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

11 LEONARD NORMAN COHEN,
12 LEONARD COHEN INVESTMENTS,
13 LLC
14 Plaintiff/Petitioner,

15 v.

16 KELLEY ANN LYNCH,
17 Defendant/Respondent.

CASE NO.: BC 338322

Hon. Patricia Nieto, Dept. 24

**EX PARTE APPLICATION FOR ORDER
SUBSTITUTING ROBERT B. KORY AS
TRUSTEE OF THE LEONARD COHEN
FAMILY TRUST IN PLACE OF
LEONARD NORMAN COHEN AND
LEONARD COHEN INVESTMENTS,
LLC; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
ROBERT B. KORY; DECLARATION OF
MICHELLE L. RICE, ESQ.; [PROPOSED]
ORDER**

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

18 Plaintiff Leonard Norman Cohen died in Los Angeles at the age of 82 on November 7,
19 2016. Cohen died during the pendency of Defendant and Judgment Debtor Kelley Lynch's two
20 appeals filed in this action, Second District Court of Appeal case numbers B265753 and B267794.
21 The Court of Appeal issued orders of substitution on January 26, 2017 allowing Robert B. Kory
22 ("Kory"), in his capacity as Trustee of the Leonard Cohen Family Trust (the "LCFT"), to
23 substitute in the place of respondent Leonard Cohen in both appeals. When the Court of Appeal
24 issued the orders of substitution, both appeals were still pending and all proceedings in the trial

1 court involving the judgment were subject to the automatic stay of California Code of Civil
2 Procedure Section 916(a) because both of Lynch's appeals involved the validity of the default
3 judgment (B265753) and the renewal of judgment (B267794). Cal. Code Civ. Proc. §916(a) ("the
4 perfecting of an appeal stays proceedings in the trial court **upon the judgment or order appealed**
5 **from** or upon the matters embraced therein or affected thereby.") (emphasis added.) When appeal
6 B265753 became final on July 21, 2017, appeal B267794 was still pending. The appeal in
7 B267794 only became final when the Court of Appeal issued its Remittitur on March 18, 2019.
8 When the remittitur issues, the jurisdiction of the appellate court terminates and the jurisdiction of
9 the trial court reattaches. (9 Witkin, Cal. Procedure (3d ed. 1985) Appeals, § 600.) Upon issuance
10 of the Remittitur on March 18, 2019, jurisdiction transferred back to this Court and the automatic
11 stay of proceedings involving the judgment ended. *Id.*

12 As the trial court proceedings have now resumed, Kory, in his capacity as Trustee of the
13 LCFT, hereby applies *ex parte* for the Court to grant his application for substitution and
14 respectfully requests the Court issue an order allowing for his substitution for Plaintiffs
15 LEONARD NORMAN COHEN and LEONARD COHEN INVESTMENTS, LLC, for the
16 purposes of all further proceedings in this action.

17 This Application is made pursuant to California Rules of Court, rule 3.1200 et seq. and is
18 based upon the following: (1) the attached Memorandum of Points and Authorities; (2) the
19 Declaration of Robert B. Kory and its attached Exhibits; (2) the Declaration of Michelle L. Rice,
20 Esq., counsel of record in this matter and counsel to Kory, as Trustee of the LCFT, regarding *ex*
21 *parte* notice requirements; and (3) a proposed order of substitution for the Court's signature.

22 Applicant moves on an *ex parte* basis without notice to Defendant and Judgment Debtor
23 KELLEY ANN LYNCH as opposed to a noticed motion for substitution for five reasons: (1) the
24 Second District Court of Appeal issued Orders on January 26, 2017 allowing Kory to substitute
25 for respondent Leonard Cohen in his capacity as Trustee of the LCFT, in those proceedings; (2)
26 CCP §377.31 and §377.32 provide that a Court must allow the substitution of a decedent's
27 successor in interest for plaintiff in an action that does not abate with plaintiff's death and that
28 such substitution is not discretionary with the Court; (3) Kory, in his capacity as sole Trustee,

1 became the successor in interest to Mr. Cohen as defined in Code of Civil Procedure Section
2 §377.11 by operation of law upon the death of Leonard Cohen, who prior to his death on
3 November 7, 2016, was the only Trustee of the Leonard Cohen Family Trust; (4) Lynch does not
4 have standing to object to Kory's appointment as Trustee of the LCFT, Plaintiffs' successor in
5 interest; (5) Finally, Kory, as Trustee of the LCFT, became the Judgment Creditor in this action by
6 operation of law upon the death of Plaintiff Leonard Norman Cohen on November 7, 2016
7 because Mr. Cohen had, prior to his death, transferred all of his separate property interests, which
8 included the judgment in this action against Defendant Kelley Ann Lynch, by written transfer
9 executed by him and dated July 2, 2016, to the LCFT. (Kory Decl. ¶10, Exhibits C and D, Decl.
10 of Reeve E. Chudd, Esq. ¶¶3-4, Exhibit A.); CCP §680.240 (defining "judgment creditor" to
11 include an assignee of record or other successor in interest of the original judgment creditor.);
12 CCP §686.010 (providing that "after the death of the judgment creditor, the judgment may be
13 enforced as provided in this title by the judgment creditor's executor or administrator or successor
14 in interest.") Plaintiffs' counsel e-filed an Acknowledgment of Assignment of Judgment Pursuant
15 to CCP §673 on March 14, 2019 with this Court in which Kory, as Trustee of the LCFT,
16 acknowledged the assignment of "all right, title and interest to the Judgment against Defendant
17 and Judgment Debtor, KELLEY ANN LYNCH, entered and filed in this matter on May 15, 2006
18 and as renewed July 13, 2015, plus any future modifications and renewals thereof" to the Leonard
19 Cohen Family Trust. (Kory Decl. ¶10, Exh. C.).

20 On these facts and circumstances, *ex parte* notice should not be required and was not given
21 to Defendant and Judgment Debtor Kelley Ann Lynch for this *ex parte* application for an order
22 allowing Kory, as Trustee of the LCFT, as successor in interest and Judgment Creditor, to
23 substitute as Plaintiff in this action. California Rules of Court, rule 3.1204(b)(3).

24 DATED: March 22, 2019

Respectfully submitted,

KORY & RICE, LLP

By: 

Michelle L. Rice, Esq.

ATTORNEY FOR PLAINTIFFS

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PROCEDURAL HISTORY**

3 On May 15, 2006, the Court entered a default judgment against Defendant Kelley Ann
4 Lynch in the amount of \$7,341,345, which included \$5,000,000 general damages and \$2,341,345
5 in prejudgment interest. Ms. Lynch first moved to vacate the default judgment in August 2013 on
6 the asserted ground that the judgment was void due to lack of personal jurisdiction for the alleged
7 failure to serve her the summons and complaint. The Court denied her motion with prejudice
8 after a hearing on the motion on January 17, 2014. More than a year after filing her first motion
9 to vacate, Ms. Lynch filed a second motion, styled as a "Motion for Terminating Sanctions" on
10 March 17, 2015 which sought an order vacating the Default Judgment due to the alleged lack of
11 service of the summons and complaint and sought "terminating sanctions" to dismiss the
12 complaint. The Court denied her second motion as an invalid motion for reconsideration under
13 CCP §1008 on June 23, 2015. Lynch appealed from the June 23, 2015 Order denying her Motion
14 for Terminating Sanctions by filing a notice of appeal on July 28, 2015 (appellate case B265753.)

15 Cohen renewed the judgment on July 13, 2015 in the amount of \$14,059,183.80.
16 Lynch filed a motion to vacate the renewed judgment on July 28, 2015 pursuant to CCP §683.170.
17 In her motion, Lynch alleged that the default judgment was void because Cohen never served her
18 the summons and complaint and had committed extrinsic fraud in obtaining the default judgment.
19 She also argued that Mr. Cohen lacked standing to bring the action and to obtain a judgment
20 against her on behalf of the corporate entities. She also asserted that the Court did not have
21 jurisdiction over the corporate entities.

22 The Court denied Lynch's motion to vacate the renewed judgment with prejudice on
23 October 6, 2015. Lynch appealed from the October 6, 2015 Order denying her motion to vacate
24 the renewed judgment by filing a notice of appeal on October 16, 2015 (appellate case B267794.)
25 In her appeal she asserted that she was not served the summons and complaint and therefore the
26 default judgment and the July 13, 2015 renewal were void for lack of jurisdiction, that the Court
27 lacked jurisdiction over certain corporate entities and that Cohen lacked standing to bring the
28

1 action. She also asserted for the first time on appeal that the judgment exceeded the amount
2 demanded in the complaint. (Rice Decl., Exhibit G, Opinion, p. 15.)

3 During the pendency of her two appeals in this action, Mr. Cohen died on November 7,
4 2016. (Kory Decl. ¶4, Exhibit A.). Robert B. Kory, in his capacity as Trustee of the Leonard
5 Cohen Family Trust, filed a motion in the Court of Appeal to substitute for Leonard Cohen as
6 respondent in the appeals on January 25, 2017. (Rice Decl. ¶6, Exhibits A and B; Kory Decl. ¶7).
7 The Court of Appeal issued orders the following day on January 26, 2017 allowing for the
8 substitution of Robert B. Kory as Trustee to substitute for Leonard Cohen in both appeals. (Rice
9 Decl. ¶¶7-8, Exhibits C and D; Kory Decl. ¶9.)

10 The Court of Appeal dismissed her appeal from the June 23, 2015 Order for lack of
11 appellate jurisdiction and the Remittitur in appeal B265753 issued to this Court on July 21, 2017.
12 (Rice Decl. ¶11, Exhibit E, Opinion, pp. 21-22). The case caption on the Remittitur reflected the
13 substitution of “Robert B. Kory, as Trustee” for Leonard Cohen. *Id.*

14 The Court of Appeal issued its Opinion in B267794 on January 16, 2019 and the
15 Remittitur issued March 18, 2019. (Rice Decl. ¶15, Exhibit G.) The case caption on the
16 Remittitur reflected the substitution of “Robert B. Kory, as Trustee” for Leonard Cohen. *Id.* The
17 Court of Appeal found that the default judgment was partially void because it exceeds the
18 monetary relief requested in the complaint. *Id.* at pp. 15-16. The Court of Appeal also held that
19 “Lynch has shown no basis to disturb the default judgment’s creation of a constructive trust or
20 provision of declaratory relief.” *Id.* at pp. 14-15. The Court of Appeal reversed the trial court’s
21 order denying Lynch’s motion to set aside the renewal of judgment in part. *Id.* at pp. 15-16. In
22 the Disposition portion of the Opinion, it stated “the trial court should modify the judgment to
23 reflect \$5 million damages plus the corrected prejudgment interest.” *Id.* at p. 16.

