

B265753

IN THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION SEVEN

LEONARD NORMAN COHEN,
LC INVESTMENTS, LLC
Plaintiff and Respondent,

v.

KELLEY A. LYNCH
Defendant and Appellant

APPEAL FROM LOS ANGELES COUNTY SUPERIOR COURT
JUDGE ROBERT HESS • CASE No. BC338322

APPELLANTS' OPENING BRIEF

Kelley Lynch
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In Propria Persona

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, <u>Second</u> APPELLATE DISTRICT, DIVISION <u>Seven</u>		Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <u>Kelley Lynch</u> <u>1754 N. Van Ness Ave.</u> <u>Hollywood CA 90028</u> TELEPHONE NO.: <u>323.331.4850</u> FAX NO. (Optional): E-MAIL ADDRESS (Optional): <u>Kelley.Lynch@psa10@gmail.com</u> ATTORNEY FOR (Name): <u>Engelstein & Parsons, P.C.</u>		Superior Court Case Number:
APPELLANT/PETITIONER: <u>Kelley Lynch</u>		FOR COURT USE ONLY
RESPONDENT/REAL PARTY IN INTEREST: <u>Robert Cohen</u>		
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE		
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.		

1. This form is being submitted on behalf of the following party (name): _____

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
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(1)

(2)

(3)

(4)

(5)

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 15 June 2016Kelley Lynch

(TYPE OR PRINT NAME)

Kelley Lynch

(SIGNATURE OF PARTY OR ATTORNEY)

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Primus Auto. Fin. Servs., Inc. v. Batarse, 115 F.3d 644, 648 (9th Cir. 1997)

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Security Pac. Nat. Bank v. Lyon (1980) 165 Cal.Rptr. 95, 105 Cal.App.3d Supp. 8, 13)

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Strathvale Holdings v. E.B.H. (2005) 126 Cal.App. 4th 1241, 1249.

United States v. Throckmorton, 98 U.S. (8 Otto) 61, 25 L.Ed. 93

Universal Oil Products Co. v. Root Refining Co., 329 U.S. 575, 66 S.Ct. 1176, 90 L.Ed. 1447

Walker v. Superior Court (1991) 53 Cal.3d 257, 267, 279 Cal.Rptr. 576, 807 P.2d 418

CONSTITUTIONS

United States Constitution, Amendment I, Amendment XIV

California Constitution, Article VI, Section 1

STATUTES

California Family Code § 7643(a)

California Rules of Court, Rule 2.550(c)

California Welf. & Inst. Code § 827(a)(1); Cal. Civ. Code § 56.10.

STATEMENT OF THE CASE

In the present case, Respondents brought an entirely fraudulent, baseless lawsuit against Kelley Lynch. CT 62. The Complaint and default judgment obtained were ultimately transmitted to IRS (CT 936), used to file and amend Cohen's personal federal and state tax returns, obtain fraudulent tax refunds, and tamper with the administration of justice in a case before the U.S. District Court of Colorado (CT 932, 1026) and elsewhere. Cohen's Complaint against Lynch was filed with LA Superior Court on August 15, 2005. It fraudulently alleged breaches of fiduciary duty, common law fraud, breach of contract, accounting, conversion, imposition of constructive trust, injunctive relief, and professional negligence. On May 15, 2006, a fraudulent default judgment was entered against Lynch. CT 197. The default judgment was supported by perjured declarations. The proof of service with respect to the summons and complaint, which falsely alleged that service was effected upon Lynch, was evidence of extrinsic fraud. CT 149 (Supplemental Transcript, Volume II or II). Lynch was not served the summons and complaint or legally notified of the entry of default judgment. The Complaint and default judgment were ultimately used to defend Leonard Cohen with respect to allegations that he committed criminal tax fraud.

