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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NOT FOR CITATION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,

v.

**ORDER GRANTING PLAINTIFFS
EUGENIO RAMOS AND COLUMBA
RAMOS’S APPLICATION FOR
DEFAULT JUDGMENT AND
JUDGMENT**

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

[Re: Docket No. 306]

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
11 Eugenio and Columba Ramos then filed the instant Application for an Order Entering Default
12 Judgment against Golden Hills. Docket No. 306. Golden Hills has not filed an opposition or
13 otherwise 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 Eugenio and Columba Ramos’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 Ramoses adequately alleged each of their causes of action. Since all
11 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 Eugenio and Columba Ramos'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 \$187,281.28.
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, a home such as the Ramoses', a four bedroom with 2.5 baths in
2 a good school district, is worth \$3,000 per month. They moved in around September 2006.
3 The sum of the reasonable rent for the period from September 2006 to the present, in the
4 Ramoses' estimation, is \$171,000;
- 5 2. Since they purchased the home, the Ramoses have paid \$14,844 to Pablo Curiel, \$43,120
6 on their second mortgage, and \$148,400 to their first mortgage, for a total of \$206,364. The
7 difference between what they paid and the estimated fair market value \$35,364;
- 8 3. The Ramoses paid \$5,000 in deposit;
- 9 4. The Ramoses have paid \$3,800 in homeowners insurance that they would not have
10 incurred but for purchasing the home;
- 11 5. The Ramoses also have paid \$47,700 in property taxes that they would not have incurred
12 but for purchasing the home;
- 13 6. The Ramoses have paid \$7,280 in water and trash, that they would not have incurred but
14 for purchasing the home;
- 15 7. The Ramoses have had to make \$3,000 in repairs to their home;
- 16 8. Mrs. Ramos had to borrow \$12,000 from the City of San Jose from a fund that is available
17 to assist victims of predatory lending;
- 18 9. Norma Valdovinos got a commission of \$52,250 from the transaction; and
- 19 10. Linda Tran received \$20,887.28 in fees and yield spread premium ("YSP") for the
20 transaction.

21 See generally, Docket Nos. 308, 309 (Ramos Declarations).

22 The court is satisfied that plaintiffs have provided sufficient evidence to prove the damages
23 they request. The court awards plaintiffs \$187,281.28.00 in damages.

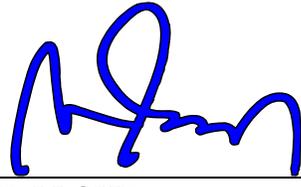
24 **CONCLUSION**

25 Default Judgment is hereby ENTERED in favor of Plaintiffs Eugenio and Columba Ramos
26 jointly and severally and against Defendants Golden Hills Associates, Inc., dba Century 21 Golden
27 Hills in the amount of \$187,281.28.

28 **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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