

Craig J. Englander, Esq. (State Bar No. 157945)

**Lewin & Englander**

13470 Washington Boulevard, Suite 200-B

Marina del Rey, California 90292

Telephone: (310) 208-9644

Facsimile: (310) 578-9505

Attorneys for Real Party in Interest, [SPOUSE]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF VENTURA – VENTURA COURTHOUSE**

<p><b>[PLAINTIFF], AN INDIVIDUAL</b></p> <p style="text-align: right;"><b>PLAINTIFF,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>[HUSBAND], AN INDIVIDUAL; DOES 1 THROUGH 50, INCLUSIVE,</b></p> <p style="text-align: right;"><b>DEFENDANTS.</b></p>	<p><b>CASE NO.</b></p> <p><b>AMENDED OPPOSITION TO MOTION FOR SPOUSAL EARNINGS WITHHOLDING ORDER</b></p> <p>Date: July 21, 2009 Time: 8:30 a.m. Dept. 41</p>
--	--

## TABLE OF CONTENTS

I. INTRODUCTION .....	1
II. FACTS.....	2
A. Procedural History.....	2
B. Facts Relating Specifically to Doreen.....	3
III. LEGAL ANALYSIS.....	5
A. The judgment is void as a matter of law and is subject to collateral attack. Plaintiff utterly failed to comply with the mandatory requirements of Code of Civil Procedure §§ 425.11, 425.115 and 580.....	5
B. A Judgment Based On Punitive Damages Should Not Be Transferred to a Third Party.....	7
C. The Judgment, Void or Otherwise, Constitutes a Fraud on the Community Estate One Which Should Not be Borne by [Spouse].....	7
IV. CONCLUSION.....	8

## TABLE OF AUTHORITY

### Table of Cases

<i>Finney v. Gomez</i> (2003) 111 Cal.App.4th 527.....	5
<i>Greenup v. Rodman</i> (1986) 42 Cal.3d 822.....	5
<i>In re Marriage of Stitt</i> (1983) 147 Cal.App.3d 579.....	8
<i>Marriage of Lippel</i> (1990) 52 Cal.3d 1160.....	5
<i>Peterson v. Superior Court</i> (1982) 31 Cal.3d 147.....	7
<i>Schwab v. Rondel Homes , Inc.</i> (1991) 53 Cal.3d 428.....	5
<i>Wiley v. Rhodes</i> (1990) 223 Cal.App.3d 1470.....	6

### Table of Codes

California Civil Code §3294(a).....	7
<i>Code of Civil Procedure</i> §425.11.....	3
<i>Code of Civil Procedure</i> §425.115.....	3
<i>Code of Civil Procedure</i> §425.115(b).....	6
<i>Code of Civil Procedure</i> §425.115(f).....	6
<i>Code of Civil Procedure</i> §425.115(g)(1).....	6
<i>Code of Civil Procedure</i> §580 .....	5
Family Code §297.5 .....	7
Family Code §1000(b)(1)&(2).....	7

# I

## INTRODUCTION

The California Supreme Court repeatedly holds, without equivocation, that fundamental fairness and due process prohibit default judgments in excess of the amount stated in the complaint or in the statements required by *Code of Civil Procedure* §§425.11 and 425.115. These notice requirements of due process lie at the core of these sections and they must be strictly construed to provide fundamental fairness. Despite having been briefed on this issue, Plaintiff completely ignores the mandates of California's legislature and the State Supreme Court in its unrelenting effort to garnish the wages of a completely innocent person who has been provided no opportunity to assert her constitutional rights until this motion.

Not only is Plaintiff pursuing an innocent victim, now, in its amended motion, Plaintiff casts unsupported accusation to malign [Spouse], who has never caused Plaintiff any harm. Plaintiff goes as far as to poison the well with slanderous comments that [Spouse] is part of "a family campaign" to "intentionally injure" Plaintiff. [Spouse] has done nothing to merit such vitriol.

