

\*\*E-Filed 10/3/2008\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

ARLENE VALDEZ,

Plaintiff,

v.

DOWNEY SAVINGS AND LOAN, et al.,

Defendants.

Case Number C 06-2541 JF (HRL)

ORDER<sup>1</sup> GRANTING PLAINTIFF'S  
MOTION FOR DEFAULT  
JUDGMENT

[re: doc. no. 126]

Plaintiff Henry J. Valdez, substituted as plaintiff in the instant action following the death of his mother Arlene Valdez, seeks default judgment against Defendant Primewest Residential Loans, Inc. ("Primewest") and its owners, Defendants Habibullah M. Khan ("Khan") and Savindar K. Kattaura ("Kattaura") (collectively with Primewest, "Defendants"). Plaintiff's motion is unopposed.

Plaintiff alleges that Defendants engaged in predatory lending practices in violation of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq.* and the California

<sup>1</sup> This disposition is not designated for publication in the official reports.

1 Unfair Competition Act, Cal. Bus. & Prof. Code § 17200 *et seq.* Plaintiff also accuses  
2 Defendants of negligence and breach of fiduciary duty. Defendants are currently unrepresented  
3 by counsel, and have not appeared in this matter since May of 2007, when their previous counsel  
4 withdrew. The parties were involved in settlement discussions prior to Ms. Valdez's passing in  
5 July of 2007. After her death, however, Defendants ceased responding to communications from  
6 Plaintiff's counsel. The Court then issued an Order to Show Cause for Defendants to appear.  
7 Defendants still failed to appear, and Plaintiff subsequently moved for default judgment.  
8 Defendants have been served with Plaintiff's motion and supporting papers by mail.

9  
10 For the reasons set forth below, the Court will enter default judgment and will award  
11 Plaintiff \$39,927.91 in damages.  
12

### 13 I. FACTS

14 Ms. Valdez commenced this action on April 12, 2006. According to the first amended  
15 complaint ("FAC"), the relevant facts are as follows. Beginning in April 2004, Ms. Valdez  
16 started to receive unsolicited phone calls from an employee of Primewest, who eventually  
17 convinced Ms. Valdez to refinance her home. The Primewest employee told Ms. Valdez that the  
18 finance charges for this transaction would be approximately \$3,000 to \$4,000. The Primewest  
19 employee also assured Ms. Valdez that there would be no prepayment penalty on her current loan  
20 due to the refinance. Primewest proceeded with the transaction even though Ms. Valdez  
21 informed the Primewest employee that her monthly income was \$1,500, which came from social  
22 security benefits and payments from a pension plan.  
23

24 Several Primewest employees then met with Ms. Valdez at her home to close the  
25 transaction. At this meeting, Ms. Valdez was presented with a large stack of documents but she  
26 was not afforded an opportunity to examine them thoroughly. However, Ms. Valdez still signed  
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1 the loan documents, believing that Primewest and its employees were acting in her best interest  
2 and that the documents contained the terms previously promised to her.

3  
4 Upon later review of the loan documents, Ms. Valdez discovered that her loan had  
5 included a \$6,075 broker fee to Primewest and a \$12,150 rebate paid to Defendant Primewest by  
6 the lender, former Defendant Downey Savings and Loan Association (“Downey”).<sup>2</sup> In addition,  
7 Ms. Valdez had incurred a \$7,011.91 prepayment penalty due to her previous loan. Ms. Valdez  
8 then contacted Primewest to request that the refinance loan be rescinded, but a Primewest  
9 employee informed her that it was too late to rescind the agreement. However, the employee told  
10 Ms. Valdez that she could recoup this prepayment penalty by referring more business to  
11 Primewest.  
12

13 Ms. Valdez eventually discovered that her loan application, which listed Defendant Khan  
14 as the person who filled out the application, contained additional misrepresentations. These  
15 included (1) she had been self-employed for ten years at a business called “Valdez Sewing and  
16 Embroideries;” (2) she owned \$1,125,018.62 in total assets, including two properties collectively  
17 valued at \$999,000 and a Toyota Camry valued at \$35,000; and (3) she earned a monthly income  
18 of \$8,031. Furthermore, the \$12,150 payment from Defendant Downey to Primewest was in fact  
19 a “yield spread premium,” paid as a benefit for placing Ms. Valdez into loan with a higher  
20 interest rate. She also had been overcharged for her title insurance and appraisal fee, and had  
21 incurred miscellaneous and unnecessary processing charges.  
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28 <sup>2</sup> Claims against Defendant Downey were dismissed on October 22, 2007 pursuant to a  
settlement agreement.

