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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES –CENTRAL DISTRICT**

16 LEONARD NORMAN COHEN, an individual;  
17 LEONARD COHEN INVESTMENTS, LLC, a  
18 Delaware Limited Liability Company,

19 Plaintiffs,

20 v.

21 KELLEY LYNCH, an individual; RICHARD A.  
22 WESTIN, an individual; DOES 1 through 50,  
23 inclusive,

24 Defendants.

CASE NO.: BC 338322  
RELATED CASE NO.: BC 341120  
*Assigned to the Hon. Robert L. Hess;*  
*Dept. 24*

**PLAINTIFFS' POINTS AND AUTHORITIES  
IN OPPOSITION TO DEFENDANT'S  
MOTION FOR TERMINATING AND  
OTHER SANCTIONS; OPPOSITION TO  
MOTION FOR DISMISSAL OF  
COMPLAINT**

Hearing Date: June 23, 2015  
Time: 8:30 A.M.  
Dept.: 24  
Complaint filed: August 15, 2005

25 TO THE COURT AND DEFENDANT AND MOVING PARTY IN PRO PER:

26 Plaintiffs Leonard Norman Cohen and Leonard Cohen Investments, LLC hereby oppose  
27 Defendant Kelley Lynch's Motion for Terminating and Other Sanctions filed with this Court on  
28 March 17, 2015 ("2015 Motion"). The Opposition is based on the attached Points and Authorities,  
the Court file in this matter, and upon such evidence as may be introduced at the hearing.

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3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

5 In an attempt to overcome the statutory time limits imposed for vacating a default  
6 judgment under California Code of Civil Procedure §473, Lynch first sought equitable relief from  
7 the May 15, 2006 Default Judgment in August 2013 on the grounds of extrinsic fraud with regard  
8 to an allegedly false proof of service of the summons and complaint (“2013 Motion”). At the  
9 January 17, 2014 hearing on Lynch’s 2013 Motion, the Court found that the service of the  
10 summons and complaint were proper, that Lynch had not demonstrated extrinsic fraud, and had  
11 not shown that she was entitled to relief on any equitable basis. Certified Hearing Transcript, p.  
12 14, lines 7-11 (“Transcript”). The Court also found Lynch’s 2013 Motion “not even colorably  
13 meritorious.” *Id.* at p. 18, lines 18-19. Lynch now launches a second motion, in a transparent  
14 attempt to avoid statutory strictures prohibiting repetitive motions, once again seeking equitable  
15 relief from the Default Judgment, but this time under a different theory of fraud. Lynch now  
16 claims to be entitled to equitable relief from the Default Judgment due to alleged misconduct on  
17 the part of Plaintiff and his attorneys, conduct which constitutes, according to Lynch, “fraud upon  
18 the Court.” (“2015 Motion”). In what can only be viewed as a desperate, all out, last ditch effort  
19 to seek equitable relief from the multi-million dollar Default Judgment entered against her nine  
20 years ago, Lynch now attempts to set aside the Default Judgment by falsely accusing Plaintiff and  
21 his attorneys of a wide array of litigation misconduct including: perjury, fraudulent  
22 misrepresentations in Plaintiffs’ Complaint, presenting fraudulent financial data to support the  
23 Default Judgment, and suppression and concealment of evidence.

24 Lynch’s requested relief should be denied in its entirety because: (i) Lynch’s 2015 Motion  
25 is procedurally defective and violates California Rules of Court and for these reasons alone should  
26 be denied in its entirety; (ii) Lynch’s 2015 Motion styled as one for “terminating sanctions” is an  
27 invalid postjudgment motion; (iii) despite its spurious title, Lynch’s 2015 Motion seeks an order  
28 for the same relief (an order vacating the Default Judgment) as her 2013 Motion, but does not  
meet the statutory requirements of Code of Civil Procedure §1008, which is the sole authority

1 allowing a party to renew a previously denied motion; (iv) Lynch's declaration filed in support of  
2 her 2015 Motion does not meet statutory requirements of §1008(b) in that she demonstrates no  
3 new or different facts, circumstances, or law and offers no excuse as to why she could not have  
4 advanced her alternate legal theories or presented these facts in her 2013 Motion and therefore she  
5 has not demonstrated the requisite diligence; (v) Lynch has not demonstrated fraud upon the Court  
6 or any misconduct on the part of Plaintiff or his attorneys as a basis for granting equitable relief;  
7 (vi) Lynch's own case authority, decided under California law and procedure, shows that a court  
8 sitting in equity will set aside a final judgment after the time to appeal has expired only upon a  
9 showing of extrinsic fraud; (vii) Lynch has not demonstrated extrinsic fraud, only claims of  
10 intrinsic fraud; (viii) Lynch's "Request for Clarification of Ambiguous Judgment" is procedurally  
11 defective and has no statutory or jurisdictional basis; (ix) Lynch shows no "clerical errors" in the  
12 Default Judgment requiring correction; and (x) the Default Judgment is clear and unambiguous.

13 **II. LYNCH'S MOTION IS PROCEDURALLY DEFECTIVE AND SHOULD BE**  
14 **DENIED IN ITS ENTIRETY**

15 **A. Lynch's Motion Styled as a "Motion for Terminating Sanctions" is Not a Valid**  
16 **Postjudgment Motion and Violates California Rules of Court**

17 The procedural posture of this case (postjudgment) precludes Lynch from filing a motion  
18 for terminating sanctions to dismiss Plaintiffs' underlying complaint without having first  
19 successfully vacated the May 15, 2006 Default Judgment. Lynch cites no statutory basis by which  
20 to move for terminating sanctions post judgment. Rather, Lynch argues that "Plaintiffs' conduct  
21 warrants dismissal sanctions under the Court's equitable inherent power." 2015 Motion, p. 7,  
22 lines 23-24. Lynch's case authority supporting her request for terminating sanctions all involve a  
23 court's ability to impose terminating sanctions **pre-judgment**. Lynch's cited cases, most of which  
24 were decided under federal law and procedure, which is inapplicable here, illustrate that pre-  
25 judgment terminating sanctions can include the dismissal of the complaint or the entry of a default  
26 judgment against the offending party for failure to comply with a court order, failing to comply  
27 with discovery requests or other discovery misconduct. 2015 Motion, pp. 7-9 and cases cited  
28 therein. While seeking "terminating sanctions" to dismiss Plaintiffs' underlying complaint, Lynch



1 also now seeks to file a Proposed Answer to Plaintiffs' Complaint that she failed to file with her  
2 2013 Motion (See 2015 Motion, Exh. 1; Transcript, p. 3, lines 23-25). Lynch's 2015 Motion is  
3 procedurally defective and violates California Rules of Court<sup>1</sup>, and for these reasons alone, merits  
4 outright denial without consideration.