24 Before remittitur issued in appeal B267794 on March 18, 2019, the automatic stay of
25 proceedings in the trial court under CCP §916(a) applied because Lynch had appealed from the
26 October 6, 2015 order denying her motion to vacate the renewed judgment. Code of Civ. Proc.
27 §916(a).

1 Before the January 16, 2019 decision of the Court of Appeal had become final on March
2 18, 2019, this Court acknowledged receipt of the Court of Appeal's January 16, 2019 opinion and
3 issued a "Ruling After Remand" on February 6, 2019 which modified the judgment to reflect
4 \$5,000,000 in damages with the corrected prejudgment interest amount of \$6,757,534.25, for a
5 total judgment amount of \$11,757,534.25. The Court ordered Plaintiffs' counsel to prepare and
6 submit a judgment in accordance with the modifications made and to serve the Defendant.
7 Applicant respectfully submits that the Court's February 6, 2019 Order modifying the judgment
8 was issued without jurisdiction because the appellate decision in the B267794 regarding the
9 validity of the renewed judgment had not yet become final. The order was prematurely issued
10 during the time period between the January 6, 2019 decision and opinion and the March 18, 2019
11 Remittitur. The Court's February 6, 2019 Minute Order is therefore void on its face for lack of
12 jurisdiction because the appeal was not yet final when issued. See *Sacks v. Superior Court* (1948)
13 31 Cal. 2d 537, 540; *Andrisani v. Saugus Colony Limited* (1992) 8 Cal. App. 4th 517, 523. Thus,
14 the Court's order is subject to being set aside as a void order for lack of jurisdiction pursuant to
15 CCP §473(d). Further, the case caption of the Court's February 6, 2019 "Notice of Ruling" still
16 reflected "LEONARD NORMAN COHEN ET AL." as Plaintiffs because Plaintiffs' successor in
17 interest, Mr. Kory, as Trustee, had not yet been substituted for Mr. Cohen, the deceased Plaintiff
18 in this action. In view of the foregoing, Plaintiffs' counsel has not prepared a proposed judgment
19 for the Court's signature as directed in the Court's February 6, 2019 Minute Order because the
20 order does not reflect the proper plaintiffs and judgment creditor after Mr. Cohen's death and the
21 order was issued without jurisdiction.

22 On March 14, 2019, an Acknowledgment of Assignment of Judgment Pursuant to CCP
23 §673 was filed in this Court by Robert B. Kory, as Trustee, of the Leonard Cohen Family Trust
24 acknowledging the assignment "of all right, title and interest to Judgment against Defendant and
25 Judgment Debtor, KELLEY ANN LYNCH, entered and filed in this matter on May 15, 2006 and
26 as renewed on July 13, 2015, plus any future modifications and renewals thereof" to the Trust.
27 (Kory Decl. ¶10, Exhibit C.)
28

1 For all the foregoing reasons, Plaintiffs now seek an order from this Court allowing
2 decedent Leonard Norman Cohen's successor in interest to be substituted for Plaintiffs for the
3 purposes of entering a modified judgment in Trustee's name in place of decedent and his wholly
4 owned entity Leonard Cohen Investments, LLC and the recalculation of prejudgment interest in
5 accordance with the Court of Appeal's directions in its opinion in the B267794 appeal, which has
6 now become final.

7 **II. PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS**
8 **377.31 AND 377.32, A COURT MUST ALLOW A DECEDENT'S SUCCESSOR IN**
9 **INTEREST TO BE SUBSTITUTED IN ACTIONS THAT DO NOT ABATE UPON**
10 **PLAINTIFF'S DEATH; SUBSTITUTION IN THIS SITUATION IS NOT**
11 **DISCRETIONARY WITH THE COURT**

12 California Code of Civil Procedure section 377.11 defines a decedent's "successor in
13 interest" as the "beneficiary of the decedent's estate or other successor in interest who succeeds to
14 a cause of action or to a particular item of the property that is the subject of a cause of action."
15 Cal. Code Civ. Proc. §377.11. Code of Civil Procedure section 377.31 requires a court to allow
16 the decedent's personal representative or successor in interest to continue a pending action that
17 does not abate upon the plaintiff's death, provided the personal representative or trustee files a
18 declaration complying with section 377.32. The 1992 Law Revision Commission Comment to
19 CCP §377.31 observes that "Section 377.31 restates part of former Section 385 but recognizes that
20 the personal representative or successor in interest has an absolute right to be substituted for the
21 decedent; substitution in this situation is not discretionary with the court. See, e.g., *Pepper v.*
22 *Superior Court*, 76 Cal. App. 3d 252, 260-61, 142 Cal.Rptr. 759 (1977)." Cal. Code Civ. Proc.
23 §377.31.

24 **A. KORY WAS APPOINTED, UPON COHEN'S DEATH, THE SOLE SUCCESSOR**
25 **TRUSTEE OF THE LEONARD COHEN FAMILY TRUST IN PLACE OF COHEN,**
26 **AND IS COHEN'S SUCCESSOR IN INTEREST**

27 Prior to his death, Leonard Cohen transferred his separate property into the Leonard Cohen
28 Family Trust by written assignment executed by him on July 2, 2016. (Kory Decl. ¶10, Exhibit D,
Chudd Decl. ¶¶3-4, Exhibit A.). The Transfer and Receipt assigned his property to the Leonard
Cohen Family Trust "...whether real, personal or mixed and whether tangible or intangible,

1 wherever located, whether acquired or received before, concurrently with or after the date of
2 execution of this Trust, including but not limited to notes receivable, partnership interests,
3 government obligations, stocks and bonds.” *Id.* No Probate Court Order was required to establish
4 the rights of the Trust in all of Mr. Cohen’s assets and property. *Id.*

5 Until his death, Leonard Cohen was the sole Trustee of the LCFT. (Kory Decl. ¶6, Exhibit
6 B, ¶2.). Upon his death on November 7, 2016, Robert B. Kory was appointed Sole Successor
7 Trustee of the LCFT in place of Leonard Cohen. (Kory Decl. ¶¶5-6, Exhibit B). Kory accepted
8 his appointment as Sole Successor Trustee of the LCFT on January 4, 2017, effective the date of
9 Mr. Cohen’s death on November 7, 2016. *Id.* In his capacity as Trustee of the LCFT, Kory is Mr.
10 Cohen’s successor in interest as defined in California Code of Civil Procedure Section 377.11. *Id.*

11 The May 15, 2006 judgment, as renewed July 13, 2015, as well as any future modifications
12 and renewals thereof, entered against Defendant Kelley Ann Lynch in this matter is property of the
13 Leonard Cohen Family Trust. (Kory Decl. ¶10, Exhibit C.). An Acknowledgment of Assignment
14 of Judgment Pursuant to CCP §673 was filed with the Court by Plaintiffs’ counsel on March 14,
15 2019. *Id.* Code of Civil Procedure §673 provides that an assignee of a right represented by a
16 judgment may become an assignee of record by filing with the clerk or the court which entered the
17 judgment an acknowledgment of assignment of the judgment. Cal. Code Civ. Proc. §673. That
18 section does not require notice to any party. *Id.*

19 **B. KORY, IN HIS CAPACITY AS TRUSTEE OF THE LEONARD COHEN FAMILY**
20 **TRUST, WAS SUBSTITUTED IN THE PENDING APPEALS BY ORDER OF THE**
21 **COURT OF APPEAL ON JANUARY 26, 2017**

22 California Rules of Court, rule 8.36(a) requires a motion in the reviewing court to
23 substitute parties on appeal. Robert B. Kory, in his capacity as Trustee of the Leonard Cohen
24 Family Trust filed a motion, which included a declaration made pursuant to CCP §377.32, in the
25 Court of Appeal on January 25, 2017 to be substituted upon the death of Leonard Cohen as
26 respondent in both pending appeals, B265753 and B267794. (Kory Decl. ¶7; Rice Decl. ¶6,
27 Exhibits A and B.) The Court of Appeal issued orders on January 26, 2017 allowing Robert B.
28 Kory as Trustee to be substituted for Respondent Leonard Cohen in both pending appeals (Kory

1 Decl. ¶9, Rice Decl. ¶¶7-9, Exhibits C, D, E). Further, California Rules of Court, rule 8.36(a)
2 provides:

3 (a) Substituting parties: Substitution of parties in an appeal or an original proceeding must
4 be made by filing and serving a motion in the reviewing court. **The clerk of that**
5 **court must notify the superior court of any ruling on the motion.** (emphasis
supplied).

6 The case caption on the Remittitur issued by the Court of Appeal to this Court on July 21,
7 2017 in case B265753 reflected the substitution of “Robert B. Kory, as Trustee” for Leonard
8 Cohen. (Rice Decl. ¶11, Exhibit F.) Likewise, the case caption on the January 16, 2019 Opinion
9 in case B267794 also reflects the substitution of “Robert B. Kory, as Trustee” for Leonard Cohen.
10 (Rice Decl. ¶¶12,15, Exhibit G.) However, despite the language of California Rules of Court,
11 rule 8.36(a) quoted above, it appears that the clerk of the Court of Appeal did not notify this Court
12 of the Court of Appeal’s January 26, 2017 Orders substituting Kory as Trustee for the LCFT for
13 Leonard Cohen upon Mr. Cohen’s death, thus necessitating this *ex parte* application for an order
14 of substitution in this Court.

15 **III. UPON DEATH OF A PARTY, SUBSTITUTION MAY BE MADE UPON *EX***
16 ***PARTE* MOTION WITHOUT NOTICE TO OPPOSING PARTY**

17 Code of Civil Procedure Section §377.31, provides that an order substituting the
18 decedent’s representative or successor in interest may be obtained “on motion”, but does not
19 specify the form of motion and whether such motion may be made *ex parte*. CCP §377.31; Rutter
20 Cal. Prac. Guide, Civil Procedure Before Trial, 2:501.1 (“either a noticed motion or *ex parte*
21 application may be utilized.”)

