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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

EVAN AULD-SUSOTT, as Trustee, etc.,

Plaintiff and Respondent,

v.

DANIEL C. SUSOTT,

Defendant and Appellant.

H040321

(Monterey County

Super. Ct. No. M115348)

I. INTRODUCTION

Appellant Daniel C. Susott and former respondent John L. Susott are brothers.¹ In 2011 John filed a lawsuit against Daniel in which he alleged that Daniel had committed financial and physical elder abuse of their mother, Kathryn Susott (Kay). After Daniel failed to respond to the second amended complaint, John requested Daniel's default. A default judgment in the total amount of \$1,624,125.07 was entered on April 17, 2013. The trial court denied Daniels' motion for relief from default under Code of Civil Procedure section 473, subdivision (b).²

¹ Since the Susott family members have the same or similar surname, we will refer to them by their first names for purposes of clarity and not out of disrespect.

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

On appeal, Daniel seeks review of the default judgment, the order denying his motion for relief from default, and a prior order overruling his demurrers to the first amended complaint. Only his challenges to the default judgment and the order denying his motion for relief from default are cognizable in this appeal. For the reasons stated below, we find no merit in Daniel's contentions that (1) the trial court erred in denying his motion for relief from default since he made a sufficient showing of excusable neglect; and (2) the default judgment must be reversed since the amount awarded is excessive. We will therefore affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Facts

Our factual summary is drawn from the second amended complaint since “ “[t]he judgment by default is said to ‘confess’ the material facts alleged by the plaintiff, i.e., the defendant’s failure to answer has the same effect as an express admission of the matters well pleaded in the complaint.” ’ [Citation.] The ‘well-pleaded allegations’ of a complaint refer to “ ‘all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.’ ” ’ [Citations.]” (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 281, italics omitted.)

Kay lived in Hawaii until 1995, when she moved to a home in Carmel that she had purchased to be closer to her family. Kay had two adult sons, John and Daniel. From approximately 1995 to 2009, Daniel lived in Kay’s home in Carmel without paying rent or contributing to living expenses. Although Daniel was a physician and had expressed on various occasions that he would take care of Kay, he physically abused her.

In 1994, Kay gave Daniel \$200,000 to purchase investment property in Cambodia. While Daniel was living with Kay in 1998, he “successfully urge[d]” her to give him a cash gift in the amount of \$771,939. Between 1999 and 2008, at Daniel’s urging Kay made gifts and forgave loans to Daniel’s friends and colleagues in the total amount of \$166,704, plus a loan of \$30,000 to Daniel’s friend, Erick Sosa, that she forgave. Kay

also loaned Daniel \$60,000, which he did not repay. Also at Daniel's urging, over a period of years Kay donated a total of approximately \$362,210 to a charity that Daniel operated.

In 2005, Kay was diagnosed with Alzheimer's-related dementia and retained three caregivers to provide personal and medical assistance. Daniel gave parties at Kay's house that made it difficult for the caregivers to provide appropriate care for Kay. In 2006 and 2007 Kay was found wandering outside the Carmel house on two occasions. In 2009 Kay's family decided to move her to the Sunrise Assisted Living Facility.

While Kay was residing in the Sunrise Assisted Living Facility, Daniel entered her quarters at 3:30 a.m. and took her valuable emerald ring off her hand. Daniel sold the emerald ring and kept the proceeds for himself. In February 2009, two days after Kay's physician had examined her and reported that she was in good health for her age of 89, Kay was found dead at the assisted living facility.

B. The Pleadings

In 2011, John initiated the present action against Daniel by filing the original complaint in his individual capacity and also as the executor of the Estate of Kathryn Susott, as trustee of The Kathryn C. Susott Living Trust, and as trustee of the John L. Susott Non-Exempt Marital Trust.³ The first amended complaint filed in May 2012 included causes of action for financial elder abuse, conversion, constructive trust, neglect, and physical elder abuse.

Daniel demurred to the first amended complaint. The "notice of ruling" dated September 10, 2012, indicates that the trial court overruled the demurrers to the causes of action for financial elder abuse and constructive trust and sustained the demurrers to the causes of action for neglect and physical elder abuse with leave to amend.

³ On July 2, 2014, this court granted respondent's motion to substitute parties and substituted Evan Auld-Susott (successor trustee) in place of John L. Susott in this appeal.

