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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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First Horizon Home Loans, a Division of)
First Tennessee Bank, N.A.,)

No. CV-11-0995-PHX-JAT

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Plaintiff,)

ORDER

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vs.)

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Centerpiece Mortgage, LLC, an Arizona)
Corporation; Kirk Jungbluth, an)
individual; Real Estate Research)
Corporation, an Arizona corporation;)
James Moore, an individual; Reliant)
Appraisal Service, an Arizona)
Corporation; Does I through X, and Roe)
Corporations I through X, inclusive,)

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Defendants.)

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Pending before the Court is Plaintiff’s Motion for Default Judgment as to Centerpiece
Mortgage, LLC (Doc. 30). The Court now rules on the Motion.

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I. BACKGROUND

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On May 19, 2011, Plaintiff filed a Complaint against Defendants, alleging as follows:

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Plaintiff entered into a Mortgage Broker Agreement (the “Broker Agreement”) with

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Defendant Centerpiece Mortgage, LLC (“Centerpiece”) in 2005 (Doc. 1, Exhibit 1).

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Pursuant to the Broker Agreement, Centerpiece brokered loans for Plaintiff. (*Id.* at ¶ 14).

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Plaintiff alleges that thirty-two of the loans that Centerpiece brokered for it were based on

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incorrect income and/or employment information. (*Id.*). Plaintiff further alleges that

1 Defendants Jungbluth, Real Estate Research Corporation, Moore, and Reliant Appraisal
2 Service (the “Appraisal Defendants”) conducted appraisals on the properties brokered by
3 Centerpiece and consistently overvalued those appraisals. (*Id.* at 15). Plaintiff alleges that
4 the borrowers on the subject loans subsequently defaulted and the properties were foreclosed
5 and sold. (*Id.* at 16). Plaintiff alleges that it was required to purchase the subject loans
6 because the loans were based on incorrect income, employment information, and/or
7 overvaluations. (*Id.* at 17). Plaintiff alleges that Centerpiece is required to indemnify it for
8 the damages that Plaintiff has incurred as a result of the foreclosures. (*Id.* at 18).

9 Plaintiff filed an Affidavit of Service by Private Service with the Court. (Doc. 22).
10 The sworn affidavit avers that Centerpiece Mortgage, LLC was served through its statutory
11 agent on July 30, 2011. (*Id.*). When Defendant Centerpiece Mortgage, LLC failed to appear
12 or otherwise defend the case, Plaintiff filed an Application for Entry of Default. (Doc. 23).
13 Thereafter, the Clerk of the Court entered default as to Defendant Centerpiece Mortgage,
14 LLC. (Doc. 25). Plaintiff now seeks a default judgment in the amount of \$4,075,731.11, in
15 addition to attorneys’ fees, costs, and post-judgment interest.

16 II. LEGAL STANDARD

17 Entry of default judgment is governed by Federal Rule of Civil Procedure 55 and is
18 left to the Court’s sound discretion. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980);
19 Fed. R. Civ. P. 55. Because granting or denying relief is entirely within the Court’s
20 discretion, a defendant’s default does not automatically entitle a plaintiff to a court ordered
21 judgment. *See id.* The Court has considerable leeway as to what it may require as a
22 prerequisite to the entry of a default judgment, pursuant to Rule 55. The Court may consider
23 the following factors in exercising its discretion to award a default judgment:

24 (1) the possibility of prejudice to the plaintiff, (2) the merits of
25 plaintiff’s substantive claim, (3) the sufficiency of the
26 complaint, (4) the sum of money at stake in the action; (5) the
27 possibility of a dispute concerning material facts; (6) whether
28 the default was due to excusable neglect, and (7) the strong
policy underlying the Federal Rules of Civil Procedure favoring
decisions on the merits.

1 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

2 According to Federal Rule of Civil Procedure 54(b), “when multiple parties are
3 involved, the court may direct entry of a final judgment as to one or more, but fewer than all,
4 claims or parties **only if** the court expressly determines that there is no just reason for delay.”
5 Fed.R.Civ.P. 54(b) (emphasis added). “[W]here a complaint alleges that defendants are
6 jointly liable and one of them defaults, judgment should not be entered against the defaulting
7 defendant until the matter has been adjudicated with regard to all defendants.” *Nielson v.*
8 *Chang*, 253 F.3d 520, 532 (9th Cir. 2001) (citing *Frow v. De La Vega*, 82 U.S. 552, 554-55
9 (1872)).

10 Even if Defendants are not alleged to be jointly and severally liable, where defendants
11 have closely related defenses or are otherwise similarly situated, the Court should not enter
12 default judgment until the matter has been adjudicated as to all defendants. *Id.* at 532.
13 Further, judgment should not be entered against one defendant until the matter has been
14 adjudicated with regard to all defendants, if judgment would produce logically inconsistent
15 judgments in the same action. *Shanghai Automation Instrument Co. v. Kuei*, 194 F.Supp.2d
16 995, 1007-1008 (N.D. Cal. 2001) (citing *Chang*, 253 F.3d at 532).

17 **III. ANALYSIS**

18 In this case, the Court cannot determine that there is no just reason for delay, and thus,
19 cannot enter default judgment against Defendant Centerpiece Mortgage, Inc. While Counts
20 One and Two of Plaintiff’s Complaint are alleged solely against Defendant Centerpiece
21 Mortgage, Inc., Counts Three and Four are alleged against all Defendants. Plaintiff alleges
22 that it was required to purchase the subject loans because the loans were based on incorrect
23 income and employment information provided by Centerpiece and/or overvaluations
24 provided by the other Defendants. Accordingly, the claims against Centerpiece and the
25 remaining Defendants are closely related and its is possible that a judgment in favor of
26 Centerpiece Mortgage, Inc. at this stage in the litigation could produce inconsistent results
27 with a judgment when the matter has been entirely adjudicated. Further, determinations that
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1 the Court must necessarily make in accordance with Federal Rule of Civil Procedure
2 55(b)(2)(A)-(D) could more easily be made once all claims are adjudicated.

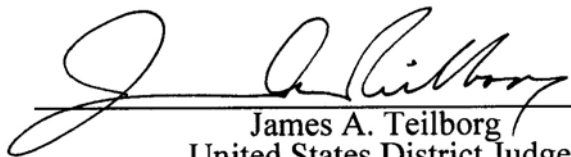
3 **IV. CONCLUSION**

4 Based on the foregoing, the Court cannot find that there is no just reason for delay.
5 Accordingly,

6 **IT IS ORDERED** that Plaintiff's Motion for Default Judgment as to Centerpiece
7 Mortgage, LLC (Doc. 30) is denied without prejudice to Plaintiff filing at the conclusion of
8 the lawsuit and in accordance with any other judgment entered in the case.

9 DATED this 22nd day of June, 2012.

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James A. Teilborg
United States District Judge