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2 KORY & RICE, LLP
3 5455 Wilshire Blvd., Suite 1701
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7 Attorney for Plaintiff/Petitioner

FILED
Superior Court of California
County of Los Angeles

05/02/2019

Sherri R. Center, Executive Officer / Clerk of Court

By: *Michael Tran* Deputy
Michael Tran

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10 **CENTRAL DISTRICT**

11 **ROBERT B. KORY, IN HIS
12 CAPACITY AS SOLE TRUSTEE OF
13 THE LEONARD COHEN FAMILY
14 TRUST**

15 Plaintiff/Petitioner,

16 v.

17 **KELLEY ANN LYNCH,**
18 Defendant/Respondent.

CASE NO.: BC 338322

Hon. Patricia Nieto, Dept. 24

**[PROPOSED] AMENDED JUDGMENT
OF DEFAULT AS TO DEFENDANT,
KELLEY ANN LYNCH**

Complaint Filed: August 15, 2005
Default Judgment Issued: May 15, 2006
Default Judgment Renewed: July 13, 2015
Remittitur Issued (B267794): March 18, 2019

19 The defendant KELLEY ANN LYNCH ("Lynch") having been served with process and
20 having failed to appear and answer or otherwise respond to Plaintiffs' complaint filed herein, the
21 default of said defendant was duly entered against Lynch on December 5, 2005.

22 This Court entered Judgment by default against Lynch on May 15, 2006 in favor of
23 LEONARD NORMAN COHEN and LEONARD COHEN INVESTMENTS, LLC, ("Plaintiffs")
24 in the amount of \$5,000,000.00 in damages and \$2,341,345.00 in prejudgment interest, for a total
25 monetary award of \$7,341,345.00 (the "Judgment"). The Judgment, on Judicial Council Form
26 JUD-100, along with the Attachment to Judgment, Item 6, granting default judgment on Plaintiffs'
27 claims for imposition of constructive trust and declaratory and injunctive relief, is attached hereto
28 as Exhibit I.

1 Defendant moved to vacate the Judgment on August 9, 2013. On January 17, 2014, this
2 Court denied her motion to vacate with prejudice.

3 The clerk of this Court renewed the Judgment in the amount of \$14,059,183.80, along with
4 the relief granted in the Attachment to Judgment, Item 6, on July 13, 2015. Defendant was served
5 with the notice of renewal the next day. The renewal of Judgment is attached hereto as Exhibit 2.

6 Defendant moved to vacate the renewal of the Judgment on July 28, 2015. Her motion to
7 vacate the renewal of the Judgment was denied on October 6, 2015. Defendant filed a Notice of
8 Appeal on October 16, 2015. (Second District Court of Appeal case number B267794.)

9 The original Plaintiff in this action, Leonard Norman Cohen, died November 7, 2016,
10 during the pendency of Lynch's appeals. Robert B. Kory, in his capacity as sole Trustee of the
11 Leonard Cohen Family Trust, was substituted for Cohen by order of the Court of Appeal on
12 January 26, 2017.

13 Remittitur issued in B267794 on March 18, 2019. A copy of the Remittitur is attached
14 hereto as Exhibit 3. The Court of Appeal determined the Judgment to be void to the extent that
15 the prejudgment interest award is excessive because it was calculated on a principal amount in
16 excess of the amount requested in the Complaint and awarded in the Judgment. Exhibit 3, pp. 15-
17 16. The Court of Appeal issued instructions to grant Lynch's motion to set aside the renewal of
18 the Judgment in part and directed the Court to recalculate the prejudgment interest on the
19 monetary portion of the Judgment. Exhibit 3, p. 16. The Court of Appeal held that Lynch had
20 shown no basis to disturb the Judgment's creation of a constructive trust or provision of
21 declaratory and injunctive relief contained in the Attachment to Judgment, Item 6, which was
22 renewed on July 13, 2015. Exhibit 3, p. 15.

23 This Court granted Plaintiffs' *ex parte* application to substitute Leonard Cohen's successor
24 in interest, Robert B. Kory, in his capacity as the sole Trustee of the Leonard Cohen Family Trust,
25 for original Plaintiffs Leonard Norman Cohen and Leonard Cohen Investments, LLC. The
26 substitution order was entered on March 26, 2019. Plaintiff mailed Defendant Notice of Entry of
27 Order on March 27, 2019. Attached as exhibit 4 hereto is a copy of the March 26, 2019 Order on
28 Substitution.

1 This Court also issued a minute order on March 26, 2019 modifying the Judgment in
2 accordance with the Court of Appeal's directions to recalculate prejudgment interest on the
3 monetary portion of the Judgment. Attached as exhibit 5 hereto is a copy of the March 26, 2019
4 Minute Order.


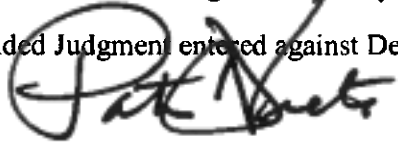
5 WHEREAS, in light of the foregoing, and GOOD CAUSE APPEARING,
6 **IT IS NOW HEREBY ORDERED, ADJUDGED AND DECREED** that:

7 The Court's October 6, 2015 Order denying Lynch's motion to set aside the renewal of
8 Judgment is vacated. Lynch's motion to set aside the renewal of the Judgment is granted in part
9 as to the monetary portion of the Judgment.

10 The monetary portion of the Judgment is modified and entered in accordance with the
11 Court's March 26, 2019 Minute Order. See Exhibit 5. Judgment is modified and entered in favor
12 of the substituted Plaintiff and Judgment Creditor, Robert B. Kory, in his capacity as the sole
13 Trustee of the Leonard Cohen Family Trust, the successor in interest to deceased Plaintiff Leonard
14 Norman Cohen, against defendant Kelley Ann Lynch. Further, the Judgment is modified to reflect
15 \$5,000,000.00 in damages with corrected prejudgment interest in the amount of \$6,757,534.25, for
16 a total monetary award of \$11,757,534.25. Concurrently filed herewith and fully incorporated
17 herein by reference, for the Court's signature, is a Proposed Amended Judgment prepared on
18 Judicial Council Form JUD-100, reflecting the Court's recalculation of prejudgment interest.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the equitable relief
20 awarded in the Attachment to Judgment, Item 6 granting default judgment on Plaintiffs' claims for
21 imposition of constructive trust and declaratory and injunctive relief is modified to reflect the
22 substituted Plaintiff Robert B. Kory, in his capacity as Trustee. In all other respects, the equitable
23 relief granted in the Judgment, as renewed July 13, 2015, remains unchanged and is fully
24 incorporated by reference herein and is part of the Amended Judgment entered against Defendant.

