B265753

IN THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION SEVEN

LEONARD NORMAN COHEN,
Plaintiff and Respondent,

v.

KELLEY A. LYNCH,
Defendant and Appellant.

Appeal from the Los Angeles County Superior Court
Case Number: BC338322
Honorable Robert Hess, Judge Presiding

RESPONDENT'S BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION SEVEN	Court of Appeal Case Number: B265753
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	FOR COURT USE ONLY
APPELLANT/PETITIONER: KELLY A. LYNCH RESPONDENT/REAL PARTY IN INTEREST: LEONARD NORMAN COHEN	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): LEONARD NORMAN COHEN

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

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

Date: September 26, 2016

Wendy C. Lascher
(TYPE OR PRINT NAME)

▶ Wendy C Lascher
(SIGNATURE OF PARTY OR ATTORNEY)

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RESPONDENT'S BRIEF

Plaintiff-respondent Leonard Cohen is a well-known poet, songwriter and performer. (2 Supp. CT 292B.)[1] Defendant-appellant Kelley Lynch was Cohen's personal manager for seventeen years, with access to highly sensitive and privileged information. (Cohen Aug. 7, 11-12, 29.) Cohen terminated Lynch's employment in 2004 after discovering that she had embezzled millions of dollars. (2 Supp. CT 292B; Cohen Aug. 11.)

In August 2005, Cohen sued Lynch for conversion, common law fraud, breach of contract and breach of fiduciary duty. (1 Supp. CT 137.) Lynch did not answer or otherwise respond to Cohen's complaint. (1 Supp. CT 142). In May 2006, Cohen secured a $7.3 million default judgment against Lynch. (2 Supp. CT 197-199.) The judgment incorporated a declaration that Lynch did not own any assets in any entity related to Cohen and imposed a constructive trust. (2 Supp. CT 198-199.)

Lynch has twice attacked the 2006 default judgment. The first time was a motion to vacate filed in 2013, in which Lynch claimed that she was never served with Cohen's summons and complaint. (1 Supp. 1-100 ["2013 Motion"].) The trial court denied that motion

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[1] The record includes:

A six-volume clerk's transcript ("CT")
A two-volume supplemental clerk's transcript ("Supp. CT")
A one-volume augmented record ("Aug. CT")
Cohen's motion to augment granted July 26, 2016 ("Cohen Aug.")

with prejudice because Lynch did not establish that Cohen's proof of service was false and did not demonstrate extrinsic fraud (1 CT 5; 5 CT 1159B, 1159G; Cohen Aug. 150, 153.) Lynch repackaged the same arguments in a 1,100-page "Motion for Terminating Sanctions" that she filed in 2015 ("2015 Motion"). (1 CT 6 - 5 CT 1133.) The court granted Cohen's motion to seal some of Lynch's evidence, and denied the 2015 Motion as "fundamentally flawed" because it was, in effect, a motion for reconsideration filed fourteen months after the court denied her 2013 Motion seeking equitable relief from the 2006 default judgment. The court concluded that Lynch did not show new or different facts, circumstances, or law, and without showing extrinsic fraud. (Cohen Aug. 150-156, 164.)

In this appeal, Lynch challenges the June 23, 2015 order denying her 2015 Motion, and contests the trial court's May 29, 2015 order sealing some of the evidence she filed in support of her 2015 Motion. (AOB 3; 6 CT 1359-1370, 1371-1374; Aug. CT 36-155).

An appeal is not a do-over. The trial court is the final arbiter of conflicting evidence (*Conderback, Inc. v. Standard Oil Co.* (1966) 239 Cal.App.2d 664, 687), and it has already decided that Lynch's evidence was insufficient to support her claims of improper service and extrinsic fraud, and that much of Lynch's evidence must be sealed. [2]

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[2] Lynch is the appellant and Cohen the respondent in two other pending appeals awaiting record preparation. *L.C. v. K.L.*, case number B267409, arises from an order denying Lynch's motion to set aside the California registration of a Colorado

STATEMENT OF FACTS AND PROCEDURAL HISTORY

An appellate court views the evidence in the light most favorable to the prevailing party. (*Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.* (1993) 12 Cal.App.4th 74, 89 [reviewing order denying motion to vacate sister state judgment for inadequate service of process or extrinsic fraud].) Lynch's brief presents a one-sided recitation of the facts favorable to her without regard to Cohen's evidence or the trial court's findings. (AOB 1-3, 9-11, 13-14.) Because she does not accurately present the record, Cohen offers this fact statement setting forth the evidence supporting the trial court's decisions. (*Rosen v. E. C. Losch Co.* (1965) 234 Cal. App. 2d 324, 327, fn. 1 [where appellant's statement of facts not supported by appropriate references to the record, reviewing court may accept the respondent's summary of the evidence].)

A. Lynch Was Cohen's Personal Manager Until He Discovered That Lynch Had Misappropriated Millions of Dollars

Until 1988, New York music lawyer Martin Machat acted as Cohen's personal manager. (Cohen Aug. 29; 1 Supp. CT 35.) When Machat died, Cohen employed Lynch to be his personal manager. (Cohen Aug. 29; 1 Supp. CT 35) In October 2004, Cohen discovered that several million dollars had been misappropriated from his

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restraining order that Cohen obtained against Lynch. *Cohen v. Lynch*, case number B267794, is Lynch's appeal from an order denying Lynch's motion to vacate Cohen's July 2015 renewal of the 2006 default judgment.

financial accounts. (Cohen Aug. 11; 2 Supp CT 261-262, 267-274, 292B.) He terminated Lynch's services. (Cohen Aug. 11, 2 Supp CT 292B.) She claimed that her employment was terminated because she had complained to the Internal Revenue Service about purported tax fraud by Cohen. (1 Supp. CT 27, 35.)

B. Cohen Sued Lynch and Served Her by Substituted Service

In August 2005, Cohen sued both Lynch and Cohen's former attorney, Richard Westin. (1 Supp. CT 137.) Scott Edelman of Gibson, Dunn and Crutcher represented Cohen. (1 Supp. CT 137.) In February 2006, Cohen reached a confidential settlement with Westin and his insurer.