John filed the second amended complaint on September 25, 2012. The five causes of action included in the second complaint included financial elder abuse (Welf. & Inst. Code, § 15600 et seq.), conversion, constructive trust, neglect (Welf. & Inst. Code, § 15610.57), and physical elder abuse (Welf. & Inst. Code, § 15610.63). John's declaration was attached to the second amended complaint, in which he stated that he was Kay's successor in interest in this action under section 377.11 and Welfare and Institutions Code section 15657.3, subdivision (d)(1)(C), and was an interested person under Probate Code section 48, subdivision (a)(3).

The second amended complaint was mail-served on Daniel at his address in Hawaii on September 25, 2012.

C. Entry of Default and Default Judgment

Daniel did not answer or otherwise respond to the second amended complaint that was mail-served on September 25, 2012, and on November 9, 2012, John filed a request for entry of default. The request for default was mail-served on Daniel at his address in Hawaii on November 9, 2012. Daniel's default was entered on the same day the request for default was filed, November 9, 2012. The file-endorsed entry of default was not served on Daniel.

On February 1, 2013, John filed a request for an order extending the time to seek a default judgment against Daniel. In support of his request, John stated, among other things, that Daniel had contacted John's attorneys by email and requested that they voluntarily set aside the request for entry of default. In his January 30, 2013 email, Daniel stated, "[I] just today found and opened the second amended complaint. . . . [¶] I also just received in the mail your notice of request for default. [¶] I intend to appear by answer . . . and respectfully request that you set aside the default." John's attorney responded in a January 30, 2013 email that John did not agree to set aside the default and advised Daniel that "[i]f you wish to challenge the default you will need to do so through the legal system and we will vigorously oppose those efforts."

The trial court's February 8, 2013 order extended the time for John to seek a default judgment to February 22, 2013. Thereafter, John filed a "Summary of Case for Default Prove-Up" on February 22, 2013. He requested a default judgment in the amount of \$851,296, plus prejudgment interest of \$727,412.67, postjudgment interest of \$178.44 per day, and attorney's fees of \$43,868.75.

John computed the sum of \$851,296 for compensatory damages for financial elder abuse and conversion by adding together (1) \$75,849, the proceeds from the sale of the Cambodian investment property that Daniel refused to return to Kay; (2) \$437,243, the value of the transfer of Kay's interest in real property in Hawaii to Daniel without any consideration; (3) \$10,000, for Kay's unpaid loan to Daniel's friend Lauryn Galindo; (4) \$128,204, the total amount of Kay's gifts to Daniel and his associates after her Alzheimer's diagnosis; and \$200,000, the value of of Kay's emerald ring that Daniel converted.

The default prove-up hearing was held on April 10, 2013. The record reflects that Daniel was present at the hearing. The minute order for the hearing states: "The court awards judgment to the plaintiff for the figures requested for the Cambodian transaction, the Galinda [*sic*] loan, the other gifts, and the value at \$200,000.00 for the emerald ring, attorney fees of \$43,868.75, plus interest as calculated based on the judgment."

A court judgment in the total amount of \$1,624,125.07 was entered on April 17, 2013. The judgment states that the total judgment includes \$851,296 in damages; \$727,412.67 in prejudgment interest; \$43,868.75 in attorney's fees; and \$1,547.65 in costs.

D. Motion for Relief from Default

On April 5, 2013, five days before the April 10, 2013 default prove-up hearing, Daniel filed a motion seeking relief from default pursuant to section 473 and requesting leave to file a demurrer to the second amended complaint. Daniel sought relief from default on the primary ground of excusable neglect. He also argued that the motion

should be granted because John's attorney had failed to warn him before taking his default.

In his supporting declaration, Daniel stated that in November 2012, when he received the second amended complaint, he was representing himself because he could not afford an attorney and due to his serious depression he "was unable to deal with anything." Daniel's neighbor, Alvin Murphy, M.D., suggested that Daniel take medication but it did not help much. In March 2013 a friend loaned Daniel some money, which enabled him to retain two attorneys to seek relief from default.

Daniel also submitted the declaration of Dr. Murphy, who stated that he was a board-certified psychiatrist licensed in Hawaii. Dr. Murphy also stated that he had known Daniel for approximately 20 years, was familiar with "his mental states." In the fall of 2012, Dr. Murphy observed that Daniel was exhibiting signs of "a very serious depression." Dr. Murphy was not treating Daniel as a patient at that time, but he suggested that Daniel try a certain medication. Sometime later, Dr. Murphy began treating Daniel and in March 2013 he prescribed an antidepressant that improved Daniel's mood. Dr. Murphy opined that "Daniel was essentially incapacitated by his depression for several months," and he would not have been capable of handling a serious legal matter without the assistance of an attorney.