25 05/02/2019
26 DATED: April _____, 2019

Patricia D. Nieto / Judge
HONORABLE PATRICIA D. NIETO,
JUDGE OF THE LOS ANGELES SUPERIOR COURT

28

EXHIBIT 1

RECEIVED

Original

JUD-100

FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):

SCOTT A. EDELMAN, SBN 116927
GIBSON, DUNN & CRUTCHER LLP
2029 Century Park East, Suite 4000
Los Angeles, CA 90067-3026

MAY 12 2006

DEPT. 64

TELEPHONE NO.: (310) 552-8500 FAX NO. (Optional): (310) 552-8741
E-MAIL ADDRESS (Optional): sedelman@gibsondunn.com
ATTORNEY FOR (Name): Plaintiffs Leonard Norman Cohen et al.

FILED
LOS ANGELES SUPERIOR COURT

MAY 15 2006
JOHN A. CLARKE, CLERK
BY E. FAJARDO, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 North Hill Street
MAILING ADDRESS:
CITY AND ZIP CODE: Los Angeles, California 90012
BRANCH NAME: Stanley Mosk Courthouse

PLAINTIFF: Leonard Norman Cohen, et al.

DEFENDANT: Kelley A. Lynch, et al.

CASE NUMBER:
BC 338322

JUDGMENT
 By Clerk By Default After Court Trial
 By Court On Stipulation Defendant Did Not Appear at Trial

JUDGMENT

1. **BY DEFAULT**
 - a. Defendant was properly served with a copy of the summons and complaint.
 - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - c. Defendant's default was entered by the clerk upon plaintiff's application.
 - d. Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
 - e. Court Judgment (Code Civ. Proc., § 585(b)). The court considered
 - (1) plaintiff's testimony and other evidence.
 - (2) plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. **ON STIPULATION**
 - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - b. the signed written stipulation was filed in the case.
 - c. the stipulation was stated in open court the stipulation was stated on the record.
3. **AFTER COURT TRIAL**. The jury was waived. The court considered the evidence.
 - a. The case was tried on (date and time):
before (name of judicial officer):
 - b. Appearances by:

<input type="checkbox"/> Plaintiff (name each): (1) (2)	<input type="checkbox"/> Plaintiff's attorney (name each): (1) (2)
<input type="checkbox"/> Continued on Attachment 3b.	
<input type="checkbox"/> Defendant (name each): (1) (2)	<input type="checkbox"/> Defendant's attorney (name each): (1) (2)
<input type="checkbox"/> Continued on Attachment 3b.	
 - c. Defendant did not appear at trial. Defendant was properly served with notice of trial.
 - d. A statement of decision (Code Civ. Proc., § 632) was not was requested.

PLAINTIFF: Leonard Norman Cohen, et al. DEFENDANT: Kelley A. Lynch, et al.	CASE NUMBER: BC 338322
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JUDGMENT IS ENTERED AS FOLLOWS BY: THE COURT THE CLERK

4. Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

a. for plaintiff (name each): Leonard Norman Cohen
 Leonard Cohen Investments, LLC

c. for cross-complainant (name each):

and against cross-defendant (name each):

Continued on Attachment 5c.

and against defendant (names):
 Kelley A. Lynch

Continued on Attachment 5a.

b. for defendant (name each):

d. for cross-defendant (name each):

6. Amount.

a. Defendant named in item 5a above must pay plaintiff on the complaint:

(1)	<input checked="" type="checkbox"/> Damages		\$ 5,000,000.00
(2)	<input checked="" type="checkbox"/> Prejudgment interest at the annual rate of 10 %		\$ 2,341,345.00
(3)	<input type="checkbox"/> Attorney fees		\$ N/A
(4)	<input type="checkbox"/> Costs		\$ N/A
(5)	<input checked="" type="checkbox"/> Other (specify): See Attachment, Item 6		\$
(6)	TOTAL		\$ 7,341,345.00

c. Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1)	<input type="checkbox"/> Damages		\$
(2)	<input type="checkbox"/> Prejudgment interest at the annual rate of %		\$
(3)	<input type="checkbox"/> Attorney fees		\$
(4)	<input type="checkbox"/> Costs		\$
(5)	<input type="checkbox"/> Other (specify):		\$
(6)	TOTAL		\$

b. Plaintiff to receive nothing from defendant named in item 5b.
 Defendant named in item 5b to recover costs \$
 and attorney fees \$

d. Cross-complainant to receive nothing from cross-defendant named in item 5d.
 Cross-defendant named in item 5d to recover costs \$
 and attorney fees \$

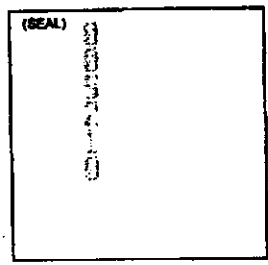
7. Other (specify):

Date: **MAY 15 2006**

CLERK
KENNETH R. FREEMAN

Date: _____ Clerk, by _____, Deputy

CLERK'S CERTIFICATE (Optional)



I certify that this is a true copy of the original judgment on file in the court.
 Date: _____

Clerk, by _____, Deputy

ATTACHMENT TO [PROPOSED] JUDGMENT, ITEM 6

Default judgment is also entered against Defendant Kelley A. Lynch ("Lynch") on Plaintiffs' claims for imposition of constructive trust and declaratory and injunctive relief. It is therefore **ORDERED, ADJUDGED AND DECREED** that a constructive trust is imposed on the money and property that Lynch wrongfully took and/or transferred while acting in her capacity as trustee for the benefit of Plaintiff Leonard Norman Cohen ("Cohen").

It is **DECLARED** that (1) Lynch is not the rightful owner of any assets in Traditional Holdings, LLC, Blue Mist Touring Company, Inc., or any other entity related to Cohen; (2) that any interest she has in any legal entities set up for the benefit of Cohen she holds as trustee for Cohen's equitable title; (3) that she must return that which she improperly took, including but not limited to "loans;" and (4) that Cohen has no obligations or responsibilities to her.

It is **FURTHER ORDERED, ADJUDGED AND DECREED** that Lynch is enjoined from conveying any rights or assets to any third party so as to frustrate Cohen's equitable interest, and from exercising her alleged rights in these legal entities, including any alleged rights to transfer, move, convey, loan, borrow or in any way exercise control over any funds or property received from Cohen.

1 **DECLARATION OF SERVICE**

2 I, Irma R. Guerra, declare as follows:

3 I am employed in Los Angeles, California; I am over the age of eighteen years and am
4 not a party to this action; my business address is 2029 Century Park East, 40th Floor,
5 Los Angeles, California 90067. On May 12, 2006, I served the within:

6 **JUDGMENT**

7
8 by placing a copy thereof in an envelope addressed to each of the persons named below at the
9 address shown:

10 **Kelley A. Lynch**
11 **2648 Mandeville Canyon Road**
12 **Los Angeles, CA 90049**

13
14 **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated
15 above, on the above-mentioned date. I am familiar with the firm's practice of
16 collection and processing correspondence for mailing. It is deposited with the
17 U.S. Postal Service on that same day in the ordinary course of business. I am
18 aware that on motion of party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one day after date of deposit
for mailing in affidavit.

