

1 **** E-filed November 16, 2011 ****

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7 NOT FOR CITATION
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 MARIA A. GARVIN; ET AL,

No. C07-01571 HRL

12 Plaintiffs,

**ORDER GRANTING PLAINTIFF
MARIA GARVIN'S APPLICATION
FOR DEFAULT JUDGMENT AND
JUDGMENT**

13 v.

[Re: Docket Nos. 279, 289]

14 LINDA TRAN, an individual; ABSOLUTE
15 INVESTMENT GROUP, a California
corporatiob dba PALACIO MORTGAGE;
ET AL.,

16 Defendants.

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18 In this predatory home loan action, numerous plaintiffs have alleged fraud, breach of
19 fiduciary duty, negligence, conspiracy to defraud, and violations of Cal. Bus. & Prof. Code § 17200
20 *et seq* against a variety of defendants involved in home sales and loans. See generally, Docket No.
21 50 (“Second Amended Complaint” or “SAC”). Plaintiffs allege that defendants preyed upon them
22 through predatory and abusive lending practices, which included making misrepresentations about
23 essential terms of loans, using bait-and-switch tactics and duress, charging unreasonable and
24 unearned fees, falsifying information on loan applications, failing to translate important loan
25 documents from English to Spanish, and including unexpected terms allowing for balloon payments,
26 prepayment penalties, and negative amortization. Id.

27 Defendant Tara Home Financial Services, Inc. (“Tara”) was served with the First Amended
28 Complaint (“FAC”) and summons by mail on June 19, 2007. Docket No. 20. Tara filed an Answer
to the FAC on July 18, 2007. Docket No. 28. Plaintiffs filed a Second Amended Complaint (“SAC”)

1 on October 22, 2007. Docket No. 50. Tara failed to answer or otherwise respond to the SAC in the
2 time allowed, so, upon plaintiffs' request, the Clerk of Court entered default against Tara on May 9,
3 2011. Docket No. 270. Plaintiff Maria Garvin then filed the instant Application for an Order
4 Entering Default Judgment against Tara. Docket No. 279. Tara has not filed an opposition to this
5 application and has not otherwise appeared in this action since 2007.

6 Defendant Golden Hills Associates dba Century 21 Golden Hills ("Golden Hills") was
7 served with the original Complaint and summons on April 11, 2007, but filed no answer. Docket
8 No. 8. Golden Hills filed an Answer to the FAC on August 3, 2007. Docket No. 35. Golden Hills
9 also filed an Answer to the SAC on December 17, 2007. Docket No. 74. Plaintiffs then propounded
10 written discovery requests on Golden Hills, to which Golden Hills failed to respond. Plaintiffs filed
11 a Motion to Compel Responses to Interrogatories they had served on Golden Hills. Docket No. 186.
12 The court granted the Motion to Compel, and then granted plaintiffs' subsequent Motion for
13 Sanctions and struck Golden Hills's Answer when it failed to respond. Docket Nos. 193, 203, 218.
14 Plaintiffs then requested the Clerk of Court to enter default against Golden Hills, which the Clerk
15 did enter on May 10, 2011. Docket No. 275. Plaintiff Maria Garvin then filed the instant
16 Application for an Order Entering Default Judgment against Golden Hills. Docket No. 289. Golden
17 Hills has not filed an opposition or otherwise appeared since filing its Answer to the SAC.

18 Based on the moving papers and arguments presented by plaintiff at hearing on October 25,
19 2011, the Court GRANTS plaintiff Maria Garvin's motions as to both defendants.

20 LEGAL STANDARD

21 After entry of default by the Clerk, courts are authorized to grant default judgment in their
22 discretion. See FED. R. CIV. P. 55; Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). A court
23 may consider the following factors in deciding whether to enter default judgment: (1) the possibility
24 of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of
25 the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning
26 material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy
27 underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool,
28 782 F.2d 1470, 1471-72 (9th Cir. 1986). In considering these factors, all factual allegations in the

1 plaintiff's complaint are taken as true, except those relating to damages. TeleVideo Sys., Inc. v.
2 Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987). When the damages claimed are not readily
3 ascertainable from the pleadings and the record, the court may conduct a hearing to conduct an
4 accounting, determine the amount of damages, establish the truth of any allegation by evidence, or
5 investigate any other matter. FED. R. CIV. P. 55(b)(2).

