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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ROBERT B. KORY, as Trustee, etc.,

Plaintiff and Respondent,

v.

KELLEY A. LYNCH,

Defendant and Appellant.

B265753

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

APPEALS from orders of the Superior Court of Los Angeles County, Robert L. Hess, Judge. Dismissed in part, affirmed in part and reversed in part.

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

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

Defendant Kelley A. Lynch appeals from an order denying her motion for terminating sanctions against plaintiff Leonard Norman Cohen and from a separate order granting Cohen's motion to seal portions of the declaration that Lynch attached to her motion, as well as certain of the exhibits attached to the declaration. [1]

Lynch filed her sanctions motion in 2015. Notwithstanding the word "sanctions" in the title, the primary relief Lynch sought in the motion was an order vacating a default judgment entered against her in 2006. Lynch argued that the judgment should be vacated because Cohen never served the summons and complaint on her. She claimed that Cohen's statements to the trial court that she was served were false and that the default judgment was the product of extrinsic fraud perpetrated by Cohen. In denying Lynch's sanctions motion, the trial court concluded that she previously had made the identical claim more than a year earlier in an unsuccessful motion to vacate the default judgment. The court thus deemed the sanctions motion an untimely motion for reconsideration of the order denying Lynch's motion to vacate, and it found no reason to revisit that order.

The court's characterization of the sanctions motion was accurate. In that motion, Lynch repackaged her claims of fabricated service and extrinsic fraud from the motion to vacate, and put a different label on it. Lynch's change in nomenclature from "vacate" to "sanctions" does not mask that the sanctions

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[1] Cohen died on November 7, 2016. After this death, we granted the motion of Robert B. Kory, as trustee of the Leonard Cohen Family Trust, to substitute for Cohen as the respondent in this appeal. For ease of reference, we will use the name Cohen to refer to both Cohen individually and Kory as trustee.

motion was a motion for reconsideration of the order denying her motion to vacate. Lynch sought the same relief she sought in the motion to vacate (an order vacating the default judgment), and she presented as the grounds for that relief the same grounds she had presented in the motion to vacate (Cohen's allegedly false statements about service that constitute extrinsic fraud). Orders denying reconsideration motions are not appealable in and of themselves; they may be reviewed on appeal only as part of a timely appeal from the denial of the order on which reconsideration was sought. (Code Civ. Proc., § 1008, subd. (b)[2]). Lynch did not appeal from the order denying her motion to vacate. Thus, we dismiss Lynch's appeal from the order denying what she has named a motion for sanctions but that we conclude is a motion for reconsideration.

The sealing order is appealable. We reverse the order with respect to three of the documents that were sealed. We affirm it as to all of the other sealed material because Lynch has failed to demonstrate on appeal that the sealing of these records did not meet the standards for sealing set forth in rule 2.550 of the California Rules of Court.

FACTUAL AND PROCEDURAL BACKGROUND

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

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[2] Unless otherwise specified, all statutory references are to the Code of Civil Procedure.

A. *Cohen's Complaint and the Default Judgment Against Lynch*

On August 15, 2005, Cohen filed a complaint for damages against Lynch arising from the alleged embezzlement. Cohen's complaint asserted causes of action for fraud, conversion, breach of contract, breaches of fiduciary duty, negligence, injunctive relief, imposition of constructive trust, and an accounting.

A registered process server whom Cohen's counsel retained filed a proof of service in the trial court stating that he attempted to personally serve the summons and complaint on Lynch at 2648 Mandeville Canyon Road, Los Angeles, California on August 17, 2005, and then again every day from August 19 through August 23, 2005, for a total of six attempts. The process server stated that two of the attempts were in the morning, one was in the afternoon, and three were in the evening; each time, nobody answered the door. The process server further stated that he was able to serve the summons and complaint on Lynch through substituted service on August 24, 2005. He said he accomplished the substituted service by giving a copy of the papers to a woman at 2648 Mandeville Canyon Road who answered the door, and thereafter mailing another copy to Lynch at that address.[3] The process server identified the woman to whom he gave the papers as "Jane Doe," a "co-occupant" of the residence, and described her

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[3] Section 415.20, subdivision (b), authorizes substituted service in the manner in which the process server said he accomplished it.

as white, with blonde hair and black eyes, and about 5 feet 7 inches and 135 pounds.[4]

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[4] Registered process servers retained by Cohen's attorney were able to personally serve Lynch at the Mandeville Canyon Road address in two other actions Cohen filed against Lynch in 2005. The first of those actions was filed on October 11, 2005 (Super. Ct. L.A. County, No. BC341120). In that action, Cohen sought the recovery of business records and other personal property belonging to him that Lynch allegedly had in her possession and had refused to return to him. The summons and complaint were personally served on Lynch at the Mandeville Canyon Road address on October 11, 2005. Later that month, pursuant to an ex parte writ of possession, the Sheriff's Department removed from that address boxes of records and personal property. On May 9, 2006, the trial court entered a default judgment declaring Cohen the rightful owner of the personal property that the Sheriff's Department had seized. The other action was filed on October 14, 2005 (Super. Ct. L.A. County, No. BS099650). In that action, Cohen sought a restraining order against Lynch based on allegedly disturbing voice mail messages and email messages that he had received from her. The application for the restraining order was personally served on Lynch at the Mandeville Canyon Road address on October 18, 2005. On November 3, 2005, the trial court entered a three-year restraining order against Lynch.