19 **BY PERSONAL SERVICE:** I placed a true copy in a sealed envelope
20 addressed to each person[s] named at the address[es] shown and giving same
21 to a messenger for personal delivery before 5:00 p.m. on the above-mentioned
date.

22 **BY FACSIMILE:** From facsimile machine telephone number (310) 551-
23 8741, on the above-mentioned date, I served a full and complete copy of the
24 above-referenced document[s] by facsimile transmission to the person[s] at
the number[s] indicated.

25 ///

26 ///

27 ///

28 ///

1 **BY OVERNIGHT MAIL:** I placed a true copy in a sealed envelope
2 addressed as indicated above, on the above-mentioned date. I am familiar
3 with the firm's practice of collection and processing correspondence for
4 delivery by overnight mail. Pursuant to that practice, envelopes placed for
5 collection at designated locations during designated hours are delivered to the
6 overnight mail service with a fully completed airbill, under which all delivery
7 charges are paid by Gibson, Dunn & Crutcher LLP, that same day in the
8 ordinary course of business.

7 **(STATE)** I declare under penalty of perjury under the laws of the State of
8 California that the foregoing is true and correct.

9 **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct and that the foregoing document was printed on recycled paper.
12 This Declaration of Service was executed by me on May 12, 2006, at Los Angeles,
13 California.


14 
15 _____
16 Irma R. Guerra
17
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27
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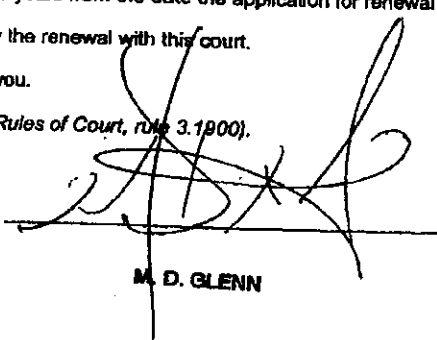
EXHIBIT 2

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Michelle L. Rice, Esq. (SBN 235189) Kory & Rice LLP 9300 Wilshire Boulevard, Suite 200 Beverly Hills, California 90212</p> <p>TELEPHONE NO.: 310-285-1630</p> <p>ATTORNEY FOR (Name): Leonard N. Cohen; Leonard Cohen Investments, LLC</p>	<p>FOR COURT USE ONLY</p> <p>CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles</p> <p>JUL 22 2015</p> <p>Sherri R. Carter, Executive Officer/Clerk By: Judi Lara, Deputy</p>
<p>NAME OF COURT: Los Angeles Superior Court STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: Stanley Mosk Courthouse - Central District</p>	
<p>PLAINTIFF: Leonard Norman Cohen; Leonard Cohen Investments, LLC DEFENDANT: Kelley A. Lynch</p>	
<p>NOTICE OF RENEWAL OF JUDGMENT</p> <p>CASE NUMBER: BC 338322</p>	

TO JUDGMENT DEBTOR (name): **Kelley A. Lynch**

1. This renewal extends the period of enforceability of the judgment until 10 years from the date the application for renewal was filed.
2. If you object to this renewal, you may make a motion to vacate or modify the renewal with this court.
3. You must make this motion within 30 days after service of this notice on you.
4. A copy of the Application for and Renewal of Judgment is attached (Cal. Rules of Court, rule 3.1900).

Date: **JUL 13 2015**

SHERRI R. CARTER Clerk, by  Deputy
M. D. GLENN



See CCP 683.160 for information on method of service

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, and State Bar number):
 After recording, return to:

Michelle L. Rice, Esq. (SBN 235189)
 Kory & Rice LLP
 9300 Wilshire Blvd., Suite 200
 Beverly Hills, CA 90212
 TEL NO.: 310-285-1630 FAX NO. (optional): 310-278-7641
 E-MAIL ADDRESS (Optional):

ATTORNEY FOR JUDGMENT CREDITOR ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles

STREET ADDRESS:

MAILING ADDRESS: 111 North Hill Street
 CITY AND ZIP CODE: Los Angeles, CA 90012
 BRANCH NAME: Stanley Mosk Courthouse - Central District

FOR RECORDER'S USE ONLY

PLAINTIFF: Leonard Norman Cohen; Leonard Cohen Investments, LLC
 DEFENDANT: Kelley A. Lynch

CASE NUMBER: BC 338322

APPLICATION FOR AND RENEWAL OF JUDGMENT

FOR COURT USE ONLY

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 13 2015

Shari R. Carter, Executive Officer/Clerk
By [Signature] Deputy
M. D. Glenn

- Judgment creditor
 - Assignee of record
- applies for renewal of the judgment as follows:

1. Applicant (name and address):
 Leonard Norman Cohen, C/o Kory & Rice, LLP, LEONARD COHEN INVESTMENTS, LLC.
 9300 Wilshire Blvd., Suite 200
 Beverly Hills, CA 90212
2. Judgment debtor (name and last known address):
 Kelley A. Lynch
 1754 N. Van Ness Avenue
 Hollywood, California 90028
3. Original judgment
 - a. Case number (specify): BC 338322
 - b. Entered on (date): May 15, 2006
 - c. Recorded:
 - (1) Date:
 - (2) County:
 - (3) Instrument No.:
4. Judgment previously renewed (specify each case number and date):

5. Renewal of money judgment
 - a. Total judgment \$ 7,341,345.00
 - b. Costs after judgment \$ -0-
 - c. Subtotal (add a and b) \$ 7,341,345.00
 - d. Credits after judgment \$ -0-
 - e. Subtotal (subtract d from c) \$ 7,341,345.00
 - f. Interest after judgment \$ 6,717,808.80 *(see Attach. 1)
 - g. Fee for filing renewal application \$ 30.00
 - h. Total renewed judgment (add e, f, and g) \$ 14,059,183.80

i. The amounts called for in items a-h are different for each debtor. These amounts are stated for each debtor on Attachment 5.

SHORT TITLE: Leonard Norman Cohen, et al. v. Kelley A. Lynch, et al.	CASE NUMBER: BC 338322
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6. Renewal of judgment for possession.
 sale.

a. If judgment was not previously renewed, terms of judgment as entered:

See Attachment to May 15, 2008 Judgment, Item 6 and Attachment 2 on Form MC-025.

b. If judgment was previously renewed, terms of judgment as last renewed:

c. Terms of judgment remaining unsatisfied:

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

Date:

Michelle L. Rice, Esq. /Attorney for Plaintiffs
(TYPE OR PRINT NAME)


(SIGNATURE OF DECLARANT)

SHORT TITLE: Leonard Norman Cohen, et al. v. Kelley A. Lynch, et al.	CASE NUMBER: BC 338322
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ATTACHMENT (Number): 1 to Item 5(f)

(This Attachment may be used with any Judicial Council form.)

