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11 *Counsel for Defendants Listed on Signature Page*

12 THE UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA  
14 SACRAMENTO DIVISION

15 MARK BAKER,

16 Plaintiff,

17 v.

18 U.S. DEPARTMENT OF HEALTH AND  
19 HUMAN SERVICES, *et al.*,

20 Defendants.

No. 4:24-cv-278-KJM-DB

**SPECIAL APPEARANCE AND NOTICE OF  
INTENT TO OPPOSE DEFAULT**

21 Federal Defendants respectfully submit this Notice of Intent to Oppose Default regarding Plaintiff  
22 Mark Baker's April 22, 2024 (docketed April 23, 2024) Application for Entry of Default. ECF No. 7.  
23 Federal Defendants intend to file a timely opposition on or before **May 6, 2024**, consistent with Local  
24 Rule 230(c).

25 Plaintiff has not properly served Federal Defendants. The Federal Rules of Civil Procedure  
26 provide that service on agencies and officers/employees of the United States requires service on the  
27 United States Attorney, the Attorney General of the United States, and the agency. Fed. R. Civ. P. 4(i)(1)-  
28 (3). Plaintiff has the burden of establishing proper service, *GrandVela v. Murphy*, 362 Fed. App'x 624,  
625 (9th Cir. 2010), and the papers filed with this Court prove that he has failed to meet that burden. ECF  
No. 7 at 4-6. Courts routinely reject attempts to serve federal agency defendants via means other than  
those explicitly enumerated in Rule 4(i). *See, e.g., Hin v. U.S. Dep't of Justice U.S. Marshalls Serv.*, No.  
2:21-cv-00393-TLN-JDP, 2022 WL 705617, at \*7-8 (E.D. Cal. Mar. 9, 2022) (holding service by FedEx  
Special Appearance and Notice of Intent 1  
Case No. 2:24-cv-278-KJM-DB

1 improper); *Shepard v. U.S. Dep't of Veteran Affairs*, No. 18-cv-01098-PAB-KMT, 2019 WL 5095680, at  
2 \*2 (D. Colo. July 11, 2019) (same). Without proper service, default is inappropriate. *Warren v. City of*  
3 *Grass Valley*, 2:10-CV-1650-JAM-EFB, 2011 WL 596707, at \*2 (E.D. Cal. Feb. 9, 2011) (setting aside  
4 entry of default when service not proper); *see also Rivera-Cornish v. Norris Square United Presbyterian*  
5 *Congregation*, Civ. No. 07-3678, 2007 WL 2916298, at \*1 (E.D. Pa. Oct. 5, 2007); *Church-El v. Bank of*  
6 *N.Y.*, Civ. No. 11-877 (NLH/KMW), 2013 WL 1190013, at \*4 (D. Del. Mar. 21, 2013).

7 By this appearance, Federal Defendants do not waive service or any other defense. *Feng v. Cnty.*  
8 *of Santa Clara*, 19-CV-06877-LB, 2019 WL 7194475, at \*1 n.1 (N.D. Cal. Dec. 26, 2019) (“A defendant’s  
9 specially appearing to oppose entry of default does not waive any defenses, including a defense of lack  
10 of service.”).

11 For the reasons summarized above, Defendants intend to file an opposition to Plaintiff’s  
12 Application for Entry of Default. Unless the Court orders otherwise, Defendants will do so on or before  
13 **May 6, 2024.**

1 DATED: April 26, 2024

Respectfully Submitted,

2 BRIAN M. BOYNTON  
3 Principal Deputy Assistant  
4 Attorney General  
5 Civil Division

6 ARUN G. RAO  
7 Deputy Assistant Attorney General

8 AMANDA N. LISKAMM  
9 Director

10 LISA K. HSIAO  
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12 HILARY K. PERKINS  
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14 /s/ Samuel Ballingrud

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25 *Counsel for Defendants United States Department of*  
26 *Health and Human Services; Xavier Becerra,*  
27 *Secretary of the Department of Health and Human*  
28 *Services; United States Food and Drug*  
*Administration; Robert M. Califf, Commissioner of*  
*Food and Drugs; and Jeffrey Shuren, Director of the*  
*Center for Devices and Radiological Health*

**CERTIFICATE OF SERVICE**

1 I hereby certify that this document, filed through the CM/ECF system, will be sent via U.S. mail  
2 on Friday, April 26, 2024, to Mr. Baker's address on file with the Court:

3 9450 SW Gemini Drive, PMB 44671

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Beaverton, OR 97008

April 26, 2024

/s/ Samuel Ballingrud  
SAMUEL BALLINGRUD