In addition to the 2005 restraining order, Cohen sought and obtained in 2008 a "permanent protection order" against Lynch from a state court in Colorado, where Lynch lived for a period of time. In 2011, Cohen had the Colorado order registered in California. In 2015, Lynch moved to set aside the California registration of the Colorado order. On September 1, 2015, the trial court entered an order denying Lynch's motion. Her appeal from that order is pending in this court.

Lynch failed to answer or otherwise respond to the complaint. On December 5, 2005, Cohen requested that the trial court enter a default judgment; the request was supported by the process server's proof of service of the summons and complaint. On the same day, Cohen's attorney sent Lynch a copy of the request for default judgment by first class mail to her Mandeville Canyon Road address. Lynch was evicted from that address in December 2005. After learning of the eviction through email communications with Lynch herself, Cohen's counsel sent copies of all the court filings in the case to Lynch via email. Lynch responded to a number of those emails.

On May 15, 2006, the trial court entered a default judgment against Lynch. The court awarded Cohen $7,341,345, which it broke down into $5 million in damages and $2,341,345 in prejudgment interest at the rate of 10 percent per annum. The court also imposed a constructive trust on "money and property that Lynch wrongfully took and/or transferred while acting in her capacity as trustee for the benefit of [Cohen]." And the court declared that Lynch did not rightfully own any interest in Traditional Holdings, LLC, an entity that Cohen had created, "or any other entity related to Cohen," and that any interest she held in those entities was as a trustee for Cohen.

B. *Lynch's Motion To Vacate the Default Judgment*

Seven years later, on August 9, 2013, Lynch filed a motion to vacate the default judgment. Lynch argued that Cohen never served her with the summons and complaint; thus, the trial court never acquired personal jurisdiction over her and the default judgment was void.

According to Lynch, the process server could not have made failed attempts to personally serve her at the Mandeville Canyon Road address because she "consistently" was present there on the days and at the times he said he tried to serve her. Nor, Lynch claimed, could the process server possibly have effected substituted service at the Mandeville Canyon Road address because nobody resembling "Jane Doe," the co-occupant female to whom he said he gave the papers, was living there at the time. Lynch submitted an unsigned declaration attesting to her claims about never being served. Lynch's son, John Rutger Penick, submitted a declaration stating that he was living with his mother at the Mandeville Canyon Road address during the period in August 2005 when Cohen's process server was alleged to have tried to serve Lynch and then effected substituted service. According to Penick, his mother "was home at all times during this period of time," and that he "was frequently present as well" in that period. And Penick stated that nobody matching the description of "Jane Doe" lived at the residence during the period in question.

Lynch claimed that the process server's statements that Lynch was served were false and constituted "extrinsic fraud" that prevented her from presenting a defense to Cohen's suit on the merits, resulting in the entry of a wrongful default judgment. Lynch pointed out that courts have inherent equitable power to set aside a default judgment when it rests on extrinsic fraud. (E.g., *Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 750.)

As to notice, Lynch asserted that she was unaware that Cohen had sued her and obtained a default judgment until April 2010, and therefore her motion to vacate the judgment was not untimely. Lynch did not explain, however, why she waited more

than three years to bring the motion after allegedly first learning of Cohen's suit and the judgment.

In addition to claiming that Cohen fabricated service and perpetrated extrinsic fraud, Lynch alleged that Cohen had committed tax fraud.[5] Lynch further alleged that she had reported Cohen's alleged tax fraud to federal governmental authorities and that Cohen sued her in retaliation for her reporting of this fraud. Lynch also alleged that Cohen had defrauded her of her ownership interest in certain companies, withheld commissions for her services, slandered and maligned her, and that she ended up homeless as a result of Cohen's actions against her.

