

RESOLUTION 06-09-2013

DIGEST

Civil Procedure: Default Judgment Based On Statement of Damages Amends Code of Civil Procedure section 425.11 to permit a plaintiff to seek all damages discovered during the case through a default judgment after an order granting terminating sanctions.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 425.11 to permit a plaintiff to seek all damages discovered during the case through a default judgment after an order granting terminating sanctions. This resolution should be approved in principle because it will permit a plaintiff to recover the actual amount of damages determined during discovery from a defendant against whom terminating sanctions have been issued during the litigation.

This resolution will allow a plaintiff, in any case where a court has issued an order for terminating sanctions, to recover all of the damages discovered during the litigation through a default judgment. Currently, a plaintiff in a non-personal injury case can only receive a default judgment for the amount demanded in the complaint. (Code Civ. Proc. §§ 425.10, 580, 585.) Limiting a default judgment to the specific amount demanded in the complaint, though, prejudices those plaintiffs' true damages that cannot be known at the time the complaint is filed, such as when the complaint arises from the unlawful concealment of financial information, an unfair business practice, or where a short statute of limitations requires the complaint to be filed before damages are certain. While a plaintiff who pleads that he or she has suffered damages in excess of the jurisdictional minimum is sufficient to set the pleadings, it is not always sufficient for entering a default judgment. (*Schwab v. Rondel Homes* (1991) 53 Cal.3d 428, 433-435.) However, when a defendant appears in a case, he or she can discover and challenge the damages claimed by the plaintiff. Thus, if terminating sanctions are issued against a defendant, the plaintiff should be allowed to receive a default judgment for the amount of damages determined during the litigation, not just the damages pleaded or prayed for in the complaint.

The policy for limiting the damages recoverable following a default is to provide due process and to ensure that a defendant who declines to contest an action does not subject himself or herself to open-ended liability. (*In re Marriage of Wells* (1988) 206 Cal.App.3d 1434, 1437; *Greenup v. Rodman* (1986) 42 Cal.3d 822, 826.) That policy is not furthered where a defendant is subject to a default judgment because of terminating sanctions, because the defendant has had notice and the opportunity to appear and participate in the case, and has chosen not to do so.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Code of Civil Procedure section 425.11, to read as follows:

- 1 §425.11
2 (a) As used in this section:
3 (1) "Complaint" includes a cross-complaint.
4 (2) "Plaintiff" includes a cross-complainant.
5 (3) "Defendant" includes a cross-defendant.
6 (b) When a complaint is filed in an action to recover damages for personal injury or
7 wrongful death, the defendant may at any time request a statement setting forth the nature and
8 amount of damages being sought. The request shall be served upon the plaintiff, who shall serve
9 a responsive statement as to the damages within 15 days. In the event that a response is not
10 served, the defendant, on notice to the plaintiff, may petition the court in which the action is
11 pending to order the plaintiff to serve a responsive statement.
12 (c) If no request is made for the statement referred to in subdivision (b), and in any case
13 where terminating sanctions are sought against a defendant, the plaintiff shall serve the statement
14 on the defendant before a default may be taken. Where the statement is permitted in relation to a
15 motion requesting terminating sanctions, that statement must be served on the defendant
16 concurrently with the notice of motion. Where the statement is permitted in relation to an order
17 to show cause for the issuance of terminating sanctions, then that statement must be served on
18 the defendant no later than five court days after the court issues that order to show cause.
19 "Terminating sanctions" shall mean those orders identified in Code of Civil Procedure section
20 2023.030, and orders striking the pleading(s) of a defendant pursuant to a motion to strike, a
21 motion for terminating sanctions, or an order to show cause.
22 (d) The statement referred to in subdivision (b) shall be served in the following manner:
23 (1) If a party has not appeared in the action, the statement shall be served in the same
24 manner as a summons.
25 (2) If a party has appeared in the action, the statement shall be served upon the party's
26 attorney, or upon the party if the party has appeared without an attorney, in the manner provided
27 for service of a summons or in the manner provided by Chapter 5 (commencing with Section
28 1010) of Title 14 of Part 2.
29 (e) The statement referred to in subdivision (b) may be combined with the statement
30 described in Section 425.115.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: A plaintiff in a non-personal injury case can only receive a default judgment for the amount demanded in the complaint. (Code Civ. Proc. §§ 425.10, 580, 585) That plaintiff is limited to recovering the amount of damages plead in his or her complaint even where the default

judgment results from terminating sanctions against a defendant who has had the opportunity to participate in the litigation and evaluate the plaintiff's actual damages. The policy for limiting the damages recoverable following a default is both to provide due process and to ensure that a defendant who declines to contest an action does not subject himself or herself to open-ended liability. (In re Marriage of Wells (1988) 206 Cal.App.3d 1434, 1437; Greenup v. Rodman (1986) 42 Cal.3d 822, 826) That policy is not furthered where a defendant is subject to a default judgment because of terminating sanctions.

This Solution: This resolution will allow a plaintiff in a non-personal injury case to receive the full amount of damages discovered in the course of litigation through a default judgment following an order for terminating sanctions against the defendant. Limiting a default judgment to the amount demanded in the complaint prejudices plaintiffs whose full damages cannot be known when the complaint is filed--e.g. where the complaint arises from the defendant's unlawful concealment of financial information, unfair business practices, or where a short statute of limitations requires the complaint to be filed before the plaintiff's damages are certain. The actual amount of damages in such cases can be determined by both parties during litigation through discovery. Although pleading that a plaintiff has suffered damages in excess of the jurisdictional minimum of the court is sufficient to set the pleadings, it is not always sufficient for entering a default judgment against a defendant. (*Schwab v. Rondel Homes* (1991) 53 Cal.3d 428, 433-435) When a defendant appears in a case he or she can discover and challenge plaintiff's damages. Therefore, if terminating sanctions are issued against a defendant, the plaintiff should be allowed to receive a default judgment for the amount of damages determined during the litigation, not just the damages pleaded or prayed for in the complaint. Terminating sanctions are issued only where lesser sanctions will not bring about compliance or where the sanctioned party has violated a court order. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496; *Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1247) They are issued where a party has appeared in a case, has had the opportunity to participate in the litigation, and to discover, evaluate and contest the potential damages. In that situation, the defendant is on notice of his or her potential liability before subjecting himself or herself to terminating sanctions and a default judgment. The plaintiff in such a case should be allowed a default judgment in an amount consistent with his or her actual damages instead of being limited to the amount pleaded in the complaint.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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