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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

LARRY TYRONE BRANTLEY, SR., and
ELLEN BRANTLEY,

Plaintiffs,

v.

GARRETT BOYD, SERGEI KLYAZMIN,
MODO REALTY, INC., ROYAL CROWN
MORTGAGE, INC., PRAVEEN
CHANDRA, ACADEMY ESCROW, and
SCHWARTZ & FENSTER, P.C.,

Defendants.

Case No. 07-cv-06139 NC

**REFERRAL FOR REASSIGNMENT
WITH RECOMMENDATION TO
DENY MOTION FOR DEFAULT
JUDGMENT**

Re: Dkt. No. 318

This case arises out of defendants' alleged scheme to lure plaintiffs Larry and Ellen Brantley into borrowing \$180,000 against their home and investing it in a sham real estate deal. Plaintiffs have since settled with all but one defendant. Defendants and cross-claimants Sergei Klyazmin, Modo Realty, Inc., and Royal Crown Mortgage, Inc. now move for default judgment under Federal Rule of Civil Procedure 55(b) against defendant and cross-defendant Garret Boyd. Boyd has not consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c), however, and so the Court REFERS this matter for REASSIGNMENT to a district court judge. The Court RECOMMENDS that the district court DENY WITHOUT PREJUDICE cross-claimants' motion for default judgment.

I. BACKGROUND

A. The Parties

Defendant and cross-claimant Sergei Klyazmin is the president, sole owner, designated officer, and employing broker of defendants and cross-claimants, Modo Realty, Inc. and Royal Crown Mortgage, Inc., both of which do business in Alameda County, California. Brantleys' First Am. Compl. ¶¶ 3-4, Dkt. No. 125; Klyazmin's, Modo Realty's and Royal Crown's Answer to Brantleys' First Am. Compl. ¶¶ 2-3, Dkt. No. 157.

Plaintiffs in the underlying action, Larry Tyrone Brantley and Ellen Brantley, are husband and wife and owners of the property at 3120 San Andreas Drive, Union City, California.

Dkt. No. 125 ¶ 1. Defendant and cross-defendant Garrett Boyd, a licensed real estate agent, resides in Oakland, California and does business in Alameda County, California. *Id.* ¶ 2. Defendant and cross-defendant Academy Escrow is an independent escrow company doing business in Alameda County, California. Dkt. No. 125 ¶ 5; Academy's Answer to Brantleys' First Am. Compl., Dkt. No. 156 at 2. Defendant Praveen Chandra is a private lender doing business in Alameda County, California. Dkt. No. 125 ¶ 6. Defendant Schwartz & Fenster is a professional law corporation, debt collector, foreclosure trustee, and agent retained by Chandra to give legal advice and counsel, collect debts, and institute foreclosure proceedings. *Id.* ¶ 7; Schwartz & Fenster's Answer to First Am. Compl., Dkt. No. 6 at 2. Schwartz & Fenster does business in Alameda County, California. Dkt. No. 125 ¶ 7.

B. The Facts Alleged in the Underlying Dispute¹

In February 2007, the Brantleys met defendant Garrett Boyd through Monique Douthit, the mother of Ms. Brantley's grandniece and grandnephew. Dkt. No. 125 ¶ 9. Boyd convinced the Brantleys to refinance their home for \$180,000 and to hold the money in escrow for about sixty days, so that he could secure financing to purchase a \$2.1 million property for himself. *Id.* ¶ 10. Boyd claimed that the Brantleys' money would sit in

¹ These facts are alleged in the Brantleys' first amended complaint, Dkt. No. 125, in which cross-claimants were named as defendants.

1 escrow without being touched, would be repaid to the lender at the end of the escrow
2 period, and would be used only to secure financing. *Id.* In exchange for placing the money
3 in escrow and borrowing against their house, Boyd claimed that he would pay the
4 Brantleys \$25,000 and Douthit a finder's fee of \$4,000. *Id.*

5 Boyd contacted Klyazmin for assistance in locating both the financing for the
6 \$2,000,000 property acquisition and also a lender willing to earn \$30,000 for a short term
7 \$180,000 loan. Cross-claimant's Mot. Default Judg., Dkt. No. 318 at 2. Boyd told
8 Klyazmin that he had a "relative" willing to secure the \$180,000 loan with her home
9 equity. *Id.* On April 10, 2007, Boyd realized he would be unable to secure financing, and
10 no longer needed to "show money on paper." Dkt. No. 125 ¶ 12. Despite knowledge of
11 this, Boyd did not disclose this information to the Brantleys. *Id.* Rather, Boyd, along with
12 Klyazmin, Modo, and Royal Crown, opened an escrow account with Academy. *Id.* ¶ 13.

13 On April 24, 2007, Chandra agreed to loan the Brantleys \$180,000 against their
14 home. Dkt. No. 125 ¶ 15. On the same day, Academy prepared the escrow instructions,
15 which provided that the \$180,000 would only be disbursed to the Brantleys at the end of
16 the escrow period, and that any change of instructions must be made in writing. *Id.* ¶ 18.
17 On May 4, 2007, Chandra sent \$180,000 to Academy's escrow account. *Id.* ¶ 23.