On August 9, 2013, after relocating to Los Angeles, Lynch diligently filed a motion to vacate the fraudulently obtained default judgment. CT 001 (Supplemental Transcript, Volume I of II). The judgment [CT 225, Supplemental Transcript Volume III of II], which unlawfully transferred the property of suspended corporations (under section 23302 of the Revenue and Taxation Code) to Leonard Cohen and his wholly owned LLC, wrongfully converted Lynch's property and corporate property to Leonard Cohen. On January 17, 2014, Lynch's motion to vacate was denied. CT 1149

Although ordered by the Court to do so, Plaintiffs failed to file an order for the Court to execute and enter into the record. CT 5. On March 17, 2015, due to the use of extensive fraudulent misrepresentations and perjured statements in their response documents – including those specifically related to service of process - Lynch filed a motion for terminating sanctions (fraud upon the court) and asked the court to vacate the January 17, 2014 decision procured through fraud, issue terminating and/or other sanctions, and refer

Leonard Cohen and his legal representatives, Michelle Rice and Robert Kory, to the District Attorney for perjury prosecutions (CT 985) and the California State Bar for disciplinary action. CT 6 – 984 (Volumes I through IV).

On October 11, 2005, Leonard Cohen personally filed a Complaint against Lynch in related writ of possession case no. BC341120. The sealing order at issue herein relied on arguments related to that case. On October 13, 2005, a writ of possession was issued in Cohen's favor with respect to certain property he had abandoned at Lynch's home. On May 9, 2006, default judgment was entered against Lynch. Lynch was unaware of this case or entry of default against her. In or around April 2010, this case was brought to Lynch's attention by Judge Ken Freeman's court reporter. The writ of possession was limited to Leonard Cohen's personal property and the legal pleadings and declarations submitted to the court are replete with fraudulent misrepresentations and perjured statements. Nevertheless, Los Angeles Sheriff's Department wrongfully seized corporate books and records, corporate tax and financial documents, Kelley Lynch's personal property, Phil Spector's master tape, Elton John's master tape (related to a tribute album Lynch executive produced), Machat & Machat files, and other property not addressed in the writ or named as parties to the Complaint. RT 607. The corporations themselves were not mentioned in the writ of possession documents or named as parties to the lawsuit. At the time Cohen filed this particular Complaint, his legal representatives understood that Lynch intended to ship the evidence at issue to Internal Revenue Service in Washington, DC. This was well documented, including with Cohen's legal representatives copied on emails to IRS Commissioner's Staff at the time, yet Cohen argued in his pleadings that he believed Lynch would destroy or sell property allegedly belonging to him. In reality, Lynch responded to Scott Edelman's letter with respect to Cohen's abandoned property but he – as was and is the custom of Cohen and his legal representatives – refused to speak with her and hung up on her.

On or about April 15, 2005, Lynch had reported allegations that Cohen committed criminal tax fraud to IRS and used certain corporations to evade and/or defeat income taxes. On March 1, 2015, Lynch submitted a declaration, and extensive evidence, to IRS. CT 74.

She ultimately decided to submit that declaration to the Court with her motion for terminating sanctions as it extensively addressed a great deal of the fraud transmitted to Internal Revenue Service, and other tax authorities, via pleadings and declarations submitted to Los Angeles Superior Court in Case No. BC338322. On May 29, 2015, Leonard Cohen and LC Investments, LLC filed an ex parte order to seal corporate property, property belonging to Lynch, evidence submitted to the U.S. District Court in Colorado, evidence submitted to the U.S. District Court for the Southern District of New York, documents available for purchase on Pacer, and other evidence. On May 29, 2015, Los Angeles Superior Court granted the ex parte application to seal portions of the court record. CT 1, 36, 150

On July 28, 2015, Kelley Lynch filed appeals with respect to the denial of her motion for terminating sanctions (fraud upon the court) and the order sealing portions of the court record. The appeals were consolidated. CT 1371, 1373.

STATEMENT OF APPEALABILITY

This appeal is from the Los Angeles Superior Court June 23, 2015 denial of Lynch's motion for terminating sanctions (fraud upon the court) and the Los Angeles Superior Court May 29, 2015 ex parte sealing of portions of the court record. The appeals are authorized by Code of Civil Procedure sections 904.1(a)(3)-(13) and 904.1(a)(2), respectively.

