

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 6

Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: July 3, 2023 TIME: 9:00 A.M.

TO REQUEST ORAL ARGUMENT: Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
 - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

IN PERSON HEARINGS: The Court strongly prefers in person appearances for contested law and motion matters. We are open and look forward to seeing you in person again.

VIRTUAL HEARINGS: Whenever feasible, please use video when appearing for your hearing virtually through Microsoft Teams. To attend virtually, click or copy and paste this link into your internet browser, and scroll down to Department 6: https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO HAVE YOUR HEARING REPORTED: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here: https://www.sccourt.org/general_info/court_reporters.shtml

Case Name: *Huong Burrow et. al. v. Long Nguyen et. al.*
Case No.: 21CV382438

Before the Court is Defendants' Motion for New Trial. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

The Court first finds Defendants may properly seek to vacate the judgment and move for a new trial even though the clerk entered default against them. The authorities are clear that the Court may grant a new trial to a defaulting defendant where the amount of damages are excessive or where the Court finds errors of law. (See *Misic v. Segars* (1995) 37 Cal. App. 4th 1149 (defaulting defendant may move for new trial under certain circumstances); *Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal. 5th 333 (defaulting defendant has standing to move for new trial based on errors of law).) Indeed, *Siry* holds that to find otherwise would unnecessarily burden appellate courts with issues that should first be resolved at the trial court.

A default judgment for an amount greater than that demanded in the complaint, statement of damages or statement of punitive damages exceeds the court's jurisdiction and is void. (Code of Civ. Proc. §§580(a), 585(a)-(c); *Sass v. Cohen* (2020) 10 Cal.5th 861, 863.) Here, Plaintiffs concede the

judgment for \$2 million in punitive damages against Long Thanh Nguyen exceeds the amount of punitive damages in their Section 425.115 Notice. Thus, even if that Notice was properly served, the Court has grounds to set aside the judgment and order a new trial for Long Thanh Nguyen on this basis alone. In fact, it may be an abuse of discretion for the Court not to do so. (See *Airs Aromatics, LLC v. CBL Data Recovery Technols., Inc.* (2018) 23 Cal.App.5th 1013, 1023.)

The Court must also vacate a default judgment where a defendant was not served with the summons in the manner prescribed by statute—even if the default judgment is valid on its face—because such a judgment is void. (*Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544.) An order denying relief to set aside a default judgment where there has been improper service is also void. (*Calvert v. Al Binali* 29 Cal.App. 5th 954, 955.)

Plaintiffs submit proofs of service for service of the underlying complaint and the amended complaint and punitive damages notice. Under Evidence code section 647, a registered process server's declaration of service establishes a presumption that the facts stated in the declaration are true. (*Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 750.) It is Defendants' burden to rebut this presumption with competent evidence.

Here, Defendants Long Nguyen, Joseph Nguyen, Jenny Nguyen, and Hai Thanh Nguyen submit declarations from themselves and others, including screen shots showing where they were on October 12, 2021 at various relevant times, that demonstrate they were not at the locations where the original complaint and summons were purportedly served on them on October 12, 2021. Defendants Joseph Nguyen, Jenny Nguyen and Hai Nguyen also submit evidence showing they did not live at the address where the amended complaint and notice of punitive damages were served on November 11, 2021. This evidence shifts the burden back to Plaintiff to demonstrate that service was effectuated. (*Summers v. McClanahan* (2006) 240 Cal.App.4th 403, 414-415.) However, Plaintiffs' sole response to this evidence is to point to the proofs of service. The Court does not find this to meet Plaintiffs' burden in response to Defendants' evidence challenging service. The Court was also unable to locate in the record a proof of service demonstrating service of the amended complaint on Long Nguyen.

Accordingly, Defendants' motion to set aside judgment and for new trial is GRANTED.