Attachment 1 to EJ-190, Item 5(f) - Interest after judgment.

Calculation of Postjudgment Accrued Interest:

1. Yearly Interest: $\$7,341,345.00 \times .10$ (10% statutory interest pursuant to CCP 685.010(a)) = $\$734,134.50/\text{yr}$
2. Daily Interest: $\$734,134.50/365$ days = $\$2,011.32/\text{day}$
3. Total Number of Days Since May 15, 2006 Judgment: 3,340 days (through July 9, 2015)
4. Total Postjudgment Interest: 3,340 days \times $\$2,011.32/\text{day}$ = $\$6,717,808.80$ (accrued through July 9, 2015)

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1

(Add pages as required)

SHORT TITLE: Leonard Norman Cohen, et al. v. Kelley A. Lynch, et al.	CASE NUMBER BC 338322
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ATTACHMENT (Number): 2, Item 6(a)*(This Attachment may be used with any Judicial Council form.)*

Attachment to Original May 15, 2006 Judgment, Item 6

Default judgment is also entered against Defendant Kelley A. Lynch ("Lynch") on Plaintiffs' claims for imposition of constructive trust and declaratory and injunctive relief. It is therefore ORDERED, ADJUDGED AND DECREED that a constructive trust is imposed on the money and property that Lynch wrongfully took and/or transferred while acting in her capacity as trustee for the benefit of Plaintiff Leonard Norman Cohen ("Cohen").

It is DECLARED that (1) Lynch is not the rightful owner of any assets in Traditional Holdings, LLC, Blue Mist Touring Company, Inc., or any other entity related to Cohen; (2) that any interest she has in any legal entities set up for the benefit of Cohen she holds as trustee for Cohen's equitable title; (3) that she must return that which she improperly took, including but not limited to "loans;" and (4) that Cohen has no obligations or responsibilities to her.

It is FURTHER ORDERED, ADJUDGED AND DECREED that Lynch is enjoined from conveying any rights or assets to any third party so as to frustrate Cohen's equitable interest, and from exercising her alleged rights in these legal entities, including any alleged rights to transfer, move, convey, loan, borrow or in any way exercise control over any funds or property received from Cohen.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1*(Add pages as required)*

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;">PROOF OF SERVICE—CIVIL</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): June 14, 2015 I served the following documents (specify):
NOTICE OF RENEWAL OF JUDGMENT; APPLICATION FOR RENEWAL OF JUDGMENT

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

6. 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: July 14, 2015

Lauren Wilhite
 (TYPE OR PRINT NAME OF DECLARANT)


 (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)

EXHIBIT 3

Filed 1/16/19

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

DIVISION SEVEN

FILED

Jan 16, 2019

DANIEL P. POTTER, Clerk

R. Lopez Deputy Clerk

ROBERT B. KORY, as Trustee,
etc.,

B267794

Plaintiff and Respondent,

(Los Angeles County
Super. Ct. No. BC338322)

v.

KELLEY ANN LYNCH,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Robert L. Hess, Judge. Affirmed in part; reversed in part.

Kelley Ann Lynch, in pro. per., for Defendant and Appellant.

Kory & Rice, Michelle L. Rice; Ferguson Case Orr Paterson and Wendy C. Lascher for Plaintiff and Respondent.

Kelley A. Lynch appeals from an order denying her motion to set aside the renewal of a default judgment in favor of Leonard Norman Cohen.¹ Lynch contends the renewal of the default judgment was void because Cohen never properly served the summons and complaint on her by personal service or substituted service. However, on January 17, 2014 the trial court denied Lynch's motion to vacate the default judgment, finding she had failed to overcome the presumption created by the proof of service that she was properly served and had actual notice of the complaint, and she failed to act diligently to set the judgment aside. Because Lynch failed to appeal the order denying her motion to vacate the judgment, she is now barred by issue preclusion from relitigating whether she was properly served with the complaint.

Lynch also contends Cohen lacked standing to bring the action on behalf of corporations named in the judgment or identified as "any other entity related to Cohen." She asserts the judgment's imposition of a constructive trust over her interests in the corporate entities was improper because the corporations were suspended at the time of the judgment and its renewal, and the trial court lacked jurisdiction over the entities. She also challenges the judgment as void for exceeding Cohen's requested relief. We conclude Lynch is correct as to this final argument in that the default judgment awarded a sum of prejudgment interest exceeding the complaint's request for relief. We reverse, and remand for the trial court to vacate the judgment and modify

¹ Cohen died on November 7, 2016. After Cohen's death, Robert B. Kory, as trustee of the Leonard Cohen Family Trust, substituted in this appeal as the respondent. For ease of reference, we use the name Cohen to refer to both Cohen individually and Kory as trustee.

it to reflect the correct prejudgment interest. In all other respects we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We set out the factual and procedural background in detail in our prior opinion in which we dismissed Lynch's appeal from an order denying her motion for terminating and other sanctions, which we concluded was a nonappealable motion for reconsideration of the trial court's order denying her motion to vacate the default judgment. (*Kory v. Lynch* (May 17, 2017, B265753) [nonpub. opn.] (*Kory I.*)) We summarize the central facts below.

A. Factual Background

Lynch is a former employee of Leonard Cohen, a well-known singer and songwriter. Lynch worked for Cohen as his personal manager for 16 years. Cohen terminated Lynch's employment in October 2004 because she embezzled millions of dollars from him.

B. The Complaint and the Default Judgment

On August 15, 2005 Cohen filed a complaint for damages against Lynch alleging causes of action for fraud, conversion, breach of contract, breach of fiduciary duty, negligence, constructive trust, and an accounting. Cohen filed a proof of service prepared by a registered process server, stating the process server served the summons and complaint on Lynch by substituted service by leaving a copy of the papers with "Jane Doe," a woman identified as a "co-occupant," at 2648 Mandeville Canyon Road, Los Angeles, and mailing a copy to Lynch at the

same address. Lynch did not file an answer or otherwise respond to the complaint.

On May 15, 2006 the trial court entered a default judgment awarding Cohen \$7,341,345 against Lynch, including \$5 million in damages and \$2,341,345 in prejudgment interest at the annual rate of 10 percent. As part of the judgment, the trial court imposed a constructive trust on “the money and property that Lynch wrongfully took and/or transferred while acting in her capacity as trustee for the benefit of . . . Cohen” The court declared “that (1) Lynch is not the rightful owner of any assets in Traditional Holdings, LLC, Blue Mist Touring Company, Inc., or any other entity related to Cohen; (2) that any interest she has in any legal entities set up for the benefit of Cohen she holds as trustee for Cohen’s equitable title; (3) that she must return that which she improperly took, including but not limited to ‘loans;’ and (4) that Cohen has no obligations or responsibilities to her.”