On March 30, 2009, Plaintiff [Plaintiff] filed his Motion for Spousal Withholding Order against Doreen. On May 19, 2009, [Spouse] served her opposition to Plaintiff's motion, setting forth the issue of a void judgment as her primary argument. Plaintiff filed no reply to said opposition. On June 2, 2009, the matter came on for hearing and Plaintiff's motion was denied, without prejudice. Plaintiff has filed this amended motion, once again ignoring Doreen's arguments of fundamental fairness and due process. Plaintiff's failure to address this matter until its reply should only be viewed as sand-bagging at this point.

It should not be lost on this court, that Plaintiff seeks an order against Doreen's earnings, not Defendant's. [Spouse] has never had an opportunity to be heard on any of the issues. She was wholly unaware of the existence of this action, or even its underlying claims until she received the motion for spousal withholding order. Plaintiff has not provided any support to apply *res judicata* principles against a person who was not a party to the action.

The Court should also note that the equities of this case no longer rest with the Plaintiff, but instead a collection agency that walked into this debt with open eyes. This action no longer involves either party to the action. Ironically, the judgment is primarily one for punitive damages based on fraud - a purely personal judgment between [Plaintiff] and [Husband].

Nor has Plaintiff satisfied this court's directive regarding Family Code §1000(b)(1)&(2), that Plaintiff provide competent evidence that [Husband]'s separate property is insufficient to satisfy the judgment. Instead, Plaintiff relies on a shoddy investigation report supported only by reference to provably unreliable reports, fraught with hearsay. Plaintiff opts not to rely on more reliable information like post-judgment written discovery or judgment debtor examinations, all of which were conducted.

Given the procedural history of this case, an order withholding Doreen's wages would be a travesty of justice which will have two adverse results. It will: (1) perpetuate and compound Plaintiff's procedural and substantive errors; and (2) transfer the burden of a punitive damages award from one person to another, by punishing [Spouse] which will only result in her immediate retirement from the workforce.

## II

### FACTS

#### A. PROCEDURAL HISTORY

On June 14, 2002, [Plaintiff] (“*[Plaintiff]*”) filed a Complaint against [Husband] (“*[Husband]*”) for among other causes of action, fraud. [Spouse] was not named as a party to the underlying action. Nor did [Spouse] have any knowledge of the facts which were alleged in that action (See Original Declaration of [Spouse] on file with Opposition filed on May 19, 2009 (“*[Spouse] Decl.*”), ¶3)(copy attached hereto as Exhibit “A”).

[Plaintiff] specifically alleged that [Husband] provided a letter of intent soliciting [Plaintiff] to invest a minimum of \$30,000 which [Plaintiff] did in fact tender (Complaint, ¶¶8 and 9). Nowhere in the complaint is there a statement of damages in excess of \$30,000 and the amount of punitive damages is unstated (as is required).

[Husband] was never personally served the Summons and Complaint. Plaintiff applied for an order for Publication of Summons which was granted and on November 14, 2002, Plaintiff filed proof of service of the Summons by publication.

[Husband] failed to respond to the Complaint.

On December 16, 2002, Plaintiff filed Request for Entry of Default against [Husband].

At no time whatsoever, did Plaintiff serve [Husband] with a statement of damages as required by Code of Civil Procedure §§425.11 and 425.115. No order for publication of a statement of damages was issued and no statement of damages was ever published.

Plaintiff’s Request for Entry of Default, if it is to be construed as a Statement of Damages (which it cannot as *Code of Civil Procedure* §425.115 sets forth the format of such a statement), sets forth

only damages in the amount of \$665.00 for costs. (See Request for Entry of Default attached hereto as Exhibit "B").

On December 30, 2002, a default hearing was completed and Judgment was entered against [Husband], in the following amounts: (1) Economic Damages - \$39,483; (2) Interest - \$9,325.00; (3) Punitive/Exemplary - \$120,000.00; and (4) Court Costs - \$665.00. The total Judgment was \$169,473.00.

Over the next two years, Judgment Debtor examinations were attempted and Plaintiff submitted post-judgment written discovery to [Husband]. [Husband] filed a motion for relief from default which was denied. In his motion, [Husband] neglected to argue Plaintiff's failure to comply with the statutory and constitutional prerequisites of notice of damages. [Husband] subsequently filed a notice of appeal, which was dismissed due to lack of prosecution of the appeal.