In opposition to Daniel's motion, John argued that Daniel had failed to show excusable neglect for several reasons: (1) during the relevant time period Daniel was able to communicate with John's attorney; (2) Dr. Murphy's conclusory opinion that Daniel was depressed at that time was based upon his "neighborly interactions with Daniel;" (3) Daniel had previously been able to represent himself and had filed the demurrers to the first amended complaint.

John also argued that Daniel was not diligent in seeking relief from default, emphasizing that Daniel did not file his motion for relief from default for five months after receiving notice of the request for entry of default in November 2012.

E. Order on Motion for Relief from Default

The trial court denied Daniels' motion for relief from default in its June 14, 2013 order. The order states: "The Court finds that Defendant failed to offer competent, admissible evidence sufficient to establish excusable neglect as required by California Code of Civil Procedures § 473(b)."

During the May 17, 2013 hearing on the motion, the trial court explained the court's finding as follows: "I don't see the evidence sufficiently presented for excusable neglect. [¶] A neighbor who is a psychiatrist having an informal opinion, an ability to do something with the assistance of counsel, and the appearance of it just being a delay, showing up on the [default court] trial [date] and just listening, filing something that would try to put a placeholder in to protract this litigation, I don't see excusable neglect having been demonstrated."

F. Motion for Reconsideration

In August 2013, Daniel filed a motion for reconsideration of the June 14, 2013 order denying his motion for relief from default. The grounds for reconsideration argued by Daniel included a misrepresentation made by John's attorney at the hearing on the motion for relief from default. Daniel asserted that John's attorney had falsely stated during his argument in opposition to the motion for relief from default that Daniel had appeared at a September 7, 2012 hearing in this case.

John conceded that his attorney had mistakenly informed the trial court that Daniel had appeared at a September 7, 2012 hearing that Daniel did not actually attend. However, John opposed the motion for reconsideration, arguing that whether Daniel had actually appeared at the September 7, 2012 hearing was not a new fact warranting reconsideration and was also immaterial.

The notice of ruling after hearing on Daniel's motion for reconsideration states that the trial court denied the motion for reconsideration, finding that the Daniel had presented no new facts. The notice of ruling also states that "the misstatement by [John's

attorney] as to the September 7, 2012 hearing date played no role in the Court’s decision to deny relief and was not a factor in the outcome.” Additionally, the notice of ruling states that the trial court denied Daniel’s requests to remove John’s attorney and report the attorney to the State Bar.

III. DISCUSSION

On October 3, 2013, Daniel filed a notice of appeal from the April 17, 2013 default judgment and “other related Orders.” On appeal, Daniel expressly seeks review of the June 14, 2013 order denying his motion for relief from default and the September 10, 2012 notice of ruling that indicates that the trial court overruled his demurrers to the causes of action for financial elder abuse and constructive trust in the first amended complaint. We will begin our review of Daniel’s appeal by addressing the issue of appealability.

A. *Appealability*

“[S]ince the question of appealability goes to our jurisdiction, we are dutybound to consider it on our own motion.” (*Olson v. Cory* (1983) 35 Cal.3d 390, 398.) To begin with, we observe that the notice of appeal from the default judgment was entered nearly seven months after entry of judgment. However, John does not dispute Daniel’s contention that the notice of appeal was timely filed within 180 days after the April 17, 2013 entry of judgment pursuant to California Rules of Court, rule 8.104(a)(1)(C),⁴ since no notice of entry of judgment was ever filed or served. We therefore determine that the notice of appeal was timely as to the default judgment.

⁴ California Rules of Court, rule 8.104(a) provides: “(1) Unless a statute, rule 8.108, or rule 8.702 provides otherwise, a notice of appeal must be filed on or before the earliest of: [¶] (A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled ‘Notice of Entry’ of judgment or a file-stamped copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled ‘Notice of Entry’ of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of judgment.”

As to the June 14, 2013 order denying Daniel’s motion for relief from default, although an order denying a motion to vacate the default is not independently appealable, “there is authority for the view that it may be reviewed on an appeal from the judgment.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.)

However, the September 10, 2012 notice of ruling, which indicates that the trial court overruled the demurrers to the causes of action for financial elder abuse and constructive trust in the superseded first amended complaint, is not appealable.