C. Lynch’s Motion To Vacate the Default Judgment

On August 9, 2013 Lynch filed a motion to vacate the default judgment. Lynch argued the judgment was void for lack of personal jurisdiction because Cohen never served her with the summons and complaint. She asserted the process server never effected substituted service because Lynch was “consistently” home when the process server purported to attempt to serve her, and no one resembling the Jane Doe was living at her home at the time. Lynch supported her arguments with her own unsigned declaration and a declaration from her son. She also asserted she was not aware of the lawsuit and default judgment until April 2010.

Lynch argued Cohen’s fabrication of service was extrinsic fraud, rendering the default judgment void. She also claimed

Cohen committed tax fraud and sued her in retaliation for her reporting the fraud to federal authorities.

Cohen argued in opposition that Lynch matched the description of the Jane Doe in the proof of service and Lynch had actual notice of the lawsuit based on extensive e-mail communications between Lynch and Cohen's lawyers in 2005 and 2006. Cohen also asserted the motion was untimely.

On January 17, 2014 the trial court denied Lynch's motion to vacate the default judgment. The trial court found the proof of service by the registered process server was presumed valid under Evidence Code section 647, and Lynch had failed to overcome the presumption because she resided at the address at the time of service and fit the description of the Jane Doe. In addition, Lynch had contemporaneous notice of the complaint, request for entry of default judgment, and entry of default judgment, and failed to act diligently to vacate the judgment. Lynch did not appeal from the order denying the motion to vacate.

D. *Lynch's Motion for Terminating Sanctions*

On March 17, 2015 Lynch filed a "Motion for Terminating & Other Sanctions." Lynch again argued she was never served with the summons and complaint, and therefore the trial court lacked jurisdiction to enter the default judgment. Lynch asserted that because of Cohen's extrinsic fraud in obtaining the judgment, the court should dismiss the action with prejudice or allow Lynch to be heard on the merits.

After a hearing on June 23, 2015, the trial court denied Lynch's motion as an untimely motion for reconsideration of Lynch's prior motion to vacate the default judgment. The trial court also noted there was no reason to revisit Lynch's claims.

We dismissed Lynch's appeal from the trial court's order, agreeing the motion was a motion for reconsideration of the trial court's order denying Lynch's motion to vacate the default judgment, which she had not appealed. Thus, we lacked jurisdiction over the appeal. (*Kory I, supra*, B265753.)

E. *The Renewal of Judgment*

On July 13, 2015 Cohen filed an application for renewal of the default judgment in the amount of \$14,059,183.80, including postjudgment interest, which was entered by the clerk. The next day Cohen served Lynch by mail with notice of the renewal of judgment.

F. *Lynch's Motion To Set Aside the Renewal of Judgment*

On July 28, 2015 Lynch filed a motion to set aside the renewal of judgment pursuant to Code of Civil Procedure section 683.170.² Lynch again argued the default judgment was void because Cohen never served her with the summons and complaint and had committed extrinsic fraud in obtaining the default judgment. She asserted Cohen did not serve her as part of his scheme to defraud the tax authorities. Finally, Lynch argued Cohen had no standing to bring the action or obtain a judgment against her on behalf of the corporate entities. She contended the corporations were suspended at the time of the judgment and its renewal, and therefore should have been excluded from the judgment. She also argued the trial court lacked jurisdiction over the entities.

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

In his opposition Cohen argued he properly served Lynch by substituted service and the default judgment and renewal of judgment were valid. He also contended Lynch forfeited her right to challenge jurisdiction because she had made a general appearance. Finally, he argued the court should reject Lynch's argument he lacked standing because he properly brought his claims in his individual capacity, not derivatively on behalf of the corporate entities.

At the hearing on October 6, 2015 the trial court referred to Lynch's motion as "an attempt to have a third bite of that same apple." Lynch responded that her motion was not a "third bite" because she "wasn't served [with] this lawsuit." She argued substituted service was improper because there was no female co-occupant at the time of purported service. The trial court responded, "This is exactly the same argument you've made to me twice before." Lynch also raised that the corporations named in the judgment had been suspended. After further argument, the court denied the motion.

Lynch timely appealed.³

³ An order denying a motion to vacate a renewal of judgment is an appealable order as "an order made after a judgment made appealable by paragraph (1)' of section 904.1, subdivision (a)" (*Jonathan Neil & Associates, Inc. v. Jones* (2006) 138 Cal.App.4th 1481, 1487; accord, *Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 262, fn. 4 ["it is the order denying a motion to vacate renewal of a judgment that is appealable, as an order after (the underlying) judgment"].)

DISCUSSION

A. *Section 683.170 Entitles a Party To Challenge the Renewal of a Judgment Based on Lack of Service of the Summons and Complaint*

Cohen contends we should dismiss the appeal because it too is a disguised motion for reconsideration of the trial court's prior order denying Lynch's motion to vacate the default judgment, which she did not appeal. Lynch responds that under section 683.170 she may challenge the renewal of judgment as a void judgment based on the lack of service of the summons and complaint. Lynch is correct.

"Before the 1982 enactment of the Enforcement of Judgments Law (§ 680.010 et seq.), the sole method by which a judgment creditor could extend the enforcement period of a money judgment was by obtaining a new judgment against the judgment debtor in an independent action based on the judgment." (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 260 (*Goldman*)). Under the Enforcement of Judgments Law, a money judgment is enforceable for 10 years from the date it is entered. (§ 683.020; *Goldman*, at p. 260.) The law created a summary procedure for renewal of the judgment by the creditor by filing an application for renewal with the clerk of the court before expiration of the 10-year period. (§ 683.130, subd. (a); *Goldman*, at p. 260.) The creditor must serve notice of the renewal on the debtor, and the debtor then has 30 days after service in which to make a motion to vacate the renewal of the judgment. (§ 683.170, subd. (b).)

Significantly, section 683.170, subdivision (a), provides that "[t]he renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on

the judgment.” Thus, “defective service of process is a defense which may be raised on a motion to vacate renewal of a judgment” (*Fidelity Creditor Service, Inc. v. Browne* (2001) 89 Cal.App.4th 195, 203 (*Fidelity*); accord, *Goldman, supra*, 160 Cal.App.4th at p. 262 [“in making a statutory motion under section 683.170, subdivision (a), to vacate a renewal of judgment, the debtor may contend that the court lacked personal jurisdiction *at the time of the initial judgment*”]; see *Hill v. City Cab & Transfer Co.* (1889) 79 Cal. 188, 191 [reversing judgment against debtor in action by creditor to enforce judgment where judgment was void for lack of service of process on defendant].)