5 **B. California Code of Civil Procedure §1008 is the Sole Authority Allowing a Party**  
6 **to Seek Reconsideration of an Order or to Renew a Previously Denied Motion**

7 After this Court denied Lynch's 2013 Motion to Vacate with prejudice, the only avenue  
8 available to Lynch to challenge that adverse ruling was to seek reconsideration under California  
9 Code of Civil Procedure Section 1008. Section 1008 is the sole authority allowing a party to seek  
10 reconsideration of an order or to renew a previously denied motion. CCP §1008(e). Section  
11 1008(e) provides in relevant part "This section specifies the court's jurisdiction with regard to  
12 applications for reconsideration of its orders and renewals of previous motions, and applies to all  
13 applications to reconsider any order of a judge or court, or for the renewal of a previous motion,  
14 whether the order deciding the previous matter or motion is interim or final. *No application to*  
15 *reconsider any order or for the renewal of a previous motion may be considered by any judge or*  
16 *court unless made according to this section."* CCP §1008 (e), emphasis supplied.

17 Subdivisions (c) and (e) of section 1008 were added in 1992, effective January 1, 1993. Le  
18 Francois v. Goel, 35 Cal 4<sup>th</sup> 1094, 1098 (Cal. 2005). Legislative findings state that the 1992  
19 amendment was intended to clarify that no motion to reconsider may be heard unless it is based on  
20 new or different facts, circumstances, or law, and that the Legislature found it desirable "to reduce  
21

22 <sup>1</sup> In violation of California Rules of Court 3.1113(b), Lynch's Memorandum provides no facts or analysis to support  
23 her legal arguments, forcing Plaintiffs and the Court to "cull" and "distill" support for her legal arguments from her  
24 voluminous filing totaling over 1,100 pages. Lynch's Memorandum also vastly exceeds page limitations imposed in  
25 Rule 3.1113(d) by impermissibly incorporating by reference not only the 66-page "Case History" filed with her 2013  
26 Motion, but also her new 109-page declaration, to which Lynch attached 90 exhibits. (See 2015 Motion,  
27 Memorandum, p. 1 wherein Lynch states that the facts in support of her legal arguments are "addressed more fully in  
28 the declarations and exhibits attached hereto and made a part hereof."). In violation of Rule 3.1113(m), Lynch's  
Proposed Order is attached to the Motion and is not a separate document lodged with the Court as required. In  
violation of Rule 3.1110(a) requiring that a "notice of motion must state in the opening paragraph the nature of the  
order being sought and the grounds for issuance of that order", Lynch seeks "clarification" of the Default Judgment  
and correction of purported "clerical errors." Memorandum, pp. 13-15. Her request for the Court's "clarification" of  
the Default Judgment is not listed in her Notice of Motion and violates Rule 3.1110(a). In violation of Rule 8.1115(a),  
Lynch cites to an unpublished Court of Appeal opinion in her Memorandum at p. 12. (Lazaro v. Lazaro).

1 the number of motions to reconsider and renewals of previous motions heard by judges in this  
2 state.” Id.

3 Subdivision (d) of Section 1008 provides in pertinent part that “a violation of this section  
4 may be punished as a contempt and with sanctions as allowed by Section 128.7.” CCP §1008(d);  
5 *See also; Taylor v. Varga*, 37 Cal. App. 4<sup>th</sup> 750, 761 (Cal. Ct. App. 2<sup>nd</sup> 1995)(sanctions award  
6 against lessees for renewed request to vacate a default under “section 1008 and alternatively,  
7 section 128.5” was based upon “duplicative requests previously denied, mis-citing of facts and  
8 law, and failure to follow applicable law.”)

9 **1. Lynch’s 2015 Motion Seeks an Order for the Same Relief [Vacating the Default**  
10 **Judgment] as Her 2013 Motion, Therefore, It Should be Construed as a Renewed**  
11 **Motion to Vacate Governed by the Statutory Requirements of CCP §1008(b).**

12 Lynch’s 2015 Motion seeks, in effect, the same relief as her 2013 Motion, equitable relief  
13 from the Default Judgment, albeit under different theories of fraud. In her Notice of Motion,  
14 Lynch seeks an order “dismissing [sic] the default judgment, and requesting terminating and other  
15 sanctions, on the grounds that the default judgment (and the January 17, 2014 denial of Lynch’s  
16 Motion to Vacate) was procured through fraud on the court (and other egregious misconduct).”  
17 Notice of Motion, p. 1. Lynch’s “[Proposed] Order on Motion For Terminating Sanctions” seeks  
18 an order: “1) That terminating sanctions are entered against Plaintiffs and this case, together with  
19 the May 15, 2006 default judgment is dismissed [sic] with prejudice.” (Proposed Order, Vol. IV).

20 Since “terminating sanctions” are not a form of relief available to Lynch due to the  
21 procedural posture of the case, Lynch, in her new motion, is essentially attempting a “second bite  
22 at the apple” in requesting an order to *vacate* the default judgment. *Taylor v. Varga*, 37 Cal. App.  
23 4<sup>th</sup> at 761 (denying second motion for relief from default brought under Section 585 as an  
24 inappropriate motion for reconsideration brought six months after denial of motion for relief from  
25 default under Section 473).