In opposing Lynch's motion, Cohen argued that his process server had complied with the statutory requirements for substituted service (§ 415.20, subd. (b)) and therefore service on Lynch was presumptively valid pursuant to section 647 of the Evidence Code. Cohen further argued that Lynch had failed to overcome that presumption because she did not show that the process server's proof of services constituted extrinsic fraud. In that regard, Cohen presented evidence that, in August 2005, Lynch matched the description of the "Jane Doe" to whom the process server gave the summons and complaint at the Mandeville Canyon Road address. Additionally, Cohen argued that Lynch's allegations that he had committed tax fraud and that he sued her in retaliation for reporting the supposed fraud, if

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[5] Lynch did not make the tax fraud allegations in her memorandum supporting the motion to vacate. She made them in her declaration, and in a 67-page attachment to the declaration, which she titled "Case Background."

true, constituted intrinsic fraud, which is not a basis to vacate default judgments.

Cohen also argued that even if Lynch had not been served, extensive email communications between Lynch and Cohen's attorneys in 2005 and 2006 demonstrated that she had contemporaneous notice of Cohen's filing of the summons and complaint and request for entry of default judgment, as well as the trial court's entry of judgment. As an illustration, Cohen pointed to one email that Lynch sent to Cohen's attorney on September 3, 2005 (less than a month after the suit was filed); Cohen argued that this email demonstrated Lynch's knowledge that the court had scheduled a case management conference. In another email that Lynch sent to Cohen's attorney, this one on October 5, 2005, she described Cohen's suit as "bogus," which, Cohen said, showed that Lynch was aware of the suit as of that date. Cohen stated that Lynch's email communications with his lawyers about the suit continued apace after the default judgment was entered in 2006. As an illustration, Cohen referred to a May 2008 email from Lynch to one of Cohen's attorneys in which she acknowledged receipt of a copy of the default judgment. Cohen asserted that, in light of Lynch's awareness of the case and developments in it from the outset, Lynch's multi-year delay in filing her motion to vacate the judgment reflected inexcusable neglect on her part that rendered the motion untimely.

At a January 17, 2014 hearing on Lynch's motion, the trial court stated that the proof of service by the registered process server was presumed valid under section 647 of the Evidence Code. The court ruled that Lynch had failed to overcome that presumption because, among other things, she acknowledged

that she resided at the Mandeville Canyon Road address on the days the process server said he went there and the evidence indicated that Lynch fit the description of the woman to whom the process server said he gave the summons and complaint.[6] The court remarked that Lynch's declaration was unsigned. The court also found that Penick's declaration furnished little support to Lynch's claim that she never was served because Penick did not purport to have been present at the Mandeville Canyon Road address at all times that the process server said he went there.

Next, the court ruled that even if Lynch had not been served, the evidence indicated that, in 2005 and 2006, she had contemporaneous notice of the complaint, request for entry of default judgment, and entry of the judgment, but failed to act with diligence in the ensuing years to seek to have the judgment set aside. The court added that, even if, as Lynch claimed, she did not learn of Cohen's suit until April 2010, she "provide[d] absolutely zero explanation why [she] waited until August 2013 to file th[e] motion" to set aside the judgment.

Towards the end of the hearing, the court expressed the view that Lynch's motion "isn't even colorably meritorious." Following the hearing, the court entered an order denying Lynch's motion to vacate with prejudice for the reasons stated at the hearing. Lynch never appealed from that order.

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[6] The court did not address whether this meant that Lynch actually was personally served, notwithstanding the process server's statement that he effected substituted service.

C. *Lynch's Motion for Terminating Sanctions*

More than a year later, on March 17, 2015, Lynch filed what she styled as a "Motion for Terminating & Other Sanctions." Together, the notice of motion and the supporting memorandum, declarations, and exhibits spanned more than 1,100 pages.

The notice of motion stated that Lynch was "mov[ing] the [c]ourt for an order dismissing the default judgment, and requesting terminating and other sanctions, on the grounds that the default judgment (and the January 17, 2014 denial of Lynch's Motion to Vacate) was procured through fraud on the court (and other egregious misconduct)." Lynch's memorandum renewed the claim she previously made in her motion to vacate the default judgment that she never was served with the summons and complaint and therefore the court lacked jurisdiction to enter judgment against her. She also renewed the claim from her motion to vacate that Cohen falsely stated that she was served and that Cohen had perpetrated an extrinsic fraud. Terminating sanctions were warranted, Lynch asserted, because of Cohen's alleged "litigation abuses and misconduct," and "perjury."

To support Lynch's claim that she never was served, Penick submitted another declaration that mirrored his earlier one from the proceedings on Lynch's motion to vacate: again, he asserted that he lived with Lynch at the Mandeville Canyon Road address at the time the process server said he served her there, but that no service was made. Paulette Brandt, a friend of Lynch's, submitted a declaration stating that she was with Lynch at the Mandeville Canyon Road address on the day that the process server said he served the summons and complaint, but that nobody served anything there that day. Three other friends of

Lynch's submitted declarations asserting that Lynch told them over the years that she never was served in this case.