In *Fidelity*, the Court of Appeal reversed the trial court’s denial of the defendant’s motion to vacate renewal of a judgment against him because he was never served with the original complaint, even though the defendant filed the motion almost 10 years after the original judgment was entered. (*Fidelity, supra*, 89 Cal.App.4th at p. 203; cf. *Goldman, supra*, 160 Cal.App.4th at p. 264 [affirming trial court’s denial of motion to vacate renewal of default judgment where trial court had jurisdiction over the defendant at the time of filing the complaint, but not at the time of renewal of the judgment].) The reasoning in *Fidelity* is on all fours because Lynch’s challenge goes to the jurisdiction of the court at the time of entry of the initial judgment, not at the time of renewal of the judgment.

B. *Standard of Review*

“The judgment debtor bears the burden of proving, by a preponderance of the evidence, that he or she is entitled to relief under section 683.170. [Citations.] On appeal, we examine the evidence in a light most favorable to the order under review and the trial court’s ruling for an abuse of discretion.” (*Fidelity*,

supra, 89 Cal.App.4th at p. 199; accord, *Iloff v. Dustrud* (2003) 107 Cal.App.4th 1201, 1208.)

“We review de novo the trial court’s determination that a default judgment is or is not void.” (*Airs Aromatics, LLC v. CBL Data Recovery Technologies, Inc.* (2018) 23 Cal.App.5th 1013, 1018 [vacating default judgment awarding damages in excess of complaint’s request for relief]; accord, *Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 752 [same].)

C. *Lynch’s Argument That She Was Never Served with the Summons and Complaint Is Barred by Issue Preclusion*

Cohen contends Lynch’s appeal is barred by the doctrine of issue preclusion because the question whether she was properly served with the summons and complaint was adjudicated by the trial court in denying her motion to vacate the default judgment and she failed to appeal the denial. We agree.

“[I]ssue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.” (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 825; accord, *Samara v. Matar* (2018) 5 Cal.5th 322, 327.)⁴

⁴ The Supreme Court in *DKN Holdings LLC v. Faerber* clarified that it was using the term “issue preclusion” to refer to collateral estoppel, explaining, “To avoid future confusion, we will follow the example of other courts and use the terms ‘claim preclusion’ to describe the primary aspect of the res judicata doctrine and ‘issue preclusion’ to encompass the notion of collateral estoppel.” (*DKN Holdings LLC v. Faerber, supra*, 61 Cal.4th at p. 824.)

The question whether Lynch was served with the summons and complaint was adjudicated by the trial court in denying her motion to vacate the default judgment. Lynch had a full opportunity to be heard on the motion. The issue before the trial court was the identical issue raised here and was “actually litigated and necessarily decided.” Further, it is undisputed Lynch was a party to the motion.

The trial court’s adjudication was a “final adjudication” because Lynch did not appeal from the trial court’s order denying her motion to vacate the default judgment. (See *In re Matthew C.* (1993) 6 Cal.4th 386, 393 [“If an order is appealable . . . and no timely appeal is taken therefrom, the issues determined by the order are res judicata.”], superseded by statute on another point, as stated in *People v. Mena* (2012) 54 Cal.4th 146, 156; *People v. Mbaabu* (2013) 213 Cal.App.4th 1139, 1147 [“A prior appealable order becomes res judicata in the sense that it becomes binding in the same case if not appealed.”].) A postjudgment grant or denial of relief from default and default judgment “is a special order after judgment on a statutory motion to set aside the judgment, and as such is appealable.” (*Shapiro v. Clark* (2008) 164 Cal.App.4th 1128, 1137; accord, *Carr v. Kamins* (2007) 151 Cal.App.4th 929, 933 [order denying motion to vacate judgment is appealable as a special order made after entry of judgment under § 904.1, subd. (a)(2)]; see *Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 287 [“An order vacating default and default judgment pursuant to section 473 ‘is appealable as an order after final judgment.’”].)

Lynch is therefore barred by issue preclusion from relitigating whether she was served with the summons and complaint.

D. *Lynch's Argument That Cohen Did Not Have Standing To Bring Suit on Behalf of Corporations Named in the Judgment Is Without Merit*

Lynch contends Cohen did not have standing to sue on behalf of Blue Mist Touring Company, Inc. (Blue Mist), Traditional Holdings, LLC (Traditional Holdings), and Old Ideas, LLC because they were suspended, dissolved, or not registered to do business in California. Lynch appropriately moved to vacate the renewed judgment on this ground under section 683.170. (See *Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 501 [“[C]ontentions based on a lack of standing involve jurisdictional challenges and may be raised at any time in the proceeding.”].) However, the named plaintiff in the action was Cohen—the default judgment required Lynch to pay Cohen \$7,341,345, which was later renewed with interest. The only mention of Traditional Holdings and Blue Mist in the proceedings was in relation to money and property that Cohen alleged Lynch wrongfully took or transferred to herself as the trustee for Cohen. Old Ideas, LLC is not mentioned in the judgment, but arguably falls within the references to “any other entity related to Cohen” or “any interest [Lynch] has in any legal entities set up for the benefit of Cohen.”

While Lynch is correct that a suspended corporation cannot prosecute an action (see *Cal-Western Business Services, Inc. v. Corning Capital Group* (2013) 221 Cal.App.4th 304, 310 [assignee of suspended corporation lacked capacity to file and maintain suit to enforce judgment]), it is undisputed that Cohen, not the corporations, was the plaintiff in this action. Although the judgment imposes a constructive trust on the interest Lynch held in these companies, that is no different than if the order required

Lynch to return money she took from a bank account owned by Cohen.

To the extent Lynch contends Cohen had no right to a constructive trust or a declaration that Lynch was not the rightful owner of Traditional Holdings, Blue Mist, “or any other entity related to Cohen” and “that any interest she has in any legal entities set up for the benefit of Cohen she holds as trustee for Cohen’s equitable title,” we look at the allegations of the complaint to see if they support these remedies.

A defendant may attack a default judgment at any time for granting relief in excess of that alleged in the complaint. (Code Civ. Proc., § 580, subd. (a) [“The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint”]; *Airs Aromatics, LLC v. CBL Data Recovery Technologies, Inc.*, *supra*, 23 Cal.App.5th at p. 1023 [“[T]he court’s jurisdiction to render default judgments can be exercised only . . . by keeping the judgment within the bounds of the relief demanded.”]; *Rodriguez v. Cho*, *supra*, 236 Cal.App.4th at p. 752 [“[A] default judgment greater than the amount specifically demanded is void as beyond the court’s jurisdiction.”]; *Simke, Chodos, Silberfeld & Anteau, Inc. v. Athans* (2011) 195 Cal.App.4th 1275, 1286 [“A default judgment that violates section 580 is void; it can be challenged and set aside at any time.”].) For purposes of evaluating the validity of the default judgment, we take as true the allegations in Cohen’s complaint. (*Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1015 [default judgment reversed where complaint, read liberally, failed to state cognizable claims against defendant]; *Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 392 [“Generally, a defendant in default ‘confesses the material allegations of the complaint.’”].)