*Lynch lived at 2648 Mandeville Canyon Road in Los Ang*eles. (1 Supp. CT 26, 99-100, 137.) On October 11, 2005, she was personally served at that address in a separate action Cohen brought against her for the return of his personal property and business records. (1 Supp. CT 140; 2 Supp. CT 158-159, 204-205.) Also in October 2005, the sheriff executed a writ of possession against Lynch at that address and in November 2005, the sheriff personally served her with a consumer notice of a subpoena for her banking records at the same address. (2 Supp. CT 171, 204-205.) In Colorado litigation, Lynch had acknowledged substituted service of a summons and complaint at the Mandeville Canyon address. (2 Supp. CT 205-208.)

Edelman employed First Legal Support Services to serve the summons and complaint on Lynch. Licensed process server Leon Moore attempted to personally serve Lynch at her Mandeville Canyon residence six times on six separate days. (2 Supp. CT 149-150.) Then on August 24, 2005, Moore served Lynch by substituted service (Code Civ. Proc., § 415.20, subd (b).) (1 Supp. CT 137, 147-148; 2 Supp. CT 150.) Moore's declaration of diligence described the person he served as "'Jane Doe' – White Female, 5'7", 135 lbs., Blond Hair, Black Eyes, Co-occupant." (2 Supp. CT 150.) The same day, Anthony Levey of First Legal Support Services mailed copies of the summons and complaint addressed to "Kelley A. Lynch, An Individual" at her Mandeville Canyon address (2 Supp. CT 151.)

C. Lynch Had Actual Notice of the Lawsuit

The same afternoon that First Legal left the summons and complaint with Jane Doe at Lynch's residence, Edelman's assistant answered a telephone call at Edelman's office from "a male caller who identified himself only as 'Chad,'" and who said he was living at Lynch's house. (1 Supp. CT 138.) Chad cautioned Edelman's assistant that "if we tried to serve another lawsuit on them, they would hold us responsible for mental duress." (1 Supp. CT 138.) During this conversation Edelman's assistant "could hear a woman yelling in the background 'this is tax fraud, this is tax fraud!'" (1 Supp. CT 138.) Meanwhile several of Edelman's Gibson, Dunn colleagues received an email from Lynch, addressed "Dear Mr. Edelman" and requesting that it be forwarded to Edelman. (1 Supp. CT 138; 2 Supp. CT 152.) In that email, Lynch wrote:

> To clarify precisely what Chad Knaak's message to you was: "If you try to serve this fraudulent lawsuit on me one more time, I will hold you personally responsible for mental duress." ... The entire legal world is watching you Mr. Edelman. ...

(2 Supp. CT 152.)

Edelman had never spoken to or otherwise communicated with Lynch until September 3, 2005. That is when he began receiving emails directly from her. (1 Supp. CT 139.) An email Lynch sent that day, with the subject line "Notice of Case Management Conference Case No. BC338 322)," said:

> ... I will attend the Case Management Conference in the 'Tax Fraud' Matter (BC 338 322) just as soon as I go to 'Batterer's Intervention' in 'The Custody Matter of Ray Lindsey' (Case Number SF 000 150). Go ahead move the date up. How about next week? I want Commissioner Iverson of the IRS at that Case Management Conference – he must understand tax fraud. He can be my expert witness. ... [¶] ... I am not afraid of lawyers, judges, or the rest of this abusive system ...

(1 Supp. CT 139; 2 Supp. CT 154.)

Starting then, and for years after, Lynch sent Edelman "numerous emails, possibly numbering in the hundreds." (1 Supp. CT 139.) Some of these messages reinforced that Lynch knew Cohen had sued her. In one email dated October 5, 2005, Lynch wrote that she "was in the bath-tub this morning and ... thought, 'Why should I use a lawyer to go up against Gibson Dunn when I can use Joanne at 'We The People' to file the Motion to Quash in response to Edelman's Motion play in the bogus lawsuit Cohen filed in LA Superior Court?'

..." (1 Supp. CT 140; 2 Supp. CT 160.) Lynch attached another message referring to "your stupid lying tax evasion lawsuit" and "your civil lawsuit," and stating, "... that process server is a liar ... " (2 Supp. CT 161-162.)[3]

Lynch did not file a response to Cohen's complaint, so Edelman requested entry of default on December 5, 2005. (1 Supp. CT 142; 2 Supp. CT 173.) He sent a copy of the request to Lynch at the Mandeville Canyon address by first-class mail. (1 Supp. CT 142; 2 Supp. CT 174-175.)

Later the same month, Edelman learned that Lynch had been evicted from 2648 Mandeville Canyon Road; she did not provide a new mailing address. (1 Supp. CT 142.) Edelman nevertheless continued to mail court filings to Lynch there because it was Lynch's last known address. (1 Supp. CT 142.) He also had electronic copies of all filings emailed to Lynch, including Cohen's request for entry of default and supporting documents and Edelman continued to keep Lynch informed by email of all upcoming court dates and hearings. (1 Supp. CT 142-145; 2 Supp. CT 176-190.) Lynch frequently responded to those notices, acknowledging her receipt of the documents yet denying service. For example, in an email dated January 19, 2006, she wrote:

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[3] Lynch also sent Cohen so many emails and left so many lengthy, expletive-filled voicemails that he applied for and obtained a restraining order against Lynch; the restraining order contained an exception for Lynch to attend noticed court appearances. (1 Supp. CT 141; 2 Supp. CT 164-166.)

> I was never served your lawsuit ... You can have any kind of hearing you want on this matter but it is tax fraud and I refuse to participate ... [¶] You can go to hell and don't contact me again.(1 Supp. CT 143; 2 Supp. CT 176.)

On April 27, 2006, Edelman's office sent Lynch an email giving her ex parte notice that Cohen would appear in court the following day to ask the court to enter a default judgment. (1 Supp. CT 145; 2 Supp. CT 189.) Lynch responded by insulting Edelman's assistant and threatening, "'[h]ere's my answer to all the nuts at Gibson Dunn: I intend to oppose every single stupid arrogant insane legal move you have made on behalf of your client and I will be coming after all of you with an attorney.'" (1 Supp. CT 145-146; 2 Supp. CT 189.)

