedure and Rule 7012 of the  
21 Federal Rules of Bankruptcy Procedure. *See also*, Fed. R. Civ. P. 55; Fed. R. Bankr. P.  
22 7055.

23 Because Defendant's motion to dismiss was filed out of time in violation of the time  
24 limits set forth in the court's order entered on December 8, 2014, the court denies the  
25 motion of Defendant to dismiss as untimely. Plaintiff in the opposition to the motion  
26 requests that the court enter a new default against Defendant in light of the untimely  
27 responsive pleading in the motion to dismiss. ECF 14 at 9:25-10:6. The court declines to  
28 enter a new default at this time in light of legal authority in this circuit indicating that

1 default should not be entered if Defendant has filed a response indicating an intent to  
2 defend the action. *Direct Mail Specialists, Inc. v. Eclat Computerized Technologies, Inc.*,  
3 840 F.2d 685, 689 (9<sup>th</sup> Cir. 1988), *cited in*, 1 Schwarzer, Tashima and Wagstaffe,  
4 *California Practice Guide: Federal Civil Procedure Before Trial*, ¶ 6:29 at 6-6 (2014). One  
5 commentary citing out of circuit authority has stated: “Even a *late-fled* responsive  
6 pleading (filed after the expiration of the time allowed by FRCP 12(a)) prevents entry of a  
7 default.” 1 Schwarzer, Tashima and Wagstaffe, *California Practice Guide: Federal Civil*  
8 *Procedure Before Trial*, ¶ 6:29 at 6-6, *citing Mitchell v. Brown & Williamson Tobacco*  
9 *Corp.*, 294 F.3d 1309, 1317 (11<sup>th</sup> Cir. 2002).

10           However, the court’s order setting the deadline for Defendant’s responsive  
11 pleading was a scheduling order which he disregarded in filing his motion to dismiss  
12 untimely, and thus, his motion may be denied solely on this ground. *Johnson v.*  
13 *Mammoth Recreations, Inc.*, 975 F.2d 604, 608-609 (9<sup>th</sup> Cir. 1992), *cited in*, 3 Schwarzer,  
14 Tashima and Wagstaffe, *California Practice Guide: Federal Civil Procedure Before Trial*,  
15 ¶ 15:24 at 15-12; *see also*, Fed. R. Civ. P. 16(b); Fed. R. Bankr. P. 7016; Local  
16 Bankruptcy Rule 7016-1. A “scheduling order is not a frivolous piece of paper, idly  
17 entered, which can be cavalierly disregarded by counsel without peril.” *Johnson v.*  
18 *Mammoth Recreations, Inc.*, 975 F.2d at 610 (citation omitted), *quoted in*, 3 Schwarzer,  
19 Tashima and Wagstaffe, *California Practice Guide: Federal Civil Procedure Before Trial*,  
20 ¶ 15:23 at 15-12.

21           Accordingly, the court determines that it is appropriate to require Defendant to file  
22 and serve an answer to the complaint now that the motion to dismiss has been denied  
23 pursuant to Rule 12(a) of the Federal Rules of Civil Procedure and Rule 7012(a) of the  
24 Federal Rules of Bankruptcy Procedure.

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Defendant's motion to dismiss is denied. Defendant is ordered to serve and file an answer to the complaint within 14 days of notice of entry of this order.

IT IS SO ORDERED.

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Date: January 26, 2015

  
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Robert Kwan  
United States Bankruptcy Judge