## II. DISCUSSION

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2 Upon default, the well-pleaded allegations in a complaint are taken as true. *See*  
3 *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). However, this rule  
4 applies only to liability, not alleged damages. *See Geddes v. United Fin. Group*, 559 F.2d 557,  
5 560 (9th Cir. 1977). This Court previously found that Plaintiff's FAC alleged sufficient facts  
6 against Defendants to survive a motion to dismiss. Furthermore, Defendants have not appeared  
7 to oppose the instant motion. Accordingly, the Court finds that default judgment as to liability is  
8 appropriate, and thus the only unresolved issue is the amount of damages to award.  
9  
10

### A. RESPA Violations

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12 For violations of RESPA, a plaintiff may recover three times the amount of the settlement  
13 services paid by the borrower, plus costs and reasonable attorneys' fees. 12 U.S.C. § 2607(d)(2),  
14 (d)(5). RESPA also provides for joint and several liability. 12 U.S.C. § 2607(d)(2). The FAC  
15 alleges that by receiving a yield spread premium, Defendants Primewest and Kattaura (as the  
16 broker of record for Primewest) violated 12 U.S.C. § 2607(a), which prohibits the receipt of  
17 referral fees or kickback payments for the completion of a loan transaction. *See Schuetz v. Banc*  
18 *One Mortg. Corp.*, 292 F.3d 1004, 1005-06 (9th Cir. 2002). *Schuetz* provides that a yield spread  
19 premium violates § 2607(a) if the compensation is not reasonably related to the services  
20 provided. 292 F.3d at 1006.  
21  
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23 In the instant case, Primewest and Kattaura received \$6,075 in broker fees directly from  
24 Ms. Valdez, an amount that represents 1.5% of the total loan value. When the \$12,150 yield  
25 spread premium is added to this amount, the total compensation to Defendants Primewest and  
26 Kattaura was \$18,225, or roughly 4.5% of the value of Ms. Valdez's loan. Based on the  
27 allegations in the FAC, the Court finds that \$18,225 is a disproportionate amount for Defendants  
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1 to have received, especially because they arguably performed no beneficial service for Ms.  
2 Valdez.

3 The FAC also alleges that several of the miscellaneous fees paid by Ms. Valdez violated  
4 § 2607(b), which provides that fees may be received only for “services actually performed.” The  
5 Court finds that Defendants violated § 2607(b) when they charged Ms. Valdez \$325 for an  
6 appraisal because such fee had already been paid by her son.  
7

8 Accordingly, Plaintiff is entitled to three times the amount that Ms. Valdez paid in  
9 settlement charges (\$6,922, which equals the \$6,075 loan origination fee plus the appraisal fee  
10 and miscellaneous charges), for a total of \$20,766.  
11

#### 12 B. Negligence and Breach of Fiduciary Duty

13 The FAC alleges that Defendants Primewest, Kattaura and Khan were negligent and  
14 breached their fiduciary duties by misrepresenting whether Ms. Valdez would be subject to a  
15 prepayment penalty on her prior loan. The Court agrees. Defendants owed Ms. Valdez a duty of  
16 loyalty, and in particular Defendant Kattaura (as the designated broker) was “charged with the  
17 duty of fullest disclosure of all material facts concerning the transaction that might affect the  
18 principal’s decision.” *Barry v. Raskov*, 232 Cal. App. 3d 447, 455 (1991). As a direct result of  
19 Defendants’ breach of their fiduciary duty, Ms. Valdez incurred economic harm in the form of a  
20 \$7,011.91 prepayment penalty. Accordingly, Plaintiff is entitled to \$7,011.91.  
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#### 23 C. Violations of Cal. Bus. & Prof. Code § 17200 et seq.

24 California law defines unfair competition as “any unlawful, unfair or fraudulent business  
25 act or practice.” Cal. Bus. & Prof. Code § 17200. The scope of § 17200 is broad, and permits  
26 independent and cumulative actions to be brought even when “the conduct alleged to constitute  
27 unfair competition violates a statute for the direct enforcement of which there is no private right  
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1 of action.” *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal. 4th 553, 565 (1998). Under  
2 California law, prevailing plaintiffs are entitled to restitution of money received due to an unfair  
3 business practice. *See* Cal. Bus. & Prof. Code § 17203.  
4

5 The FAC alleges multiple acts of unfair competition by Defendants, including high  
6 pressure sales tactics and misrepresentations regarding loan fees. Plaintiff requests an award of  
7 \$12,150 for these unfair business practices, an amount which equals the yield spread rebate paid  
8 to Defendants by Downey. The Court finds that \$12,150 is an appropriate damage award in light  
9 of Defendants unfair business practices.  
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11 **III. ORDER**

12 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s motion for default judgment is  
13 GRANTED, and Plaintiff is awarded \$39,927.21 in damages.  
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16  
17 DATED: October 3, 2008

18   
19 JEREMY FOGEL  
20 United States District Court  
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1 This Order has been served upon the following persons:

2 Joshua David Brysk josh@jgschwartz.com, bella@jgschwartz.com

3 Isela Castaneda isela.castaneda@dlapiper.com, alison.mcquade@dlapiper.com

4 Rajiv Sajjan Dharnidharka rajiv.dharnidharka@dlapiper.com,  
5 trina.walker@dlapiper.com

6 Moses Diaz mosesd@lawfoundation.org, moses@ucdavis-alumni.com

7 Kimberly Pederson kimp@lawfoundation.org

8 James Gerald Schwartz jim@jgschwartz.com, bella@jgschwartz.com,  
9 roberta@jgschwartz.com

10 Stephanie Sidra Alexandre Stevens sastevens@justice.com

11 Aaron Wainscoat aaron.wainscoat@dlapiper.com, celestine.seals@dlapiper.com

12 Yakov M. Zolotorev yakov.zolotorev@dlapiper.com, deborah.brown@dlapiper.com  
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