D. Because Lynch Did Not Answer, the Court Entered a Default Judgment Against Her in May 2006

The court granted Cohen's request to enter default judgment against Lynch on May 9, 2006, and on May 12 both Edelman and the clerk served a copy of the minute order on Lynch; Edelman also served the proposed judgment on Lynch that same day. (1 Supp. CT 146; 2 Supp. CT 191-196.) On May 15, the court entered the default judgment. (2 Supp. CT 197-199.) It awarded Cohen damages and interest exceeding $7.3 million dollars. (2 Supp. CT 197-201). The default judgment also 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 (2 Supp. CT 199), and it declared, among other things, 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.

(2 Supp. CT 199.)

Lynch did not appeal from the default judgment.

E. Lynch Waited Seven Years Before Moving to Vacate the Default Judgment in August 2013

In August 2013 – seven years after the entry of the 2006 default judgment – Lynch filed a motion to vacate the default judgment. (1 Supp. CT 1-100.) She claimed that she had not been served, that no person resembling the process server's description lived in the Mandeville Canyon home, and that therefore the proof of service in the court's file was evidence of "extrinsic fraud" entitling her to equitable relief from the default judgment. (1 Supp. CT 1-100.) Cohen's opposition to the motion to vacate demonstrated that: the substituted service on Lynch complied with Code of Civil Procedure sections 415.20, subdivision (b) and 417.10, subdivision (a); the process server had exercised reasonable diligence trying to serve Lynch personally before resorting to substituted service; the proof of service was not void on its face; the service complied with statutory requirements; and Lynch had actual notice of the summons and complaint. (1 Supp. CT 101-135.) Also, Cohen addressed the untimeliness of Lynch's motion to vacate, her inexcusable neglect

and lack of diligence, her failure to show extrinsic fraud or mistake, and her failure to establish the essential elements for equitable relief from the judgment. (1 Supp. CT 101-135.)

F. The Court Denied the 2013 Motion to Vacate

On January 17, 2014, the court denied Lynch's motion to vacate, with prejudice, concluding that the motion was "not even colorably meritorious" (1 CT 5; 5 CT 1149-1159G) because:

- The motion to vacate was untimely under Code of Civil Procedure sections 473 and 473.5. (5 CT 1154-1155.)
- Lynch did not provide a proposed answer to the complaint with the motion to vacate. (5 CT 1155-1156.)
- Lynch had not shown that her claimed lack of actual notice of Cohen's complaint was not caused by her efforts to avoid service or by her own excusable neglect. (5 CT 1154-1156.)
- Lynch's evidence was not credible. For example, the court noted that Lynch's son (who had supplied a declaration in support of Lynch's motion) was not present when the process server tried to serve Lynch and "doesn't know anything about this as far as [the court] can tell." (5 CT 1158.) The court also discredited Lynch's statement that the person who accepted the complaint was not Lynch herself, and found that Lynch had actual notice of the request for entry of default. (5 CT 1158-1159B.)

- Lynch had not satisfactorily accounted for the mailing of the request for entry of default to her Mandeville Canyon residence. (5 CT 1159A.)

These circumstances led the court to hold that Lynch did not overcome the presumption of correctness afforded to the registered process server's declaration (5 CT 1156-1157), did not carry the burden of proving that the process server's declaration was false, and therefore did not establish extrinsic fraud. (5 CT 1159B-1159C.) Also, the court held, Lynch did not show that she acted with diligence, as she acknowledged learning of this action in April 2010 but waited until August 2013 to move to vacate the judgment. (5 CT 1159B-1159D.)

The court directed Cohen to "submit an order." (1 CT 5.) Lynch's opening brief incorrectly asserts that "[a]lthough ordered by the Court to do so, Plaintiffs failed to file an order for the Court to execute and enter into the record." (AOB 1.) Jeffrey Korn, who represented Cohen at the January 17, 2014 hearing, prepared an order, served a proposed order on Lynch by email and overnight mail, and lodged it with the court on January 28, 2014. The clerk file-stamped the Notice of Lodging.[4] At the hearing on her 2015 Motion, Lynch acknowledged that she had received the proposed order Korn sent her:

> I still don't know if your order was entered. I mean, I was in jail. I got out of jail. Jeffrey [Korn]

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[4] Cohen is requesting judicial notice of the Notice of Lodging he served on Lynch and lodged with the court.

> had sent me an email on January 22nd saying I would like you to approve or comment on this. When I got out of jail a number of months later, I called him. He said he would serve me; I never received anything. I don't even know if an order was filed. It's not on L.A. Superior Court's website. And he refused to serve me anything, which is pretty fascinating"].)

(Cohen Aug. 156.)

Lynch did not appeal the order denying her 2013 motion to vacate.

G. Lynch Waited Another Fourteen Months Before Repeating Her Effort to Obtain Equitable Relief from the 2006 Default Judgment

In March of 2015, Lynch filed a 1,100-page document styled a "Motion For Terminating Sanctions." (1 CT 6 - 5 CT 1133.) The 2015 Motion requested equitable relief from the $7.3 million default judgment on the basis of alleged lack of personal service of the summons and complaint. (1 CT 14-28; 5 CT 1130-1132.) The 2015 Motion also accused Cohen and his attorneys of "fraud upon the court" with respect to both the default judgment and the 2014 denial of her 2013 motion to vacate. (1 CT 6-25.)

Lynch's 2015 Motion repeated her already-rejected contention that she was not properly served and that the trial court did not have jurisdiction to enter the default judgment or to deny her 2013 motion to vacate. (1 CT 15.) She charged Cohen and his attorneys with perjury, fraudulent misrepresentations, presenting fraudulent financial data to support the 2006 default judgment, and suppression and concealment of evidence, all of which, according to

Lynch, entitled her to equitable relief from the default judgment and to dismissal of the action. (1 CT 15-25.) Lynch also asked the court to sanction Cohen's attorneys Robert Kory and Michelle Rice, to invalidate Cohen's prior settlement with Westin, and to order Cohen to provide her with transcripts of the Westin mediation proceedings as well as the confidential Westin settlement agreement. (1 CT 28; 5 CT 1130-1132.)