26 The nature of a motion is determined by nature of relief sought, not by the label attached to  
27 it. *California Correctional Peace Officers Assn. v. Virga*, 181 Cal. App. 4<sup>th</sup> 30, 43 (Cal. Ct. App.  
28 1<sup>st</sup> 2010)(“CCPOA”)(second motion for attorneys fees was a renewed motion governed by

1 §1008(b) because it sought the “same order” for identical relief in both motions (attorneys fees),  
2 albeit under different statutes; parties may not make “seriatim” motions seeking same relief); San  
3 Francisco v. Muller, 177 Cal. App. 2d 600, 603 (Cal. Ct. App. 1<sup>st</sup> 1960).

4 **2. CCP §1008 Bars Repetitive Motions, Unless the Moving Party Can Show New or**  
5 **Different Facts, Circumstances or Law That Could Not Have Been Presented**  
6 **Before**

7 Lynch’s 2015 Motion was filed fourteen months after the denial of her 2013 Motion to  
8 vacate the default on the basis of extrinsic fraud. The redundancies between Lynch’s 2015 Motion  
9 compared with the 2013 Motion make it clear that she seeks reconsideration of this Court’s  
10 adverse ruling on the 2013 Motion. Both the 2013 Motion and 2015 Motion seek equitable relief  
11 from the Default Judgment; both motions seek the dismissal of the underlying complaint; both  
12 motions argue that the Court did not obtain fundamental jurisdiction over her due to the alleged  
13 failure to effectuate service of the summons and complaint; both Motions allege fraud – the 2013  
14 Motion alleged “extrinsic fraud” due to the purported lack of service of the summons and  
15 complaint; the 2015 Motion alleges “fraud upon the court” as the basis of equitable relief.

16 In her 2015 Motion, as in her 2013 Motion, Lynch repeatedly reiterates her assertion that  
17 she was not personally served. Lynch “contends that she was not served the Summons &  
18 Complaint; continues to maintain that this Court lacks jurisdiction over her (including with respect  
19 to the denial of Defendant’s Motion to Vacate)” (2015 Motion, p. 1, lines 16-19.) In her  
20 Memorandum Lynch argues “no judgment of a court is due process of law, if rendered without  
21 jurisdiction in the court, or without notice to the party.” (2015 Motion, p. 13).

22 In Motion Exhibit HHHH, a 41-page document entitled “Schedules of Perjury”, a  
23 document which purports to list evidence of the alleged statements of Plaintiff and his attorneys  
24 which are purportedly false, Lynch, in response to the Declarations of Robert Kory, Michelle  
25 Rice, Scott Edelman, and Leonard Cohen submitted in support of Plaintiffs’ Opposition to  
26 Lynch’s 2013 Motion, repeatedly continues to challenge service. (2015 Motion, Exh. HHHH, ¶¶  
27 4, 7, 9, 14, 16, 18, 19, 21, 32, 72-74). In the same exhibit, Lynch also reiterates her assertion that  
28 the Default Judgment is void due to lack of service and “extrinsic fraud” in paragraphs 19 & 33.

1 In paragraph 19 on page 7, Lynch argues “the default judgment is evidence of theft...The  
2 judgment of the California Court is void due to the fact that I was not served the summons and  
3 complaint and the proof of service is evidence of extrinsic fraud.” And again in paragraph 33 on  
4 page 19: “The judgment is void and that means that Judge Babcock’s Order in Colorado is void as  
5 well.” (2015 Motion, Exh. HHHH, pp. 7, 19, Vol. IV.).

6 **3. Lynch’s Renewed Motion to Vacate Does Not Meet Statutory Requirements of**  
7 **CCP §1008(b) and Should be Denied**

8 Subdivision (b) of section 1008, as amended in 1992, provides, in relevant part: “A party  
9 who originally made an application for an order which was refused...may make a subsequent  
10 application for the same order upon new or different facts, circumstances, or law in which case it  
11 *shall be shown by affidavit what application was made before, when and to what judge, what*  
12 *order or decisions were made, and what new or different facts, circumstances, or law are claimed*  
13 *to be shown.” CCP §1008(b)(emphasis added). Case law has included an additional requirement*  
14 *that the party seeking to renew a previously denied motion based upon new or different facts*  
15 *“must provide a satisfactory explanation for the failure to produce the evidence at an earlier time.”*  
16 *New York Times Co. v. Superior Court, 135 Cal. App. 4<sup>th</sup> 206, 212 (Cal. Ct. App. 2<sup>nd</sup> 2005); See*  
17 *also CCPOA, 181 Cal. App. 4<sup>th</sup> at 46-47, fn. 15. The “diligence” requirement for “new facts” has*  
18 *also been applied to motions brought under different case law or legal theories. See, e.g. Baldwin*  
19 *v. Home Savings of America, 59 Cal. Ct. App. 4<sup>th</sup> 1192, 1200 (Cal. Ct. App. 1<sup>st</sup> 1997); Taylor v.*  
20 *Varga, 37 Cal. App. 4<sup>th</sup> at 761; CCPOA, 181 Cal. App. 4<sup>th</sup> at 48.*

21 If the predicate requirements set forth in CCP §1008 subdivision (b) are not met, the trial  
22 court lacks jurisdiction to consider the renewal motion. *See, e.g., Kerns v. CSE Ins. Group, 106*  
23 *Cal. App. 4<sup>th</sup> 368, 383-391 (Cal. Ct. App. 1<sup>st</sup> 2003). Code of Civil Procedure Section 1008 gives a*  
24 *court no authority when deciding whether to grant a motion to reconsider to “reevaluate” or*  
25 *“reanalyze” facts and authority already presented in the earlier motion. Crotty v. Trader, 50 Cal.*  
26 *App. 4<sup>th</sup> 765, 771 (Cal. Ct. App. 1<sup>st</sup> 1996). A court may grant reconsideration only if presented*  
27 *with “new or different facts, circumstances, or law.” Id.*

1 Section 1008 is designed to conserve the court's resources by constraining litigants who  
2 would attempt to bring the same motion over and over. Darling, Hall & Rae v. Kritt, 75 Cal. App.  
3 4<sup>th</sup> 1148, 1157 (Cal. Ct. App. 2<sup>nd</sup> 1999); *See also* Gilberd v. AC Transit, 32 Cal. App. 4<sup>th</sup> 1494,  
4 1500 (Cal. Ct. App. 1<sup>st</sup> 1995); San Francisco v. Muller, 177 Cal. App. 2d at 604.