Lynch's own 109-page declaration repeated her accusation from the motion to vacate the judgment that Cohen had committed tax fraud. The declaration also provided details about Cohen's taxes and finances and communications between Cohen and his attorneys about those matters.[7]

Cohen argued in opposition that, despite the label that Lynch attached to it, her sanctions motion was an untimely motion for reconsideration of the trial court's 2014 order denying her motion to vacate the default judgment because the sanctions motion sought the same relief that Lynch sought in the earlier motion (an order vacating the judgment) and had the same predicate as the earlier motion (she never was served and the process server lied about serving her). Cohen also argued that the motion was procedurally defective because the trial court could not issue terminating sanctions until the default judgment was vacated. And Cohen argued that, in any event, Lynch failed to show that Cohen had committed extrinsic fraud or other litigation misconduct warranting the setting aside of the judgment and the entry of termination sanctions.

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[7] Lynch's memorandum stated that Lynch was seeking "clarification of ambiguities" in the default judgment. The memorandum, along with a supporting exhibit that Lynch prepared, asserted that these ambiguities arose from "federal tax and corporate matters" encompassed by the judgment. Clarification of ambiguities in the judgment appeared to be alternative relief in the event that the court did not vacate the judgment and enter terminating sanctions.

The hearing on Lynch's sanctions motion was held on June 23, 2015. At the outset of the hearing, the trial court noted that it already had rejected Lynch's claims of fabricated service and extrinsic fraud in denying her motion to vacate the default judgment a year earlier. The court stated, "You bore the burden of persuasion that the [p]roof of [s]ervice was false, and you had not carried that burden of proof because you had failed to produce any evidence of that beyond an unsigned declaration by yourself and a signed declaration by your son that said only that you were home at all times during 2005. And you did not demonstrate extrinsic fraud because you conceded . . . you were home when the process server attempted to serve you on the six occasions before . . . subserving the Jane Doe." The court then characterized Lynch's sanction motion as an untimely motion for reconsideration of the order denying the motion to vacate; the motion was untimely, the court said, because section 1008 requires motions for reconsideration to be submitted within 10 days of the order on which reconsideration is sought.

In response, Lynch asserted that "this is not a motion to reconsider, this is a motion addressing fraud upon the [c]ourt which was used to obtain the [d]efault [j]udgment. I was not served. I was home. No one came to my house." The court replied, "We have adjudicated that already," and added that Lynch "had a full and fair opportunity to present" her claims of fabricated service and extrinsic fraud in connection with the motion to vacate, which was denied. The court concluded that it found no reason to revisit that decision.

Following the hearing, the court entered an order denying Lynch's motion for terminating sanctions.[8] Lynch appealed from that order.[9]

D. *Cohen's Sealing Motion*

While Lynch's sanctions motion was pending, Cohen moved ex parte for an order sealing portions of 33 paragraphs in the 130-paragraph declaration that Lynch attached to her motion, and sealing in their entirety 29 of the 90 exhibits that Lynch attached to her declaration. Cohen sought the sealing of this material pursuant to rules 2.550 and 2.551 of the California Rules of Court.[10]

Cohen's supporting memorandum and declaration asserted that the material that he requested to be sealed contained privileged communications between Cohen and his attorneys, the work product of his attorneys, his personal tax information, and/or confidential information about his business dealings and transactions. Cohen stated that he had not waived the privileged or confidential nature of these documents by providing them to Lynch in the course of her performance of duties as his manager; nor, he asserted, had he consented to Lynch's disclosure of this

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8 The court did not address Lynch's request for clarification of supposed ambiguities in the default judgment. Lynch does not raise that issue on appeal.

9 On July 13, 2015, the trial court granted Cohen's request to renew the default judgment. On October 7, 2015, the court denied Lynch's motion to set aside the renewal of the judgment. Lynch filed a notice of appeal from that order. That appeal is pending in this court.

10 All rules references are to the California Rules of Court.

information. Cohen also stated that the 2006 default judgment declared that Lynch had no interest in Cohen's business entities and ordered her to return all property of Cohen's that she had wrongfully retained. He asserted that Lynch had disregarded the court's order by retaining privileged and confidential documents belonging to him and then disclosing them as part of her sanctions motion.

The hearing on Cohen's sealing motion was held on May 29, 2015. Following the hearing, and over Lynch's objection, the trial court entered an order granting Cohen's sealing motion. The order required the redaction of the portions of the 33 paragraphs in Lynch's declaration that Cohen asked to be redacted. And the order sealed the 29 exhibits attached to Lynch's declaration that Cohen asked to be sealed.

