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

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARIA A. GARVIN; ET AL,

No. C07-01571 HRL

Plaintiffs,

**ORDER GRANTING PLAINTIFFS
MARTHA HERNANDEZ AND
TOMAS HERNANDEZ’S
APPLICATION FOR DEFAULT
JUDGMENT AND JUDGMENT**

v.

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

[Re: Docket No. 294]

Defendants.

_____ /

In this predatory home loan action, numerous plaintiffs have alleged fraud, breach of fiduciary duty, negligence, conspiracy to defraud, and violations of Cal. Bus. & Prof. Code § 17200 *et seq* against a variety of defendants involved in home sales and loans. See generally, Docket No. 50 (“Second Amended Complaint” or “SAC”). Defendant Norma Valdovinos, through her company, Golden Hills Associates dba Century 21 Golden Hills, acted as plaintiffs’ real estate agent, and then directed plaintiffs to Linda Tran, a mortgage broker, for their loan applications. Id. ¶¶ 2-3. Plaintiffs allege that defendants preyed upon them through predatory and abusive lending practices, which included making misrepresentations about essential terms of loans, using bait-and-switch tactics and duress, charging unreasonable and unearned fees, falsifying information on loan applications, failing to translate important loan documents from English to Spanish, and including unexpected terms allowing for balloon payments, prepayment penalties, and negative amortization. Id.

United States District Court
For the Northern District of California

1 Defendant Golden Hills Associates dba Century 21 Golden Hills (“Golden Hills”) was
2 served with the original Complaint and summons on April 11, 2007, but filed no answer. Docket
3 No. 8. Golden Hills filed an Answer to the First Amended Complaint (“FAC”) on August 3, 2007.
4 Docket No. 35. Golden Hills also filed an Answer to the SAC on December 17, 2007. Docket No.
5 74. Plaintiffs then propounded written discovery requests on Golden Hills, to which Golden Hills
6 failed to respond. Plaintiffs filed a Motion to Compel Responses to Interrogatories they had served
7 on Golden Hills. Docket No. 186. The court granted the Motion to Compel, and then granted
8 plaintiffs’ subsequent Motion for Sanctions and struck Golden Hills’s Answer when it failed to
9 respond. Docket Nos. 193, 203, 218. Plaintiffs then requested the Clerk of Court to enter default
10 against Golden Hills, which the Clerk did enter on May 10, 2011. Docket No. 275. Plaintiffs Tomas
11 and Martha Hernandez then filed the instant Application for an Order Entering Default Judgment
12 against Golden Hills. Docket No. 294. Golden Hills has not filed an opposition or otherwise
13 appeared since filing its Answer to the SAC.

14 Based on the moving papers and arguments presented by plaintiff at hearing on October 25,
15 2011, the Court GRANTS plaintiffs Tomas and Martha Hernandez’s motion for entry of default
16 judgment against Golden Hills.

17 LEGAL STANDARD

18 After entry of default by the Clerk, courts are authorized to grant default judgment in their
19 discretion. See FED. R. CIV. P. 55; Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). A court
20 may consider the following factors in deciding whether to enter default judgment: (1) the possibility
21 of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive claim; (3) the sufficiency of
22 the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning
23 material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy
24 underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool,
25 782 F.2d 1470, 1471-72 (9th Cir. 1986). In considering these factors, all factual allegations in the
26 plaintiff’s complaint are taken as true, except those relating to damages. TeleVideo Sys., Inc. v.
27 Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987). When the damages claimed are not readily
28 ascertainable from the pleadings and the record, the court may conduct a hearing to conduct an

1 accounting, determine the amount of damages, establish the truth of any allegation by evidence, or
2 investigate any other matter. FED. R. CIV. P. 55(b)(2).

3 DISCUSSION

4 A. Entry of Default Judgment

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

22 Therefore, the court GRANTS Martha and Tomas Hernandez's application for default
23 judgment against Golden Hills.

24 B. Damages Requested

25 Plaintiffs request that the default judgment be entered against Golden Hills for \$82,322.00.
26 Unlike liability-related allegations, allegations related to damages are not taken as true upon entry of
27 default against a defendant. Plaintiffs must therefore "prove up" the amount of damages they seek.
28 Here, plaintiffs seek damages for all of the following:

- 1 1. On information and belief, the fair market value of a three bedroom home such as the
- 2 Hernandez's is \$2,300 per month, or \$138,000 for the sixty months they have lived in the
- 3 home. Since purchasing the home, they have paid \$131,832;
- 4 2. The Hernandez's paid a deposit of \$3,000 for the home which they will lose when the
- 5 home is foreclosed on;
- 6 3. The Hernandez's have paid \$4,000 in homeowners insurance, a cost they would not have
- 7 incurred but for purchasing the home;
- 8 4. The Hernandez's have also paid \$47,965 in property taxes, which they would not have
- 9 incurred but for purchasing the home;
- 10 5. The Hernandez's have paid \$9,900 in water and trash over the last five years. They would
- 11 not have incurred those costs but for having purchased the home;
- 12 6. Valdovinos received \$34,985 in fees;
- 13 7. Through the purchase and subsequent refinance, Tran received \$31,410;
- 14 8. The Hernandez's move-in costs were approximately \$230;
- 15 9. The Hernandez's had to take out substantial debt on credit cards to pay for their mortgage
- 16 and living expenses while maintaining the mortgage. They have taken out \$18,000 in credit
- 17 cards. They have paid most of it off; and
- 18 10. The Hernandez's took out a loan from the City of San Jose from a fund for victims of
- 19 predatory loans in the amount of \$12,000.

20 See generally, Docket Nos. 296, 297 (Hernandez Declarations).

21 The court is satisfied that plaintiffs have provided sufficient evidence to prove the damages
22 they request. The court awards plaintiffs \$82,322.00 in damages.

23 **CONCLUSION**

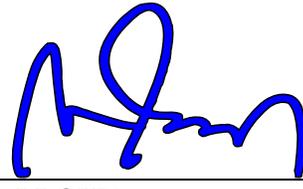
24 Default Judgment is hereby ENTERED in favor of Plaintiffs Martha and Tomas Hernandez
25 jointly and severally and against Defendants Golden Hills Associates, Inc., dba Century 21 Golden
26 Hills in the amount of \$82,322.00.

27 **IT IS SO ORDERED.**

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Dated: November 16, 2011



HOWARD R. 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**
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