6 DISCUSSION

7 A. Entry of Default Judgment

8 All of the Eitel factors favor entry of default judgment. Plaintiffs' claims have merit and are
9 sufficiently pled. Once the Clerk of Court enters default, all well-pleaded allegations regarding
10 liability are taken as true except as to the amount of damages. Fair Hous. of Marin v. Combs,
11 285 F.3d 899, 906 (9th Cir. 2002); Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977).
12 Here, the Clerk entered default against Tara on May 9, 2011, and against Golden Hills on May 10,
13 2011. Upon review of Plaintiffs' SAC, the court finds that Maria Garvin has adequately alleged each
14 of her causes of action. Since all liability-related allegations are taken as true, there can be no
15 dispute over material facts. Further, plaintiff would be prejudiced if default is not entered against
16 Tara and Golden Hills. Since both defendants have failed to participate in this action (and there is no
17 indication that their failure to do so is due to excusable neglect), plaintiff's only recourse is a default
18 judgment. While this court prefers to decide matters on the merits, defendants' refusal to participate
19 meaningfully in this litigation renders that impossible. Finally, "default judgment is disfavored
20 when a large amount of money is . . . unreasonable in light of defendant's actions." United States v.
21 Ordonez, 2011 U.S. Dist. LEXIS 50765, *6 (E.D. Cal. May 11, 2011) (finding that over \$300,000
22 was appropriate for resolution by default judgment when plaintiff's allegations supported the sum).
23 Here, the sum of money requested, while not insignificant, is small enough to make this matter
24 appropriate for resolution by default judgment.

25 Therefore, the court GRANTS Maria Garvin's applications for default judgment against both
26 Tara and Golden Hills.

27 B. Damages Requested

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1 Maria Garvin requests that the default judgment be entered jointly and severally against Tara
2 and Golden Hills for \$112,429.02. Unlike liability-related allegations, allegations related to damages
3 are not taken as true upon entry of default against a defendant. Plaintiffs must therefore “prove up”
4 the amount of damages they seek. Here, plaintiff seeks damages for all of the following:

- 5 1. Ms. Garvin paid a deposit of \$5,000;
- 6 2. Ms. Garvin lost the deposit on her rental home because the home she purchased was not
7 ready when they were told it would be. Ms. Garvin would not have incurred this cost had she
8 not purchased the home. The deposit was \$1,000;
- 9 3. Ms. Garvin has paid homeowners insurance for six years, which she would never have
10 had to pay had she not moved into the home. The total amount of payments Ms. Garvin
11 made for homeowners insurance is \$3,600;
- 12 4. Ms. Garvin paid the property tax for five years, which was \$34,008.02;
- 13 5. Ms. Garvin has paid \$60 per month for water and trash for the last six years, which she
14 did not pay in her previous apartment. The total Ms. Garvin has paid is \$4,320;
- 15 6. Electricity was covered in her previous home, but it is not paid for here. Ms. Garvin pays
16 on a balanced scale, meaning she pays the same amount every month. That amount is \$72.50
17 per month for six years, or \$5,220;
- 18 7. Ms. Garvin invested a great deal of money in her home. In June of 2007, Ms. Garvin had
19 to get a new garage door and garage door opener, for a total of \$2,000. Ms. Garvin had to
20 make non-cosmetic patio repairs for \$2,000 in June 2006. Ms. Garvin had to make electrical
21 repairs in the kitchen for \$2,500. Ms. Garvin had to make several repairs per Code
22 Enforcement orders regarding damage done to the property before she moved in for a total of
23 \$5,000. In total, Ms. Garvin has paid \$11,500 in home repairs;
- 24 8. Ms. Garvin has had to take out significant cash advances from her credit cards to pay her
25 mortgage. Ms. Garvin took out \$8,600 on her Bank of America Visa, \$3,000 of which she
26 has paid;
- 27 9. Ms. Garvin had to take a loan from the City of San Jose through Project Sentinel for
28 victims of predatory lending for \$12,000;

1 10. Per the HUD-1, Golden Hills received a commission of \$16,550 for her real estate
2 transaction, a transaction Ms. Garvin should never have entered; and

3 11. Per the HUD-1, Tara received \$22,631 in brokers' fees and yield spread premium
4 (“YSP”) through this transaction.

5 See generally, Docket Nos. 281, 291 (Garvin Declarations). The court is satisfied that plaintiff has
6 provided sufficient evidence to prove the damages she requests. The court awards plaintiff
7 \$112,429.02 in damages.

8 **CONCLUSION**

9 Default Judgment is hereby ENTERED in favor of Plaintiff Maria A. Garvin and against
10 Defendants Golden Hills Associates, Inc., dba Century 21 Golden Hills and Tara Home Financial
11 Services, Inc. jointly and severally in the amount of \$112,429.02.

12 **IT IS SO ORDERED.**

13 Dated: November 16, 2011

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16 HOWARD B. LLOYD
17 UNITED STATES MAGISTRATE JUDGE
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1 **C07-01571 HRL Notice will be electronically mailed to:**

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16 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
17 **registered for e-filing under the court's CM/ECF program.**

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