In entering the sealing order, the court found that Cohen "has an overriding interest to prevent disclosure of attorney-client privileged and work product information and documentation, as well as confidential business information and documentation and tax return information that overcomes the public interest of access to [c]ourt records." The court further found "that a substantial probability exists that such overriding interest would be substantially prejudiced if such records were not sealed from the public." And the court found that Cohen "has narrowly tailored his request for sealing such records and that no less restrictive means exist for protecting [his] overriding interest other than sealing such records from the public." The court's findings tracked rule 2.550(d), which sets forth the findings that must be made before court records may be sealed.

At the June 23, 2015 hearing on her sanctions motion, Lynch renewed her opposition to Cohen's sealing motion and

essentially asked the court to unseal the records that the court had sealed the month before. In support of that request, Lynch asserted that many of the documents that the court had sealed were publicly available in court records in cases brought against Cohen by other parties in federal courts in New York and Colorado.[11] Lynch did not specify, however, which of the sealed

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[11] The New York case to which Lynch referred was *UCC Lending Corp. v. Cohen*, No. 00 Civ. 1068 (S.D.N.Y.). In that case, the plaintiffs sued Cohen for breach of contract in connection with an aborted transaction pursuant to which plaintiffs would loan money to an entity that Cohen was to establish and Cohen would provide plaintiffs an interest in certain of his musical compositions as security for the loan. The Colorado case to which Lynch referred was *Natural Wealth Real Estate, Inc. v. Cohen*, No. 05–cv–01233 (D.Col.). In that case, plaintiffs alleged they were hired by Cohen to invest the assets of Traditional Holdings, which totaled $5 million. Plaintiffs further alleged they warned Cohen that Lynch was severely depleting those assets and that Cohen sought to extort the lost sums from the plaintiffs when Cohen realized that the chance of recovering the funds from Lynch was slim. Plaintiffs sued Cohen and Lynch for assorted torts and civil wrongs; as relief, they sought, inter alia, an interpleader against both Cohen and Lynch to determine rightful ownership as between Cohen and Lynch of the remaining assets of Traditional Holdings. Cohen counterclaimed against plaintiffs. The court ultimately dismissed both sides' claims, and held that the plaintiffs' interpleader claim was rendered moot when the May 12, 2006 California superior court default judgment declaring that Lynch did not have any interest in Traditional Holdings became final. (*Natural Wealth Real Estate, Inc. v. Cohen* (D. Col. Dec. 4, 2006) 2006 WL 3500624; *Natural Wealth Real Estate, Inc. v. Cohen* (D. Col. Sept. 5, 2008) 2008 WL 4186003.)

documents were publicly available in the records in the New York and Colorado cases.

The court made no modifications to the sealing order in response to Lynch's assertion. The order remains in place today.

Lynch filed a timely notice of appeal from the sealing order.

DISCUSSION

A. *The Order Denying Lynch's Sanctions Motion Was Not Appealable*

Lynch argues that the trial court's order denying her motion for terminating sanctions constituted an abuse of discretion. We lack jurisdiction to review that order because it was not appealable.

1. *Lynch's Motion for Terminating Sanctions Was a Motion for Reconsideration of the Order Denying Her Motion To Vacate the Default Judgment*

Section 1008 governs motions for reconsideration of prior orders. It provides that "any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order." (*Id.*, subd. (a).) As relevant here, "[t]he name of a motion is not controlling, and, regardless of the name, a motion asking the trial court to decide the same matter previously ruled on is a motion for reconsideration under . . . section 1008." (*Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1577.)

Lynch named the motion at issue in this case a "motion for terminating & other sanctions." The name aside, the primary relief that Lynch sought in the motion was an order vacating the default judgment entered against her. This was the same relief Lynch had sought the previous year in the motion that was named "motion to vacate and/or modify default judgment." And as in that prior motion, Lynch's sanctions motion based the request to vacate the default judgment on the claim that Cohen's process server falsely stated that he served the summons and complaint on her when she never was served and that Cohen thereby had committed extrinsic fraud that prevented her from defending the case on the merits. In short, Lynch's sanctions motion "ask[ed] the trial court to decide the same matter previously ruled on" in the order denying her motion to vacate. (*Powell v. County of Orange*, *supra*, 197 Cal.App.4th at p. 1577.) As such, it was a motion for reconsideration, just as the trial court characterized it. The court denied the motion on two grounds. First, the motion was untimely: Lynch filed it more than a year after the order denying the motion to vacate, in contravention of section 1008's 10-day requirement. Second, Lynch presented no new or different facts, circumstances, or law, to justify reconsideration of that order.