On October 20, 2008, [Assignee] filed an assignment of judgment and effectively, on or about December 30, 2002, the above judgment was entered in favor of [Assignee].

**B. FACTS RELATING SPECIFICALLY TO DOREEN**

[Spouse] is a 70-year-old woman who has been a productive part of the work force for years ([Spouse] Decl., ¶4). She has held the same job for over twenty (20) years ([Spouse] Decl., ¶5). [Spouse] has never been involved in [Husband]'s business dealings ([Spouse] Decl., ¶6).

[Spouse] has never been made aware of the events or the existence of this action or the events occurring as a part thereof until she received the underlying motion ([Spouse] Decl., ¶3). Even Plaintiff corroborated this in a declaration by his investigator in 2002, stating he was unable to locate Doreen.

[Spouse] was not involved with any of the transactions which were the basis for the complaint and she most definitely did not act with malice, oppression and/or fraud towards the Plaintiff ([Spouse] Decl., ¶7). [Spouse] did not receive any notice of this lawsuit and no such notice was directed towards

her at any time prior to this motion ([Spouse] Decl., ¶8).

As for [Spouse] house, Plaintiff should be admonished for its uncorroborated conjecture and efforts to paint [Spouse] to be a conspirator. [Spouse] used her own separate property to purchase the house, all of which came directly from her 401K and a cash out on her own life insurance policy (See Second Declaration of [Spouse] , ¶3). Furthermore, as stated by Plaintiff, [Husband] Quitclaimed any community property interest he had immediately as part of the purchase agreement. The house is Doreen's separate property. Additionally, [Spouse] is unaware of any other titleholder named Todd [Husband]. In fact, [Spouse] has never even heard of the name Todd [Husband], or any name similar thereto. [Spouse] has run her own property profile on the property, as well as a search on title held by any person with the last name [Husband] in Sacramento County and has found no mention of a Todd [Husband] (Exhibit "C"). Plaintiff's private investigator's declaration under penalty of perjury, paragraph 20, fails to state the source of his information, or that it is on information and belief. More importantly, it is flat out wrong!

## II

### LEGAL ANALYSIS

**A. THE JUDGMENT IS VOID AS A MATTER OF LAW AND IS SUBJECT TO COLLATERAL ATTACK. PLAINTIFF UTTERLY FAILED TO COMPLY WITH THE MANDATORY REQUIREMENTS OF CODE OF CIVIL PROCEDURE §§ 425.11, 425.115 AND 580**

Long before Plaintiff obtained his default judgment in this action, the California Supreme Court had consistently held that *ALL* default judgments in excess of the amount demanded are void and that lower courts simply do not have the jurisdiction to enter a default judgment in excess thereof.



“The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115. . . .” *Code of Civil Procedure* §580 (hereinafter “**Section 580**”). The Supreme Court, as well as the California Courts of Appeal have consistently held Section 580 is an unqualified limit on the jurisdiction of courts entering default judgments - a default judgment greater than the amount specifically demanded is void as beyond the court's jurisdiction. *Greenup v. Rodman* (1986) 42 Cal.3d 822, 826.

A default judgment is limited to the damages of which the defendant had notice. *Schwab v. Rondel Homes, Inc.* (1991) 53 Cal.3d 428, 433. The Supreme Court and Courts of Appeal have reaffirmed that the language of Section 580 is mandatory. *Marriage of Lippel* (1990) 52 Cal.3d 1160, 1167. In **all** default judgments the demand sets a ceiling on recovery. *Greenup v. Rodman, supra* at p.824.

The notice requirements of due process lie at the core of Section 580 and our Supreme Court has affirmed that Section 580 must be strictly construed as it is designed to ensure fundamental fairness. *Finney v. Gomez* (2003) 111 Cal.App.4th 527, 535. Section 580 is far from a procedural housekeeping rule and does not lose force by virtue of equitable principles. The Section is fundamental to constitutionally required notice. *Id* at p. 538.