22 Early California Supreme Court authority supports that substitution of a successor in
23 interest may be upon an *ex parte* motion. In *Campbell v. West*, the California Supreme Court
24 stated “the practice in this state is well settled...for courts to allow the substitution to be made,
25 upon suggestion of the death of a party, and on an *ex parte* motion showing the appointment and
26 qualification of the executor or administrator of the estate of the deceased party.” *Campbell v.*
27 *West* (1892) 93 Cal. 653, 656 (allowing substitution of administrator of estate after original
28 plaintiff died).

1 In *Kittle v. Bellegarde*, 86 Cal. 556, the California Supreme Court held that upon the death
2 of a plaintiff, his executor may be substituted as plaintiff upon *ex parte* suggestion and proof of
3 death, and no notice thereof to defendants in default is necessary. *Kittle v. Bellegarde* (1890) 86
4 Cal. 556, 562-563. All subsequent proceedings should be in the name of the substituted party and
5 that a judgment in favor of the substituted executor is supported by the order of substitution. *Id.*

6 Further, notice of the substitution to a defendant in default is not required. In *Farrell v.*
7 *Jones*, 63 Cal. 194, the California Supreme Court held that where a third person succeeds to the
8 rights of the plaintiff, the court has the power to substitute such person as plaintiff in the action
9 and notice of the substitution need not be given to a defendant whose default has been entered for
10 failing to appear. *Farrell v. Jones* (1883) 63 Cal. 194, 195-196.

11 When Ms. Lynch failed to answer or otherwise respond to Mr. Cohen's complaint, her
12 default was entered by the Court on December 5, 2005. A default judgment was entered against
13 her on May 15, 2006 and was renewed on July 13, 2015. Thus, because she has defaulted in this
14 action, Lynch is not entitled to notice of this *ex parte* motion for substitution. *Farrell*, at 195-196;
15 *Kittle*, at 562-563.

16 IV. CONCLUSION

17 Decedent Leonard Cohen's successor in interest Robert B. Kory, as Trustee of the Leonard
18 Cohen Family Trust, has an absolute right to substitute for Plaintiffs for the purposes of all further
19 proceedings. Cal. Code Civ. Proc. §377.11; §377.31 and §377.32. Accordingly, Trustee
20 respectfully requests that the Court grant the *ex parte* application and issue an order allowing
21 Trustee's substitution for Plaintiffs Leonard Norman Cohen and Leonard Cohen Investments,
22 LLC. A Proposed Order on substitution has been lodged and concurrently filed with this
23 Application for the Court's signature.

24 DATED: March 22, 2019

Respectfully submitted,

KORY & RICE, LLP

By 

Michelle L. Rice, Esq.

28 ATTORNEY FOR PLAINTIFFS

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2 KORY & RICE, LLP
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6 Facsimile: (310) 278-7641

7 Attorney for Plaintiff/Petitioner

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

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

14 Plaintiff/Petitioner,

15 v.

16 KELLEY ANN LYNCH,
17 Defendant/Respondent.

CASE NO.: BC 338322

Hon. Patricia Nieto, Dept. 24

**DECLARATION OF ROBERT B. KORY
IN SUPPORT OF *EX PARTE*
APPLICATION FOR AN ORDER TO
SUBSTITUTE HIMSELF IN HIS
CAPACITY AS TRUSTEE OF THE
LEONARD COHEN FAMILY TRUST IN
PLACE OF PLAINTIFFS LEONARD
NORMAN COHEN AND LEONARD
COHEN INVESTMENTS, LLC
PURSUANT TO CCP §377.31 AND CCP
§377.32**

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

23 I. I am an attorney duly licensed to practice law in California and have been
24 practicing law for over 35 years. I make this Declaration in support of an *ex parte* application
25 requesting that the Court issue an order allowing for my substitution in my capacity as Trustee of
26 the Leonard Cohen Family Trust in place of Plaintiffs Leonard Norman Cohen and his wholly
27

1 owned entity, Leonard Cohen Investments, LLC. I have personal knowledge of the facts stated in
2 this Declaration, and if called as a witness I could and would testify to these facts.

3 2. Prior to his death in November 2016, Leonard Cohen had been a client of our law
4 firm since late November 2004. Mr. Cohen first engaged our firm to represent him in the legal
5 disputes involving his former manager, Kelley Lynch, and his former attorney, Richard Westin.
6 Our firm also represented Mr. Cohen in his legal dispute with his former investment advisor based
7 in Colorado, Neal Greenberg and his associated companies.

8 3. My law partner, Michelle L. Rice, is counsel of record in this matter and upon Mr.
9 Cohen's death, will continue to represent me in my capacity as Trustee of the Leonard Cohen
10 Family Trust. Ms. Rice was also co-counsel with Wendy Lascher of the Ferguson, Case, Orr,
11 Paterson LLP firm on the appeals filed in this matter involving Mr. Cohen and Ms. Lynch.

12 4. Mr. Cohen died in his home in Los Angeles on November 7, 2016. A true and
13 correct copy of his death certificate is attached hereto as Exhibit A.

14 5. When Mr. Cohen died, I became the Sole Successor Trustee of the Leonard Cohen
15 Family Trust. In my capacity as Sole Successor Trustee of the Leonard Cohen Family Trust, I am
16 Mr. Cohen's successor in interest as defined in California Code of Civil Procedure section 377.11.
17 No other person has a superior right to be substituted for Mr. Cohen in this action.

18 6. I executed an Acceptance of Appointment as Sole Successor Trustee of the Leonard
19 Cohen Family Trust on January 4, 2017 in which I accepted appointment effective as of the date of
20 Mr. Cohen's death on November 7, 2016. I attach a true and correct copy of the Acceptance of
21 Appointment as Exhibit B to this Declaration.

22 7. Because Ms. Lynch had two pending appeals in this matter before the Second
23 District Court of Appeal when Mr. Cohen died, appellate co-counsel, Wendy Lascher, filed a
24 motion on January 25, 2017 with the Court of Appeal requesting an order that would allow me, in
25 my capacity as Trustee of the Leonard Cohen Family Trust, to substitute for Mr. Cohen as
26 respondent in the pending Court of Appeal proceedings.

27 8. Attached to the motions filed by Ms. Lascher in the Court of Appeal was my
28 declaration I executed for the purposes of the Court of Appeal motions for my substitution as

1 successor in interest to Mr. Cohen pursuant to the requirements of California Code of Civil
2 Procedure Section 377.32.

3 9. The Court of Appeal issued orders on January 26, 2017 allowing me to substitute in
4 my capacity as Trustee of the Leonard Cohen Family Trust for Mr. Cohen, the respondent in each
5 of the appeals involving Mr. Cohen and Ms. Lynch.

6 10. On March 14, 2019, in my capacity as Trustee, I executed an Acknowledgment of
7 Assignment of Judgment Pursuant to CCP §673, which acknowledged the assignment "of all right,
8 title and interest to the Judgment against Defendant and Judgment Debtor, KELLEY ANN
9 LYNCH, entered and filed in this matter on May 15, 2006, and as renewed on July 13, 2015, plus
10 any future modifications and renewals thereof" to the Leonard Cohen Family Trust. This
11 document, along with the supporting declaration of Mr. Cohen's estate attorney, Reeve E. Chudd,
12 Esq. was e-filed with the Court the same day. I attach hereto a true and correct copy of the
13 conformed Acknowledgment of Assignment of Judgment Pursuant to CCP §673 as Exhibit C. I
14 attach a conformed copy of Mr. Chudd's declaration filed in support of the Acknowledgment of
15 Assignment as Exhibit D.

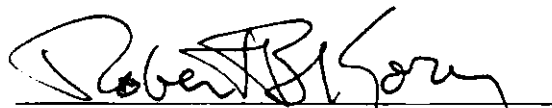
16 11. Estate planning attorney Reeve Chudd of Ervin, Cohen & Jessup LLP drafted Mr.
17 Cohen's Will and Trust documents. (See Exhibit D, Chudd Decl. ¶¶2-3.)

18 12. No probate proceeding was initiated because prior to his death Mr. Cohen had
19 conveyed all ownership interests in all of his assets to the Leonard Cohen Family Trust. (See
20 Exhibit D, Chudd Decl. ¶4.)

21 13. Accordingly, no proceeding is now pending in California for administration of Mr.
22 Cohen's estate.