The Court's decision with respect to the motion for terminating sanctions (fraud upon the court) is void because the trial court lacked jurisdiction to enter it. See, e.g., Carlson v. Eassa (1997) 54 Cal.App.4th 684, 691 [proper to appeal from denial of a motion to vacate if the underlying judgment is void because the denial gives effect to a void judgment]. "A judgment is void on its face if the court which rendered the judgment lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant." County of Ventura v. Tillett (1982) 133 Cal.App.3d 105, 110. Furthermore, the issues raised in Lynch's fraud upon the court motion differed from the motion to vacate although the facts with respect to the extrinsic fraud related to the proof of service remained the same. See Rooney v. Vermont Investment Corp. (1973) 10. Cal.3d 351, 359.

A state trial court's decision regarding a motion to seal is appealable as a collateral order. Mercury Interactive Corp. v. Klein, 158 Cal. App. 4th 60, 77 (2007) (a sealing order is appealable "because it is a 'final determination of a collateral matter in that it directs the performance of an act—i.e., unsealing—against defendants'"); In re Providian Credit Card Cases, 96 Cal. App. 4th 292, 297 n.2 (2002).

ARGUMENT

Appellant contends denial of the motion seeking terminating sanctions (fraud upon the court) was an abuse of discretion. The motion was not time-barred; the original judgment and all decisions emanating therefrom were void due to defects in service of the summons and complaint; the Court lacked jurisdiction over Lynch; and extrinsic fraud – as well as extensive intrinsic fraud presented in documents responding to Lynch's motion to vacate - was used to perpetrate a fraud upon the court. The January 17, 2014 decision of the Court's was procured by fraud. These issues violated Kelley Lynch's right to due process. Appellant argues that the court has the inherent equitable power to vacate a judgment (decision) that has been obtained through fraud on the court. Additionally, the court mischaracterized Lynch's motion for terminating sanctions (fraud upon the court) as a motion for reconsider. The Appellate Division consolidated the two appeals. This consolidated appeal also addresses the improper sealing of portions of the court record related to evidence submitted with the motion for terminating sanctions (fraud upon the court).

Motion for Terminating Sanctions Based on the Ground of Fraud

A motion to vacate the judgment on the ground of fraud is generally authorized. The California Supreme Court has instructed that "under certain circumstances a court, sitting in equity, can set aside or modify a valid final judgment." Kulchar v. Kulchar (1969) 1 Cal.3d 467, 470. "A final judgment may be set aside by a court if it has been established that extrinsic factors have prevented one party to the litigation from presenting his or her case. The grounds for such equitable relief are commonly stated as being extrinsic fraud or mistake. However, those terms are given a broad meaning and tend to encompass almost

any set of extrinsic circumstances which deprive a party of a fair adversary hearing.” In re Marriage of Park (1980) 27 Cal.3d 337, 342.

A Court’s Inherent Powers

The doctrine of inherent judicial power—that is, the existence of power vested in courts by their creation, and independent of legislative grant—developed early in English common law ... From their creation by article VI, section 1, of the California Constitution, California courts received broad inherent power “not confined by or dependent on statute.” Walker v. Superior Court (1991) 53 Cal.3d 257, 267, 279 Cal.Rptr. 576, 807 P.2d 418; □see also Civil Code section 22.2; Ferguson v. Keays (1971) 4 Cal.3d 649, 654-655, 94 Cal.Rptr. 398, 484 P.2d 70 ... This inherent power includes “fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation.” Rutherford v. Owens-Illinois, Inc. (1997) 16 Cal.4th 953, 967, 67 Cal.Rptr.2d 16, 941 P.2d 1203. It has been held that California courts have inherent authority to impose evidentiary sanctions as a remedy for litigation misconduct. See Peat, Marwick, Mitchell & Co. v. Superior Court (1988) 200 Cal.App.3d 272, 286-291, 245 Cal.Rptr. 873. These powers are “not confined by or dependent on statute” [Walker v. Superior Court] and include the power to “fashion procedures and remedies as necessary to protect litigants’ rights.” See Stephen Slesinger, Inc. v. Walt Disney Co., 155 Cal. App. 4th 736 (2007).

Redressing Litigation Misconduct & Terminating Sanctions

The court exercised its inherent power to sanction Peat, Marwick for conduct that the court deemed an “abuse of the litigation process” and to “preserve the integrity of the judicial process.” See generally *id.* at 275 - 289. The Peat, Marwick court recognized that inherent powers “have been flexibly applied in response to the many vagaries of the litigation process” and reasoned that there is no “intrinsic limitation” that would justify restricting their application to redressing only specific types of litigation abuse. *Id.* at 287-89. The Court concluded that when a party seeks to take unfair advantage or “the integrity of the judicial system” is at risk, judges are empowered to act. *Id.* at 289.