Furthermore, a default judgment is subject to collateral attack by separate lawsuit to set aside a void judgment. *Lippel* at 1168-1169. As such, [Spouse] has standing to collaterally attack the judgment in this action as a void judgment.

California's Legislature created a simple process to preserve the right to seek punitive damages on a default judgment by serving upon the defendant the following statement:

“NOTICE TO \_\_\_\_\_: (Insert name of defendant or cross-defendant) \_\_\_\_\_ reserves the right to seek (Insert name of plaintiff or cross-complainant) \$ \_\_\_\_\_ in punitive damages (Insert dollar amount) when \_\_\_\_\_ seeks a judgment in the (Insert name of plaintiff or cross-complainant) suit filed against you.”

*Code of Civil Procedure* §425.115(b).

The plaintiff **SHALL** serve the statement upon the defendant pursuant to this section before a default may be taken, if the motion for default judgment includes a request for punitive damages. *Code of Civil Procedure* §425.115(f).

The statement referred to shall be served, if the party has not appeared in the action, in the same manner as a summons pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. *Code of Civil Procedure* §425.115(g)(1). Plaintiff failed to prepare, file or serve a statement of damages in this action in any manner, let alone by publication, as required.

Section 580 is mandatory and does not permit relief in excess of the amounts demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115.

A plaintiff cannot obtain punitive damages by way of default unless the defendants are given notice of the amount sought before entry of default judgment and can chose to defend the case

accordingly. (See *Wiley v. Rhodes* (1990) 223 Cal.App.3d 1470, 1472-1474.) Due process concerns are implicated and the award must be reversed. (Id. at pp. 1473-1474.)

The default judgment against [Husband] is void as a matter of black letter law. There simply is no factual dispute to this and there is no exception to the legislative enactment which applies to this action.

**B. A JUDGMENT BASED ON PUNITIVE DAMAGES SHOULD NOT BE TRANSFERRED TO A THIRD PARTY**

“In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.”

California Civil Code §3294(a).

Punitive damages are designed to punish a defendant and to deter said party and others from committing similar acts in the future. The California Supreme Court has unequivocally held that indemnification of punitive damages "is disallowed for public policy reasons." *Peterson v. Superior Court* (1982) 31 Cal.3d 147, 159.

Punitive damages are awarded to punish and make an example out of the Defendant. The goal of punitive damages is to ensure that defendants who deserve to be punished in fact receive an appropriate level of punishment.

If this Court were to order [Spouse] to pay from her earnings, a punitive damage award against [Husband], in essence, [Spouse] is the one who is being punished for the intentional conduct of her husband. In fact, the only person being punished is [Spouse] and not the tortfeasor. That simply is not the goal of punitive damages.

**C. THE JUDGMENT, VOID OR OTHERWISE, CONSTITUTES A FRAUD ON THE COMMUNITY ESTATE, ONE WHICH SHOULD NOT BE BORNE BY DOREEN.**

A judgment based on a spouse's tort liability is enforceable against the community property only if the tortfeasor was acting on behalf of the community. If the liability is not based on an act or omission for the benefit of the community the judgment is enforceable against the community estate *only* to the extent the tortfeasor's separate property is insufficient to satisfy the judgment. Family Code §297.5; Family Code §1000(b)(1)&(2).

Despite having been provided the opportunity to cure its errors, Plaintiff nevertheless has failed to provide competent evidence that [Husband]'s separate property is insufficient to satisfy their void judgment. The extent of Plaintiff's investigation was that they hired a private investigator who ran an Experian report, a property profile and an asset report on [Husband]. All of these reports consist of nothing more than unreliable hearsay loaded upon hearsay. The investigator even fails to provide the documentation to support his declarations (except for a marriage certificate). What reliability is there in the "asset report" and from where was this information obtained? Furthermore, the property profile is clearly unreliable as according to the investigator it reveals a titleholder who simply does not exist.

But more importantly, Plaintiff sent out post-judgment written discovery and attempted to conduct judgment debtor examinations. Whatever came of those? Did Plaintiff follow through or simply drop the ball?

