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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TAHOE REGIONAL PLANNING  
AGENCY,

Plaintiff,

No. CIV S-08-3102 LKK EFB

vs.

MARSHA ELIZABETH HALE,

Defendant.

FINDINGS AND RECOMMENDATIONS

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On June 17, 2009, this court heard plaintiff’s motion for default judgment, pursuant to Fed. R. Civ. P. 55(b), against defendant Marsha Elizabeth Hale.<sup>1</sup> Plaintiff Tahoe Regional Planning Agency (hereafter “TRPA”), was represented by attorney Nicole Rinke. No appearance was made on behalf of defendant Marsha Elizabeth Hale (hereafter “Hale”).

Upon review of the motion, supporting documents, plaintiff’s oral argument, and good cause appearing, the court makes the following findings and recommendations.

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<sup>1</sup> This case was referred to the undersigned pursuant to Local Rule 72-302(c)(19) and 28 U.S.C. § 636(b)(1).

1 BACKGROUND

2 The complaint, filed December 19, 2008, premises this court’s jurisdiction on federal  
3 subject matter, 28 U.S.C. § 1331, based on the underlying interstate agreement that controls this  
4 action, Pub. Law 96-551, 94 Stat 3233 (Tahoe Regional Planning Compact (hereafter  
5 “Compact”)) and implementing Code of Ordinances (“Code”); *see also* Cal. Gov’t Code  
6 §§ 66891, *et seq.*, and Nev. Rev. Stat. §§ 277.200, *et seq.*

7 A certificate of service, filed February 19, 2009, demonstrates that the summons and  
8 complaint were personally served on defendant on February 3, 2009. Dckt. No. 6.

9 On March 5, 2009, pursuant to plaintiff’s request, the Clerk of the Court entered  
10 defendant’s default. Dckt. Nos. 7, 9. Plaintiff’s request for entry of default provides that  
11 defendant “has failed to appear or otherwise respond to the Complaint . . .,” which should have  
12 been filed and served on or before February 23, 2009. Dckt. No. 7. While defendant was not  
13 served with plaintiff’s request for entry of default or the Clerk’s entry of default, these omissions  
14 come within the exception for service upon a defaulting party. *See* Fed. R. Civ. P. 5(a)(2) (“No  
15 service is required on a party who is in default for failing to appear”).

16 Plaintiff filed the instant motion for default judgment on May 7, 2009, Dckt. No. 13,  
17 which was served by mail on defendant on May 5, 2009, Dckt. No. 19, at p. 2.

18 DISCUSSION

19 Process has been served upon defendant, who has not appeared in this action. *See Pacific*  
20 *Atlantic Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1331 (9th Cir. 1985) (default  
21 judgment void without personal jurisdiction).

22 Entry of default pursuant to Fed. R. Civ. P. 55(a) effects defendant’s admission of the  
23 well-pled factual allegations of the complaint, except those relating to the amount of damages.  
24 *See* Fed. R. Civ. P. 8(b)(6) (“An allegation—other than one relating to the amount of damages— is  
25 admitted if a responsive pleading is required and the allegation is not denied”); *Geddes v. United*  
26 *Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977), *Anderson v. Air West*, 542 F.2d 1090, 1093

1 (9th Cir. 1976).

2 The court finds that the complaint states the following claims for which relief can be  
3 granted, specifically:

4 1. Defendant engaged, on two separate occasions in July and October 2008, in grading  
5 and disposing of 200 cubic yards of soil onto her real property, located at 495 Lakeridge Court,  
6 El Dorado County, California, Assessor’s Parcel Number (APN) 016-512-02, and onto adjacent  
7 property owned by the United States Forest Service. The properties are within the geographical  
8 boundaries of the Region, and such disposal was initially conducted without authorization from  
9 TRPA, and subsequently in violation of a TRPA cease and desist order. *See* Compl., ¶¶ 31-35,  
10 Declaration of Steve D. Sweet (“Sweet Decl.”) ¶¶ 3, 6-8, 11-14; Declaration of Ethan Casaday  
11 (“Casaday Decl.”) ¶¶ 3, 5.

12 2. Defendant failed to install and/or maintain discharge control devices (known as “Best  
13 Management Practices,” or “BMP’s”) on her property during the initial stages of the grading and  
14 construction activities, causing an indirect discharge of soil to the waters of the Region. *See*  
15 Compl., ¶¶ 41-45; Sweet Decl., at ¶¶ 3, 5, 6, 8 -13; Casaday Decl., at ¶¶ 3, 5.