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

25
26 DATED: March 22, 2019


Robert B. Kory

27
28
DECLARATION OF ROBERT B. KORY

DECLARATION OF
ROBERT B. KORY

EXHIBIT A

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC HEALTH

3052016217005

CERTIFICATE OF DEATH

2201819048628

1. DECEASED'S NAME (Last, first, middle) LEONARD		2. SEX MALE		3. RACE COHEN	
4. DATE OF BIRTH 08/21/1934		5. AGE (at death) 82		6. SEX AT BIRTH M	
7. CURRENT RESIDENCE (Street, city, county, state, zip) CANADA 914-43-6184		8. MARITAL STATUS WIDOWED		9. DATE OF DEATH 11/07/2018	
10. PLACE OF BIRTH BACHULO		11. ETHNICITY CAUCASIAN		12. US DEPARTMENT OF HEALTH AND HUMAN SERVICES (1-800-554-6221) 1300	
13. OCCUPATION POET		14. CAUSE OF DEATH (ICD-10) POETRY		15. ICD-10 CODE 80	
16. ADDRESS (Street, city, county, state, zip) 1031 S. TREMAYNE AVENUE / OF 2 LOS ANGELES LOS ANGELES 90019 CA					
17. DECEASED'S US RESIDENCE ADDRESS (Street, city, county, state, zip) 1031 S. TREMAYNE AVENUE, LOS ANGELES, CA 90019					
18. NAME OF DECEASED'S NEXT OF KIN NATHAN		19. RELATIONSHIP TO DECEASED COHEN		20. US BIRTH STATE QUEBEC	
21. NAME OF DECEASED'S NEXT OF KIN MASHA		22. RELATIONSHIP TO DECEASED BLONITSKY		23. US BIRTH STATE LITHUANIA	
24. NAME OF DECEASED'S NEXT OF KIN SHAR HASNOMAYIM CEMETERY					
25. ADDRESS (Street, city, county, state, zip) 1290 CHEMIN DE LA FORET, OUTREMONT, QUEBEC, CANADA H2V4T6					
26. NAME OF DECEASED'S NEXT OF KIN TRILLI					
27. RELATIONSHIP TO DECEASED ACT. UNK.					
28. NAME OF DECEASED'S NEXT OF KIN DALROW AND EVERMAN MORTUARY					
29. ADDRESS (Street, city, county, state, zip) 11401 114TH AVE. S. JEFFREY GUNZENHAUSER, MD 91104					
30. DATE OF DEATH 11/07/2018					
31. RESIDENCE (Street, city, county, state, zip) LOS ANGELES 1031 S. TREMAYNE AVENUE LOS ANGELES					
32. CAUSE OF DEATH (ICD-10) CARDIAC ARRHYTHMIA					
33. ICD-10 CODE I48					
34. CAUSE OF DEATH (ICD-10) RESPIRATORY FAILURE					
35. ICD-10 CODE J96					
36. CAUSE OF DEATH (ICD-10) ACUTE MYELOGENOUS LEUKEMIA					
37. ICD-10 CODE C91					
38. CAUSE OF DEATH (ICD-10) NO					
39. ICD-10 CODE NO					
40. NAME OF DECEASED'S NEXT OF KIN JOSHUA TRABULUS M.D.		41. RELATIONSHIP TO DECEASED TRABULUS		42. US BIRTH STATE MD	
43. ADDRESS (Street, city, county, state, zip) 496 N ROCKBURY DR 9308 BEVERLY HILLS, CA 90210		44. DATE OF DEATH 11/07/2018		45. ICD-10 CODE G36087	
46. NAME OF DECEASED'S NEXT OF KIN JOSHUA TRABULUS M.D.					
47. ADDRESS (Street, city, county, state, zip) 496 N ROCKBURY DR 9308 BEVERLY HILLS, CA 90210					
48. DATE OF DEATH 11/07/2018					
49. ICD-10 CODE G36087					
50. CAUSE OF DEATH (ICD-10) NO					
51. ICD-10 CODE NO					

CALOSANG01

CERTIFIED COPY OF VITAL RECORD
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

This is a true certified copy of the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.



001154199

Jeffrey Gunzenhauser, MD
Health Officer and Registrar
VD

DEC 28 2018

This copy is an exact carbon prepared on an engraved form, displaying the date, time and signature of the Registrar.



COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH

3052016217005

AFFIDAVIT TO AMEND A RECORD NO ERASURES, WHITEOUTS, PHOTOCOPIES, OR ALTERATIONS

3201619948820

STATE FILE NUMBER

LOCAL REGISTRATION NUMBER

1.1

BIRTH DEATH FETAL DEATH

TYPE OR PRINT CLEARLY IN BLACK INK ONLY - THIS AMENDMENT BECOMES AN ACTUAL PART OF THE OFFICIAL RECORD

PART I INFORMATION TO LOCATE RECORD

Form with fields for Name (Leonard), Date of Birth (11/07/2016), City of Birth (Los Angeles), and Name of Mother (Masha Klinsky).

PART II STATEMENT OF CORRECTIONS TO BIRTH, DEATH, OR FETAL DEATH RECORD

Table with 3 columns: A. Item number to be corrected (12), B. Incorrect information that appears on official record (MARRIED), C. Correct information that should appear (NEVER MARRIED). Includes a '2012' handwritten note.

TO CORRECT ERROR

Form for signatures and addresses of witnesses, including Randy Ziegler (Funeral Director) and Lorca Cohen (Registrar).

STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC HEALTH, OFFICE OF VITAL RECORDS

CERTIFIED COPY OF VITAL RECORD STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

This is a true certified copy of the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.



Handwritten signature of the Registrar and date issued: DEC 28 2016

DEC 28 2016



CALOSANGRE

DECLARATION OF
ROBERT B. KORY

EXHIBIT B

**ACCEPTANCE OF APPOINTMENT AS SOLE SUCCESSOR TRUSTEE
OF THE LEONARD COHEN FAMILY TRUST**

I, ROBERT B. KORY, the undersigned, declare:

1. October 2, 1998, LEONARD COHEN, as Settlor, executed that certain declaration of trust entitled "LEONARD COHEN FAMILY TRUST", creating a revocable trust by that name (hereinafter referred to as "the Trust"). Said original declaration of trust was subsequently amended and restated in its entirety by Restatement of the Leonard Cohen Family Trust, executed by LEONARD COHEN on May 12, 2005 (hereinafter referred to as "the Trust Instrument").

2. From the inception of the Trust until the present, LEONARD COHEN served as sole Trustee of the Trust.

3. Paragraphs 3.1 and 3.2 of the Trust Instrument read as follows:

"3.1 **Appointment of Trustees.** Settlor, during his lifetime, shall have the power to remove a Trustee or Co-Trustee, to appoint a Co-Trustee or Co-Trustees to serve with the Trustee, or to appoint a successor Trustee or Co-Trustees, said appointees to serve at the pleasure of Settlor, but not beyond the date of death or incapacity of Settlor unless Settlor shall specifically so designate by a writing filed with the Trustee.

"3.2 **Successor Trustees.** If Settlor shall cease to serve as Trustee and no designation of a continuing successor Trustee or Co-Trustees shall have been made pursuant to Paragraph 3.1 above, then ROBERT B. KORY shall serve as successor Trustee. If ROBERT B. KORY shall be unable or unwilling to serve as Trustee, then ADAM COHEN and LORCA COHEN shall serve as successor Co-Trustees or, if either of them shall be unable or unwilling to so serve, then the other shall serve as sole successor Trustee. Thereafter, if there is a vacancy in the trusteeship, then the last serving Trustee shall have the power to appoint successor Trustees and/or Co-Trustees, including the naming of a succession of Trustees and/or Co-Trustees, by delivering a signed writing to the successor Trustee so designated by him or her."

4. LEONARD COHEN did not exercise his power to name a successor Trustee pursuant to Paragraph 3.1 of the Trust Instrument.

5. LEONARD COHEN died on November 7, 2016. A photocopy of his death certificate is attached hereto. By reason of the death of LEONARD COHEN, I am nominated to serve as sole successor Trustee of the Trust, pursuant to the aforesaid Paragraph 3.2 of the Trust Instrument.

6. I do hereby accept appointment as said successor Trustee of the Trust, effective as of November 7, 2016.

Dated: January 4th, 2017


ROBERT B. KORY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document

State of California)
) ss
County of Los Angeles)

On January 4th, 2017, before me, Lauren Wilhite, a Notary Public for California, personally appeared ROBERT B. KORY, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Lauren Wilhite
Notary Public

(Seal)



STATE OF CALIFORNIA

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC HEALTH

305209217006 CERTIFICATE OF DEATH 320191904826

1. DECEASED PERSON'S NAME LEONARD		2. LAST NAME COHEN	
3. SEX M		4. DATE OF BIRTH 08/21/1934	
5. PLACE OF BIRTH CANADA		6. MARITAL STATUS WIDOWED	
7. OCCUPATION POET		8. ETHNIC OR RACIAL GROUP CAUCASIAN	
9. RESIDENCE 1081 S. TREMUNE AVENUE LOS ANGELES 90019 CA			
10. PLACE OF DEATH 1081 S. TREMUNE AVENUE LOS ANGELES CA 90019			
11. NAME OF DECEASED PERSON'S FATHER NATHAN		12. NAME OF DECEASED PERSON'S MOTHER MASHA	
13. NAME AND ADDRESS OF PLACE WHERE DECEASED PERSON WAS USUALLY KEPT SHARHASHOMAYM CONISTERY 1200 CHEMIN DE LA FORET, OUTREMONT, QUEBEC, CANADA H2K4T8			
14. NAME AND ADDRESS OF PLACE WHERE DECEASED PERSON WAS USUALLY KEPT DALNOW AND SILVERMAN MORTUARY 11802 WILSON AVE LOS ANGELES CA 90024			
15. RESIDENCE LOS ANGELES 1081 S. TREMUNE AVENUE LOS ANGELES			
16. CAUSE OF DEATH CARDIAC ARREST RESPIRATORY FAILURE ACUTE MYELOGENOUS LEUKEMIA			
17. NAME AND ADDRESS OF PHYSICIAN JOSHUA TRABULUS M.D. 425 N ROXBURY DR & 300 N BEVERLY HILLS CA 90210			

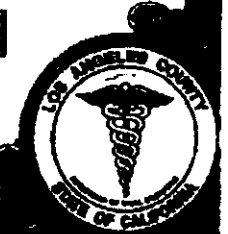
CERTIFIED COPY OF VITAL RECORD
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

This is a true certified copy of the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.



Handwritten Signature
DATE ISSUED
VD

DEC 28 2006



CALOSANG01

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH

3052018217005 AFFIDAVIT TO AMEND A RECORD 3201618048626

STATE FILE NUMBER LOCAL REGISTRATION NUMBER

BIRTH DEATH FETAL DEATH

TYPE OR PRINT CLEARLY IN BLACK INK ONLY - THIS AMENDMENT BECOMES AN ACTUAL PART OF THE OFFICIAL RECORD

PART I INFORMATION TO LOCATE RECORD. Includes fields for name (LEONARD COHEN), sex (M), date of birth (11/07/2016), city (LOS ANGELES), county (LOS ANGELES), full name of registrant (NATHAN S COHEN), and full name of informant (MASHA KLINITSKY).

PART II STATEMENT OF CORRECTIONS TO BIRTH, DEATH, OR FETAL DEATH RECORD. Includes a table with columns for 'A. TYPE OF CORRECTION', 'B. REASON FOR CORRECTION', and 'C. CORRECTED INFORMATION AS IT SHOULD APPEAR'. Handwritten entries include 'WIDOWED' and 'NEVER MARRIED'.

SEARCH FOR CORRECTION

Affidavit section with signatures and dates. Includes fields for 'AFFIDAVIT AND SIGNATURE', 'STATE REGISTRAR - OFFICE OF VITAL RECORDS', and dates like 12/12/2016.

CERTIFIED COPY OF VITAL RECORD

This is a true certified copy of the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.



