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13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 MATTHEW R. WALSH

16 Plaintiff,

17 vs.

18 ROKOKO ELECTRONICS, and
 19 DOES 1 through 50, inclusive,

20 Defendant.

Case No.: 2:25-cv-05340-ODW-RAO

[Assigned to Hon. Otis D. Wright, II,
 Courtroom 5D; Hon. Rozella A. Oliver,
 Courtroom 590]

**DEFENDANT ROKOKO
 ELECTRONICS' OPPOSITION TO
 PLAINTIFF MATTHEW R.
 WALSH'S MOTION FOR ENTRY
 OF DEFAULT**

Date: December 8, 2025
 Time: 1:30 p.m.
 Place: Dept. 590

State Court Action Filed: May 12, 2025
 Removal Date: June 12, 2025
 Trial Date: None

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1 **MEMORANDUM OF POINTS AND AUTHORITY**

2 **I. INTRODUCTION**

3 Plaintiff Matthew R. Walsh’s (“Plaintiff”) Motion for Entry of Default
4 (“Motion”) against Defendant Rokoko Electronics (“Rokoko”) improperly seeks a
5 default against a party who has and will continue to defend against this action.
6 Pursuant to F.R.C.P. Rule 55(a), entries of default are reserved for defendants who
7 have “failed to plead or otherwise defend” an action. Default is inappropriate insofar
8 as Rokoko has a pending Motion to Dismiss all causes of action asserted in the
9 Plaintiff’s Complaint, and has continuously responded to Plaintiff’s litany of filings
10 in this case.

11 **II. ARGUMENT**

12 An entry of default may only be entered “[w]hen a party against whom a
13 judgment for affirmative relief sought has *failed to plead or otherwise defend*, and
14 that failure is shown by affidavit or otherwise.” F.R.C.P. Rule 55(a). “[T]he general
15 rule [is] that default judgments are ordinarily disfavored. Cases should be decided
16 upon their merits whenever reasonably possible.” *Eitel v. McCool*, 782 F.2d 1470,
17 1472 (9th Cir. 1986). When a party has defended an action by filing a motion to
18 dismiss, default is not favored or warranted. *See Harper v. City of Monterey*, 519 F.
19 App’x 503, 503 (9th Cir. 2013) (affirming denial of request for default where
20 defendant had filed motion to dismiss); *Nathan v. Fry’s Elecs., Inc.*, 607 F. App’x
21 623, 624 (9th Cir. 2015) (affirming denial of a motion for default where motion to
22 dismiss was filed before clerk acted on request for entry of default); *see also United*
23 *States v. Boyce*, 148 F. Supp. 2d. 1069, 1093 (S.D. Cal. 2001) (default judgement is
24 not a “matter of right; rather, a court has discretion as to whether it should be
25 granted.”).

26 Default is improper because Rokoko has timely appeared and defended this
27 action. After being removed to the Central District of California, this Court *sua*

1 *sponte* extended Rokoko’s deadline to respond to Plaintiff’s complaint until June 26,
2 2025. (ECF No. 24). On June 26, 2025, Rokoko timely filed its Motion to Dismiss,
3 which is fully briefed and still pending before this Court. (ECF No. 42). Rokoko’s
4 Motion to Dismiss renders Plaintiff’s request for an entry of default moot.

5 Furthermore, Clerks may only enter default against parties who have never
6 appeared in the action. *See Direct Mail Specialists, Inc. v. Eclat Computerized*
7 *Technologies, Inc.*, 840 F.2d 685 (9th Cir. 1988). If a defendant has appeared, default
8 entered by the clerk is void *ab initio*. *Id.* In general, “an appearance in an action
9 involves some presentation or submission to the court. *Id.* at 698. But because
10 judgments by default are disfavored, a court usually will try to find that there has
11 been an appearance by defendant.” *Id.*

12 As the Docket clearly demonstrates, Rokoko and Plaintiff has been actively
13 defending against this action since June 2025. Rokoko has been filing briefs,
14 engaging in discovery, and communicating directly with Plaintiff. Entries of default
15 are reserved for situations in which a defendant’s failure to appear to appear or
16 respond to a plaintiff’s allegations would lead to no recourse absent a default. That
17 is clearly not the case here.

18 Moreover, the Court has already rejected Plaintiff’s request for an entry of
19 default before. (ECF Nos. 45, 46 (“The Clerk cannot enter the requested relief as:
20 Answer and/or Motion for Summary Judgment and/or Motion to Dismiss on file.
21 Responsive Motion to Dismiss was filed 6/26/2025 and is Pending hearing and
22 Ruling by the Judge”)).

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1 **III. CONCLUSION**

2 For all of the reasons explained herein, Rokoko respectfully requests this Court
3 deny Plaintiff’s Motion.

4
5 DATED: November 17, 2025 REED SMITH LLP

6
7 By: /s/ Katherine J. Ellena
8 Katherine J. Ellena
9 Michael Galibois (*pro hac vice*)
10 Emily Graue (*pro hac vice*)

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13 *Rokoko Electronics*
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Rokoko Electronics, certifies that this Memorandum of Points and Authorities contains 897 words, which complies with the word limit of L.R. 11-6.2.

DATED: November 17, 2025

/s/ Katherine J. Ellena
Katherine J. Ellena