Lynch challenges the default judgment's imposition of a constructive trust and declaratory relief with respect to her property interests in the listed corporate entities. "Three conditions must be shown to impose a constructive trust: (1) a specific, identifiable property interest, (2) the plaintiff's right to the property interest, and (3) the defendant's acquisition or detention of the property interest by some wrongful act." (*Higgins v. Higgins* (2017) 11 Cal.App.5th 648, 659; accord, *Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1332; see Civ. Code, § 2223 ["One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner."].) To qualify for declaratory relief, a plaintiff must show "(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party." (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546; accord, *Artus v. Gramercy Towers Condominium Assn.* (2018) 19 Cal.App.5th 923, 934 ["The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject."]); see Code Civ. Proc., § 1060 [providing right of action for declaration of rights or duties with respect to property].)

Cohen's complaint alleges he was the rightful owner of assets and interests in Traditional Holdings, Blue Mist, and other entities wrongfully taken by Lynch. And Cohen's complaint sought the imposition of a constructive trust as a remedy for this wrongful taking, as well as a declaration of Cohen's interests in the property. These pleadings, which we take as true, satisfy the conditions for imposition of a constructive trust and establish a controversy appropriately resolved by the declaration of Cohen's property interests in the subject corporate entities. Lynch's argument that the trial court lacked jurisdiction over the

corporate entities misses the mark: The default judgment sets forth Cohen's rights with respect to property interests taken by Lynch, not the rights of the corporate entities. Lynch has shown no basis to disturb the default judgment's creation of a constructive trust or provision of declaratory relief.

E. *The Default Judgment Is Void Because It Exceeds the Monetary Relief Requested in the Complaint*

Lynch also contends the default judgment is void because the amount of damages exceeds that requested by the complaint.⁵ We agree. Cohen's complaint sought "general damages in a sum of not less than \$5,000,000 or an amount according to proof, together with interest thereon at the legal rate." The default judgment awarded \$5 million in damages and \$2,341,345 in prejudgment interest, calculated at the annual rate of 10 percent. Thus, the \$5 million damage award does not exceed the damages requested in Cohen's pleadings. However, the record shows the calculation of prejudgment interest was in error. The declaration of accounting consultant Kevin Prins, which Cohen submitted in support of entry of the default judgment against Lynch, shows that the \$2,341,345 figure was calculated based on a damages award of \$7,159,413, an amount in excess both of the amount requested in the complaint and awarded in the judgment. The default judgment is therefore void to the extent the prejudgment interest award is excessive. (See *David S. Karton, A Law Corp. v.*

⁵ Although Lynch did not raise this issue in the trial court, "[b]ecause of its jurisdictional nature, the claim that a judgment exceeds the relief demanded in the complaint can even be raised for the first time on appeal." (*People ex rel. Lockyer v. Brar* (2005) 134 Cal.App.4th 659, 666; accord, *Matera v. McLeod* (2006) 145 Cal.App.4th 44, 59.)

Dougherty (2009) 171 Cal.App.4th 133, 151 [setting aside default judgment as void where prejudgment interest awarded was “mathematically impossible”].) We reverse with instructions for the trial court to modify the judgment to reflect the \$5 million in damages and corrected prejudgment interest. (See *Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1748 [affirming trial court’s order vacating default judgment awarding damages in excess of demand in complaint, and remanding for trial court to enter judgment reflecting corrected amount of damages].)

DISPOSITION

The order denying Lynch’s motion to set aside the renewal of judgment is reversed. On remand, the trial court is directed to vacate its order denying the motion and to enter a new order granting Lynch’s motion to set aside the renewal of judgment in part. The trial court should modify the judgment to reflect \$5 million in damages plus the corrected prejudgment interest. In all other respects we affirm. The parties shall bear their own costs on appeal.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

SEGAL, J.

EXHIBIT 4

CIV-130

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): MICHELLE L. RICE, ESQ. (SBN 235189) KORY & RICE, LLP 5455 WILSHIRE BLVD., SUITE 1701 LOS ANGELES, CA 90036 TELEPHONE NO: 310-285-1833 FAX NO. (Optional): 310-278-7641 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): ROBERT B. KORY, TRUSTEE, LEONARD COHEN FAMILY TRUST	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 NORTH HILL STREET MAILING ADDRESS CITY AND ZIP CODE: LOS ANGELES, CA 90012 BRANCH NAME: CENTRAL DISTRICT - STANLEY MOSK COURTHOUSE	
PLAINTIFF/PETITIONER: ROBERT B. KORY, TRUSTEE, LEONARD COHEN FAMILY TRUST DEFENDANT/RESPONDENT: KELLEY ANN LYNCH	
NOTICE OF ENTRY OF JUDGMENT OR ORDER (Check one): <input checked="checked" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less)	CASE NUMBER: BC 338322

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): March 26, 2019
2. A copy of the judgment, decree, or order is attached to this notice.

Date: March 27, 2019

Michelle L. Rice, Esq.

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)


(SIGNATURE)

PLAINTIFF/PETITIONER: ROBERT B. KORY, TRUSTEE, LEONARD COHEN FAMILY	CASE NUMBER: BC 338322
DEFENDANT/RESPONDENT: KELLEY ANN LYNCH	

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):
5455 WILSHIRE BLVD., SUITE 1701
LOS ANGELES, CALIFORNIA 90036

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (check one):
 - a. deposited the sealed envelope with the United States Postal Service.
 - b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:
 - a. on (date): MARCH 27, 2019
 - b. from (city and state): LOS ANGELES, CA 90038

4. The envelope was addressed and mailed as follows:

<ol style="list-style-type: none"> a. Name of person served: KELLEY ANN LYNCH Street address: 1754 N. VAN NESS AVE. City: LOS ANGELES State and zip code: CALIFORNIA 90028 	<ol style="list-style-type: none"> c. Name of person served: Street address: City: State and zip code:
<ol style="list-style-type: none"> b. Name of person served: Street address: City: State and zip code: 	<ol style="list-style-type: none"> d. Name of person served: Street address: City: State and zip code:

- Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

5. Number of pages attached 1

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

Date: March 27, 2019

Lauren Wilhite

(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

1 MICHELLE L. RICE, SBN 235189
2 KORY & RICE, LLP
3 5455 Wilshire Blvd., Suite 1701
4 Los Angeles, CA 90036
5 Telephone: (310) 285-1630
6 Facsimile: (310) 278-7641

7 Attorney for Plaintiff/Petitioner

CONFIRMED COPY
CENTRAL DISTRICT
Superior Court of California
County of Los Angeles

MAR 28 2019

Sherril R. Carter, Executive Officer/Clerk
By: Michael Truu, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 CENTRAL DISTRICT

11 LEONARD NORMAN COHEN,
12 LEONARD COHEN INVESTMENTS,
13 LLC

14 Plaintiff/Petitioner,

15 v.