Handwritten signature and date: HEALTH AND REGISTRATION DIVISION, DATE ISSUED DEC 28 2016



DECLARATION OF
ROBERT B. KORY

EXHIBIT C

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

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**
9 **CENTRAL DISTRICT**
10

11 LEONARD NORMAN COHEN, LEONARD) Case No. BC 338322
12 COHEN INVESTMENTS, LLC)
13 Plaintiff/Petitioner,) Hon. Patricia Nieto, Dept. 24
14 vs.) **ACKNOWLEDGEMENT OF**
15) **ASSIGNMENT OF JUDGMENT**
16) **PURSUANT TO CCP §673;**
17) **DECLARATION OF REEVE E. CHUDD,**
18) **ESQ. IN SUPPORT OF**
19) **ACKNOWLEDGEMENT OF**
20) **ASSIGNMENT**
21)
22)
23)
24)
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27)
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29 TO THE COURT AND ALL INTERESTED PARTIES:

30 PLEASE TAKE NOTICE that the Plaintiff and Judgment Creditor, ROBERT B. KORY, AS
31 TRUSTEE, THE LEONARD COHEN FAMILY TRUST, does hereby acknowledge assignment, as a
32 matter of law upon the death of Plaintiff Leonard Norman Cohen on November 7, 2016, of all right,
33 title and interest to the Judgment against Defendant and Judgment Debtor, KELLEY ANN LYNCH,
34 entered and filed in this matter on May.15, 2006 and as renewed on July 13, 2015, plus any future
35 modifications and renewals thereof.

36 Plaintiff and Judgment Creditor's name and current address is:

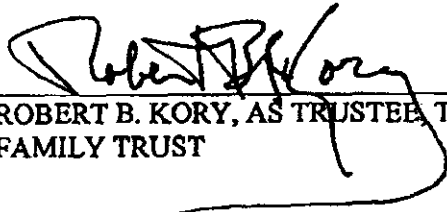
1 ROBERT B. KORY, AS TRUSTEE,
2 THE LEONARD COHEN FAMILY TRUST
3 5455 WILSHIRE BLVD., SUITE 1701
4 LOS ANGELES, CA 90036

4 The Judgment Debtor's name and last known address is:

5 KELLEY ANN LYNCH
6 1754 N. VAN NESS AVENUE
7 LOS ANGELES, CALIFORNIA 90028

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

10
11 Dated: 3/14/19

12 
13 ROBERT B. KORY, AS TRUSTEE, THE LEONARD COHEN
14 FAMILY TRUST

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A notary public or other officer completing this certificate verifies only the identity of the person signing the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

NOTARY ACKNOWLEDGEMENT

State of CALIFORNIA

County of Los Angeles

On March 14, 2019 before me, Lauren Wilhite, a notary public of the State of California, personally appeared Robert B. Kory, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lauren Wilhite

My commission expires August 14, 2021.



DECLARATION OF
ROBERT B. KORY

EXHIBIT D

1 MICHELLE L. RICE, ESQ. (SBN 235189)
KORY & RICE, LLP
2 545 Wilshire Blvd., Suite 1701
Los Angeles, CA 90036
3 Telephone: (310) 285-1630
4 Facsimile: (310) 278-7641
5 Attorney for Plaintiff/Petitioner

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**
9 **CENTRAL DISTRICT**
10

11 LEONARD NORMAN COHEN, LEONARD) Case No. BC 338322
12 COHEN INVESTMENTS, LLC)
13 Plaintiff/Petitioner,) Hon. Patricia Nieto, Dept. 24
14 vs.) **DECLARATION OF REEVE E. CHUDD,**
15 KELLEY ANN LYNCH,) **ESQ. IN SUPPORT OF**
16 Defendant/Respondent.) **ACKNOWLEDGEMENT OF**
17) **ASSIGNMENT**
18)

19 I, Reeve E. Chudd, declare that if called upon to testify in this matter, I would
20 competently testify to the following:

21 1. I am an attorney licensed to practice in California. I am a partner with the law firm
22 of Ervin, Cohen & Jessup LLP, Beverly Hills, California. My areas of practice are estate
23 planning, probate and trust administration, planned charitable giving, tax-exempt entities, and
24 non-tax issues of wealth transfer.

25 2. The late Leonard Cohen was a client of our law firm for approximately two
26 decades preceding his death in 2016. I prepared the Restatement of his inter vivos revocable trust,
27 which he executed on May 12, 2005, as well as subsequent amendments thereto. In addition, I
28

DECLARATION OF REEVE E. CHUDD

1 prepared Mr. Cohen's Last Will and Testament, which he executed on May 12, 2005 ("the
2 Will").

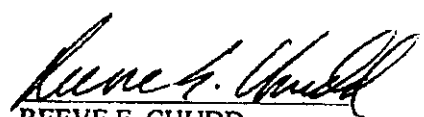
3 3. On July 2, 2016, Leonard Cohen executed a Transfer and Receipt, assigning his
4 property to the Leonard Cohen Family Trust "...whether real, personal or mixed and whether
5 tangible or intangible, where ever located, whether acquired or received before, concurrently with
6 or after the date of execution of this Trust, including but not limited to notes receivable,
7 partnership interests, government obligations, stocks and bonds." Attached as Exhibit A is a true
8 and correct copy of the executed Transfer and Receipt.

9 4. Although the Will was a "pourover Will", meaning that the sole beneficiary of the
10 Will was the Leonard Cohen Family Trust, no probate proceeding was initiated by reason of
11 formal title to any recorded asset was already held by said Trust and the aforesaid Transfer and
12 Receipt specified the intent of Mr. Cohen to convey all ownership interests in all of his assets to
13 the Trust. Accordingly, no Probate Court Order was required to establish the rights of the Trust
14 in all of Mr. Cohen's assets and property.

15 5. Upon the death of Mr. Cohen on November 7, 2016, pursuant to the terms of the
16 Leonard Cohen Family Trust, as amended, Robert B. Kory was named as successor Trustee of
17 said Trust, and on January 4, 2017, Robert B. Kory accepted his appointment as successor
18 Trustee of the Leonard Cohen Family Trust. Attached as Exhibit B is a true and correct copy of
19 the executed Acceptance of Appointment as Sole Successor Trustee of the Leonard Cohen
20 Family Trust.

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

23 Dated: March 14, 2019

24 
25 REEVE E. CHUDD

**DECLARATION OF
REEVE E. CHUDD, ESQ.**

EXHIBIT A

RESTATEMENT OF THE LEONARD COHEN FAMILY TRUST
TRANSFER AND RECEIPT

LEONARD COHEN, as Settlor, hereby transfers, grants and conveys the following described property to LEONARD COHEN, as the Trustee of the LEONARD COHEN FAMILY TRUST:

1. Separate Property. Each and every item of the Settlor's separate property, except for (i) any interest in a pension, profit-sharing or other retirement plan or in an individual retirement account, or (ii) life insurance policies on the life of Settlor, whether real, personal or mixed and whether tangible or intangible, wherever located, whether acquired or received before, concurrently with, or after the date of execution of this Trust, including but not limited to notes receivable, partnership interests, governmental obligations, stocks and bonds.

Dated: July 2nd, 2016

Leonard Cohen
LEONARD COHEN, Settlor

The foregoing instrument is hereby accepted this 2nd day of July, 2016.

Leonard Cohen
LEONARD COHEN, Trustee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

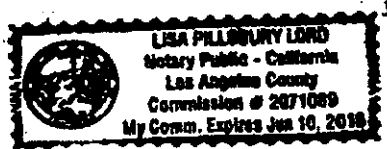
State of California)
County of Los Angeles)

On July 2, 2016, before me, LISA PILLSBURY LORD, a Notary Public, personally appeared LEONARD COHEN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/het/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Lisa Pillsbury Lord
Notary Public



**DECLARATION OF
REEVE E. CHUDD, ESQ.**

EXHIBIT B

**ACCEPTANCE OF APPOINTMENT AS SOLE SUCCESSOR TRUSTEE
OF THE LEONARD COHEN FAMILY TRUST**

I, ROBERT B. KORY, the undersigned, declare:

1. October 2, 1998, LEONARD COHEN, as Settlor, executed that certain declaration of trust entitled "LEONARD COHEN FAMILY TRUST", creating a revocable trust by that name (hereinafter referred to as "the Trust"). Said original declaration of trust was subsequently amended and restated in its entirety by Restatement of the Leonard Cohen Family Trust, executed by LEONARD COHEN on May 12, 2005 (hereinafter referred to as "the Trust Instrument").

2. From the inception of the Trust until the present, LEONARD COHEN served as sole Trustee of the Trust.

3. Paragraphs 3.1 and 3.2 of the Trust Instrument read as follows:

"3.1 Appointment of Trustees. Settlor, during his lifetime, shall have the power to remove a Trustee or Co-Trustee, to appoint a Co-Trustee or Co-Trustees to serve with the Trustee, or to appoint a successor Trustee or Co-Trustees, said appointees to serve at the pleasure of Settlor, but not beyond the date of death or incapacity of Settlor unless Settlor shall specifically so designate by a writing filed with the Trustee.

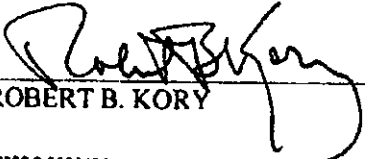
"3.2 Successor Trustees. If Settlor shall cease to serve as Trustee and no designation of a continuing successor Trustee or Co-Trustees shall have been made pursuant to Paragraph 3.1 above, then ROBERT B. KORY shall serve as successor Trustee. If ROBERT B. KORY shall be unable or unwilling to serve as Trustee, then ADAM COHEN and LORCA COHEN shall serve as successor Co-Trustees or, if either of them shall be unable or unwilling to so serve, then the other shall serve as sole successor Trustee. Thereafter, if there is a vacancy in the trusteeship, then the last serving Trustee shall have the power to appoint successor Trustees and/or Co-Trustees, including the naming of a succession of Trustees and/or Co-Trustees, by delivering a signed writing to the successor Trustee so designated by him or her."

4. LEONARD COHEN did not exercise his power to name a successor Trustee pursuant to Paragraph 3.1 of the Trust Instrument..

5. LEONARD COHEN died on November 7, 2016. A photocopy of his death certificate is attached hereto. By reason of the death of LEONARD COHEN, I am nominated to serve as sole successor Trustee of the Trust, pursuant to the aforesaid Paragraph 3.2 of the Trust Instrument.