Stephen Slesinger, Inc. v. Walt Disney Co. directly tackled the question of whether the arsenal of inherent powers includes the authority to terminate a case for litigation

misconduct. The trial court imposed a terminating sanction against Stephen Slesinger, Inc., based on its finding that Slesinger engaged in severe and irremediable litigation misconduct. Id. at 755-56. In granting the terminating sanction, the trial court made clear that it was “exercising its inherent powers to preserve and protect the integrity of the judicial process.” Id. At 756. The Slesinger court concluded that California courts necessarily must have the power to dismiss cases for pervasive litigation abuse.

The federal courts also recognize a court’s inherent power to dismiss. For example, the Ninth Circuit has stated that federal courts “have inherent power to dismiss an action when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice.” Anheuser-Busch, Inc. v. Natural Beverage Distribs., 69 F. 3d 337, 348 (9th Cir. 1995).

Federal courts have held that courts have the inherent power to issue sanctions in order to “protect the due and orderly administration of justice and maintain the authority and dignity of the court.” Primus Auto. Fin. Servs., Inc. v. Batarse, 115 F.3d 644, 648 (9th Cir. 1997) (quoting Cooke v. United States, 267 U.S. 517, 539, 45 S. Ct. 390, 395-96, 69 L. Ed. 767 (1925)). The Court has an obligation to ensure that parties do not make a mockery of the justice system. This duty does not end with the entry of judgment. As the U.S. Supreme Court has held, “The imposition of sanctions under the bad-faith exception depends not on which party wins the lawsuit, but on how the parties conduct themselves during the litigation.” Chambers v. Nasco, Inc., 501 U.S. 32 (1991).

According to the U.S. Supreme Court: “The most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.” NHL v. Metropolitan Hockey Club, 427 U.S. 639, 643 (1976). The U.S. Supreme Court has made clear that sanctions may be awarded after the termination of a suit. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395-96 (1990).

Inherent Power Sanctions Are Appropriate for Fraud Practiced Upon the Court

Inherent power sanctions are also particularly appropriate for fraud practiced upon the court. See *Chambers*, 501 U.S. at 54. Fraud upon the court “includes both attempts to subvert the integrity of the court and fraud by an officer of the court” and “must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision.” *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995). In *Pumphrey*, for example, the court found that the parties in question had “engaged in a scheme to defraud the jury, the court, and [their opponent], through the use of misleading, inaccurate and incomplete responses to discovery requests, the presentation of fraudulent evidence, and the failure to correct the false impression created by [a witness’ testimony].” *Id.* The Ninth Circuit held that “the end result of the scheme was to undermine the judicial process, which amounts to fraud upon the court.” *Id.* See also *Combs v. Rockwell Int’l Corp.*, 927 F.2d 486 (9th Cir. 1991) (district court did not err in dismissing case as sanction for falsifying a deposition).

Dismissal for Fraud Upon the Court

The Supreme Court has described fraud on the court as “a wrong against the institutions set up to protect and safeguard the public.” *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). Courts are empowered to deal harshly with plaintiffs who act in underhanded ways to improperly influence the judicial system. Sufficient flexibility exists to respond to whatever scheme a misbehaving litigant might concoct, whether it involves perjury, fabrication of evidence, destruction of evidence, suppression of evidence, witness tampering, or a combination of these.

“It is a well-recognized principle that a court of general jurisdiction has the inherent power to set aside a judgment obtained through fraud practiced upon the court. *McKeever v. Superior Court*, 85 Cal. App. 381 [259 P. 373]; *McGuinness v. Superior Court*, 196 Cal. 222 [237 P. 42, 45, 40 A.L.R. 1110].) “There can be no question as to the inherent power of the court to set aside the final decree if obtained by fraud.” *Miller v. Miller*, 26 Cal. 2d 119, 121 [156 P.2d 931].