16 3. Defendant made unauthorized modifications to the natural contours of the land by  
17 constructing large terraces on her property without the approval of TRPA. *See* Compl., ¶ 24;  
18 Sweet Decl., at ¶¶ 3-4, 6-8, 13-14; Casaday Decl., at ¶¶ 3, 5.

19 4. Defendant has, on two separate occasions, violated TRPA cease and desist orders,  
20 issued in July and October 2008. *See* Compl., ¶ 22; Sweet Decl., at ¶¶ 4-6, 15-17; Casaday  
21 Decl., at ¶¶ 3, 5-6.

22 Based on the foregoing, and plaintiff’s memorandum of points and authorities and  
23 affidavits filed in support of the motion for default judgment, and pursuant to the authority  
24 Article VI(1) of the TRPA Compact, and the factors set forth in *Tahoe Regional Planning*  
25 *Agency v. Terrace Land Co.*, 772 F. Supp. 506, 509-510 (D. Nev. 1991), the court finds that  
26 plaintiff is entitled to the relief requested. There are no policy considerations that preclude the

1 entry of default judgment of the type requested. *See Eitel v. McCool*, 782 F.2d 1470, 1471-1472  
2 (9th Cir. 1986).

3 Accordingly, the court will recommend judgment in the total amount of \$50,000.00,  
4 reflecting statutory civil penalties based on the following:

5 1. First Cause of Action: Unauthorized Disposal of Soil, in violation of TRPA Code  
6 § 64.5, and TRPA Compact, Art. VI(b), subject to \$5000 penalty per day. Plaintiff seeks a total  
7 of \$10,000, based on two separate recorded instances.

8 2. Second Cause of Action: Unauthorized Grading, in violation of TRPA Code §§ 4.7  
9 and 64.1, and TRPA Compact, Art. VI(b), subject to \$5000 penalty per day. Despite multiple  
10 days of grading, plaintiff seeks a total of \$10,000.

11 3. Third Cause of Action: Failure to Install and Maintain Discharge Control Devices  
12 (“BMP’s”) During Grading and Construction, in violation of TRPA Code §§ 64.3.C and 25.2.A,  
13 and TRPA Compact, Art. VI(b), subject to \$5000 penalty per day. Despite multiple days of  
14 grading, plaintiff seeks a total of \$10,000.

15 4. Fourth Cause of Action: Indirect Discharge of Earthen Materials To Lake Tahoe (soil  
16 deposited in roadway), in violation of TRPA Code § 64.3.B, and TRPA Compact, Art. VI(b),  
17 subject to \$5000 penalty per day. Plaintiff seeks a total of \$5,000.

18 5. Fifth Cause of Action: Failure to Maintain Natural Slope of the Property  
19 (unauthorized construction of terraces and modification of natural slope), in violation of TRPA  
20 Code § 30.5.A(1), and TRPA Compact, Art. VI(b), subject to \$5000 penalty per day. Plaintiff  
21 seeks a total of \$5,000.

22 6. Sixth Cause of Action: Violation of a TRPA Issued Cease and Desist Order, in  
23 violation of TRPA Code § 8.3.B, subject to \$5000 penalty per day. Plaintiff seeks a total of  
24 \$10,000, based on two separate recorded violations.

25 In addition, plaintiff seeks injunctive relief in the form of “ordering Hale to restore the  
26 Property pursuant to a TRPA-approved restoration plan.”

1 CONCLUSION

2 In view of the foregoing findings, IT IS HEREBY RECOMMENDED that:

3 1. Plaintiff's motion for default judgment against defendant Marsha Elizabeth Hale, be

4 GRANTED;

5 2. Statutory civil penalties be awarded in the total amount of \$50,000.00; and

6 3. Defendant be ordered to restore her property located at 495 Lakeridge Court, El  
7 Dorado County, California, Assessor's Parcel Number (APN) 016-512-02, pursuant to a TRPA-  
8 approved restoration plan.

9 These findings and recommendations are submitted to the United States District Judge  
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days after  
11 being served with these findings and recommendations, any party may file written objections  
12 with the court and serve a copy on all parties. Such a document should be captioned "Objections  
13 to Magistrate Judge's Findings and Recommendations." Failure to file objections within the  
14 specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158  
15 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

16 DATED: July 8, 2009.

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18 EDMUND F. BRENNAN  
19 UNITED STATES MAGISTRATE JUDGE  
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