

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4
5 RAFAEL CACHO VEGA and
6 MIGUEL CACHO VEGA,

7 Plaintiffs,

8 v.

9 DOWNEY SAVINGS AND LOAN,
10 et al.,

11 Defendants.

NO. C07-6304 TEH

ORDER RE: HEARING ON
MOTION FOR DEFAULT
JUDGMENT

12 Plaintiffs' motion for default judgment against Defendant Absolute Investment Group
13 dba Palacio Mortgage ("Absolute Investment Group") is scheduled to be heard on
14 January 11, 2010. The deadline for opposing the motion has passed, and no opposition was
15 filed. Thus, unless Absolute Investment Group appears at the hearing and presents good
16 cause for its failure to file an opposition and to set aside the entry of default, it appears that
17 entry of default judgment will be appropriate.

18 However, upon reviewing Plaintiffs' moving papers, the Court has serious concerns
19 about the amount of damages claimed by Plaintiffs. Plaintiffs shall come prepared to address
20 the following issues at oral argument:

21 1. Why should funds paid on the second mortgage be considered on a motion for
22 default judgment against the first mortgage company when Plaintiffs have settled with the
23 holder of the second mortgage? Even if such funds should be considered, why is Miguel
24 Cacho Vega's "belief" that he paid "at least \$5000" on the second mortgage sufficient
25 evidence to support a judgment for that amount?

26 2. Miguel Cacho Vega's declaration states that if he had been aware of the true
27 nature of the loans at issue, he either would have sold the property or obtained a different
28 loan. There is also evidence that Mr. Cacho Vega intended only to remove his co-borrower

1 from the original mortgage and did not intend to sell the property. Given this evidence, why
2 should Mr. Cacho Vega recover lost equity in the home as of the 2005 appraisal date? If the
3 goal is to place the plaintiff in the position he would have been in but for the fraudulent
4 activity, wouldn't a better measure be to consider how much equity, if any, Mr. Cacho Vega
5 would have had if he continued to live in his home through the present date?

6 3. Does Miguel Cacho Vega have any evidence to support his statement that
7 "[t]he lost furniture had a value of \$2,000"?

8 4. How did both Plaintiffs determine the value of their emotional distress and the
9 amount of punitive damages to request?

10 5. How did Rafael Cacho Vega determine that the damage to his credit should be
11 valued at \$50,000?


12 6. What figures did Rafael Cacho Vega include when calculating that he incurred
13 \$30,389.63 in loan costs?

14 7. Why should the \$22,385.63 that Rafael Cacho Vega asserts should be
15 disgorged by Absolute Investment Group also be included in the amount of compensatory
16 damages awarded to Mr. Cacho Vega?

17 If Plaintiffs wish to file a written response to any of the above questions, they must do
18 so on or before **January 6, 2010**. If Plaintiffs need more time to re-evaluate their claims for
19 damages in light of the Court's concerns, the Court will entertain a motion for a brief
20 extension of both the response-filing deadline and the hearing date.

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22 **IT IS SO ORDERED.**

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24 Dated: 12/23/09

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27 THELTON E. HENDERSON, JUDGE
28 UNITED STATES DISTRICT COURT