It is beyond question that a court may investigate a question as to whether there was fraud in the procurement of a judgment. *Universal Oil Products Co. v. Root Refining Co.*,

329 U.S. 575, 66 S.Ct. 1176, 90 L.Ed. 1447. The inherent power of a court to investigate whether a judgment was obtained by fraud is beyond question. This is to be done in adversary proceedings as in the case before the Court. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*; *Sprague v. Taconic National Bank*, 59 S.Ct. 777, 83 L.Ed. 1184; and *United States v. Throckmorton*, 98 U.S. (8 Otto) 61, 25 L.Ed. 93. Fraud on the court is fraud which is directed to the judicial machinery itself. It is thus fraud where the impartial functions of the court have been directly corrupted. The basic decisions of the Supreme Court with respect to judgments procured through fraud are *Throckmorton*, *Hazel-Atlas*, and *Universal Oil Products*. These cases considered the basic issues involved in setting aside judgment and demonstrate, with *Marshall v. Holmes*, 141 U.S. 589, 12 Sup. Ct. 62, the nature of the fraud and the proof required for relief. The United States Supreme Court has also addressed the inherent power of courts to vacate judgments on basis of fraud upon the court. See *Chambers v. NASCO, Inc.* The *Hazel-Atlas* opinion did not refer to the distinction between extrinsic or intrinsic fraud. Importantly, the U.S. Supreme Court concluded that the case was about “far more than an injury to a single litigant,” but rather it was about “a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.” *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*

Under Ninth Circuit authority, motions addressing fraud upon the court are granted if the defendants can, by clear and convincing evidence, establish “that species of fraud which does or attempts to defile the court itself, or is a fraud perpetuated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.” *In re Levander*, 180 F.3d 1114 (9th Cir. 1999) (finding that perjury and nondisclosure that defiled the bankruptcy court amounted to a fraud on the court) (quoting 7 James Wm. Moore et al., *Moore’s Federal Practice* ¶ 60.33, at 515 (2d ed. 1978)). A party can be found to have engaged in a scheme to defraud the court and “improperly influence” its decisions through “the use of misleading, inaccurate, and incomplete responses to discovery requests, the presentation of fraudulent evidence, and the failure to correct false impressions created by [witness] testimony.” *Pumphrey v. K.W.*

Thompson Tool Co., 62 F.3d 1128, 1132 (9th Cir. 1995) (finding that defendant committed a fraud on the court by failing to disclose the existence of favorable evidence to the plaintiff and other violations of the rules of discovery and professional responsibility). The Ninth Circuit has faithfully followed the Supreme Court's mandate that misconduct resulting in a fraud on the court shall not be tolerated. It has recognized that such fraud "corrupts the legitimacy of the truth-seeking process" and "defiles the sanctity of the court and the confidence of all future litigants." Dixon v. C.I.R., 316 F.3d 1041, 1046-47 (9th Cir. 2003) (finding of fraud on the court).

Fraud upon the court causes grave damage to the integrity of the judicial process.

A Fraud Upon the Court Motion Is Not A Motion to Reconsider

This court has previously distinguished between a fraud upon the court motion and motion to reconsider. See Jordan v. O'Connor Hospital CA6, H038107 (Cal. Ct. App. 2013)[unpublished]. The court erred when it mischaracterized Lynch's motion for terminating sanctions as a motion to reconsider. See Request for Judicial Notice.

Lack of Jurisdiction

Appellant's motion argued that the default judgment was void because she was never properly served with the summons and complaint and hence any further decisions emanation from that judgment were void. See Caldwell v. Coppola (1990) 219 Cal.App.3d 859, 863 ["Proper service is a requirement for a court's exercise of personal jurisdiction," "An order entered without personal jurisdiction over the defendant is void.] The proof of service alleged that personal service was attempted and appellant was served via substitute service. M. Lowenstein & Sons, Inc. v. Superior Court (1978) 80 Cal.App.3d 762, 770.

A motion to set aside a judgment may be brought at any time despite a statutory time bar where a party is able to establish that default was obtained through extrinsic fraud. In re Marriage of Melton (1994) 28 Cal.App.4th 931, 937. "Extrinsic fraud occurs when a party is deprived of the opportunity to present a claim or defense to the court as a result of being kept in ignorance or in some other manner being fraudulently prevented by the opposing party from fully participating in the proceeding." County of San Diego v. Gorham (2010) 186 Cal.App.4th 1215, 1228-1229.