5 **a. Lynch's Declaration Does Not Meet the Requirements of CCP §1008(b)**

6 Lynch's declaration, while extremely lengthy, fails to meet the statutory requirements of  
7 Section 1008(b). Lynch fails to show "what new or different facts, circumstances, or law are  
8 claimed to be shown." CCP §1008(b). Lynch's 2015 Motion is at least in part based upon "facts"  
9 presented before in that she incorporates by reference the 66-page "Case History" filed with her  
10 2013 Motion. 2015 Motion, Memorandum, p. 1, lines 23-24. Lynch's new 109-page declaration  
11 contains a section with a heading entitled "Background" beginning at page 11, which purports to  
12 relate the history between the parties in roughly chronological order dating back to the late 1980's.  
13 2015 Motion, Lynch Decl., Exh. 4. Even if some of the "Background" provided in her new  
14 declaration contains a more exemplified description of her "Case History" filed previously, Lynch  
15 also fails to show why she could not have presented this information in her previous motion.

16 The facts that Lynch seeks to introduce in her new declaration, consisting of Lynch's own  
17 declared "personal knowledge", were obviously always within her possession, so they are not  
18 "new." *See* Garcia v. Hejmadi, 58 Cal. App. 4<sup>th</sup> 674, 690 (Cal. Ct. App. 1<sup>st</sup> 1997)(finding that  
19 Garcia's declaration did not meet §1008 requirements because the information consisting of  
20 Garcia's own declared knowledge was obviously always within his possession, and no satisfactory  
21 explanation appeared for not bringing it out earlier.).

22 Lynch also submits additional declarations from her son, Rutger Penick and Paulette  
23 Brandt, her housemate, who both provided declarations in support of Lynch's 2013 Motion. In  
24 addition to Penick and Brandt, Lynch also submits declarations from her mother, Joan Lynch, and  
25 three other individuals, all long time friends of Lynch (Surkhang, Ronge and Meade). Lynch fails  
26 to explain why these additional individuals were not available to provide declarations when she  
27 filed her 2013 Motion and she therefore does not meet the requisite diligence requirement.

28

1           **b. The Additional Declarations Lynch Submits are Not Competent Evidence Because**  
2           **the Declarations are Either Unsigned or the Signatures Appear Fabricated**

3           All of the additional declarations submitted in support of Lynch’s 2015 Motion purport to  
4 offer additional “facts” surrounding the alleged lack of service of the summons and complaint.  
5 (See Joan Lynch Decl., Exh. 5, “Addendum” at ¶8, p. 61; Penick Decl., Exh. 6, ¶¶2-12; Brandt  
6 Decl., Exh. 7, ¶¶17, 19; Surkhang Decl., Exh. 8, ¶¶7-8; Ronge Decl., Exh. 9, ¶¶6-10; Meade Decl.,  
7 Exh. 10, ¶11). Strikingly, however, the signature on Penick’s March 9, 2015 declaration is  
8 radically different from his May 23, 2013 declaration and does not appear to be authentic.  
9 (Compare 2013 Motion, Penick Decl. (May 23, 2013) with 2015 Motion, Penick Decl. (March 9,  
10 2015), Exh. 6, p. 5). The signatures that appear on Meade’s and Ronge’s declarations also appear  
11 to be from the same hand and are similar to Lynch’s own handwriting. (Compare signatures on  
12 Meade Decl., Exh. 10 at p. 5, Ronge Decl., Exh. 9 at p. 3, with Lynch Decl. Exh. 4 at p. 109).  
13 Surkhang’s declaration is not signed. Instead, she “verbally authorized Kelley Lynch to execute  
14 this declaration on my behalf.” Surkhang Decl., Exh. 8, p. 2. The 16 page “addendum” to Joan  
15 Lynch’s declaration is signed by Paulette Brandt. Joan Lynch Decl., Exh. 5, p. 71.

16           Notably, of equal concern, Brandt appears to have *materially* changed her testimony with  
17 regard to facts surrounding service of the summons and complaint on August 24, 2005, apparently  
18 in response to Plaintiffs’ Opposition to Lynch’s 2013 Motion. In her 2013 declaration, Brandt  
19 declared to be merely “*in touch* with Kelley during the summer and fall of 2005.” 2013 Motion,  
20 Brandt Decl., ¶3. Incredulously, in a handwritten paragraph (its authenticity also suspect) below  
21 the signature line, Brandt now declares that she was not only present in Lynch’s residence on the  
22 day of service (August 24, 2005), but that she had dyed Lynch’s hair a dark (almost black) shade  
23 of brown. (2015 Motion, Brandt Decl., Exh. 7, ¶19). Brandt also now claims to have been in the  
24 residence on the morning of August 24, 2005 and declares that no one came to the door. *Id.*

25           **III. LYNCH HAS NOT DEMONSTRATED FRAUD UPON THE COURT OR ANY**  
26           **MISCONDUCT ON THE PART OF PLAINTIFF OR HIS ATTORNEYS**

27           Lynch contends in her Notice of Motion that the “default judgment (and the January 17,  
28 2014 Denial of Lynch’s Motion to Vacate) was procured through fraud on the court (and other

1 egregious misconduct.)” (Notice of Motion, p. 1, lines 20-22). The alleged acts constituting  
2 “fraud upon the court” include Lynch’s belief that Plaintiff and his attorneys have engaged in a  
3 litany of misconduct, including: “excessive and knowing use of perjured statements, fabricated  
4 financial data, concealed evidence, and fraudulent misrepresentations.” (2015 Motion,  
5 Memorandum, p. 1, lines 4-5).