Cohen opposed the motion for terminating sanctions on the basis that it merely repeated the allegations of lack of proper service of the summons and complaint of her prior motion to vacate, which the court had denied with prejudice fourteen months earlier. (1 CT 5; 6 CT 1160-1180.) Further, as to Lynch's allegations of misconduct on the part of Cohen and his attorneys, conduct which Lynch alleged constituted "fraud upon the court," Cohen argued that Lynch had not demonstrated extrinsic fraud that would entitle her to equitable relief from the 2006 default judgment. (6 CT 1173-1177.) Cohen showed that Lynch had not satisfied Code of Civil Procedure section 1008's requirements for a motion for reconsideration by showing new or different facts, circumstances, or law; still had not established extrinsic fraud or misconduct by Cohen or his attorneys; and had not shown any ambiguity or other defect in the 2006 default judgment. (6 CT 1166-1180.) In addition, Cohen's opposition pointed out that the signature on her son's declaration that Lynch offered in 2015 was "radically different" from the signature on her son's 2013 declaration. (6 CT 1173; 1 Supp. CT 100; 2 CT 260). Because of the similarity between the handwriting on the signatures and Lynch's

handwriting, it appeared that Lynch herself had signed some of the declarations from other witnesses that she submitted in support of her claim of lack of service. (6 CT 1173; see also, 2 CT 260, 277, 281,287; compare 1 CT 183.)

Lynch's reply claimed she had newly discovered evidence. (6 CT 1199-1345.) This turned out to be admissions that Lynch herself, rather than the declarants, had signed some of the declarations originally submitted with the 2015 Motion. (6 CT 1213, 1297-1323, 1346-1358.)

H. The Court Sealed Some of Lynch's Supporting Material

Thirty-two paragraphs of Lynch's 109-page declaration in support of her 2015 Motion and 28 of her 90 exhibits revealed privileged and confidential information, including communications between Cohen and several of his former and current attorneys. (1 CT 98, 129-130; 3 CT 469-471;4 CT 757-769; Aug. CT 65, 76; Cohen Aug. 138-143.) Lynch also disclosed documents regarding Cohen's personal tax returns (4 CT 728-732; Cohen Aug. 11), as well as tax returns from Traditional Holdings, LLC. (4 CT 858-884; Cohen Aug. 11.) On May 29, 2015, Cohen filed an *ex parte* motion to seal the improperly-disclosed evidence. (Aug. CT 1-12; Cohen Aug. 4-147.) Lynch filed written opposition. (Aug. CT 13-35.)

The trial court granted the sealing order. (6 CT 1187.) It 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 Court records."
>
> [A] substantial probability exists that such overriding interest would be substantially prejudiced if such records were not sealed from the public.
>
> [Cohen] has narrowly tailored his request for sealing such records and ... no less restrictive means exist for protecting [Cohen's] overriding interest other than sealing such records from the public.

(Aug. CT 36-38.)

The sealing order specifically identified each line or partial paragraph of Lynch's declaration that was sealed, by redacting the sealed portions. (Aug. CT 40-148.) It also identified which exhibits to Lynch's declaration were to be sealed by underlining the exhibits in the "document index" that Lynch had submitted with the 2015 Motion. (Aug. CT 150-155; Cohen Aug. 138-143.)

I. The Court Denied Lynch's 2015 Motion for Equitable Relief from the Default Judgment

At the June 23 hearing on Lynch's 2015 Motion, the court denied the motion, pointing out as it did the procedural deficiencies and untimeliness of Lynch's 2013 Motion:

> And at the conclusion of that hearing [in January, 2014], the Motion to Vacate was denied with prejudice on a variety of grounds, among other things, that it was procedurally deficient because it ... wasn't properly served on the Plaintiffs, your own declaration was unsigned, that you had not acted with diligence in bringing the Motion to Vacate because you said you found out about the action in April of

> 2010 but did not seek to have this set aside until August of 2013.

(Cohen Aug. 150; see also, 6 CT 1359-1362, 1369-1370.)

After concluding that the 2015 Motion was an improper request for reconsideration of its order denying the 2013 Motion (Cohen Aug. 151), the court also explained why it was not persuaded on the merits by the 2015 Motion:

> You bore the burden of persuasion that the Proof of Service 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 living in the home where the request -- where the Notice of Request for Default was sent, and that you were home when the process server attempted to serve you on the six occasions before serving -- before subserving the Jane Doe.

(Cohen Aug. 150; see also, p. 155.)

DISCUSSION

In light of those rulings, Lynch's appeal is dead on arrival. (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1449.) She did not demonstrate to the trial court in her 2013 Motion that the proof of service was false and that she was not served with the summons and complaint, and she did not demonstrate to the court's satisfaction in 2015 that there was any extrinsic fraud either in the default process or in the denial of the 2013 Motion. (Cohen Aug. 164.) Lynch does not establish any basis for reversal.

I. An Order Denying Reconsideration Is Not Appealable

The trial court correctly recognized that Lynch's 2015 Motion was in effect a motion for reconsideration – albeit an improper one – of the ruling denying Lynch's 2013 Motion. (Cohen Aug. 149-151.)

> This is not a proper motion for reconsideration. A motion for reconsideration under CCP 1008 has to be done very promptly. ... And you are supposed to present facts or new law that could not have been presented the first time around.

(Cohen Aug. 151.) The court did not "see any reason ... to revisit this at this time." (Cohen Aug. 152.)

To the extent Lynch was asking the court to revisit its order denying her 2013 Motion, the 2015 denial is not appealable. In 2011, the Legislature amended Code of Civil Procedure section 1008 by adding subdivision (g), which expressly provides that an order denying a motion for reconsideration is not appealable. But even before that amendment, "[t]he majority of courts addressing the issue ha[d] concluded an order denying a motion for reconsideration is not appealable, **even when based on new facts or law**." (*Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1577, emphasis added, citing seven cases; see also, *Tate v. Wilburn* (2010) 184 Cal.App.4th 150, 159-160.) And regardless of a motion's title, if it raises the same issues as an earlier motion by the same party that was previously denied, it is properly deemed a renewal of the earlier motion under section 1008, subdivision (b). (*Powell, supra*, 197 Cal.App.4th at 1577.)