Plaintiff is merely trying to take the laziest route, a path of least resistance. Plaintiff is digging its claws into the innocent wife of the judgment debtor, doing the least work possible.

Moreover, [Husband] was not acting on behalf of any community. The complaint itself clearly describes a business transaction between Plaintiff and [Husband]. [Spouse] had absolutely no knowledge

of [Husband's] business transactions. In the case *In re Marriage of Stitt*, the Court of Appeals held that because a husband of a debtor spouse did not participate in the wife's embezzlement and there was no benefit to the community, the harmed creditor was required to first look to the debtor spouse's separate property for recovery. *In re Marriage of Stitt* (1983) 147 Cal.App.3d 579, 587.

[Spouse] should not be made to bear the burden of [Husband]'s separate obligation.

#### IV

#### CONCLUSION

Plaintiff and its predecessor have trampled on [Husband]'s due process rights. Fundamental fairness required that [Husband] be given notice of what amounts Plaintiff was seeking. The Court did not have the authority to overlook this in awarding a default judgment. Even if the Court feels that Frank has had his chance to rectify this wrong, it is indisputable that [Spouse] has not! Doreen's first notice of this lawsuit did not occur in 2002. Instead, [Spouse] first received notice of this lawsuit when she was served the original motion in April of 2009. [Spouse] immediately asserted her constitutional rights to due process and fundamental fairness in her opposition to said motion.

[Spouse] was not a party to the alleged fraud. She was not a party to the action. The Plaintiff failed to comply with black letter law and the judgment which was issued was void. Legally, the judgment is void. Legally and equitably, [Spouse] should not be forced to retire from the work force. Her employer should not be forced to bear the burden of hiring and training a new employee. Plaintiff respectfully requests that the Court deny the Assignee of Record's motion.

DATED: June 3, 2010

**LEWIN & ENGLANDER**

By

**CRAIG J. ENGLANDER**

Attorneys for Real Party in Interest

**SECOND DECLARATION OF [SPOUSE]**

I, [Spouse] , state and declare as follows:

1. I am the interested party with respect to the Amended Motion for a Spousal Earnings Withholding Order in the above entitled action. I have personal knowledge of the facts testified hereto, except for those which are stated on information and belief, and if called to do so, I could and would competently and truthfully testify thereto.
2. I make this declaration in support of my amended opposition to the motion. I re-affirm all of that which is stated in my declaration of May 18, 2009.
3. It is particularly disturbing and distressing to me that the Plaintiff would callously state that I am part of “a family campaign” to “intentionally injure” Plaintiff. I have never had any dealings with Plaintiff, so I am not sure where they would get such information to level such a personal attack on me. Contrary to Plaintiff’s implications, I purchased the home with my own separate property from my 401K and a cash out of my own life insurance policy. Anyone who understands California property laws should understand the prudence of having [Husband] quitclaim any perceived interests he may have had in a home which is my separate property. At the time of the purchase, [Husband] was not even being sued and I was personally unaware of any potential lawsuits down the road.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_ day of July, 2009 at \_\_\_\_\_, California.

\_\_\_\_\_  
[Spouse]

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 13470 Washington Blvd., Suite 200-B, Marina Del Rey, California 90292.

On June 3, 2010, I served the foregoing document entitled:

**AMENDED OPPOSITION TO MOTION FOR SPOUSAL EARNINGS WITHHOLDING ORDER**

upon the interested parties in this action by enclosing them in an envelope(s) addressed as follows:

A. Edward Briseno, Esq. LAW OFFICES OF A. EDWARD BRISENO 22603 Sarkis Ct. Saugus, California 91350	
---	--

**BY MAIL:** I caused such envelope with postage thereon, fully prepaid, to be placed in the United States Mail.

9 I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

: **BY FACSIMILE:** I caused said document(s) to be sent via Facsimile to (661) 244-4432

: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

9 I declare that I am employed in the offices of a member of the State bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on June 3, 2010, at Marina del Rey, California.

\_\_\_\_\_  
J. ENGLANDER CRAIG