6 **A. Lynch’s Own Case Authority Shows That a Court in Equity Will Set Aside a Final**  
7 **Judgment After the Time to Appeal Has Expired Only Upon a Demonstration of**  
8 **Extrinsic Fraud**

9 The California Supreme Court in Westphal v. Westphal set out the rule that a “final  
10 judgment of a court having jurisdiction over persons and subject matter can be attacked in equity  
11 after the time for appeal or other direct attack has expired only if an alleged fraud or mistake is  
12 extrinsic rather than intrinsic.” Westphal v. Westphal, 20 Cal. 2d 393, 397 (Cal. 1942); In Re  
13 Margarita D., 72 Cal. App. 4<sup>th</sup> 1288, 1294 (Cal. Ct. App. 4<sup>th</sup> 1999). Further, the fraud sufficient to  
14 justify equitable relief from a judgment must be extrinsic or collateral to the questions examined  
15 or determined. Hammell v. Britton, 19 Cal. 2d 72, 82 (Cal. 1941). Finally, because of the  
16 importance of finality of judgments, when a default judgment has been entered, equitable relief is  
17 given only in exceptional circumstances. Rappleyea v. Campbell, 8 Cal. 4<sup>th</sup> 975, 981 (Cal. 1994).

18 Extrinsic fraud occurs when a party is deprived of the opportunity to present a claim or  
19 defense to the court as a result of being kept in ignorance or in some other manner, other than  
20 from his or her own conduct, being fraudulently prevented from fully participating in the  
21 proceeding. Home Ins. Co. v. Zurich Ins. Co., 96 Cal. App. 4<sup>th</sup> 17, 26 (Cal. Ct. App. 3<sup>rd</sup> 2002).  
22 Extrinsic fraud is distinguishable from intrinsic fraud, “[which] goes to the merits of the prior  
23 proceeding and is not a valid ground for setting aside a judgment when the party has been given  
24 notice of the action and has had an opportunity to present his case and to protect himself from any  
25 mistake or fraud of his adversary *but has unreasonably neglected to do so.*” In Re Margarita D.,  
26 72 Cal. App. 4<sup>th</sup> at 1295 (emphasis added); Westphal, 20 Cal. 2d at 397.

27 Lynch cites to several Ninth Circuit Court of Appeals decisions decided under Federal  
28 Rule of Civil Procedure 60(b)(3), which provides for relief from a judgment based upon fraud

1 (whether intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party. See  
2 F.R.C.P. 60(b)(3); 2015 Motion, pp. 5-7 and cases cited therein. However, a motion for relief  
3 from a judgment made under F.R.C.P. 60(b)(3) must be brought within one year of the entry of the  
4 judgment. F.R.C.P. 60(c)(1). These federal cases decided under Rule 60(b) are inapposite because  
5 federal law and procedure are inapplicable to these state court proceedings.

6 Lynch's cited case authority decided under California law and procedure, all older  
7 decisions, demonstrate the principle that in equity a judgment will be set aside after the time for  
8 appeal has expired only upon a showing of extrinsic, not intrinsic, fraud. 2015 Motion, p. 6. In  
9 McGuinness v. Superior Court, a widow was able to set aside a final decree of divorce six months  
10 after its entry upon a showing that the decree was obtained by *extrinsic* fraud. In McKeever v.  
11 Superior Court, the husband was found guilty of laches and denied equitable relief from the  
12 judgment when he sought relief nineteen months after its entry, even though he was able to  
13 demonstrate both intrinsic *and* extrinsic fraud. Unlike the lack of diligence shown by the movant  
14 in McKeever, the wife in Miller v. Miller was able to set aside a final decree based upon the false  
15 affidavit of her husband, but critically, she moved within 6 months of entry of that decree. That is  
16 clearly not the case in the instant proceeding. Lynch is moving nearly nine years after the entry of  
17 the judgment and is guilty of laches like the movant in McKeever.

18 Lynch also cites to the United States Supreme Court cases of U.S. v. Throckmorton and  
19 Hazel-Atlas Glass Co. v. Hartford-Empire Co. 2015 Motion at p. 6. Throckmorton, followed by  
20 California decisional authority, clearly distinguishes between intrinsic versus extrinsic fraud,  
21 holding that equitable relief will be granted only on the ground of extrinsic fraud which "practiced  
22 directly upon the party seeking relief against the judgment...that party has been prevented from  
23 presenting all of his case to the court." U.S. v. Throckmorton, 98 U.S. 61, 66 (1878).  
24 Throckmorton also established that it is "well settled that the court will not set aside a judgment  
25 because it was founded on a fraudulent instrument, or perjured evidence, or for any other matter  
26 which was actually presented and considered in the judgment assailed." Id. The only published  
27 California Appellate decision to consider Hazel-Atlas Glass Co. v. Hartford-Empire Co. in a non-  
28 criminal case, declined to follow it, instead citing to the law pertaining to vacation of judgments



1 “first laid down in United States v. Throckmorton.” Smith v. Great Lakes Airlines, Inc., 242 Cal.  
2 App. 2d 23, 30 (Cal. Ct. App. 2<sup>nd</sup> 1966). Throckmorton’s “harsh rule” has been adopted by this  
3 state and is followed “by an unbroken line of decisions.” Id.

#### 4 **B. Lynch Has Not Demonstrated Extrinsic Fraud**

5 Lynch has not demonstrated extrinsic fraud because she has not shown how the alleged  
6 acts of misconduct by Plaintiff and his attorneys prevented her from presenting her claim or  
7 defense in the original action. In Re Margarita D., 72 Cal. App. 4<sup>th</sup> 1288, 1294 (Cal. Ct. App. 4<sup>th</sup>  
8 1999)(Extrinsic fraud is one party’s preventing the other from having his day in court.); Sporn v.  
9 Home Depot USA, Inc., 126 Cal. App. 4<sup>th</sup> 1294, 1300 (Cal. Ct. App. 4<sup>th</sup> 2005). Having had an  
10 opportunity to protect her interest, she cannot attack a judgment once the time has elapsed for  
11 appeal or other direct attack on the basis of intrinsic fraud. Westphal, 20 Cal. 2d at 397.