Therefore, the Court should dismiss Lynch's appeal from the order denying her 2015 Motion. But even if the Court reaches the merits of the appeal, it should affirm.

II. Because Lynch's Opening Brief Does Not Cite the Evidence Fairly or Provide Meaningful Argument, She Has Waived Any Claim of Error

Trial court rulings are presumed correct. (*Estate of Gilkison, supra*, 65 Cal.App.4th at 1449.) A factual presentation that "is but an attempt to reargue on appeal those factual issues decided adversely to it at the trial level ... is doomed to fail." (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, quoting *Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 398-399.)

The "terminating sanction" that Lynch sought in her 2015 Motion was equitable relief from the 2006 default judgment. (1 CT 28; 5 CT 1130-1132.) Equitable relief from a default judgment is available only in "exceptional circumstances." (*Yolo County Dept. of Child Support Services v. Myers* (2016) 248 Cal.App.4th 42, 47 ["*Yolo*"].) The record does not reveal any exceptional circumstance – other than Lynch's own exceptional delay in seeking relief.

A. The Abuse of Discretion Standard Applies to Lynch's Appeal from Both Orders

The trial court correctly deemed Lynch's motion for terminating sanctions to be a poorly-disguised motion for reconsideration of its January 17, 2014 order denying Lynch's 2013 Motion to vacate the judgment. (Cohen Aug. 151). To the extent an

order denying a motion for reconsideration is appealable at all, it is reviewed for abuse of discretion. (*California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 42.)

Although Lynch denies that her 2015 Motion was a reprise of her 2013 Motion (AOB 4, 9; Cohen Aug. 156), the same standard of review would control even if she were right, because an appellate court reviews an order denying equitable relief from a default judgment for abuse of discretion. (*Yolo, supra,* 248 Cal.App.4th at 47; *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd., supra,* 12 Cal.App.4th 74, 88-89.)

The abuse of discretion standard also governs review of orders sealing documents. (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 299-300.)

Under the abuse of discretion standard, a reviewing court considers whether the trial court's decision exceeded the bounds of reason in light of the circumstances before it. (*Yolo, supra*, 248 Cal.App.4th at 47.) The reviewing court first determines whether the trial court's factual findings underlying the ruling are supported by substantial evidence. (*Ibid.*) Next, the court independently reviews the trial court's statutory interpretations and legal conclusions. (*Ibid.*) Finally, the court considers whether, when the law is applied to the facts that the trial court found, the ruling is one a reasonable judge could have made under the circumstances. (*Ibid.*; *In re Providian Credit Card Cases, supra,* 96 Cal.App.4th at 302.) In evaluating the facts, the appellate court does not disturb the trial court's credibility findings. (*Nestle v. City of Santa Monica* (1972) 6

Cal.3d 920, 925.) "Where affidavits in support of a motion are controverted by opposing declarations, the duty of determining the credibility of affiants is within the exclusive realm of the trial court ... " (*In re Marriage of Carter* (1971) 19 Cal.App.3d 479, 493.)

B. The Opening Brief Violates Basic Rules Governing Appeals

The appellant must discuss all the evidence supporting the court's ruling; otherwise the point is waived. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) "When a party does not present evidence favorable to the respondent, the appellate court may presume the record contains evidence to sustain every finding of fact by the trial court." (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.) Lynch's "Statement of the Case" presents only Lynch's version of the evidence and omits the conflicting evidence favorable to Cohen that supports the trial court's findings. (AOB 1-3.) Instead, Lynch tries to reargue the facts already decided against her. For example, Lynch continues to assert, as she did in both her 2013 and 2015 Motions, that she "was not served the summons and complaint or legally notified of the entry of the default judgment." (AOB 1.) But Lynch cites merely to the proof of service, without identifying any record evidence to support her contention, while avoiding the Edelman declaration that Cohen submitted to show all the details of service and notice. (AOB 1-3; see, 1 Supp. CT 136 - 2 Supp. CT 201.) Edelman's declaration not only demonstrated compliance with all the requirements for substituted service, but also revealed Lynch's

emails sent within hours of that service in which her own words reveal that she had actual notice of the service of the complaint and, later, actual notice of the entry of the default judgment. (See Statement of Facts and Procedural History, Sections C. and D., pp. 11-15, above.)

The appellant must identify where in the record evidence appears to support her contentions. "It is not the task of the reviewing court to search the record for evidence that supports the party's statement; it is for the party to cite the court to those references." (*Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826, fn. 1; *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16.) The opening brief repeatedly makes factual contentions without record citations. For example, the factual assertions on page 2 of Lynch's opening brief are not supported by any record references. Instead, Lynch refers to matters outside the record, such as another default judgment entered against her in a separate case Cohen had brought against her for return of his personal property and business records. (AOB 2; see Cohen Aug. 21-26; 1 Supp. CT 140-142; 2 Supp. CT 158-159.) Likewise, Lynch states without reference to the record (or any other proof) that the evidence the court sealed "belonged to Lynch," was "submitted to the U.S. District Court in Colorado ... [and the] Southern District of New York," and is "available for purchase from Pacer." (AOB 3, 13; please see further discussion in Section IV.A., below.)

Instead of offering record references and specific facts to support her contentions, Lynch refers the court generally to the

entire four volumes of material submitted in support of her 2015 Motion. (AOB 2, citing Clerk's Transcript Volumes I – IV.)

The appellant must support legal contentions with reasoned argument and citations to authority. (*Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1303 [affirming order denying motion for equitable relief from default judgment].) General allusions to broad propositions of law are insufficient. (*People v. Kelly* (1999) 72 Cal.App.4th 842, 847, fn. 3.) A reviewing court need not, and should not, independently seek out support for an appellant's conclusory assertions, and such assertions may be rejected without consideration. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

Lynch's brief is not a reasoned argument supported by complete and accurate discussion of the record. It is instead a "rambling and disjointed series of accusations" that does not qualify as "'meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error.'" (*Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 817, quoting *In re S.C.* (2006) 138 Cal.App.4th 396, 408.) It does not offer any basis for reversal.