Lynch contends that the trial court "mischaracterized" her sanctions motion as a motion for reconsideration. This contention is belied by Lynch's own words at the hearing on the sanctions motion. When at the outset of the hearing the court described the sanctions as a motion for reconsideration, Lynch responded, "this is not a motion to reconsider, this is a motion addressing fraud upon the [c]ourt which was used to obtain the [d]efault [j]udgment. I was not served. I was home. No one

came to my house." These are the identical claims Lynch made in support of her motion to vacate the default judgment. Lynch's appeal briefs do her no favors in this regard either. While denying that the sanctions motion was a motion for reconsideration, her opening brief states "the facts with respect to the extrinsic fraud related to the proof of service remained the same" as in her motion to vacate the default judgment. Likewise, in her reply brief, Lynch's denial that the sanctions motion was a motion for reconsideration is coupled with a statement the "facts with respect to service, lack of jurisdiction, and the void judgment remained the same" as in the motion to vacate.

It is true that, in the sanctions motion, Lynch expanded upon those "facts" by submitting declarations from several individuals who did not provide declarations in connection with Lynch's motion to vacate; the additional declarants all stated that Lynch never was served with Cohen's summons and complaint. But these were not new and different facts: they were the same facts, albeit supported through additional sources.

Notwithstanding her multiple concessions that the factual basis for the motion to vacate and the sanctions motion were identical, Lynch contends that the trial court's characterization of her sanctions motion as a motion for reconsideration was wrong. None of the reasons Lynch advances in support of that contention has merit.

First, Lynch states the court's characterization of her sanctions motion was wrong because she did not seek reconsideration of several issues that the court had resolved against her in denying the motion to vacate, including whether that motion was procedurally defective, whether her declaration in support of that motion was signed, and whether she had acted

diligently in filing the motion after first learning of Cohen's suit and the default judgment. Lynch overlooks that the main issues from the motion to vacate were raised for a second time in the sanctions motion: whether Cohen made false statements about service and committed extrinsic fraud. She asked the court to reverse its prior ruling on those issues and set aside the default judgment.

Second, Lynch states that the trial court's characterization of her sanctions motion was wrong because "[t]his court has previously distinguished between a fraud upon the court motion and [a] motion to reconsider." The opinion that Lynch cites for this proposition is unpublished. Thus, it may not be cited by parties to any other action. (Rule 8.1115.) In any event, we are unaware of any published opinion supporting the proposition that a motion that raises an alleged fraud upon the court should not be treated as a motion for reconsideration even when the party raising that allegation raised it in a prior motion that was denied.

Third, Lynch states that the court's characterization was wrong because courts have inherent power to vacate a judgment that was obtained through fraud upon the court. Courts do indeed have that power. But a second motion requesting that a court exercise the power after declining to do so when previously asked is a motion that seeks reconsideration of the denial of the prior request.

To be sure, Lynch's sanctions motion sought more than just an order vacating the default judgment—it sought terminating sanctions against Cohen as well. But the trial court could not impose sanctions against Cohen unless it first agreed to reconsider its prior order denying Lynch's motion to vacate the default judgment and then revoked the order. Put another way,

Lynch could not be declared the victor in the case through the entry of terminating sanctions against Cohen without an antecedent order reconsidering and setting aside the default judgment that had declared her the loser in the case.

Finally, Lynch's expansion in the sanctions motion upon her allegations from the motion to vacate that Cohen committed tax fraud and that he sued her in retaliation for having reported that fraud do not call into question the trial court's characterization of the sanctions motion as a motion to reconsider the order denying the motion to vacate. At most, these expanded allegations speak to whether terminating sanctions should be imposed on Cohen—an issue that the court could not reach unless and until it reconsidered the prior order and then revoked it.

2. *Because Lynch Never Appealed from the Order Denying Her Motion To Vacate the Default Judgment, the Order Denying Her Sanctions Motion, Which Sought Reconsideration of That Prior Order, Is Not Reviewable*

An order denying a motion for reconsideration under section 1008, subdivision (a), is not an appealable order. (*Id.*, subd. (g).) It is reviewable on appeal from the prior order that was the subject of the motion for reconsideration if the prior order itself was appealable and a timely appeal from the prior order was filed. (*Ibid.*; see also *Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2008) 166 Cal.App.4th 1625, 1633.)

The trial court's order denying Lynch's motion to vacate the default judgment was appealable. (*Carr v. Kamins* (2007) 151 Cal.App.4th 929, 933 [order denying motion to vacate default

judgment based on claim that judgment was void due to false claims of service and extrinsic fraud is appealable].) Lynch never appealed from that order, however. Instead, she waited for more than a year, filed a new motion in the trial court, labeled it a sanctions motion, and in that motion, asked the court once again to vacate the default judgment.