12 The acts that Lynch believes constitute “fraud upon the court” (concealment, falsification,  
13 and suppression of evidence, providing fraudulent financial data to support the Default Judgment,  
14 perjury, ‘fraudulent misrepresentations’ in Plaintiffs’ Complaint) all involve issues that go to the  
15 merits of the action and could have been decided in the prior proceeding, and are therefore  
16 intrinsic. In Re Margarita D., 72 Cal. App. 4<sup>th</sup> at 1295. The alleged acts are not “extrinsic or  
17 collateral to the questions examined or determined”, but are intertwined with the merits of the  
18 underlying case. Hammell, 19 Cal. 2d at 82.

19 Lynch cites California Penal Code §118 as a basis for relief for the alleged perjury of  
20 Plaintiff and his attorneys in her 2012 criminal trial for violations of Cohen’s Permanent  
21 Restraining Order and in declarations submitted in support of Plaintiffs’ Opposition to her 2013  
22 Motion. 2015 Motion, Notice of Motion, p. 1. There is no private right of action for perjury  
23 under Cal. Penal Code §118. Rendon v. Fresno Police Department, 2006 WL 2694678 \*23, 2006  
24 U.S. LEXIS 71170 \*67 (E.D. Cal. 2006).

25 With respect to Lynch’s belief that Plaintiffs’ declarations contained false statements, the  
26 California Supreme Court stated the rule in Gale v. Witt that: “it is uniformly held that perjury is  
27 intrinsic, not extrinsic fraud, and therefore does not form a basis for equitable relief from the  
28 default judgment.” Gale v. Witt, 31 Cal. 2d 362, 366 (Cal. 1948); *See also* Buesa v. City of Los

1 Angeles, 177 Cal. App. 4<sup>th</sup> 1537, 1546 (Cal. Ct. App. 2<sup>nd</sup> 2009)(alleged perjured declaration  
2 intrinsic, not extrinsic fraud); Hammell, 19 Cal. 2d at 82 (false or perjured testimony is not  
3 extrinsic fraud). Lynch also fails to show how the alleged perjured statements made by Plaintiff  
4 and his attorneys in the April 2012 criminal jury trial against Lynch for violations of Cohen’s  
5 Permanent Restraining Order operated to prevent her from presenting her case or her defense  
6 when Plaintiffs’ Complaint was originally filed in August 2005, nearly *seven years* before the  
7 2012 criminal trial.

8 Further, with regard to Lynch’s allegations of falsification or concealment of evidence in  
9 Plaintiffs’ forensic accounting analysis submitted to support Plaintiffs’ claim for monetary  
10 damages: “It is settled in this state that a judgment will not be set aside because it is based upon  
11 perjured testimony or because material evidence was concealed or suppressed, that such fraud  
12 both as to the court and the party against whom judgment is rendered is not fraud extrinsic to the  
13 record for which relief may be had.” Preston v. Wyoming Pacific Oil Co., 197 Cal. App. 2d 517,  
14 531 (Cal. Ct. App. 2<sup>nd</sup> 1961); Cedars-Sinai Medical Center v. Superior Court, 18 Cal. 4<sup>th</sup> 1, 10  
15 (Cal. 1998). The California Supreme Court in Cedars-Sinai Medical Center v. Superior Court  
16 stated that the long recognized rule against vacating judgments on the ground of false evidence or  
17 intrinsic fraud rested on the important interest of finality of adjudication. Cedars-Sinai Medical  
18 Center, 18 Cal. 4<sup>th</sup> at 11. If such a rule did not exist, there would be “endless litigation.” Id.

19 Lynch also cites the equitable doctrine of unclean hands as a basis for relief from the  
20 Default Judgment. (Notice of Motion; Memorandum, pp. 11-12). Lynch raises unclean hands as  
21 an affirmative defense in her Proposed Answer. (2015 Motion; Exh. 1, Proposed Answer,  
22 Affirmative Defense No. 10.) A party is not entitled to equitable relief from a judgment on  
23 grounds that could have been a defense to the original action. Hammell, 19 Cal. 2d at 80.

24 **IV. LYNCH’S REQUEST FOR “CLARIFICATION OF AMBIGUOUS JUDGMENT”**  
25 **IS PROCEDURALLY DEFECTIVE AND HAS NO STATUTORY OR**  
26 **JURISDICTIONAL BASIS**

27 In a section of Lynch’s Memorandum entitled “Clarification of Ambiguous Judgment” and  
28 its associated Exhibit 11 entitled “Request for Judicial Clarification of Ambiguities in Default

1 Judgment Filed May 15, 2006”, Lynch argues that a court has “inherent power to correct clerical  
2 error in its records, whether made by the court, clerk or counsel, at anytime so as to conform its  
3 records to the truth.” 2015 Motion, p. 13. Lynch also argues that a “‘clerical mistake’ may include  
4 an ambiguous provision in a judgment which seemingly changes what was actually agreed to and  
5 ordered in open court.” *Id.* By arguing that the Default Judgment is ambiguous and needs  
6 “clarification”, Lynch is attempting to cloak a renewed motion to vacate the Default Judgment  
7 under the guise of a “request for clarification.” *Id.*, pp. 13-15. Lynch’s “request” is also violative  
8 of Section 1008 in that Lynch shows no new facts; she shows no new law and is impermissibly  
9 seeking to re-litigate issues that have been finally determined and embodied in the Default  
10 Judgment.

