

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MELANIE O'REILLY,

No. C-09-03580-CW (DMR)

Plaintiff,

**SUPPLEMENTAL REPORT AND
RECOMMENDATION RE PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT**

v.

VALLEY ENTERTAINMENT, INC., et al.,

Defendants.


On January 18, 2011, Plaintiff filed a Response to the Report and Recommendation on Plaintiff's Motion for Default Judgment issued by this Court on January 4, 2011. *See* Docket No. 65.

The Court has considered Plaintiff's submission and finds that Plaintiff was given ample opportunity to submit her evidence in support of her Motion for Default. Specifically, the Court notes that Plaintiff made three supplemental submissions to the Court. *See* Docket No. 49; Docket No. 54; Docket No. 62. Counsel is expected to make appropriate presentations of evidence to the Court, rather than count upon successive opportunities to fix deficiencies. As described in this Court's January 4, 2011 Report and Recommendation, the Evers Declaration was so vague and devoid of information supporting Mr. Evers' qualifications as an expert that it could not be considered. In this regard, the Court underscores that although the factual contentions of the operative complaint must be accepted as true when determining the liability of a defaulting

1 defendant, this rule does not apply to statements regarding damages. *Geddes v. United Financial*
2 *Group*, 559 F.2d 557, 560 (9th Cir. 1977). A plaintiff must establish damages in default
3 proceedings, and a court may not rely on bare assertions but must ensure the propriety of the
4 damages sought. *See Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp.*, 109 F.3d
5 105, 111 (2d Cir. 1997).

6 Therefore, given the multiple opportunities already provided to Plaintiff to present her
7 evidence, the Court recommends that Plaintiff not be given further opportunity to correct the
8 deficiencies in the Evers Declaration.

9
10 Dated: January 19, 2011

11
12 
13 _____
14 DONNA M. RYU
15 United States Magistrate Judge
16
17
18
19
20
21
22
23
24
25
26
27
28