

## **Damages Awarded in a Default Judgment Cannot Exceed the Amount Demanded in a Complaint, and a Statement of Damages Does Not Cure a Defective Complaint that Fails to Specify Damages**

By Lynnette M. Garrett and Gregory M. Salvato, Esq. \*\*

A recent California Court of Appeal decision re-affirmed the longstanding rule that damages in a default judgment cannot exceed the amount of damages actually claimed in the complaint, and that a later-filed statement of damages specifically identifying the damages sought is no substitute for an amended complaint, at least in an action not involving personal injury or wrongful death. *Dhawan v. Biring*, 241 Cal. App. 4th 963 (2d Dist. 2015).

In *Dhawan*, the Second District Court of Appeal held that a default judgment is void on its face (not merely voidable) and subject to attack at any time where the default judgment awards damages that exceed the relief demanded in the complaint, citing Code of Civil Procedure Section 580(a). A complaint seeking monetary damages must state the amount of damages sought. Code Civ. Proc. § 425.10(a)(2). Any amount awarded in excess of the amount stated in the complaint is beyond a court's jurisdiction to grant, and the resulting judgment is void. Code Civ. Proc. § 580(a).

Furthermore, service of a statement of damages under Code of Civil Procedure Section 425.11 or 425.115 only satisfies the requirements of Code of Civil Procedure Section 580 when the law prevents a plaintiff from stating an amount of damages in the body of the complaint; i.e., in personal injury or wrongful death cases, or where plaintiff is seeking punitive damages. In all other cases, a statement of damages does not substitute for an amended complaint, as it does not provide formal notice of the actual damages sought in compliance with the requirements of Section 580(a).

As may be common practice for some, the plaintiff in *Dhawan* filed a complaint that did not specify the amount of damages, seeking merely an award of damages “according to proof.” Defendants failed to answer the complaint. At the default hearing—likely at the instigation of the trial judge—the plaintiff moved to vacate the default so that he could personally serve a statement of damages on the defendants, thereby hoping to cure the defect where the Defendants never received actual notice of the amounts claimed as damages. Plaintiff subsequently filed and served a statement of damages, identifying each category of damages and the amount sought. Again, however, Defendants did not respond, and a default judgment was entered.

Nearly seven years later, defendant Biring moved to vacate the default judgment, contending that a default judgment in excess of the amounts demanded in the complaint is void, and not merely voidable, because the award was in excess of the trial court's jurisdiction. Code Civ. Proc. § 580(a). That is, the trial court did not have the power to

enter a default judgment that exceeded the relief sought in the complaint, and such an excess damage judgment could be set aside at any time. Code Civ. Proc. § 473(d). The trial court agreed and vacated the default judgment.

On appeal, plaintiff argued that defendants had actual notice of the lawsuit and the precise amount of damages sought, as they did not contest receipt of the statement of damages. At most, plaintiff argued, the judgment was merely voidable, and not void. And, plaintiff argued, as the time period to challenge a voidable judgment had long since passed, the default judgment should not have been overturned.

The Court of Appeal rejected each of the plaintiff's arguments and affirmed the trial court's order setting aside the default judgment. Even though it contained the same information, a statement of damages was not a substitute for a properly amended complaint. Actual notice of the damages sought—ostensibly by service of the statement of damages—was not a substitute for formal notice, which could only be provided in non-personal injury cases through an amended complaint.

And, where the plaintiff had sought in its complaint only “damages according to proof,” the original trial court had exceeded its jurisdiction in awarding any damages at all.

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