11 **A. Lynch Shows No “Clerical Errors” in the Default Judgment Requiring**  
12 **Correction; The Default Judgment is the Identical Judgment Which the Trial**  
13 **Court Intended to Render**

14 A judgment is a final determination of the rights of the parties in an action or proceeding.  
15 CCP §577. Once a judgment has been entered, the trial court loses its unrestricted power to  
16 change that judgment. Rochin v. Pat Johnson Manufacturing Co., 67 Cal. App. 4<sup>th</sup> 1228, 1237  
17 (Cal. Ct. App. 2<sup>nd</sup> 1998). The court does retain power to correct clerical errors in a judgment  
18 under its inherent power. *Id.* The court's inherent power to correct clerical errors includes errors  
19 made in the entry of the judgment or due to inadvertence of the court. Bell v. Farmers Ins.  
20 Exchange, 135 Cal. App. 4<sup>th</sup> 1138, 1144 (Cal. Ct. App. 1<sup>st</sup> 2006). However, it may not amend  
21 such a judgment to substantially modify it or materially alter the rights of the parties under its  
22 authority to correct clerical error. Rochin, 67 Cal. App. 4<sup>th</sup> at 1237. Unless the challenged portion  
23 of the judgment was entered inadvertently, it cannot be challenged post judgment under the guise  
24 of correction of clerical error. Bell, 135 Cal. App. 4<sup>th</sup> at 1144. Lynch fails to show any “clerical  
25 errors” that resulted from the inadvertence of the Court.

26 **B. The Default Judgment is Clear and Unambiguous**

27 The Attachment to Judgment, Item 6 (“Attachment”), clearly and unequivocally  
28 extinguished all of Lynch’s interests in Cohen’s entities. (2015 Motion, Exh. 11). The equitable  
remedy of a constructive trust was created and imposed “on the money and property that Lynch

1 wrongfully took and/or transferred while acting in her capacity as trustee for the benefit of  
2 Plaintiff Leonard Norman Cohen (“Cohen”).” Id. A constructive trust may be imposed when one  
3 has acquired property to which he is unjustly entitled, if it was obtained by actual fraud, mistake or  
4 the like, or by constructive fraud through violation of some fiduciary or confidential relationship.  
5 Walter H. Leimert Co. v. Woodson, 125 Cal. App. 2d 186, 191 (Cal. Ct. App. 2<sup>nd</sup> 1954); Cal. Civ.  
6 Code §§2223, 2224. A constructive trust is an equitable remedy, which arises by operation of law  
7 and *no writing is necessary*. Walter H. Leimert Co., 125 Cal. App. 2d at 191 (emphasis added).

8 Lynch’s own confusion regarding the operation of the constructive trust remedy granted to  
9 Cohen through the Default Judgment does not create ambiguity where none exists. Lynch’s  
10 confusion regarding the constructive trust remedy is apparent in her declaration regarding her  
11 assertions with respect to Traditional Holdings, LLC that “there was and remains no trust  
12 agreement related to a trust, or any discussion, once Cohen elected to use Traditional Holdings,  
13 LLC, about a potential trust. I did not hold my shares of this entity in trust for Leonard Cohen.”  
14 (Lynch Decl. ¶65). Lynch’s confusion is also apparent in Exhibit 11, wherein she requests  
15 identification of “what Trust or other document was submitted to the Court proving that Lynch  
16 held her shares as trustee for Cohen’s equitable title” with regard to Blue Mist Touring Company,  
17 Inc. and Traditional Holdings, LLC and Old Ideas, LLC. (2015 Motion, Exh. 11, ¶¶1-3).

18 The second paragraph of the Attachment declares that “Lynch is not the rightful owner of  
19 any assets in Traditional Holdings, LLC, Blue Mist Touring Company, Inc., or *any other entity*  
20 *related to Cohen*” (emphasis added) is not ambiguous because it fails to specifically enumerate all  
21 of Cohen’s entities, i.e., Old Ideas, LLC. (See Lynch Decl. ¶83 wherein she argues that the  
22 Judgment is “silent” with regard to Old Ideas, LLC.)

23 Lynch asserts, despite the clear and unambiguous language of the Attachment, that she  
24 continues to hold ownership interests in Cohen’s legal entities. (Exh. 11, ¶¶1-3; Lynch Decl. ¶¶48,  
25 58, 61, 83-84,109). Particularly, Lynch asserts a continued 15% “ownership interest” in Blue Mist  
26 Touring Company, Inc. and Old Ideas, LLC and a 99.5% ownership interest in Traditional  
27 Holdings, LLC. Id. The Default Judgment extinguished all rights Lynch formerly held in  
28 Cohen’s entities. The language of the Attachment is clear: “It is FURTHER ORDERED,

1 ADJUDGED AND DECREED that Lynch is enjoined from...*exercising her alleged rights in*  
2 *these legal entities.*" (emphasis added).

3 Lynch is estopped from asserting any rights to or interest in Traditional Holdings, LLC  
4 ("THLLC"). In multi-year (2005-2008) litigation between Cohen, Lynch and his former  
5 investment advisors at Agile Group in the District of Colorado, Hon. Lewis Babcock, construed  
6 the May 15, 2006 Default Judgment in ruling on Cohen's Motion for Summary Judgment and  
7 distributed the THLLC remaining funds that had been interplead into the District Court's Registry  
8 by the investment advisor to Cohen. (Plaintiffs' Opp. To 2013 Motion, Rice Decl. ¶20, Exh. H, p.  
9 3). Lynch never made an appearance in that case and did not oppose Cohen's Summary Judgment  
10 Motion regarding ownership of the remaining THLLC funds. *Id.* at ¶¶13-21.

11 Lynch also asserts that Cohen owes her for unpaid management commissions "for services  
12 rendered and owed for 'future commissions.'" Exh. 11, ¶5; Lynch Decl. ¶83 (asserting a 15%  
13 commission "in perpetuity for items created and released during the period [she] served as  
14 manager."). Again, the language of the Attachment could not be clearer with regard to Cohen's  
15 obligations to Lynch - it unequivocally and unambiguously states that Cohen "has *no* obligations  
16 or responsibilities to her." (emphasis added).

17 **V. CONCLUSION**

18 For all of the foregoing reasons, Plaintiffs pray that the Court deny Lynch's requested  
19 relief in its entirety with prejudice.