III. The Trial Court Properly Denied Equitable Relief from the Default Judgment

The trial court deemed Lynch's 2015 Motion a thinly-disguised motion for reconsideration. (Cohen Aug. 151 ["This is not a proper motion for reconsideration"].) Both the 2013 Motion and the 2015

Motion sought equitable relief from the default judgment. (1 Supp. CT 18-23; 1 CT 16-22; 5 CT 1130-1132.) Both motions requested dismissal of the underlying complaint. (1 Supp. CT 20-23; 1 CT 14-22; 5 CT 1130-1132.) Both motions argued that the court lacked fundamental jurisdiction over Lynch. (1 Supp. CT 9-13; 1 CT 15, 26.) Both motions asserted fraud as the basis for seeking equitable relief: The 2013 Motion alleged "extrinsic fraud" due to purported lack of service; the 2015 Motion alleged "fraud upon the court." (1 Supp. CT 14-15, 18-23; 1 CT 18-23.) Lynch acknowledged that she was relying on the same facts in her 2015 Motion as she had in the 2013 Motion; she told the trial court that there was "nothing new" in the 2015 Motion (Cohen Aug 161), and the opening brief admits that the facts "with respect to the extrinsic fraud related to the proof of service remained the same" as the facts Lynch had presented in the 2013 Motion. (AOB 3.)

Because Lynch had "a full and fair opportunity to present all [her] arguments, all [her]evidence, in 2013," the trial court did not "see any reason" in 2015 "to revisit" the order denying Lynch's 2013 Motion to Vacate the default judgment. (Cohen Aug. 152, 155.) It properly denied Lynch's 2015 Motion.

Even if the court had agreed to reconsider its order denying the 2013 Motion to vacate, the outcome would be the same. The court ruled in 2015 that Lynch still had not overcome the presumption of correctness arising from the registered process server's affidavit of service, because "there is no doubt whatsoever" that Lynch was living at the Mandeville Canyon residence at the time

the process server attempted to serve her. (Cohen Aug. 153.) The court also recognized that the process server had relied on substituted service on "Jane Doe after multiple attempts to serve [Lynch]," and that after the substituted service, the summons and complaint were mailed to Lynch's residence. (Cohen Aug. 154.)

Lynch does not demonstrate any abuse of discretion.

A. The Court Properly Characterized Lynch's 2015 Motion As a Motion for Reconsideration of the Order Denying Lynch's 2013 Motion to Vacate

Code of Civil Procedure section 1008, subdivision (a) addresses when any party affected by an order may apply for reconsideration; subdivision (b) addresses when a party whose motion was originally denied may make a subsequent application for the order. Both subdivisions of the statute require that the moving party demonstrate "new or different facts, circumstances, or law." Subdivision (e), added in 1992, expressly provides that "[n]o application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to" section 1008.

Because the trial court had already rejected all her assertions in 2014, Lynch recast her 2015 Motion as a motion for terminating sanctions. Nevertheless, she asked for the same relief as she had requested in 2013: an order "dismissing" the 2006 judgment. (1 CT 16-22; 5 CT 1130-1132.) Renaming the motion is of no use to Lynch. "The nature of a motion is determined by the nature of the relief sought, not by the label attached to it. The law is not a mere game of

words." (*California Correctional Peace Officers Assn. v. Virga*, *supra*, 181 Cal.App.4th at 43, internal quotation marks omitted.)

Lynch nevertheless asserts that the trial court "erred when it mischaracterized Lynch's motion for terminating sanctions as a motion to reconsider." (AOB 9, citing request for judicial notice of *Jordon v. O'Connor Hospital* (2013, case no. H038107.)[5] Unpublished decisions may not be cited as authority. (Cal. Rules Ct., rule 8.1115(a); *Faitz v. Ruegg* (1981) 114 Cal.App.3d 967, 970.)

Code of Civil Procedure section 1008 expressly applies to all renewed applications for orders the court has previously refused. It applies to motions for relief from default as it does to every other kind of motion, and it does not permit unlimited repetitions of the same motion. (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 840-841.) Instead, a party seeking reconsideration "must provide a satisfactory explanation for the failure to produce the evidence at an earlier time." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) The trial court correctly held that Lynch did not make such a showing. (Cohen Aug. 151-155.) Notwithstanding the length of her 2015 declaration nor the number of exhibits Lynch attached to it, she did not identify any new or different facts, circumstances or law.

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[5] This court denied Lynch's request for judicial notice on June 29, 2016.

Nor did Lynch establish that she exercised diligence. "To merit reconsideration, a party must give a satisfactory reason why it was unable to present its 'new' evidence at the original hearing." (*McPherson v. City of Manhattan Beach* (2000) 78 Cal.App.4th 1252, 1265, internal quotation marks omitted; see also, *Yolo , supra,* 248 Cal.App.4th at 50; *New York Times Co. v. Superior Court, supra,* 135 Cal.App.4th at 212-213 [evidence that was available to moving party throughout the case is not a proper basis for reconsideration].) Lynch made no attempt to show why the declarations she submitted in 2015 were not available to her at the time of her 2013 Motion.

Finally, Lynch's 2015 Motion was supported by several additional declarations that purported to offer additional evidence supporting Lynch's repeated claim that she was not served the summons and complaint. (2 CT 256-287; 6 CT 1173, 1213; see AOB 11.) Lynch did not provide a satisfactory explanation why these additional declarations had not been available in support of her 2013 Motion. The trial court correctly found that Lynch had a full and fair opportunity to present all her evidence and all her arguments in 2013. (Cohen Aug. 152-155.)

For each of these reasons, the order denying reconsideration was a proper exercise of judicial discretion.

B. The 2015 Motion Does Not Demonstrate Extrinsic Fraud or Attorney Misconduct

Even if the court had erred in considering the 2015 Motion an improper motion for reconsideration, it acted correctly in upholding the 2006 default judgment. After a judgment has become final, it may be set aside only if it was entered as the result of extrinsic fraud or mistake. (*Westphal v. Westphal* (1943) 20 Cal.2d 393, 397.) "Extrinsic fraud occurs when a party is deprived of the opportunity to present a claim or defense to the court as a result of being kept in ignorance or in some other manner being fraudulently prevented by the opposing party from fully participating in the proceeding." (*Home Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17, 26-27.)