"Chaos would result if the legal community could not depend on the truthfulness of declarations of service of process. Public policy requires that it be regarded as serious, with consequences sufficiently adverse to act as deterrence Service of process is the means by which a court having jurisdiction over the subject matter asserts its jurisdiction over the party and brings home to him reasonable notice of the action. It is an indispensable element of due process of law." Kappel v. Bartlett (1988) 200 Cal. App.3d 1457, 1464, 246 Cal. Rptr. 815 (citing Judicial Council of Cal. com., 14 West's Ann. Code Civ. Proc. (1973) ed.) 413.10, p. 541, and 2 Witkin, Cal. Procedure (3d ed. 1985) Jurisdiction, 84, p. 454). A false, fraudulent, or perjurious declaration of service of process misuses "the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice." Meadows v. Bakersfield Savings & Loan Assoc., (1967) 250 Cal. App.2d 749, 753, 59 Cal. Rptr. 34, 37.

On January 4, 2014, Leonard Cohen submitted a declaration to the Court fraudulently arguing that Lynch – not the alleged Jane Doe named in the proof of service – was the individual served the summons and complaint. Cohen's declaration included photographs of Lynch allegedly from the early 2000s and possibly 2006. CT 292A, Supplemental Transcript, Volume II of II. Michelle Rice, Cohen's litigation counsel, also argued that Lynch was the individual who was served and falsely informed the Court that Lynch had previously attempted to evade service in another related case when in fact Lynch expressed her concerns about attempts to obstruct justice and cover up criminal tax fraud with the court itself in that matter. CT 203. Robert Kory's declaration argued federal tax matters. CT 259. Lynch submitted approximately six (6) declarations rebutting the allegations that she resembled the individual in the proof of service, was in fact the Jane Doe, had a female co-occupant, or was served and/or subserved. Lynch's declarations further addressed the intrinsic fraud with respect to other allegations but addressing extrinsic and intrinsic fraud are not mutually exclusive and Lynch did request the Court to refer the case to the District Attorney for perjury prosecutions. Leonard Cohen's own testimony (March 23, 2012 hearing) proved perjury with respect to the allegations of misappropriation. The "gist of Cohen's complaint against Lynch was that she had misappropriated well in

excess of the 15% management compensation ..." CT 131, 384. Perjury is generally considered intrinsic fraud. It is relevant to note that Lynch was not permitted to present witnesses, or cross-examine witnesses, at the hearing on the motion to vacate or with respect to the motion for terminating sanctions. See Declaration of Joan Lynch Declaration CT 184-255, John Rutger Penick CT 257-260, Paulette Brandt CT 262-274, Clea Surkhang (Westphal) CT 276-277, Palden Ronge CT 279-281, and Daniel J. Meade CT 283 – 287, and CT 1215 - 1345. It is abundantly clear that absent the use of fraud to obtain court decisions, the outcome of the January 17, 2014 hearing would have been different. The fraud prejudiced and harmed Lynch. It prevented her from fully and fairly presenting her case and defense. It also significantly tainted the proceedings.

Void Judgment

The default judgment in this case is void as a matter of law due to the Court's lack of personal jurisdiction arising from the failure to serve Lynch the summons and complaint.

"A court can lack fundamental authority over the subject matter, question presented, or party, making its judgment void, or it can merely act in excess of its jurisdiction or defined power, rendering the judgment voidable." In re Marriage of Goddard (2004) 33 Cal.4th 49, 56. A judgment is void if the court lacked jurisdiction over the subject matter or parties, for example, if the defendant was not validly served with summons. Neumann v. Melgar (2004) 121 Cal.App.4th 152, 164. A judgment void on its face because rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant, is subject to collateral attack at any time. See also County of Ventura v. Tillett (1982) 133 Cal.App.3d 105, 110, 183 Cal.Rptr. 741; disapproved of on other grounds by County of Los Angeles v. Soto (1984) 35 Cal.3d 483, 198 Cal.Rptr. 779, 674 P.2d 750; Security Pac. Nat. Bank v. Lyon (1980) 165 Cal.Rptr. 95, 105 Cal.App.3d Supp. 8, 13.) An attack on a void judgment may also be direct, since a court has inherent power, apart from statute, to correct its records by vacating a judgment which is void on its face, for such a judgment is a nullity and may be ignored. Olivera v. Grace (1942) 19 Cal.2d 570, 574, 122 P.2d 564.