Because Lynch failed to appeal from the prior order denying Lynch's motion to vacate the default judgment, we cannot review it. Nor can we review the order denying what Lynch has called a sanctions motion but that we have concluded is a motion for reconsideration of the prior order. Accordingly, we dismiss Lynch's appeal from the order denying her motion for sanctions/motion for reconsideration. Put simply, the litigation tack that Lynch chose to pursue has deprived us of jurisdiction over that appeal.[12]

B. *Lynch Largely Failed To Demonstrate Errors in the Sealing Order*

An order granting a motion to seal court records is appealable. (*Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 481, fn. 2 (*Overstock*); *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 77.) We thus have jurisdiction over Lynch's appeal from the trial court's order sealing portions of 33 of the 130 paragraphs in Lynch's declaration and sealing in their entirety 29 of the 90 exhibits attached to the declaration. We affirm the order in most

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[12] Because we are dismissing Lynch's appeal, we do not address her arguments that the trial court erred in failing to vacate the default judgment and to impose sanctions against Cohen.

respects. Aside from three exhibits that were sealed, Lynch failed to demonstrate that any material was erroneously sealed.

1. *The Rules Governing the Sealing of Court Records*

Rules 2.550 and 2.551 govern motions to seal court records. (Rule 2.550(a).) These rules seek to protect the public's First Amendment right of access to court records that the California Supreme Court recognized in *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1208, footnote 25. (See Advisory Com. com., 23 pt. 1 West's Ann. Codes, Court Rules (2006 ed.) foll. rule 2.550, p. 143.) In that vein, rule 2.550(c) states, "Unless confidentiality is required by law, court records are presumed to be open." In turn, rule 2.550(d), provides, "The court may order that a record be filed under seal only if it expressly finds facts that establish:

"(1) There exists an overriding interest that overcomes the right of public access to the record;

"(2) The overriding interest supports sealing the record;

"(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;

"(4) The proposed sealing is narrowly tailored; and

"(5) No less restrictive means exist to achieve the overriding interest."

The protection of privileged attorney-client communications is an overriding interest that can overcome the right of access to public records. (See *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, *supra*, 20 Cal.4th at p. 1222, fn. 46.) The protection of attorney work product is another overriding interest that can overcome the right of access to public records. (*OXY Resources California LLC v. Superior Court* (2004) 115

Cal.App.4th 874, 881, fn. 3.) So too are the protection of confidential business and financial information (*Overstock*, *supra*, 231 Cal.App.4th at pp. 504-505; *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1286), and the protection of personal tax returns and other tax-related information (*Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 625).

Rule 2.551(a), states that "[a] record must not be filed under seal without a court order." Rules 2.551(b), (c), (d), and (e) set forth the procedures for filing records under seal and for sealing records if a sealing order is entered.

There is a split in California appellate decisions on the standard of review of an order sealing records. Some courts have said that sealing orders should be reviewed for abuse of discretion, and that any factual determinations made in connection with the order should be upheld if supported by substantial evidence. (E.g., *McGuan v. Endovascular Technology, Inc.* (2010) 182 Cal.App.4th 974, 988.) Other courts have said that sealing orders should be reviewed de novo. (E.g., *People v. Jackson* (2005) 128 Cal.App.4th 1009, 1019-1020.)[13] We need not take sides in this dispute. Under either standard of review, Lynch largely failed to demonstrate errors in the sealing order in this case.

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[13] There is, however, a consensus that orders to unseal court records are reviewed for abuse of discretion. (E.g., *Overstock*, *supra*, 231 Cal.App.4th at p. 492.) That consensus has no bearing here because we are reviewing a sealing order, not an unsealing order.

2. *With the Exception of Three Exhibits, Lynch Failed to Demonstrate That the Sealing Order Is Contrary to The Rules Governing the Sealing of Court Records*

At Cohen's request, the trial court sealed portions of 33 paragraphs in the declaration that Lynch filed in support of her sanctions motion. The court also sealed in their entirety 29 of the exhibits that Lynch attached to her declaration. In its sealing order, the court made the express findings that rule 2.550(d) requires.

On appeal, it is incumbent on Lynch to demonstrate error in the trial court's sealing order, just as all appellants must demonstrate error in the particular trial court action that is challenged on appeal. (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685 ["An appealed judgment or challenged ruling is presumed correct. . . . An appellant must affirmatively demonstrate error . . . ."]; see also *Flores v. Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 204.) For the most part, Lynch failed to satisfy this burden.

In her opening brief, Lynch made no mention at all of the trial court's sealing of portions of her declaration. Thus, she forfeited any claim of error on appeal with respect to that aspect of the sealing order. (See *Tellez v. Rich Voss Trucking, Inc.* (2015) 240 Cal.App.4th 1052, 1066 ["On appeal we need address only the points adequately raised by plaintiff in his opening brief on appeal"]; *Telish v. State Personnel Bd.* (2015) 234 Cal.App.4th 1479, 1487, fn. 4 ["An appellant's failure to raise an argument in the opening brief waives the issue on appeal"].)[14]

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[14] Lynch's reply brief referenced in passing the sealing of portions of her declaration. But even if we could consider arguments made for the first time in a reply brief (*Mansur v.*

As to the 29 exhibits that were sealed, Lynch's opening brief explicitly mentions just three: exhibits W, LL and MM.[15] Lynch states that all three are court records that are publicly available through Public Access to Court Electronic Records (PACER) and that their availability through this source defeats Cohen's sealing claim as to them.

