

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**** 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NOT FOR CITATION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 PLAINTIFF
RAUL TORRES'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. 316]

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.

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. Plaintiff Raul
11 Torres then filed the instant Application for an Order Entering Default Judgment against Golden
12 Hills. Docket No. 316. Golden Hills has not filed an opposition or otherwise appeared since filing its
13 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 plaintiff Raul Torres’s motion for entry of default judgment against
16 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 Mr. Torres has adequately alleged each of his causes of action. Since all
11 liability-related allegations are taken as true, there can be no dispute over material facts. Further,
12 plaintiff 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), plaintiff's 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 Raul Torres's application for default judgment against
23 Golden Hills.

24 B. Damages Requested

25 Plaintiff Torres requests that the default judgment be entered against Golden Hills for
26 \$95,127.00. Unlike liability-related allegations, allegations related to damages are not taken as true
27 upon entry of default against a defendant. Plaintiffs must therefore "prove up" the amount of
28 damages they seek. Here, plaintiff seeks damages for all of the following:

- 1 1. Mr. Torres lost the \$2,000 deposit on his home;
- 2 2. Mr. Torres paid moving costs of \$2,450. He would not have incurred this cost but for
- 3 having purchased the home;
- 4 3. Mr. Torres paid homeowners insurance in the amount of \$26, which was the balance not
- 5 covered through escrow. He would not have incurred this cost but for having purchased the
- 6 home;
- 7 4. Mr. Torres paid \$2,864 in property taxes. He would not have incurred this cost but for
- 8 having purchased the home;
- 9 5. Mr. Torres paid \$2,300 in water and trash. He would not have incurred this cost but for
- 10 having purchased the home;
- 11 6. The home needed substantial repairs. Mr. Torres put in a new water heater, garbage
- 12 disposal, bathroom repairs, interior paint, and flood repair. In total, he spent approximately
- 13 \$5,000 on repairs, which he would not have incurred but for having purchased the home;
- 14 7. Mr. Torres had to take out a cash advance of \$7,000 to cover expenses;
- 15 8. Mr. Torres had to take a personal loan from his father for \$10,000, of which he has paid
- 16 back \$5,000;
- 17 9. Mr. Torres had to take a personal loan of \$12,000 from the City of San Jose revolving
- 18 loan fund for victims of predatory lending;
- 19 10. Mr. Torres' new home is further from his children's school, and he has had to spend
- 20 \$960 on additional transportation;
- 21 11. Mr. Torres had to put many things in storage since he lost the home, which has cost him
- 22 \$3,600;
- 23 12. Norma Valdovinos received a commission of \$31,750, as reflected in the HUD-1 for the
- 24 purchase of the property;
- 25 12. For the purchase, Linda Tran made \$3,755; and
- 26 13. For the refinance, Linda Tran made \$11,422 in fees and yield spread premium ("YSP"),
- 27 as reflected in the HUD-1 for the refinance.

28 See generally, Docket No. 318 (Torres Declaration).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The court is satisfied that plaintiff has provided sufficient evidence to prove the damages he requests. The court awards plaintiff \$95,127.00 in damages.

CONCLUSION

Default Judgment is hereby ENTERED in favor of Plaintiff Raul Torres and against Defendants Golden Hills Associates, Inc., dba Century 21 Golden Hills in the amount of \$95,127.00.

IT IS SO ORDERED.

Dated: November 16, 2011



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

1 **C07-01571 HRL Notice will be electronically mailed to:**

2 Alisha Mei Yuk Louie alouie@sideman.com
3 Annette D. Kirkham annettek@lawfoundation.org, teresam@lawfoundation.org
4 Cindy Hamilton hamiltonc@gtlaw.com, sandiferc@gtlaw.com, svlitdock@gtlaw.com
5 Jessica Lynn Fry jessicaf@lawfoundation.org, nuemig@lawfoundation.org,
6 Karen Rosenthal rosenthalk@gtlaw.com, sandiferc@gtlaw.com, svlitdock@gtlaw.com
7 Kimberly Pederson kimp@lawfoundation.org, teresam@lawfoundation.org
8 Kyra Ann Kazantzis kyrak@lawfoundation.org
9 Shawn Robert Parr shawn@parrlawgroup.com, donna@parrlawgroup.com
10 William Cornelius Last , Jr wclast@lastlawfirm.com
11 William J. Goines goinesw@gtlaw.com, sandiferc@gtlaw.com, svlitdock@gtlaw.com

12 **Notice will be mailed to:**

13 Raya Ghajar
14 1101 Salerno Drive
15 Campbell, CA 95008

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.**

18
19
20
21
22
23
24
25
26
27
28