18 Academy immediately wired the funds in escrow directly to Boyd's bank account. *Id.*

19 When the loan came due on June 28, 2007, Chandra demanded that the Brantleys
20 repay. *Id.* ¶ 25. Chandra instituted non-judicial foreclosure proceedings against the
21 Brantleys in Alameda County Superior Court sometime after August 14, 2007. *Id.* ¶ 26.

22 **C. Procedural History**

23 On November 9, 2007, the Brantleys filed an action against all defendants in the
24 Superior Court of California, County of Alameda. Dkt. No. 1 at 2. Chandra removed the
25 action to federal court on December 6, 2007 because the Brantleys claimed violations of
26 federal laws over which federal courts would have original jurisdiction. Dkt. No. 1. On
27 January 7, 2009, Boyd filed an answer to the Brantleys' original complaint. Dkt. No. 65.

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1 On the same day, Boyd's attorney also filed a motion to withdraw, which Judge Conti
2 granted on February 17, 2009. Dk. No. 68; Dkt. No. 77.

3 On October 7, 2009, Judge Conti granted the Brantleys' motion to amend their
4 complaint. Dkt. No. 122 at 2. The Brantleys filed their first amended complaint on
5 September 13, 2009. Dkt. No. 125. Boyd never filed an answer.

6 On April 22, 2011, Klyazmin, Modo Realty, and Royal Crown Mortgage ("cross-
7 claimants") filed a crossclaim against Academy Escrow and Boyd for indemnification,
8 equitable contribution, apportionment of fault, and "tort of another" to recover attorneys'
9 fees. Klyazmin's, Modo Realty's, and Royal Crown's Cross-claim, Dkt. No. 204. Cross-
10 claimants allege that Academy's and Boyd's "active negligence, breach of contract, or
11 other wrongful conduct was the proximate and actual cause of plaintiffs' damages." *Id.* ¶
12 10. Cross-claimants "deny that they were or are in anyway responsible for the damages"
13 the Brantleys allege they sustained and seek "complete, total, or partial indemnity" for any
14 amount that the Brantelys recover from cross-claimants. *Id.* ¶¶ 10-11. Cross-claimants
15 also allege that under the "tort of another" theory, they are entitled to attorneys' fees
16 incurred in bringing their crossclaim and in defending against the underlying complaint.
17 *Id.* ¶ 18-19. Academy responded to the crossclaim, but Boyd did not.

18 On July 8, 2011, the clerk entered the default of Boyd on the crossclaim. Dkt. No.
19 232. The active remaining parties, the Brantleys, cross-claimants, and Academy entered
20 into a settlement on September 27, 2012, and the Court granted the stipulation to voluntary
21 dismissal of the plaintiffs' claims against Academy Escrow and cross-claimants on January
22 7, 2013. Dkt. No. 308. Cross-claimants requested and the clerk entered default against
23 Boyd in July 2011. Dkt. Nos. 230, 232. Cross-claimants now move for default judgment
24 against Boyd. Dkt. No. 318. No opposition to the motion for default judgment has been
25 filed by Boyd.

26 Judge Conti reassigned the case to this Court on May 29, 2012. Dkt. No. 277.

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II. STANDARD OF REVIEW

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2 Default may be entered against a party who fails to plead or otherwise defend an
3 action and against whom a judgment for affirmative relief is sought. Fed. R. Civ. P. 55(a).
4 After entry of default, the Court has discretion to grant default judgment on the merits of the
5 case. Fed. R. Civ. P. 55(b); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In
6 deciding whether to grant default judgment, the Court considers the following factors:
7 (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive
8 claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action;
9 (5) the possibility of a dispute concerning material facts; (6) whether the default was due to
10 excusable neglect; and (7) the strong policy favoring decisions on the merits. *Eitel v.*
11 *McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). The factual allegations of the complaint,
12 except those concerning damages, are deemed admitted by the non-responding parties.
13 *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977); *see also Massa v. Jiffy*
14 *Products Co.*, 240 F.2d 702, 705 (9th Cir. 1957) (On a motion for default judgment, "the
15 allegations of the cross-complaint are taken as true.").

III. DISCUSSION

A. Jurisdiction

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18 In considering whether to enter a default judgment, a district court first must
19 determine whether it has jurisdiction over the parties and the subject matter. *In re Tuli*, 172
20 F.3d 707, 712 (9th Cir. 1999).

1. Subject matter jurisdiction

21
22 Federal courts shall have original jurisdiction over "all civil actions arising under the
23 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Federal courts may
24 exercise "supplemental jurisdiction over all other claims that are so related to claims in the
25 action within such original jurisdiction that they form part of the same case or controversy."
26 28 U.S.C. § 1367(a); *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966)
27 (holding that the federal courts have subject matter jurisdiction where "[t]he state and
28 federal claims . . . derive from a common nucleus of operative fact"). It is within the

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