

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL GARCIA and COURTNEY GARCIA,

Plaintiff,

vs.

FIDELITY MORTGAGE COMPANY,  
JOEL ATWATER, et al.,

Defendant.

No.C-05-5144 MHP  
(MEJ)**ORDER ADOPTING  
REPORT AND  
RECOMMENDATION  
GRANTING MOTION  
FOR DEFAULT  
JUDGMENT AND  
JUDGMENT THEREON**

This matter was referred to Chief Magistrate Judge Maria-Elena James to conduct an evidentiary hearing for the purposes of determining damages, costs and attorneys' fees and such other relief as may be proper, this court having found that plaintiffs were entitled to a default judgment against defendant Atwater. The referral, pursuant to Federal Rule of Civil Procedure 72(b) and Civil Local Rule 72-3 in accordance with 28 U.S.C. section 636(b)(1)(B) and (C), requested Judge James to make a Report and Recommendation on these matters. Judge James filed her Report and Recommendation on January 6, 2010 and on that same date filed an Amended Report and Recommendation. No timely objection has been filed. Therefore, in accordance with the Report and Recommendation,


IT IS HEREBY ORDERED AND ADJUDGED that the Amended Report and Recommendation is adopted in its entirety and default judgment is hereby entered as follows:

Plaintiffs MICHAEL GARCIA AND COURTNEY GARCIA shall recover from the

1 defendant JOEL ATWATER, the amounts of \$29,874.30 as and for compensatory damages and  
2 \$10,000.00 in punitive damages with prejudgment and post-judgment interest thereon at the rate of  
3 0.39 %. Plaintiffs' further request for damages, including punitive damages, along with costs of  
4 action and attorneys' fees is denied as recommended by the Chief Magistrate Judge. Plaintiffs'  
5 request for punitive damages is further denied because they were afforded by the Chief Magistrate  
6 Judge an opportunity to come forward with evidence to support their claim and have failed to do so  
7 as of this date, nearly two months later. Therefore, the claim for punitive damages is denied with  
8 prejudice.

9  
10 The Clerk of Court shall close the file.

11  
12 Date: February 25, 2010

  
13 MARILYN HALL PATEL  
14 United States District Court Judge  
15 Northern District of California  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28