6. I do hereby accept appointment as said successor Trustee of the Trust, effective as of November 7, 2016.

Dated: January 4th, 2017


ROBERT B. KORY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document

State of California)
) ss
County of Los Angeles)

On January 4th, 2017, before me, Lauren Wilhite, a Notary Public for California, personally appeared ROBERT B. KORY, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Lauren Wilhite
Notary Public

(Seal)



COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH

3062976217005 CERTIFICATE OF DEATH 2201919048826

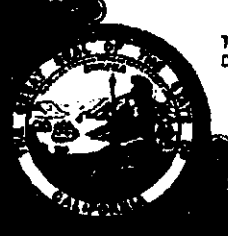
Form with fields for Name (LEONARD COHEN), Date of Birth (09/21/1934), Sex (M), Marital Status (WIDOWED), Cause of Death (CARDIAC ARRHYTHMIA), and Registrar (JOSHUA TRABULUS M.D.).

CERTIFIED COPY OF VITAL RECORD

This is a true certified copy of the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.



Handwritten signature of Registrar and date DEC 28 2016



CALOSANGOS

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH

3052016217005

AFFIDAVIT TO AMEND A RECORD

3201619948820

STATE FILE NUMBER

NO ENTRIES, REVISIONS, PHOTOCOPIES, OR ALTERATIONS

LOCAL REGISTRATION NUMBER

1.1

[] BIRTH [X] DEATH [] FETAL DEATH

TYPE OR PRINT CLEARLY IN BLACK INK ONLY - THIS AMENDMENT BECOMES AN ACTUAL PART OF THE OFFICIAL RECORD

PART I INFORMATION TO LOCATE RECORD

Form with fields for Name-First (LEONARD), Name-Last (COHEN), Date (11/27/2016), City (LOS ANGELES), County (LOS ANGELES), Full Name of Person (NATHAN B COHEN), and Full Name of Person (MASHA KLIMTSKY).

PART II STATEMENT OF CORRECTIONS TO BIRTH, DEATH, OR FETAL DEATH RECORD

Table with 3 columns: 1. How entered (12), 2. Incorrect information (WIDOWED), 3. Corrected information (NEVER MARRIED). Includes a handwritten '2012' in the third column.

TO CORRECT ERROR

REASON FOR CORRECTION

Affidavit section with fields for Affiant Name (RANDY ZIEGLER), Relationship (FUNERAL DIRECTOR), Date (11/06/2016), and State Registrar Name (STATE REGISTRAR - OFFICE OF VITAL RECORDS) dated 12/12/2016.

STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC HEALTH, OFFICE OF VITAL RECORDS

CERTIFIED COPY OF VITAL RECORD

This is a true certified copy of the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.



Signature of Randy Ziegler, MD, Health and Registrar, VD

DATE ISSUED DEC 28 2016



CALOSANGC01

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

5 Attorney for Plaintiff/Petitioner

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**
9 **CENTRAL DISTRICT**

10 LEONARD NORMAN COHEN,
11 LEONARD COHEN INVESTMENTS,
LLC

12 Plaintiff/Petitioner,

13 v.

14 KELLEY ANN LYNCH,
15 Defendant/Respondent.
16
17

CASE NO.: BC 338322

Hon. Patricia Nieto, Dept. 24

**DECLARATION OF MICHELLE L.
RICE, ESQ. IN SUPPORT OF *EX PARTE*
APPLICATION FOR AN ORDER
SUBSTITUTING ROBERT B. KORY AS
TRUSTEE OF THE LEONARD COHEN
FAMILY TRUST FOR PLAINTIFFS
LEONARD NORMAN COHEN AND
LEONARD COHEN INVESTMENTS, LLC**

Complaint Filed: August 15, 2005

Default Judgment Issued: May 15, 2006

Default Judgment Renewed: July 13, 2015

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19
20
21 **DECLARATION AS TO WHY *EX PARTE* NOTICE SHOULD NOT BE REQUIRED FOR**
22 **THIS APPLICATION FOR AN ORDER ON SUBSTITUTION OF TRUSTEE FOR**
23 **DECEDENT PURSUANT TO CRC 3.1204(b)(3)**

24 1. I am an attorney licensed to practice law in California and am the attorney of record
25 in this matter. I have personal knowledge of the facts stated in this Declaration, and if called as a
26 witness I could and would testify to these facts.
27
28

1 2. I submit this Declaration in support of the *Ex Parte* Application for an order
2 allowing substitution of Robert B. Kory, as Trustee of the Leonard Cohen Family Trust, for
3 decedent Plaintiff Leonard Norman Cohen and his wholly owned entity, Leonard Cohen
4 Investments, LLC.

5 3. I represented Plaintiff Leonard Cohen since 2005 until his death on November 7,
6 2016. After Mr. Cohen's death, I remain legal counsel to Robert B. Kory in his capacity as
7 Trustee of the Leonard Cohen Family Trust and will continue to represent him in this action.

8 4. I was co-counsel with certified appellate specialist Wendy Lascher, Esq. of
9 Ferguson, Case, Orr, Paterson, LLP in the two appeals filed in this matter by Defendant Kelley
10 Lynch involving the validity of the judgment and its renewal in the Second District Court of
11 Appeal, appellate case numbers B265753 and B267794.

12 5. Plaintiff Leonard Cohen died during the pendency of both appeals filed by
13 Defendant Kelley Lynch in this case. The appeal in B265753 involved Ms. Lynch's appeal from
14 this Court's June 23, 2015 Order denying her "Motion for Terminating Sanctions" which sought to
15 vacate the default judgment entered against her on May 15, 2006 based upon purported lack of
16 personal jurisdiction for the alleged failure to serve her the summons and complaint. The second
17 appeal, B267794, involved her appeal filed on October 16, 2015 from the October 6, 2015 Order
18 denying her motion to vacate the July 13, 2015 renewal of judgment.

19 6. On January 25, 2017, appellate co-counsel Wendy Lascher filed a "Motion to
20 Substitute Trustee in Place of Respondent Leonard Cohen" pursuant to California Code of Civil
21 Procedure Sections 377.31 and 377.32, and California Rules of Court, rule 8.36(a) in appellate
22 cases B265753, B267794, and B267409. I attach hereto as Exhibits A and B, true and correct
23 copies of the motions filed in the Court of Appeal in appeals B265753 and B267794, respectively.
24 Appellate cases B265753 and B267794 involved appeals from two orders issued in this action.
25 Appellate case B267409 involved Ms. Lynch's appeal from a denial of a motion to vacate the
26 California Registration of a Colorado Permanent Protection Order issued to Mr. Cohen in Los
27 Angeles Superior Court Case number BQ033717.

28

DECLARATION OF MICHELLE L. RICE

1 7. On January 26, 2017, the Court of Appeal issued orders substituting Robert B.
2 Kory as Trustee for Leonard Cohen in the pending appeals involving Ms. Lynch and Mr. Cohen.

3 8. The same day, James Renteria, Deputy Clerk of the Court of Appeal, served the
4 parties to the appeals by electronic mail PDF copies of the January 26, 2017 Orders, signed by the
5 Presiding Justice, allowing Mr. Kory to be substituted in place of Mr. Cohen in the appellate
6 proceedings. I attach hereto, as Exhibits C and D to this Declaration, a true and correct copy of
7 the two emails I received from Mr. Renteria transmitting the substitution orders in B265753 and
8 B267794, respectively.

9 9. Exhibit E is a true and correct copy of the dockets (Register of Action) in appeals
10 B265753 and B267794 showing the motions for substitution were made on 01/25/2017 and the
11 substitution orders were filed on 01/26/2017 in both appeals.

12 10. Ms. Lynch never objected to or otherwise challenged Mr. Kory's substitution, in
13 his capacity as Trustee of the Leonard Cohen Family Trust, for Mr. Cohen in the Court of Appeal
14 proceedings.

15 11. On July 17, 2017, the Court of Appeal issued the Remittitur in appellate case
16 number B265753. The case caption of the Remittitur reflected the Court of Appeal's substitution
17 of "Robert B. Kory, as Trustee" for Leonard Cohen. Attached hereto as Exhibit F is a true and
18 correct copy of the file stamped Remittitur issued in the B265753 appeal.

19 12. On January 16, 2019, the Court of Appeal issued its Opinion in appellate case
20 number B267794. The case caption of the Opinion in B267794 also reflects the Court of
21 Appeal's substitution of "Robert B. Kory, as Trustee" for Leonard Cohen in that appeal.

22 13. On the afternoon of Friday, March 1, 2019, I spoke by telephone with Raylene
23 Lopez, the Deputy Clerk in Division 7 of the Court of Appeal regarding whether the Court of
24 Appeal had notified the superior court pursuant to the requirement in CRC 8.36(a) of the orders on
25 substitution issued by the Court of Appeal on January 26, 2017. Ms. Lopez stated that the orders
26 on substitution allowing Mr. Kory to substitute as Trustee of the Family Trust for Leonard Cohen
27 had not been transmitted to the trial court.

28

1 14. On March 4, 2019, I spoke with the clerk in Los Angeles Superior Court
2 Department 24 and reconfirmed that the orders on substitution had not been transmitted from the
3 Court of Appeal in appeals B265753 and B267794 and that the superior court had not been
4 otherwise notified of the action taken by the reviewing court granting Mr. Kory's motion to
5 substitute.


6 15. On March 18, 2019, Joshua Dunn, clerk of the Court of Appeal emailed the parties
7 to the appeal a PDF copy of the Remittitur issued in B267794. I attach hereto as Exhibit G a true
8 and correct copy of the email I received by email from Mr. Dunn.

9 16. The Remittitur in B267794 now appears on the Los Angeles Superior Court's
10 website in this action as having been filed by the clerk on March 18, 2019.

11 17. In addition to the grounds and reasons more fully stated in the *ex parte*
12 application, pursuant to California Rules of Court, rule 3.1204(b)(3), applicant should not be
13 required to inform the Defendant and Judgment Debtor, Kelley Lynch, of this *ex parte* application
14 to substitute Trustee made under CCP §377.31 and §377.32 because such substitution is an
15 absolute right of a decedent's successor in interest which Ms. Lynch has no standing to contest.
16 Further, Ms. Lynch had been previously served with the Court of Appeal's orders on substitution
17 allowing Mr. Kory to substitute for Mr. Cohen in the appellate proceedings. Accordingly, no *ex*
18 *parte* notice was given by Plaintiffs' counsel to Defendant in this matter.

19
20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct.