A California Court of Appeal has ruled that lack of personal jurisdiction renders a default judgment void: "Lack of personal jurisdiction renders a default judgment void, so that it may be vacated at any time." Strathvale Holdings v. E.B.H. (2005) 126 Cal.App. 4th 1241, 1249.

The trial court's denial of Lynch's motion for terminating sanctions is void itself as it gives effect to a void judgment. County of Ventura v. Tillett. A "final" but void order can have no preclusive effect. "A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one." Bennett v. Wilson (1898) 122 Cal. 509, 513-514, 55 P. 390.

The United States Supreme Court has ruled that a void judgment must be set aside regardless of the merits of the underlying lawsuit. This was in a case where there was never a valid service of summons: "Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." Peralta v. Heights Medical Center, Inc. (1988) 485 US 80, 86-87, 108 S.Ct. 896, 900.

Due Process Violations

Lynch's right to due process and a fair trial were violated due to the defects in service, lack of jurisdiction, extrinsic fraud, and extensive litigation misconduct. Due process requires notice and a meaningful opportunity to present evidence in regards to the issues. Rea v. Workers' Comp. Appeals Bd. (2005) 127 Cal.App.4th 625, 643.

The Fourteenth Amendment to the Constitution bars states from depriving "any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1. "Service of summons is the procedure by which a court having venue and jurisdiction of the subject matter of the suit asserts jurisdiction over the person of the party served." Omni Capital Intern., Ltd. v. Rudolf Wolff & Co., Ltd. 484 U.S. 97, 104, 108 S.Ct. 404, 409 (U.S.1987). Any such judgment rendered without jurisdiction would be deemed void. It is long established that personal jurisdiction by a court over the parties is a prerequisite to

the adjudication of disputes brought before it. Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 102 S.Ct. 2099 (U.S. 1982). The underlying rationale for personal service of process as a prerequisite to the valid exercise of a judicial tribunal over a defendant finds its source in the Due Process clause of the 14th Amendment. This rationale, most often characterized as “notice and opportunity to be heard.” was discussed by the U.S. Supreme Court in a 1950 decision: “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co. 339 U.S. 306, 314, 70 S.Ct. 652, 657 (U.S. 1950).

Sealing of Portions of Court Record

The First Amendment to the United States Constitution and the common law provide a presumptive right of public and press access to civil court proceedings and documents. NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal. 4th 1187, 1208 & n.25; 1211 n.27, 1218-19 (1999). These rights do not disappear merely because the proceedings involve wealthy, powerful public figures.

The presumptive openness that applies to civil court proceedings and records includes disputes involving personal relationships – as in the Eastwood/Locke trial in NBC Subsidiary – as well as those involving personal financial matters, as is the case at hand. Despite this well established right of public access, respondent Leonard Cohen has asked the Court to issue an extensive sealing order to remove from public scrutiny records that were available in the Court files for approximately three (3) months. Many of the documents under seal are presently available for purchase through Pacer; were attached unsealed as evidence in a case before the U.S. District Court, District of Colorado (CT 622, CT 625, 631,); were submitted as evidence to the Southern District of New York (CT 514, 530, 534, 709) by respondent himself; available through the State of Kentucky’s website (CT 654, 678), are evidence of potentially unlawful conduct; and/or belong to Kelley Lynch (CT 856, 881)

and/or the corporations themselves. These documents are most certainly not Leonard Cohen's personal property.

Leonard Cohen, a public figure, relied on arguments related to attorney client privilege (CT 1); the related writ of possession case (BC341120) which unlawfully authorized the seizure of corporate property and property belonging to Lynch and others; Lynch's personal tax information and stock certificates (CT 697); and extremely general statements, without any evidence to support them, that he has an overriding interest in keeping these documents confidential. The proceedings that have involved Cohen and Lynch relied heavily on fraudulent allegations that corporate assets are Leonard Cohen's personal property. At no time did Lynch hold attorney/client privilege, all parties – including Cohen – understood this, and there was no discussion of or understanding with respect to the so-called confidential nature of the records.