Lynch did not demonstrate extrinsic fraud or mistake. The 2015 Motion focused on "fraud upon the court" – alleged perjury, concealment, falsification and suppression of evidence going to the merits of the case. (AOB 4, 9.) Even if there had been any perjury, concealment, or suppression of evidence going to the merits, it would constitute only intrinsic fraud, not extrinsic fraud. (*Gale v. Witt* (1948) 31 Cal.2d 362, 366 ["perjury is intrinsic, not extrinsic, fraud"].) "Fraud is intrinsic and not a valid ground for setting aside a judgment when the party has been given notice of the action and has had an opportunity to present his case and to protect himself from any mistake or fraud of his adversary, but has unreasonably neglected to do so." (*Heyman v. Franchise Mortgage Acceptance Corp.* (2003) 107 Cal.App.4th 921, 926.) The opening brief admits that "[p]erjury is generally considered intrinsic fraud." (AOB 11.)

C. Lynch Was Properly Served and Had Actual Notice of the Summons and Complaint

Lynch was properly served by substituted service, and has been aware of Cohen's lawsuit against her from the outset.

1. The Substituted Service on Lynch Complied with the Code of Civil Procedure

Code of Civil Procedure section 415.20, subdivision (b), provides that if a copy of the summons and complaint "cannot with reasonable diligence be personally delivered to the person to be served" as specified in Section 416.60, 416.70, 416.80, or 416.90, they may instead be served by leaving a copy of each at the person's "usual place of abode ... in the presence of a competent member of the household or person apparently in charge... and by thereafter mailing a copy of the summons and of the complaint by first class mail" to the person to be served at the address where the documents were left.

A registered process server attempted to serve Lynch at her Mandeville Canyon home six times before leaving the summons and complaint with "'Jane Doe' – White Female, 5'7 ", 135 lbs., blond hair, black eyes, co-occupant." (2 Supp. CT 149-150.) The same day, a copy of the summons and complaint were mailed to Lynch at the same address. (2 Supp. CT 151.) Lynch disputes service of the summons and complaint. (AOB 10-11.) However, the trial court concluded that Lynch's evidence was not credible. For example, it noted that Lynch's son (who had supplied a declaration in support of Lynch's motion) was not present when the process server tried to

serve Lynch and "doesn't know anything about this as far as [the court] can tell." (5 CT 1158.) The court also discredited Lynch's statement that the person who accepted the complaint was not Lynch herself, and found that Lynch had actual notice of the request for entry of default. (5 CT 1158-1159B.) On appeal from an order denying a motion to vacate a judgment, the reviewing court "will not revisit the trial court's factual determination if supported by substantial evidence," and will not second-guess the trial court's credibility findings. (*Conseco Marketing, LLC v IFA & Ins. Services, Inc.* (2013) 221 Cal.App.4th 831, 841.)

2. Lynch Had Actual Notice of the Summons and Complaint, and of the Default Proceedings

"[I]n deciding whether service was valid, the statutory provisions regarding service of process should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant. (*Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 313, citing *Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal. 3d 773, 778.) From the date the process server left the summons and complaint with "Jane Doe," Lynch has repeatedly demonstrated that she had notice of the action. These demonstrations began the afternoon of the substituted service of the summons and complaint at Lynch's residence with the call to Edelman's office from Chad, threatening to assert mental duress if Edelman persisted in trying to serve Lynch (1 Supp. CT 138), followed by emails from Lynch. (2 Supp. CT 152.)

Lynch subsequently emailed Edelman to say she would not attend the case management conference. (1 Supp. CT 139; 2 Supp. CT 154.) She barraged Edelman with hundreds of emails, including one saying she intended to file a "Motion to Quash in response to Edelman's Motion play in the bogus lawsuit Cohen filed in LA Superior Court" (1 Supp. CT 140; 2 Supp. CT 160.) Lynch attached another message referring to "your stupid lying tax evasion lawsuit" and "your civil lawsuit," and stating, "... that process server is a liar ... ."" (2 Supp. CT 161-162.)

Edelman continued to mail court filings to Lynch's last known address (1 Supp. CT 142), and to provide her with electronic copies of all filings, including Cohen's request for entry of default, and information about upcoming court dates and hearings. (1 Supp. CT 142-145; 2 Supp. CT 176-180, 187.) Lynch frequently responded to those notices, acknowledging her receipt of the documents yet denying service. (1 Supp. CT 143, 145-146; 2 Supp. CT 176, 189.) Lynch does not deny receiving Edelman's notices or sending responsive emails.

D. The Court Did Not Err in Precluding Live Testimony

The opening brief asserts that Lynch "was not permitted to present witnesses, or cross-examine witnesses, at the hearing on the motion to vacate or with respect to the motion for terminating sanctions." (AOB 11.)

California Rules of Court, rule 3.1306(b) provides that "[a] party seeking permission to introduce oral evidence ... must file, no

later than three court days before the hearing, a written statement stating the nature and extent of the evidence proposed to be introduced and a reasonable time estimate for the hearing." Lynch did not comply with this rule. (6 CT 1349.) Nor did she make any offer of proof at either motion hearing. Therefore, Lynch was not entitled to present live testimony. The court did not abuse its discretion. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 414 ["There is simply no authority for the proposition that a trial court necessarily abuses its discretion, in a motion proceeding, by resolving evidentiary conflicts without hearing live testimony"].)

IV.
The Court Correctly Sealed the Privileged and Confidential Information that Lynch's Motion Improperly Revealed

The default judgment declares that Lynch has no interest in any of Cohen's business entities, and ordered her to return all of Cohen's personal property that she wrongly retained after Cohen terminated her services. (Cohen Aug. 7, 11, 17; 2 Supp. CT 199.) But Lynch retained privileged and confidential documents belonging to Cohen, and disclosed them and their contents in her motion for terminating sanctions as well as on her blog. (1 CT 74 - 4 CT 884; Aug. CT 1-2; Cohen Aug. 7-8, 11-12.) Cohen had never waived any privilege or consented to disclosure of the information, and Lynch lacked authority to make those disclosures. (Aug. CT 1-2; Cohen Aug. 7-8, 11-12.)

