

1 UNITED STATES DISTRICT COURT
 2 Northern District of California

3
 4 MICHAEL GARCIA and COURTNEY
 GARCIA,

5 Plaintiffs,

No. C 05-5144 MHP (MEJ)

6 v.

**ORDER RE EVIDENTIARY
 HEARING ON DAMAGES**

7 FIDELITY MORTGAGE COMPANY *et al.*,

8 Defendants.

9

10 On May 5, 2009, the Honorable Marilyn Hall Patel, the presiding judge in this action, issued
 11 a Memorandum & Order regarding Plaintiffs' Motion for Default Judgment. (Dkt. #95.) In her
 12 Order, Judge Patel granted default judgment in favor of Plaintiffs and against Defendant Joel
 13 Atwater. However, Judge Patel found that Plaintiffs had not submitted sufficient documentation and
 14 testimony regarding his claimed damages to enable the Court to determine the dollar amount it
 15 should award to Plaintiffs. (*Id.* at 6.) Accordingly, Judge Patel referred the matter to the
 16 undersigned to hold an evidentiary hearing on the issue of damages and to make findings of fact and
 17 recommendations regarding the specific amounts that should be awarded. Judge Patel also
 18 instructed Plaintiffs that, at the hearing, they will need to provide evidentiary support, such as
 19 documents, affidavits, or witness or expert testimony to corroborate their claimed damages. (*Id.*)
 20 Further, with respect to each area of damages Plaintiffs requested, Judge Patel outlined what
 21 evidence Plaintiffs would need to submit and what questions Plaintiffs would need to address to
 22 enable the undersigned to make a recommendation regarding the proper amount of damages
 23 recoverable.

24 Since Judge Patel issued her Order, Plaintiffs have not filed any supplemental material in
 25 advance of the evidentiary hearing set for September 3, 2009. Thus, Plaintiffs have not addressed
 26 the questions raised in Judge Patel's Order or submitted additional evidence in response to the
 27 evidentiary deficiencies she pointed out in her ruling. The Court therefore finds it prudent to
 28 **CONTINUE** the hearing set for September 3, 2009, to allow Plaintiff one last opportunity to

1 marshal and present whatever evidence they may have to substantiate their requests for monetary
2 damages. To assist Plaintiffs with this task, and so that the evidentiary hearing will be productive,
3 the undersigned **ORDERS** as follows.

- 4 1. Plaintiffs shall file a Supplemental Brief addressing - at a minimum - the questions posed in
5 Judge Patel's Order and the issues outlined below.
- 6 2. Along with the Supplemental Brief, Plaintiffs shall also file a witness list for any live
7 testimony Plaintiffs intend to present during the evidentiary hearing.¹ The witness list should
8 indicate the name of the witness and offer a brief (i.e., two or three sentences) explanation of
9 what facts that witness will testify to at the hearing.
- 10 3. Plaintiffs shall file their Supplemental Brief, witness list, and any additional declarations,
11 affidavits, or documents they wish the Court to consider by September 18, 2009.
- 12 4. In preparing their Supplemental Brief, Plaintiffs must address the following questions and
13 issues raised in Judge Patel's Order:
 - 14 a. Order at 7:15-18.
 - 15 b. Order at 8:7-9.
 - 16 c. Order at 10:5-15.
 - 17 d. Order at 11:7-9.
 - 18 e. Order at 11:10-18.
 - 19 f.. Order at 12:18-24.
- 20 5. The Court re-sets this matter for hearing on September 24, 2009, at 10:00 a.m. in Courtroom
21 B, 15th Floor.

22 **IT IS SO ORDERED.**



27 ¹For the most part, declarations and affidavits should be sufficient and submitted in lieu of
28 live testimony.

1 Dated: September 3, 2009

2 _____
3 Maria-Elena James
4 Chief United States Magistrate Judge

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28