We consider Lynch's challenge to the sealing of exhibits LL and MM first. They are letters to Cohen from one of his attorneys, Richard Westin. Both letters would appear to be protected from disclosure by the attorney-client privilege. Cohen concedes, however, that they are available on PACER as part of the records in the Colorado federal court litigation that was brought against him. Cohen maintains that the letters remain eligible for sealing in this case because they were submitted in the Colorado case "by a third party," and that their disclosure in that manner "does not prevent them from being considered private and privileged." Cohen points to nothing in the record, however, showing that he sought to preserve the privileged nature of the letters by opposing their disclosure in the Colorado case; thus, Cohen appears to have waived the privilege. This

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Ford Motor Co. (2011) 197 Cal.App.4th 1365, 1387-1388 ["We will not consider arguments raised for the first time in a reply brief, because it deprives [the respondents] of the opportunity to respond to the argument"]), Lynch's reply brief failed to identify with particularity any errors the court made in sealing portions of her declaration. Lynch simply asserted that the trial court erred without articulating the basis for that assertion.

15 Lynch's opening brief also explicitly mentioned five other exhibits: V, OO, QQ, RR, and SS. None of these five exhibits was sealed, however.

waiver defeats Cohen's claims that he has an overriding interest in sealing the letters in this case. (See *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3.) Accordingly, we find that the exhibits LL and MM were sealed in error.

Exhibit W is a declaration of Cohen's that bears the caption of the New York federal court litigation that was brought against him. In the declaration, Cohen describes discussions that he had with the plaintiffs in that litigation about a possible loan to a business entity that Cohen would establish. The declaration has several attachments, all of which relate to the proposed loan. Cohen contends that the declaration and its attachments were "not publicly filed in the New York litigation, [are] not publicly available for download from PACER as Lynch claims, and does not appear on the judicially noticeable docket sheet for [that litigation]." Even if that is true, in response to Lynch's argument that Exhibit W should not have been sealed, Cohen failed to identify the particular overriding interest that would warrant its sealing in this case. Thus, we find that exhibit W also was sealed in error.

We have reviewed all of the other 26 exhibits that were sealed but that Lynch did not explicitly reference in her briefs. It appears the trial court was right in concluding that Cohen had an overriding interest in sealing them. Many of the exhibits are communications between Cohen and his lawyers. Still others reflect the work product of Cohen's attorneys. And a good chunk of them contain confidential information about Cohen's tax returns and tax planning and his business and financial dealings. The trial court also was right in concluding that prejudice likely would occur if the exhibits were not sealed. That is most clearly the case with respect to attorney-client communications, the

disclosure of which would invade the confidentiality of legal advice that Cohen received about his music and the rights thereto, and investments and other business ventures he undertook with the money he earned over his long career. And we believe that the trial court was right in concluding that Cohen's sealing request was narrowly tailored in that it left unsealed the vast bulk of the exhibits that Lynch submitted.

Lynch's claim of error in the sealing of these 26 exhibits was limited to a generalized assertion that Cohen failed to show an overriding interest in sealing them and that he would be prejudiced if they were not sealed. This was too conclusory. A cardinal tenet of appellate review is that broad claims of error unsupported by an articulation of what the error was "are wholly inadequate to tender a basis for relief on appeal." (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435; see *In re S.C.* (2006) 138 Cal.App.4th 396, 408 ["conclusory claims of error will fail"].) This is not to suggest that Lynch was required to delineate the errors in the court's sealing of the 26 exhibits, one by one. Lynch could have grouped these exhibits by category or pointed to the sealing of certain exhibits as illustrative of errors in the sealing of others. But what she could not do was simply proclaim that the trial court was wrong to seal the 26 exhibits and then rest her case for reversal of the sealing order.[16]

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16 In her reply brief, Lynch invoked the crime fraud exception to the attorney-client privilege. But Lynch failed to specify which of the sealed exhibits supposedly are subject to this exception.

DISPOSITION

Lynch's appeal from the order denying her motion for terminating sanctions is dismissed. The order sealing records is reversed with respect to Exhibits LL, MM, and W to the declaration that Lynch filed in support of her sanctions motion. In all other respects, the sealing order is affirmed. The parties are to bear their own costs on appeal.

SMALL, J.*

We concur:

PERLUSS, P. J.

SEGAL, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.