22
23 DATED: March 22, 2019

24 
Michelle L. Rice

DECLARATION OF
MICHELLE L. RICE, ESQ.

EXHIBIT A

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

**MOTION TO SUBSTITUTE TRUSTEE IN PLACE
OF RESPONDENT LEONARD COHEN;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF ROBERT B.
KORY; [PROPOSED] ORDER**

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Fax: (310) 278-7641

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FERGUSON CASE ORR
PATERSON LLP
1050 South Kimball Road
Ventura, California 93004
Telephone: (805) 659-6800
Fax: (805) 659-6818

Attorneys for Plaintiff and Respondent,
LEONARD NORMAN COHEN

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TABLE OF AUTHORITIES

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Code of Civil Procedure	
§ 337.31	4, 5
§ 337.32	4, 5
§ 377.11	7

RULES

California Rules of Court	
Rule 8.36(a)	4, 5

**MOTION TO SUBSTITUTE TRUSTEE IN PLACE OF
RESPONDENT LEONARD COHEN;
MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION OF ROBERT B. KORY;
[PROPOSED] ORDER**

Robert Kory, Trustee of the Leonard Cohen Family Trust (“Trustee”), respectfully moves for an order substituting Trustee as respondent on appeal in place of Leonard Cohen in light of Mr. Cohen’s death on November 7, 2016. Trustee makes this motion under Code of Civil Procedure sections 337.31 and 337.32, and California Rules of Court, rule 8.36 (a). The motion is based on the memorandum of points and authorities and the attached Declaration of Robert B. Kory.

Dated: January 23, 2017 Respectfully submitted,

KORY & RICE LLP
Michelle L. Rice

FERGUSON CASE ORR PATERSON LLP
Wendy Cole Lascher

By Wendy Cole Lascher
Attorneys for Respondent
Leonard Norman Cohen

MEMORANDUM OF POINTS AND AUTHORITIES

The Los Angeles Superior Court awarded Leonard Cohen \$7.3 million against appellant Kelley Lynch in 2006. Lynch never appealed that judgment, but she unsuccessfully attacked it by various post-judgment motions. Here, Lynch appeals an order denying her 2015 motion for “terminating sanctions” and ordering parts of the record to be sealed.¹ This case is fully briefed and awaits oral argument.

Mr. Cohen died November 7, 2016. There was an error in the original death certificate; an amended one issued December 28. Robert B. Kory has accepted appointment as successor Trustee of the Leonard Cohen Family Trust.

Code of Civil Procedure section 337.31 requires a court to allow the decedent’s personal representative or successor in interest to continue a pending action that does not abate upon the plaintiff’s death, provided the personal representative or trustee file a declaration complying with section 337.32. California Rules of Court, rule 8.36(a) requires a motion in this court to substitute parties on appeal.

¹ In case no. B267794, Lynch appeals from an order denying her motion to vacate Cohen’s renewal of the money judgment. In case no. B267409, Lynch appeals from an order registering in California the domestic violence restraining order granted by a Colorado court to protect Cohen from Lynch.

CONCLUSION

Based on these authorities, Trustee respectfully requests that the court order that he be substituted into the case to continue this appeal as successor in interest to respondent Cohen.

Dated: January 23, 2017 Respectfully submitted,

KORY & RICE LLP
Michelle L. Rice

FERGUSON CASE ORR PATERSON LLP
Wendy Cole Lascher

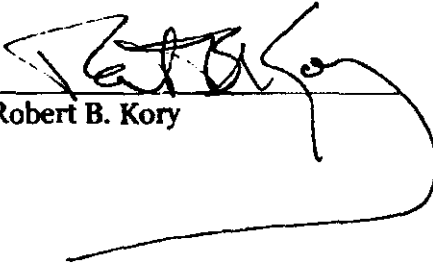
By Wendy Cole Lascher
Attorneys for Respondent
Leonard Norman Cohen

DECLARATION OF ROBERT B. KORY

Robert B. Kory declares:

1. I am an attorney licensed to practice in California. I make this declaration in support of my motion to substitute myself, in my capacity as Trustee of the Leonard Cohen Family Trust, as respondent on appeal, in place of the late Mr. Cohen. I have personal knowledge of the facts stated in this declaration, and if called as a witness I could and would testify to these facts.
2. Leonard Cohen was the successful plaintiff in this action against appellant Kelley Lynch.
3. Mr. Cohen died November 7, 2016 in Los Angeles, California. I attach, and incorporate by reference into this declaration, a certified copy of Mr. Cohen's death certificate, including the affidavit to amend a record correcting an error in the original death certificate.
4. No proceeding is now pending in California for administration of Mr. Cohen's estate.
5. I am successor Trustee of the Leonard Cohen Family Trust. I attach, and incorporate by reference into this declaration, a true copy of my Acceptance of Appointment as Sole Successor Trustee of the Leonard Cohen Family Trust.
6. In my capacity as Trustee, I am Mr. Cohen's successor in interest as defined in Code of Civil Procedure section 377.11, and succeed to his interest in this action. No other person has a superior right to be substituted for Mr. Cohen in the pending action.

I declare under penalty of perjury, under the laws of California, that the facts stated in this declaration are true, and that this declaration was executed in Los Angeles, California, on January 24th, 2017.


Robert B. Kory

[PROPOSED] ORDER

The court has read and considered the motion of Robert B. Kory, Trustee of the Leonard Cohen Family Trust, to substitute as respondent in place of the late Mr. Cohen. Good cause appearing, IT IS HEREBY ORDERED:

Robert B. Kory, Trustee of the Leonard Cohen Family Trust, may continue as respondent in this appeal, in place of Leonard Cohen.

Dated: _____, 2017

Presiding Justice

STATE OF CALIFORNIA
OFFICE OF THE CLERK OF THE SUPERIOR COURT

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC HEALTH

3052016217005

AFFIDAVIT TO AMEND A RECORD

3201619048828

STATE FILE NUMBER

NO ERASURES, WHITEOUTS, PHOTOCOPIES,
OR ALTERATIONS

LOCAL REGISTRATION NUMBER

1.1

BIRTH DEATH FETAL DEATH

TYPE OR PRINT CLEARLY IN BLACK INK ONLY - THIS AMENDMENT BECOMES AN ACTUAL PART OF THE OFFICIAL RECORD

PART I INFORMATION TO LOCATE RECORD

INFORMATION AS IT APPEARS ON ORIGINAL RECORD	1A. FIRST-NAME LEONARD	1B. MIDDLE	1C. LAST COHEN
	2. SEX M	3. DATE OF BIRTH—MM/DD/YYYY 11/07/2016	4. CITY OF BIRTH LOS ANGELES
	5. FULL NAME OF FATHER/STEPFATHER AS STATED ON ORIGINAL RECORD NATHAN B COHEN		6. FULL NAME OF MOTHER/STEPMOTHER AS STATED ON ORIGINAL RECORD MASHA - KLINITSKY
	7. COUNTY OF EVENT LOS ANGELES		

PART II STATEMENT OF CORRECTIONS TO BIRTH, DEATH, OR FETAL DEATH RECORD

LIST ONE ITEM PER LINE	8. NEW NUMBER TO BE CORRECTED 12	9. INCORRECT INFORMATION THAT APPEARS ON ORIGINAL RECORD WIDOWED	10. CORRECTED INFORMATION AS IT SHOULD APPEAR NEVER MARRIED

TO CORRECT ERROR

REASON FOR CORRECTION

AFFIDAVITS AND SIGNATURES	We, the undersigned, hereby certify under penalty of perjury that we have personal knowledge of the above facts and that the information given above is true and correct.		
	12A. SIGNATURE OF FIRST PERSON 	12B. PRINTED NAME RANDY ZIEGLER	12C. TITLE/RELATIONSHIP TO PERSON IN PART I FUNERAL DIRECTOR
	12D. ADDRESS (STREET AND NUMBER, CITY, STATE, ZIP) 7306 OSAGE AVENUE, LOS ANGELES, CA 90045-1786		12E. DATE SIGNED—MM/DD/YYYY 11/08/2016
	12A. SIGNATURE OF SECOND PERSON 	12B. PRINTED NAME LORCA COHEN	12C. TITLE/RELATIONSHIP TO PERSON IN PART I DAUGHTER
STATE/LOCAL REGISTRAR USE ONLY	12D. ADDRESS (STREET AND NUMBER, CITY, STATE, ZIP) 1031 S. TREMANS AVENUE LOS ANGELES, CA. 90019		12E. DATE SIGNED—MM/DD/YYYY 11/16/2016

STATE/LOCAL REGISTRAR USE ONLY

14. OFFICE OF VITAL RECORDS OR LOCAL REGISTRAR
 STATE REGISTRAR - OFFICE OF VITAL RECORDS

15. DATE ACCEPTED FOR REGISTRATION
12/12/2016

STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC HEALTH, OFFICE OF VITAL RECORDS

CERTIFIED COPY OF VITAL RECORD
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

This is a true certified copy of the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.



Health Officer and Registrar
VD

DATE ISSUED
DEC 28 2016

This copy is not valid unless prepared on an engraved border, displaying the date, seal and signature of the Registrar.



CALOSANG00

**ACCEPTANCE OF APPOINTMENT AS SOLE SUCCESSOR TRUSTEE
OF THE LEONARD COHEN FAMILY TRUST**

I, ROBERT B. KORY, the undersigned, declare:

1. October 2, 1998, LEONARD COHEN, as Settlor, executed that certain declaration of trust entitled "LEONARD COHEN FAMILY TRUST", creating a revocable trust by that name (hereinafter referred to as "the Trust"). Said original declaration of trust was subsequently amended and restated in its entirety by Restatement of the Leonard Cohen Family Trust, executed by LEONARD COHEN on May 12, 2005 (hereinafter referred to as "the Trust Instrument").

2. From the inception of the Trust until the present, LEONARD COHEN served as sole Trustee of the Trust.

3. Paragraphs 3.1 and 3.2 of the Trust Instrument read as follows:

"3.1 Appointment of Trustees. Settlor, during his lifetime, shall have the power to remove a Trustee or Co-Trustee, to appoint a Co-Trustee or Co-Trustees to serve with the Trustee, or to appoint a successor Trustee or Co-Trustees, said appointees to serve at the pleasure of Settlor, but not beyond the date of death or incapacity of Settlor unless Settlor shall specifically so designate by a writing filed with the Trustee.

