

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7 NOT FOR CITATION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.

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

**[Re: Docket Nos. 279, 289]**

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;

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

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

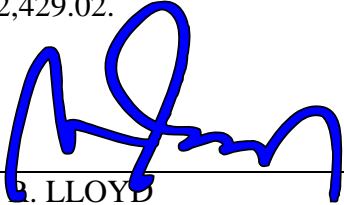
See generally, Docket Nos. 281, 291 (Garvin Declarations). The court is satisfied that plaintiff has provided sufficient evidence to prove the damages she requests. The court awards plaintiff \$112,429.02 in damages.

**CONCLUSION**

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

**IT IS SO ORDERED.**

Dated: November 16, 2011

  
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HOWARD B. LLOYD  
UNITED STATES MAGISTRATE JUDGE

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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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