16 KELLEY ANN LYNCH,
17 Defendant/Respondent.

CASE NO.: BC 338322

Hon. Patricia Nieto, Dept. 24

[PROPOSED] ORDER GRANTING EX
PARTE APPLICATION TO SUBSTITUTE
ROBERT B. KORY AS TRUSTEE OF
THE LEONARD COHEN FAMILY
TRUST AS THE PARTY PLAINTIFF
PURSUANT TO CCP §377.31 AND CCP
§377.32

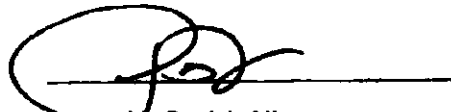
Complaint Filed: August 15, 2005
Default Judgment Issued: May 15, 2006
Default Judgment Renewed: July 13, 2015

18 The Court has read and considered the *ex parte* application of Robert B. Kory, Trustee of
19 the Leonard Cohen Family Trust, to substitute in this action for Plaintiffs Leonard Norman Cohen,
20 now deceased, and Leonard Cohen Investments, LLC. Good cause appearing therefore, IT IS
21

22 **HEREBY ORDERED:**

23 Robert B. Kory, Trustee of the Leonard Cohen Family Trust, may substitute as Plaintiff in
24 this action in the place of Leonard Norman Cohen and Leonard Cohen Investments, LLC.

25 DATED: March 26 2019

26 

27 Honorable Patricia Nieto,
28 Judge of the Los Angeles Superior Court

[PROPOSED] ORDER ON SUBSTITUTION

EXHIBIT 5

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 24

BC338322

**LEONARD NORMAN COHEN ET AL VS KELLEY A
LYNCH ET AL**

March 26, 2019

8:30 AM

Judge: Honorable Patricia D. Nieto
Judicial Assistant: M. Tran
Courtroom Assistant: M. Quinteros

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Michelle Lorraine Rice

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Hearing on Ex Parte Application FOR ORDER
SUBSTITUTING ROBERT B. KORY AS TRUSTEE OF THE LEONARD COHEN ' FAMILY
TRUST IN PLACE OF LEONARD NORMAN COHEN AND LEONARD COHEN
INVESTMENTS, LLC

The case is called for hearing.

After hearing oral argument, the Court makes the following rulings:

The Ex Parte Application FOR ORDER SUBSTITUTING ROBERT B. KORY AS TRUSTEE
OF THE LEONARD COHEN ' FAMILY TRUST IN PLACE OF LEONARD NORMAN
COHEN AND LEONARD COHEN INVESTMENTS, LLC filed by Leonard Norman Cohen on
is Granted.

Robert B. Kory, Trustee of the Leonard Cohen Family Trust, may substitute as Plaintiff in this
action in the place of Leonard Norman Cohen and Leonard Cohen Investments, LLC.

Order is signed and filed this date.

The court's order on the ruling after remand made on 2/6/19 is set aside and vacated.

Court reissues the order after remand.

Defendant's Motion to Set Aside the July 13, 2015 Renewal Judgment was heard on noticed
hearing on October 6, 2015. Upon consideration of all supporting documents and arguments of
the parties, the Court DENIED with prejudice Defendant's Motion to Set Aside the Renewal of
Judgment.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
Civil Division
Central District, Stanley Mosk Courthouse, Department 24

BC338322
LEONARD NORMAN COHEN ET AL VS KELLEY A
LYNCH ET AL

March 26, 2019
8:30 AM

Judge: Honorable Patricia D. Nieto	CSR: None
Judicial Assistant: M. Tran	ERM: None
Courtroom Assistant: M. Quinteros	Deputy Sheriff: None

Upon appeal from the above order, the Court of Appeal, Second Appellate District, reversed the order denying Defendant and Appellant Kelly Ann Lynch's motion to set aside the renewal judgment.

Consistent with instructions on remand, the Court vacates its previous order of October 6, 2015 denying the motion and grants Defendant's motion to set aside the renewal of judgment in part.

The judgment is modified to reflect \$5,000,000.00 in damages with the corrected prejudgment interest amount of \$6,757,534.25 for a total amount of \$11,757,534.25. The amount is calculated as follows:

Type of interest: Simple interest
Judgment Term (in Days) 4933 (from August 5, 2005 to February 6, 2019)
Rate of interest: 10.00%
Amount of judgment: \$5,000,000.00

Judgment for Plaintiff in the Amount of: \$5,000,000.00
Plus interest of: \$6,757,534.25
Attorney's Fees: \$0
Costs: \$0

TOTAL AMOUNT OF JUDGMENT: \$11, 757,534.25

Moving party is to submit a proposed order and judgment reflecting court's order including the new substituted Plaintiff.

Order to Show Cause Re: Entry of Judgment is scheduled for 05/29/19 at 08:30 AM in Department 24 at Stanley Mosk Courthouse.

Moving party is ordered to give notice.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO: NAME: Michelle L. Rice, Esq. (SBN 235189) FIRM NAME: Kory & Rice, LLP STREET ADDRESS: 5455 Wilshire Blvd., Suite 1701 CITY: Los Angeles STATE: CA ZIP CODE: 90036 TELEPHONE NO.: 310-285-1630 FAX NO.: 310-278-7641 E-MAIL ADDRESS: mrice@koryrice.com ATTORNEY FOR (name): Robert B. Kory, as Trustee, Leonard Cohen Family Trust	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: Stanley Mosk Courthouse - Central District	CASE NUMBER: BC 338322
Plaintiff/Petitioner: Robert B. Kory, as Trustee, Leonard Cohen Family Trust Defendant/Respondent: Kelley Ann Lynch	JUDICIAL OFFICER: Hon. Patricia D. Nieto
PROOF OF SERVICE-CIVIL Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input checked="" type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax	DEPARTMENT: 24

**Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.**

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: **5455 Wilshire Boulevard, Suite 1701, Los Angeles, CA 90036**

3. The fax number from which I served the documents is (complete if service was by fax):

4. On (date): **April 5, 2019** I served the following documents (specify):

[PROPOSED] AMENDED JUDGMENT OF DEFAULT AS TO DEFENDANT, KELLEY ANN LYNCH;
 JUDGMENT - JUDICIAL COUNCIL FORM JUD-100

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 Ann 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, California 90028**

- c. (Complete if service was by fax.)
 Fax number where person was served:

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 (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in 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 eight in the evening.

CASE NAME: Robert B. Kory, as Trustee, Leonard Cohen Family Trust v. Kelley A. Lynch	CASE NUMBER: BC 338322
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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.

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

Date: April 5, 2019

 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 (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in 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)