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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Daniel F. Gruender,

) No. CV-09-1347-PHX-DGC

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Plaintiff,

) **ORDER AND DEFAULT JUDGMENT**

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vs.

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Harald Rosell; The Gardiner Law Firm,
P.S., a Washington corporation; and

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D. Bruce Gardiner,

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Defendants.

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Daniel Gruender and Harald Rosell entered into an unsecured promissory note on
18 April 7, 2009. Dkt. #1-1. Gruender agreed to loan Rosell \$1.35 million, and Rosell agreed
19 to pay Gruender a total of \$2 million by May 1, 2009. *Id.* at 2, §§ 1-3. Gruender funded the
20 loan, but Rosell failed to meet the repayment deadline. On May 18, 2009, the promissory
21 note was amended to provide that Rosell would pay Gruender a total of \$2.5 million by
22 June 8, 2009. Dkt. #39-1 at 2, §§ 2-3. Rosell has defaulted on the note and has refused
23 Gruender’s demand for payment.

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Gruender filed suit on June 23, 2009. Dkt. #1. The complaint asserts three claims:
25 breach of contract, breach of the covenant of good faith and fair dealing, and specific
26 performance. *Id.* ¶¶ 27-48. Gruender seeks damages in the principle amount of \$2.5 million,
27 plus accrued interest and late fees. He also seeks an award of his reasonable attorneys’ fees
28 and costs. *Id.* at 8-9.

1 Gruender has filed a motion for default judgment against Rosell pursuant to Rule 55
2 of the Federal Rules of Civil Procedure. Dkt. #51; *see* Dkt. #45. No response has been filed.
3 For reasons stated below, the Court will grant the motion and enter default judgment against
4 Rosell in the amount of \$3,227,576.13, plus additional late fees and interest.

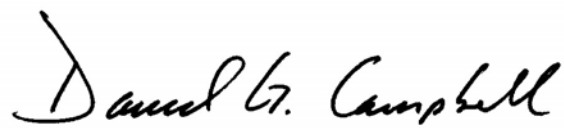
5 Because Rosell's default has been entered under Rule 55(a) (Dkt. #49), the Court has
6 discretion to grant default judgment against him pursuant to Rule 55(b). *See Aldabe v.*
7 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir.
8 1986). Factors the Court should consider in deciding whether to grant default judgment
9 include (1) the possibility of prejudice to Gruender, (2) the merits of his claims, (3) the
10 sufficiency of the complaint, (4) the amount of money at stake, (5) the possibility of a dispute
11 concerning material facts, (6) whether default was due to excusable neglect on the part of
12 Rosell, and (7) the policy favoring a decision on the merits. *See Eitel v. McCool*, 782 F.2d
13 1470, 1471-72 (9th Cir. 1986).

14 Having considered Gruender's motion, which addresses each of the *Eitel* factors
15 (Dkt. #51 at 2-9), and having reviewed the well-pled factual allegations of the complaint and
16 the record as whole, the Court is firmly convinced that the entry of default judgment against
17 Rosell is appropriate.

18 **IT IS ORDERED:**

- 19 1. Plaintiff Daniel Gruender's motion default judgment (Dkt. #51) is **granted**.
- 20 2. Default judgment is entered in favor of Plaintiff and against Defendant Harald
21 Rosell in the amount of **\$3,227,576.13** (U.S. Dollars), plus late fees and
22 interest accrued after February 25, 2010 and until judgment is paid in full (*see*
23 Dkt. ##1-1 at 2, § 5; Dkt. #45-1 at 4, ¶ 13).

24 DATED this 21st day of May, 2010.

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28 David G. Campbell
United States District Judge