“ ‘It is well established that an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading. [Citations.]’ [Citation.] ‘Such amended pleading supplants all prior complaints. It alone will be considered by the reviewing court. [Citations.]’ [Citation.]” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884 (*Foreman & Clark Corp.*)). Thus, “a reviewing court ordinarily will not consider the sufficiency of a superseded pleading [citations].” (*Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, 488.)

Here, the first amended complaint was superseded by the second amended complaint; accordingly, the merits of the trial court’s ruling on the demurrer to the first amended complaint may not be considered in this appeal. We also note that a notice of ruling ordinarily is not an appealable order. “A notice of ruling is not an order; an order is a document which contains a direction by the court that a party take or refrain from action, or that certain relief is granted or not granted [citations] and which is either entered in the court’s permanent minutes or signed by the judge and stamped ‘filed.’ [Citations.]” (*Shpillar v. Harry C’s Redlands* (1993) 13 Cal.App.4th 1177, 1179.)

Having determined that the June 14, 2013 order denying Daniel’s motion for relief from default is appealable, we next consider Daniel’s appeal of that order.

B. Order Denying Relief from Default Under Section 473, subdivision (b)

On appeal, we understand Daniel to contend that the trial court erred in denying his timely motion for relief from default because the uncontradicted evidence regarding

his depression and his financial circumstances, which was set forth in his own declaration and the declaration of Dr. Murphy, was sufficient to show that his default was due to excusable neglect. Daniel also contends, without citation to authority, that if the trial court found Dr. Murphy's declaration unbelievable, the court could have "demanded that [Dr.] Murphy personally appear at the hearing on the motion." John responds that sufficient evidence supports the trial court's finding that Daniel failed to show excusable neglect.⁵

We will begin our evaluation of Daniel's contentions with an overview of section 473, subdivision (b) and the applicable standard of review.

1. Section 473, subdivision (b)

The discretionary relief provision of section 473, subdivision (b) provides in part: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." This provision "applies to *any* 'judgment, dismissal, order, or other proceeding.'" (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 254 (*Zamora*).

As this court stated in *Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1419 (*Huh*): " 'In order to qualify for [discretionary] relief under section 473, the moving party must act diligently in seeking relief and must submit affidavits or testimony demonstrating a reasonable cause for the default.' [Citation.] In other words, the court's 'discretion may be exercised only after the party seeking relief has shown that there is a proper ground for relief, and that the party has raised that ground in a procedurally proper manner, within any applicable time limits.' [Citation.]"

⁵ Although the parties dispute whether Daniel's motion for relief from default was diligently made, we need not address the issue since the trial court's order reflects that the court denied the motion after finding that Daniel had not made a sufficient showing of excusable neglect.

2. Standard of Review

In *Zamora*, the California Supreme Court instructed that “ ‘[a] ruling on a motion for discretionary relief under section 473 shall not be disturbed on appeal absent a clear showing of abuse.’ [Citation.]” (*Zamora, supra*, 28 Cal.4th at p. 257.) However, any doubts in applying section 473 must be resolved in favor of the party seeking relief, because the policy underlying section 473 favors disposition on the merits. (*Huh, supra*, 158 Cal.App.4th at pp. 1419-1420.) An order denying a motion for relief under section 473 is therefore “ ‘scrutinized more carefully than an order permitting trial on the merits.’ [Citation.]” (*Huh, supra*, at p. 1420.)

3. Analysis

“ ‘Section 473 . . . permits relief for “excusable” neglect. The word “excusable” means just that: inexcusable neglect prevents relief.’ [Citation.] [¶] The burden of establishing excusable neglect is upon the party seeking relief who must prove it by a preponderance of the evidence. [Citations.]” (*Iott v. Franklin* (1988) 206 Cal.App.3d 521, 528, fn. omitted.) “ ‘Excusable neglect is that neglect which might have been the act of a reasonably prudent person under the same circumstances.’ [Citations.]” (*Huh, supra*, 158 Cal.App.4th at p. 1419.)

A showing of excusable neglect may be based upon the disability of the party moving for relief under section 473. (See *In re Marriage of Kerry* (1984) 158 Cal.App.3d 456, 465 [party entered into stipulation due to mental confusion]; *Kesselman v. Kesselman* (1963) 212 Cal.App.2d 196, 207-208 [defendant not capable of understanding legal proceedings due to post-stroke mental deterioration].) However, to establish excusable neglect on the basis of disability, the moving party must show that the disability *caused* the party’s failure to act. (See *Transit Ads, Inc. v. Tanner Motor Livery, Ltd.* (1969) 270 Cal.App.2d 275, 279 [the excusable neglect must be the actual cause of the default]; *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 909 [defendant failed to show that her medical condition prevented her from responding to the complaint]; see also

Bellm v. Bellia (1984) 150 Cal.App.3d 1036, 1038 [defendant failed to show that parents' illnesses and deaths prevented him from responding to the complaint].)