The trial court concluded that: Cohen has an overriding interest in preventing disclosure of matter protected by attorney-client and work product privileges, as well as protecting confidential business information and tax returns; Cohen's interest overcomes any public interest in access to those records; Cohen's motion to seal was narrowly tailored; and no less restrictive means exist for protecting Cohen's overriding interest other than sealing the documents. (Aug. CT 37.) Lynch could have, but did not, move to unseal the documents after the initial sealing order. (Cal. Rules of Court, rule 2.551(h).)

The court reiterated its initial findings when Lynch inquired about them at the June 23, 2015 hearing on the 2015 Motion. (Cohen Aug. 157-164.) The trial court reviewed its May 29, 2015 sealing order and concluded it was correct. (Cohen Aug. 161-163.) It was; Lynch has not demonstrated any abuse of discretion.

A. Lynch Has Not Demonstrated Error in the May 29, 2015 Sealing Order

The opening brief states that the court improperly sealed documents that are purportedly "presently available for purchase through Pacer" or "available through the State of Kentucky's website," or were Lynch's personal documents. (AOB 3, 13-14, citing 3 CT 631, 654, 678, 697, corresponding to Exhibits OO, QQ and RR to Lynch's Declaration.) **The trial court did not seal these documents.** (Aug. CT 36-38, 152-153.)

The opening brief also challenges the sealing order as to documents that Cohen supposedly submitted "as evidence to the Southern District of New York." (AOB 3, 13, citing 3 CT 514, 530, 534; 4 CT 709, corresponding to Exhibits V, W and SS to Lynch's declaration.) The trial court did not seal Exhibits V (3 CT 514) and SS (4 CT 709; see, Aug. CT 36-38, 152-153.) The document in Exhibit W (3 CT 530, 534), which the court did seal, was not publicly filed in the New York litigation, is not publicly available for download from PACER as Lynch claims, and does not appear on the judicially noticeable docket sheet for *U.C.C. Lending Corp v. Cohen,* S.D.N.Y. case number 1:00-cv-01068-CBM.

Lynch attacks the order as to documents that remain subject to attorney-client privilege. Lynch does identify two documents that can be found on PACER. (AOB 13, citing 3 CT 622 and 625, Exhibits LL and MM to Lynch's declaration.) Both are copies of letters from Cohen's former attorney, Richard Westin, to Cohen. They fall within attorney-client privilege (Evid. Code, § 954), and therefore were properly sealed in this case. Attorney-client privilege may be waived only if the holder of the privilege (i.e., the client, Cohen) makes an uncoerced disclosure, or the holder intentionally consents to disclosure by a third party. (Evid. Code, § 912, subd. (a).) The fact the letters were made publicly available through PACER in another case, by a third party without Cohen's consent, does not prevent them from being considered private and privileged. (*Pasadena Police Officers Assn. v. Superior Court* (2015) 240 Cal.App.4th 268, 295-296, fn. 5 [mere fact that privileged

information "is available from other sources [does not] necessarily mean[] that the information cannot be considered personal or private"].)

Lynch asserts that the sealing order also encompassed "evidence of potentially unlawful conduct." (AOB 13.) But she never says what evidence falls into that category, so the exception is waived. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1008, 1115-1116.) There was no error.

B. Any Error in the Sealing Order Does Not Affect the Propriety of the Order Denying the 2015 Motion

Regardless of whether the sealing order was proper, that is irrelevant to the fundamental question of whether Lynch is entitled to equitable relief from the 2006 default judgment. The few documents that Lynch claims were improperly sealed have nothing to do with the reasons Lynch offers for setting aside the 2006 default judgment. As shown above in Sections I-III, the court did not abuse its discretion in denying the 2015 Motion, and it likewise did not abuse its discretion in sealing documents containing privileged and confidential information.

CONCLUSION

Lynch's brief asks this court to reverse the January 17, 2014 decision denying her motion to vacate. (AOB 15). There is no basis for doing so, or for granting "terminating" sanctions, or any sanctions whatsoever, against Cohen. "'Instead of a fair and sincere effort to show that the trial court was wrong,'" Lynch's brief is a

"'mere challenge to [Cohen] to prove that the court was right.'" (*Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 505, quoting *Estate of Palmer* (1956) 145 Cal.App.2d 428, 431.) Lynch has forfeited her appeal from both the orders she challenges.

This court should affirm both the orders Lynch challenges, and award Cohen his costs on appeal.

Dated: September 26, 2016 Respectfully submitted,

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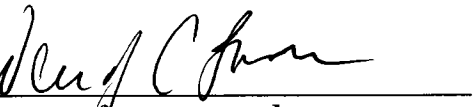
By 
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CERTIFICATE OF WORD COUNT

(Rule 8.204(c), California Rules of Court)

The text of this brief consists of 8,596 words as counted by the Microsoft Word word-processing program used to generate this brief.

Dated: September 26, 2016

Wendy C. Lascher

PROOF OF SERVICE

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action; my business address is 1050 South Kimball Road, Ventura, California 93004.

On September 26, 2016, I served the foregoing document described as **"RESPONDENT'S BRIEF"** on the interested parties in the action entitled *Leonard Norman Cohen vs. Kelley A. Lynch;* Los Angeles County Superior Court Case No.: BC338322; Court of Appeal, Second Appellate District, Division Seven Case No.: B265753.

[**X**] by placing [ ] the original [**X**] a true copy thereof enclosed in sealed envelopes addressed as follows:

See attached Service List

[X]BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice the above envelope would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Ventura, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] BY PERSONAL SERVICE. I caused personal delivery *(I personally delivered by hand)* of the document(s) listed above to the person(s) at the address(es) listed above. (or address(es) as set forth on the attached service list)

[ ] BY OVERNIGHT DELIVERY Depositing the above document(s) in a box or other facility regularly maintained by the U.S. Post Office, Express Mail, overnight delivery in an envelope or package designated by the U.S. Post Office with delivery fees paid or provided for.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 26, 2016, at Ventura, California.

Alice Duran

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Los Angeles County Superior Court Case No.: BC338322
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