A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record, accompanied by a memorandum and a declaration with facts sufficient to justify the sealing. Cal Rules of Ct 2.551(b)(1). These facts include (Cal Rules of Ct 2.550(d)(1)-(5)): an overriding interest that overcomes the First Amendment right of public access to the record; the overriding interest supports sealing the record; a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; the proposed sealing is narrowly tailored; and, no less restrictive means exist to achieve the overriding interest.

In California state court, unless "confidentiality is required by law, court records are presumed to be open." California Rules of Court ("CRC"), Rule 2.550(c). Under California law, only certain narrow categories of information, like certain family law or juvenile records, or medical information, are automatically excluded from the public record. *See, e.g.*, Cal. Fam. Code § 7643(a); Cal. Welf. & Inst. Code § 827(a)(1); Cal. Civ. Code § 56.10.

Respondent did not make a particularized showing of harm supported by evidence showing that prejudice would result if the information is disclosed. Harm to a reputation, embarrassment and blanket assertions of "confidential" business records are insufficient to overcome the presumption favoring the public right of access.

Courts have held that the personal finances of the rich and famous are not worthy of sealing (see In re Marriage of Burkle (2006) 135 CA4th 1045, 37 CR3d 805), but they have found overriding interests in instances such as the protection of minor victims of sex crimes from further trauma and embarrassment; the protection of witnesses from embarrassment or intimidation so extreme as to render them unable to testify; the protection of trade secrets; attorney-client communications; national security; binding contractual obligations not to disclose; and the anonymity of juvenile offenders in juvenile court. See also NBC Subsidiary, Inc. v Superior Court (1999) 20 C4th 1178, 87 CR2d 778.

Overriding Interest

Respondent has argued that he has an “overriding interest” in keeping the documents under seal but has failed to demonstrate a “substantial probability” that he would be prejudiced if the information was made public. In any event, the mere possibility of prejudice does not overcome the presumption of an open record and does not overcome the presumption that people should be free to speak about the details of their lives or address those relevant and material details in declarations submitted to the court.

Lynch is the individual who has been harmed by the sealing of these documents due to the fraudulent misrepresentations and perjured declarations used to obtain the fraudulent default judgment, court decisions procured through fraudulent means, fraudulent pleadings and other documents transmitted to Internal Revenue Service` and other tax authorities, and false and defamatory arguments advanced in the news media by Respondent, his lawyers, and publicists, and the media itself.

CONCLUSION

In view of the prejudicial nature of the errors addressed in this appeal, the errors should not be found harmless. Appellant respectfully requests that the Trial Court’s January 17, 2014 decision be reversed and the portions of the trial record that have been sealed be unsealed.

Dated: 15 June 2016

Respectfully submitted,


Kelley Lynch, in Propria Persona

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 5,701 words. In making this certification, I have relied on the word count of the computer program used to prepare the brief.



Kelley Lynch

PROOF OF SERVICE

IN THE MATTER OF LEONARD COHEN, ET AL. V. KELLEY LYNCH, ET AL.
Court of Appeal, Second Appellate District, Division One, Case No. B265753
Los Angeles Superior Court, Case No. BC338322 (Judge Robert Hess)

I, Paulette Brandt, declare as follows: At the time of service, I was over 18 years of age and not a party to this action. I am a resident of the County of Los Angeles, State of California. My address is 1754 N. Van Ness Avenue, Los Angeles, California 90028.

On June 15, 2016, I served true copies of the following document described as APPELLANTS'

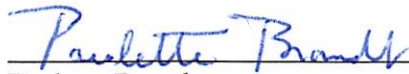
OPENING BRIEF

on the interested parties in this action as follows:

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[X] U. S. MAIL: Unless otherwise noted on the attached Service List, BY MAIL: I placed a true copy of the document in a sealed envelope, with postage fully prepaid, for each addressee named on the Service List and placed the envelope for collection and mailing with United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit or mailing affidavit. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on April 18, 2016.



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