Although Daniel's showing included Dr. Murphy's uncontroverted expert opinion that "Daniel was essentially incapacitated by his depression for several months" and would not have been capable of handling a serious legal matter without the assistance of an attorney, Dr. Murphy's opinion did not compel relief from Daniel's default under section 473. The general rule is that the trier of fact may reject the uncontradicted testimony of an expert witness, as long as the trier of fact does not do so arbitrarily. (*Foreman & Clark Corp., supra*, 3 Cal.3d at p. 890.) Here, the trial court did not act arbitrarily in rejecting Dr. Murphy's opinion, in light of the evidence showing that Dr. Murphy was Daniel's longtime neighbor who did not begin treating Daniel for depression until some unspecified date after Daniel received the the second amended complaint in November 2012.

The trial court also implicitly rejected, as lacking credibility due to the court's prior experience with Daniel's litigation activities in this case, Daniel's explanation in his declaration that his depression and financial circumstances generally caused him to be unable "to deal with anything." " 'Credibility is an issue for the fact finder . . . ; we do not reweigh evidence or reassess the credibility of witnesses. [Citation.]' " (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 915.)

For these reasons, we determine that Daniel has not shown that the trial court clearly abused its discretion in denying his motion for relief from default under section 473, subdivision (b) after finding that Daniel's evidence was insufficient to establish excusable neglect. (See *Zamora, supra*, 28 Cal.4th at pp. 257-258.) Since we will affirm the trial court's June 14, 2013 order denying the motion for relief from default, we next consider Daniel's appellate challenge to the default judgment.

C. The Default Judgment

Daniel seeks reversal of the \$1,624,125.07 default judgment that was entered on April 17, 2103. He argues that the default judgment should not have been entered in the absence of a statement of damages, as required by section 425.11. He also argues that the amount of the default judgment exceeds the amount demanded in the complaint in violation of section 580.

1. Statement of Damages

Section 580, subdivision (a) provides in part: “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. . . .” “[T]he primary purpose of the section is to guarantee defaulting parties adequate notice of the maximum judgment that may be assessed against them.” (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 826 (*Greenup*).)

In *Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 398-399, the court explained that under section 425.10, subdivision (b) “a complaint in an action for personal injury or wrongful death may not state the amount of damages. Similarly, under Civil Code section 3295, subdivision (e), a complaint may not state the amount of punitive damages sought. In such cases, . . . sections 425.11, subdivision (b),^{6]} and 425.115, subdivision (b), permit the service of notices on the defendant stating the amounts of the plaintiff’s compensatory and punitive damages. Under . . . section 580,

⁶ Section 425.11 provides in part: “(b) When a complaint is filed in an action to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff, who shall serve a responsive statement as to the damages within 15 days. . . . [¶] (c) If no request is made for the statement referred to in subdivision (b), the plaintiff shall serve the statement on the defendant before a default may be taken.”

subdivision (a), those notices establish the maximum amount of a default judgment against the defendant, if properly served before the entry of default. [Citation.]”

Thus, a statement of damages under section 425.11 is used only in a personal injury or wrongful death case. (See *Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1137.) In other cases, “a prayer for damages according to proof passes muster under section 580 only if a specific amount of damages is alleged in the body of the complaint. [Citation.]” (*Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, 494, fn. omitted (*Becker*).

In the present case, John was not required to serve Daniel with a statement of damages under section 425.11 prior to obtaining Daniel’s default, since, as stated in *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1302 (*Sporn*), “the complaint, which was not limited to personal injuries and did not claim wrongful death, expressly apprised defendant of the amount demanded. A statement of damages would have been superfluous and was not required under these circumstances.”

The decisions on which Daniel relies, including *Twine v. Compton Supermarket* (1986) 179 Cal.App.3d 514 and *Petty v. Manpower, Inc.* (1979) 94 Cal.App.3d 794, do not support his contention that John was required to serve a section 425.11 statement of damages, since both decisions concern default judgments in personal injury cases and are therefore inapplicable. As we will discuss, the default judgment here did not include an award of compensatory damages for personal injury; instead, the default judgment was based upon the money damages claimed for financial elder abuse and conversion.

