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

LEHMANL BROTHERS HOLDINGS, INC.,

Plaintiff,

No. CIV S-10-3083 JAM CMK (TEMP)

v.

SHASTA FINANCIAL SERVICES, INC.

Defendant.

\_\_\_\_\_/

Plaintiff’s motion for default judgment was submitted on the papers. The court’s docket reflects that defendant has not filed any opposition to plaintiff’s motion for entry of default judgment despite being served with the motion and supporting exhibits. For the reasons set forth below, the undersigned recommends that plaintiff’s motion be granted and that default judgment be entered against defendant.

BACKGROUND

In the complaint filed November 16, 2010, plaintiff alleges mortgage loans were purchased by Lehman Brothers Bank, FSB (“LBB”) from defendant pursuant to a series of written contracts and that the rights of LBB were subsequently assigned to plaintiff. Plaintiff further alleges that with respect to certain of the mortgages, defendant breached provisions of the

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1 Federal Rules of Civil Procedure favoring decisions on the merits.

2 Eitel, 782 F.2d at 1471-72 (citing 6 Moore's Federal Practice ¶ 55-05[2], at 55-24 to 55-26).

3 ANALYSIS

4 I. Whether Default Judgment Should Be Entered

5 The factual allegations of plaintiff's complaint, taken as true pursuant to the entry  
6 of default against defendant, and the affidavits submitted in support of the motion for summary  
7 judgment establish that plaintiff is entitled to the relief requested. The repurchase price of each  
8 loan has been appropriately calculated according to the formula set forth in the Seller's Guide  
9 that governs the parties' respective rights and responsibilities. Baker Decl., Exh. A-G. From the  
10 business records submitted by plaintiff, damages in a sum certain are calculable according to a  
11 set formula and the amount of damages is \$1,993,605.63.

12 After weighing the Eitel factors, the undersigned finds that the material  
13 allegations of the complaint support plaintiff's claims. Plaintiff will be prejudiced if default  
14 judgment is denied because plaintiff has no other recourse for recovery of the damages suffered  
15 due to the defendants' failure to repurchase the subject loans.

16 In light of the entry of default against the defendant, there is no apparent  
17 possibility of a dispute concerning the material facts underlying the action. Nor is there any  
18 indication that the defendant's default resulted from excusable neglect, as defendant has been  
19 properly notified of the pendency of the lawsuit and was served with a copy of the pending  
20 motion.

21 Although public policy generally favors the resolution of a case on its merits, the  
22 defendant's failure to make a proper appearance and defend against plaintiff's claims has made a  
23 decision on the merits impossible in this case. Because most of the Eitel factors weigh in  
24 plaintiff's favor, the undersigned, while recognizing the public policy favoring decisions on the  
25 merits, will recommend that default judgment be entered against the defaulted defendant.

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1 II. Terms of Judgment to Be Entered

2 After determining that entry of default judgment is warranted, the court must next  
3 determine the terms of the judgment. Upon consideration of all of plaintiff's briefing, the  
4 undersigned will recommend that damages be awarded in the amount requested. By its motion  
5 for default judgment, plaintiff seeks a judgment in the amount of \$1,993,605.63 with post-  
6 judgment interest to accrue pursuant to 28 U.S.C. § 1961. The declaration of John Baker and  
7 exhibits attached thereto support the entry of judgment in the amount requested.

8 CONCLUSION

9 For the reasons set forth above, IT IS RECOMMENDED that:

10 1. Plaintiff's motion for default judgment (Doc. No. 16) against defendant be  
11 granted;

12 2. Judgment be entered against defendant in the amount of \$1,993,605.63 with  
13 post-judgment interest to accrue pursuant to 28 U.S.C. § 1961.

14 These findings and recommendations will be submitted to the United States  
15 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
16 fourteen days after these findings and recommendations are filed, any party may file written  
17 objections with the court. A document containing objections should be titled "Objections to  
18 Magistrate Judge's Findings and Recommendations." The parties are advised that failure to  
19 file objections within the specified time may, under certain circumstances, waive the right to  
20 appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21  
22 DATED: April 29, 2011

23   
24 **CRAIG M. KELLISON**  
25 UNITED STATES MAGISTRATE JUDGE

26 JMM  
lehman-shasta.def.cmk