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DATED: May 25, 2015

Respectfully submitted,

By: 

MICHELLE L. RICE  
KORY & RICE, LLP

**ATTORNEY FOR PLAINTIFFS**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michelle L. Rice, Esq. (SBN 235189) Kory & Rice, LLP 9300 Wilshire Blvd., Suite 200 Beverly Hills, CA 90212  TELEPHONE NO.: 310-285-1630      FAX NO. (Optional): E-MAIL ADDRESS (Optional): mrice@koryrice.com ATTORNEY FOR (Name): Leonard Norman Cohen; Leonard Cohen Investments LLC	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District - Stanley Mosk Courthouse	
PLAINTIFF/PETITIONER: Leonard Norman Cohen; Leonard Cohen Investments DEFENDANT/RESPONDENT: Kelley Lynch	CASE NUMBER: BC338322
<p style="text-align: center;"><b>PROOF OF SERVICE—CIVIL</b></p> Check method of service (only one): <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input checked="" type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input type="checkbox"/> By Electronic Service	JUDGE: Hon. Robert L. Hess DEPT.: 24

*(Do not use this proof of service to show service of a Summons and complaint.)*

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:  
 9300 Wilshire Blvd., Suite 200, Beverly Hills, CA 90212
3.  The fax number or electronic service address from which I served the documents is (complete if service was by fax or electronic service):
4. On (date): May 26, 2015      I served the following documents (specify):  
  
 The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).
5. I served the documents on the person or persons below, as follows:
  - a. Name of person served: Kelley Lynch
  - b.  (Complete if service was by personal service, mail, overnight delivery, or messenger service.)  
 Business or residential address where person was served:  
 1754 N. Van Ness Avenue, Hollywood, CA 90028
  - c.  (Complete if service was by fax or electronic service.)
    - (1) Fax number or electronic service address where person was served:
    - (2) Time of service:
- The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).
6. The documents were served by the following means (specify):
  - a.  **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME: Leonard Norman Cohen;Leonard Cohen Investments v Kelley Lynch	CASE NUMBER: BC338322
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6. b.  **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:
- (1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - (2)  placed the envelope for collection and mailing, following our ordinary business practices. 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.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:
- c.  **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d.  **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*
- e.  **By fax transmission:** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f.  **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

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

Date: May 26, 2015

Lauren Wilhite  
(TYPE OR PRINT NAME OF DECLARANT)

▶ *Lauren Wilhite*  
(SIGNATURE OF DECLARANT)

*(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)*

**DECLARATION OF MESSENGER**

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date)*:

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

Date:

\_\_\_\_\_  
(NAME OF DECLARANT)

▶ \_\_\_\_\_  
(SIGNATURE OF DECLARANT)

SHORT TITLE: Leonard Norman Cohen, Leonard Cohen Investments v Kelley Lynch	CASE NUMBER: BC338322
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ATTACHMENT TO PROOF OF SERVICE—CIVIL (DOCUMENTS SERVED)

(This Attachment is for use with form POS-040)

The documents that were served are as follows (describe each document specifically):

PLAINTIFFS' POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION FOR TERMINATING AND OTHER SANCTIONS; OPPOSITION TO MOTION FOR DISMISSAL OF COMPLAINT

[PROPOSED] ORDER ON PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR TERMINATING AND OTHER SANCTIONS

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR TERMINATING AND OTHER SANCTIONS

[PROPOSED] ORDER ON PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR TERMINATING AND OTHER SANCTIONS

NOTICE OF ASSOCIATION OF COUNSEL



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michelle L. Rice, Esq. (SBN 235189) Kory & Rice, LLP 9300 Wilshire Blvd., Suite 200 Beverly Hills, CA 90212 TELEPHONE NO.: 310-285-1630 FAX NO. (Optional): E-MAIL ADDRESS (Optional): mrice@koryrice.com ATTORNEY FOR (Name): Leonard Norman Cohen; Leonard Cohen Investments LLC		FOR COURT USE ONLY   CASE NUMBER: BC338322  JUDGE: Hon. Robert L. Hess DEPT.: 24
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District - Stanley Mosk Courthouse		
PLAINTIFF/PETITIONER: Leonard Norman Cohen; Leonard Cohen Investments DEFENDANT/RESPONDENT: Kelley Lynch		
<b>PROOF OF SERVICE—CIVIL</b> <b>Check method of service (only one):</b> <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input type="checkbox"/> By Electronic Service		

(Do not use this proof of service to show service of a Summons and complaint.)

- At the time of service I was over 18 years of age and not a party to this action.
- My residence or business address is:  
9300 Wilshire Blvd., Suite 200, Beverly Hills, CA 90212
- The fax number or electronic service address from which I served the documents is (complete if service was by fax or electronic service):
- On (date): May 26, 2015 I served the following documents (specify):

The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).

- I served the documents on the person or persons below, as follows:
  - Name of person served: Kelley Lynch
  - (Complete if service was by personal service, mail, overnight delivery, or messenger service.)  
Business or residential address where person was served:  
1754 N. Van Ness Avenue, Hollywood, CA 90028
  - (Complete if service was by fax or electronic service.)
    - Fax number or electronic service address where person was served:

(2) Time of service:

The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).

- The documents were served by the following means (specify):
  - By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

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6. b.  **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - (2)  placed the envelope for collection and mailing, following our ordinary business practices. 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.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):
- c.  **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
  - d.  **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
  - e.  **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
  - f.  **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

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

Date: May 26, 2015

Lauren Wilhite  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME OF DECLARANT)

▶ *Lauren Wilhite*  
 \_\_\_\_\_  
 (SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

**DECLARATION OF MESSENGER**

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

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

Date:

\_\_\_\_\_  
 (NAME OF DECLARANT)

▶ \_\_\_\_\_  
 (SIGNATURE OF DECLARANT)

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**ATTACHMENT TO PROOF OF SERVICE—CIVIL (DOCUMENTS SERVED)**

*(This Attachment is for use with form POS-040)*

**The documents that were served are as follows (describe each document specifically):**

PLAINTIFFS' POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION FOR TERMINATING AND OTHER SANCTIONS; OPPOSITION TO MOTION FOR DISMISSAL OF COMPLAINT

[PROPOSED] ORDER ON PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR TERMINATING AND OTHER SANCTIONS

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR TERMINATING AND OTHER SANCTIONS

[PROPOSED] ORDER ON PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR TERMINATING AND OTHER SANCTIONS

NOTICE OF ASSOCIATION OF COUNSEL