2. Excessive Judgment

Daniel generally contends that the amount of the default judgment “greatly exceeded” the amount of damages demanded in the second amended complaint and therefore the default judgment cannot stand. Daniel does not raise any issues as to the awards of attorney’s fees, prejudgment and postjudgment interest, or the other costs included in the default judgment.

John responds that the allegations in the body of the second amended complaint included specific dollar allegations of the amounts that Daniel misappropriated from Kay in the total amount of \$1,610,853, and Daniel therefore had notice of his potential exposure to a judgment in excess of \$1.6 million. John also asserts that Daniel had notice of his potential exposure due to Daniel's own knowledge of the dollar amounts of the misappropriated funds and the value of the stolen emerald ring.

The California Supreme Court has "long interpreted section 580 in accordance with its plain language. Section 580 . . . means what it says and says what it means: that a plaintiff cannot be granted more relief than is asked for in the complaint." (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166.) Thus, "a default judgment greater than the amount specifically demanded is void as beyond the court's jurisdiction. [Citations.]" (*Greenup, supra*, 42 Cal.3d at p. 826.) For that reason, "a prayer for damages according to proof passes muster under section 580 only if a specific amount of damages is alleged in the body of the complaint. [Citation.]" (*Becker, supra*, 27 Cal.3d at p. 494, fn. omitted; see *People ex rel. Lockyer v. Brar* (2005) 134 Cal.App.4th 659, 667 (*Brar*) [allegations in body of complaint of damages sought is sufficient]; *Finney v. Gomez* (2003) 111 Cal.App.4th 527, 536 (*Finney*) [notice provided to the extent a specific amount of damages was alleged in the complaint]; *National Diversified Services, Inc. v. Bernstein* (1985) 168 Cal.App.3d 410, 417-418 (*National*) [same].)

In this case, the April 17, 2013 default judgment in the total amount of \$1,624,125.07 was comprised of \$851,296 in damages; \$727,412.67 in prejudgment interest; \$43,868.75 in attorney's fees; and \$1,547.65 in costs. Daniel's contention that the default judgment was excessive rests on his claim that John failed to serve a statement of damages under section 425.11. According to Daniel, the absence of a statement of damages means that "John failed to give Daniel sufficient notice of damages sought in excess of zero dollars. Consequently, entry of the Default Judgment in any amount over zero dollars was in excess of the court's jurisdiction." We disagree. The record reflects

that the trial court based the amount of the default judgment on “the figures requested for the Cambodian transaction, the Galinda [*sic*] loan, the other gifts, and the value at \$200,000.00 for the emerald ring, attorney fees of \$43,868.75, plus interest as calculated based on the judgment.” Since the damages in this case were implicitly awarded for financial elder abuse and conversion, not personal injury or wrongful death, section 425.11 does not apply and a statement of damages was not required. (See *Sporn, supra*, 126 Cal.App.4th at p. 1302.)

Further, Daniel does not dispute John’s contention that the allegations in the body of the second amended complaint claimed specific money damages in the total amount of \$1,610,853 resulting from Daniel’s misappropriation of Kay’s funds and her emerald ring. Since \$1,610,853, the amount of damages stated in the second amended complaint, exceeds \$851,296, the amount of damages awarded in the default judgment, the amount of damages awarded in the default judgment is not excessive. (See *Becker, supra*, 27 Cal.3d at p. 494.) As we have noted, it is well established that where, as here, the complaint’s prayer asks only for damages according to proof, notice sufficient for a default judgment is provided where a specific amount of damages is alleged in the body of the complaint. (See *ibid.*; *Brar, supra*, 134 Cal.App.4th at p. 667; *Finney, supra*, 111 Cal.App.4th at p. 536; *National, supra*, 168 Cal.App.3d at pp. 417-418.) Moreover, the second amended complaint provided express notice that John sought an award of attorney’s fees and costs by including a demand for statutory attorney’s fees and for costs in the prayer. (See *Becker, supra*, at p. 495 [attorney’s fee award in default judgment reversed because the complaint did not pray for attorney’s fees].)

For these reasons, we find no merit in Daniel’s contentions on appeal and we will affirm the default judgment.

IV. DISPOSITION

The April 17, 2103 judgment is affirmed. Costs on appeal are awarded to respondent.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

MÁRQUEZ, J.