"3.2 Successor Trustees. If Settlor shall cease to serve as Trustee and no designation of a continuing successor Trustee or Co-Trustees shall have been made pursuant to Paragraph 3.1 above, then ROBERT B. KORY shall serve as successor Trustee. If ROBERT B. KORY shall be unable or unwilling to serve as Trustee, then ADAM COHEN and LORCA COHEN shall serve as successor Co-Trustees or, if either of them shall be unable or unwilling to so serve, then the other shall serve as sole successor Trustee. Thereafter, if there is a vacancy in the trusteeship, then the last serving Trustee shall have the power to appoint successor Trustees and/or Co-Trustees, including the naming of a succession of Trustees and/or Co-Trustees, by delivering a signed writing to the successor Trustee so designated by him or her."

4. LEONARD COHEN did not exercise his power to name a successor Trustee pursuant to Paragraph 3.1 of the Trust Instrument..

5. LEONARD COHEN died on November 7, 2016. A photocopy of his death certificate is attached hereto. By reason of the death of LEONARD COHEN, I am nominated to serve as sole successor Trustee of the Trust, pursuant to the aforesaid Paragraph 3.2 of the Trust Instrument.

6. I do hereby accept appointment as said successor Trustee of the Trust, effective as of November 7, 2016.

Dated: January 4th, 2017


ROBERT B. KORY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document

State of California)
) ss
County of Los Angeles)

On January 4th, 2017, before me, Lauren Wilhite, a Notary Public for California, personally appeared ROBERT B. KORY, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Lauren Wilhite
Notary Public

(Seal)



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 January 25, 2017, I served the foregoing document described as **"MOTION TO SUBSTITUTE TRUSTEE IN PLACE OF RESPONDENT LEONARD COHEN; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ROBERT B. KORY; [PROPOSED] ORDER"** 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.

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

**Kelley A. Lynch, Pro Per
1754 North Van Ness Avenue
Los Angeles, CA 90028**

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.

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

Executed on January 25, 2017, at Ventura, California.



Alice Duran

**DECLARATION OF
MICHELLE L. RICE, ESQ.**

EXHIBIT B

B267794

**IN THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION SEVEN**

LEONARD NORMAN COHEN,
Plaintiff and Respondent,

v.

KELLEY LYNCH,
Defendant and Appellant.

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

**MOTION TO SUBSTITUTE TRUSTEE IN PLACE
OF RESPONDENT LEONARD COHEN;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF ROBERT B.
KORY; [PROPOSED] ORDER**

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Telephone: (805) 659-6800
Fax: (805) 659-6818

Attorneys for Plaintiff and Respondent,
LEONARD NORMAN COHEN

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Code of Civil Procedure

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California Rules of Court

Rule 8.36(a)	4, 5
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**MOTION TO SUBSTITUTE TRUSTEE IN PLACE OF
RESPONDENT LEONARD COHEN;
MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION OF ROBERT B. KORY;
[PROPOSED] ORDER**

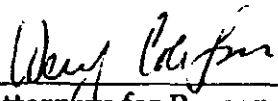
Respondent Leonard Cohen died November 7, 2016. Robert Kory, Trustee of the Leonard Cohen Family Trust ("Trustee"), respectfully moves for an order substituting himself, in his capacity as Trustee, as respondent on appeal in place of Mr. Cohen. Trustee makes this motion under Code of Civil Procedure sections 337.31 and 337.32, and California Rules of Court, rule 8.36 (a).

The motion is based on the attached memorandum of points and authorities and Declaration of Robert B. Kory and the exhibits to that Declaration.

Dated: January 23, 2017 Respectfully submitted,

KORY & RICE LLP
Michelle L. Rice

FERGUSON CASE ORR PATERSON LLP
Wendy Cole Lascher

By 
Attorneys for Respondent
Leonard Norman Cohen

MEMORANDUM OF POINTS AND AUTHORITIES

The Los Angeles Superior Court awarded Leonard Cohen \$7.3 million against appellant Kelley Lynch in 2006. The Superior Court denied Lynch's belated motions to vacate the judgment. Cohen renewed the judgment October 6, 2015. In this appeal, Lynch challenges the order renewing the judgment. Her opening brief is due February 15, 2017.¹

Cohen died November 7, 2016. Robert B. Kory has accepted appointment as successor Trustee of the Leonard Cohen Family Trust. There was an error in the original death certificate; an amended one issued December 28.

Code of Civil Procedure section 337.31 requires a court to allow the decedent's personal representative or successor in interest to continue a pending action that does not abate upon the plaintiff's death, provided the personal representative or trustee file a declaration complying with section 337.32. California Rules of Court, rule 8.36(a) requires a motion in this court to substitute parties on appeal.

¹ In case no. B265753, Lynch appeals from the order denying her motion to vacate Cohen's renewal of the money judgment by imposing "terminating sanctions". Also in case no. B265753, Lynch appeals an order sealing documents. In case no. B267409, Lynch appeals from an order registering in California the domestic violence restraining order granted by a Colorado court to protect Cohen from Lynch.

CONCLUSION

Based on these circumstances and authorities, Trustee respectfully requests that the court order that he be substituted into the case to continue this appeal as successor in interest to respondent Cohen.

Dated: January 23, 2017 Respectfully submitted,

KORY & RICE LLP
Michelle L. Rice

FERGUSON CASE ORR PATERSON LLP
Wendy Cole Lascher

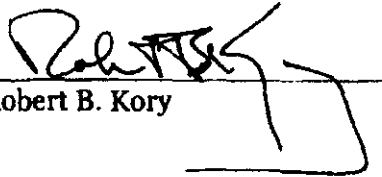
By Wendy Cole Lascher
Attorneys for Respondent
Leonard Norman Cohen

DECLARATION OF ROBERT B. KORY

Robert B. Kory declares:

1. I am an attorney licensed to practice in California. I make this declaration in support of my motion to substitute myself, in my capacity as Trustee of the Leonard Cohen Family Trust, as respondent on appeal, in place of the late Mr. Cohen. I have personal knowledge of the facts stated in this declaration, and if called as a witness I could and would testify to these facts.
2. Leonard Cohen was the successful plaintiff in this action against appellant Kelley Lynch.
3. Mr. Cohen died November 7, 2016 in Los Angeles, California. I attach, and incorporate by reference into this declaration, a certified copy of Mr. Cohen's death certificate, including the affidavit to amend a record correcting an error in the original death certificate.
4. No proceeding is now pending in California for administration of Mr. Cohen's estate.
5. I am successor Trustee of the Leonard Cohen Family Trust. I attach, and incorporate by reference into this declaration, a true copy of my Acceptance of Appointment as Sole Successor Trustee of the Leonard Cohen Family Trust.
6. In my capacity as Trustee, I am Mr. Cohen's successor in interest as defined in Code of Civil Procedure section 377.11, and succeed to his interest in this action. No other person has a superior right to be substituted for Mr. Cohen in the pending action.

I declare under penalty of perjury, under the laws of California, that the facts stated in this declaration are true, and that this declaration was executed in Los Angeles, California, on January 21, 2017.


Robert B. Kory

[PROPOSED] ORDER

The court has read and considered the motion of Robert B. Kory, Trustee of the Leonard Cohen Family Trust, to substitute as respondent in place of the late Mr. Cohen. Good cause appearing, IT IS HEREBY ORDERED:

Robert B. Kory, Trustee of the Leonard Cohen Family Trust, may continue as respondent in this appeal, in place of Leonard Cohen.

Dated: _____, 2017

Presiding Justice

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC HEALTH

3062016217005	CERTIFICATE OF DEATH	3201619046828
STATE OF CALIFORNIA - COUNTY OF LOS ANGELES		
1. NAME OF DECEASED (Last, first, middle initial) LEONARD		2. SEX M
3. DATE OF BIRTH (month/day/year) 09/21/1934		4. AGE (years) 82
5. PLACE OF BIRTH (Country, State, County, City, and ZIP Code) CANADA		6. RACE M
7. SOCIAL SECURITY NUMBER 614-42-5124	8. U.S. ARMY SERVICE (Yes/No) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	9. MARITAL STATUS (at date of death) WIDOWED
10. EDUCATION (highest grade completed) BACHELOR	11. ETHNICITY (check all that apply) <input checked="" type="checkbox"/> CAUCASIAN	12. DATE OF DEATH (month/day/year) 11/07/2016
13. OCCUPATION (type of work for most of life, do not use "retired") POET	14. CAUSE OF DEATH (e.g., disease, accident, poisoning, etc.) POETRY	15. YEARS OF OCCURRENCE 60
16. DECEASED'S RESIDENTIAL ADDRESS (street and number, or location) 1031 S. TREMAINE AVENUE		
17. CITY LOS ANGELES	18. COUNTY LOS ANGELES	19. ZIP CODE 90019
20. YEARS IN COUNTY 42		
21. STATE OF DEATH CA		
22. NAME OF DECEASED'S RELATIVE (Name, address, and city, state, and ZIP Code) LORCA COHEN, DAUGHTER		
23. NAME OF DECEASED'S RELATIVE (Name, address, and city, state, and ZIP Code) 1031 S. TREMAINE AVENUE, LOS ANGELES, CA 90019		
24. NAME OF DECEASED'S RELATIVE (Name, address, and city, state, and ZIP Code) NATHAN		25. LAST BIRTH NAME COHEN
26. NAME OF DECEASED'S RELATIVE (Name, address, and city, state, and ZIP Code) NASHA		27. LAST BIRTH NAME KLINTSKY
28. PLACE OF DEATH (Name, address, and city, state, and ZIP Code) 1250 CHEMIN DE LA FORET, OUTREMONT, QUEBEC, CANADA, H2V4T8		
29. TYPE OF DEATH (Natural/Unnatural/Unknown) TR/BU - 1		
30. PLACE OF DEATH (Name, address, and city, state, and ZIP Code) MALINOW AND SILVERMAN MORTUARY		
31. TYPE OF DEATH (Natural/Unnatural/Unknown) NOT EMBALMED		
32. DATE OF DEATH (month/day/year) 11/09/2016		
33. NAME OF DECEASED'S RELATIVE (Name, address, and city, state, and ZIP Code) JEFFREY GUNZENHAUSER, MD		
34. DATE OF DEATH (month/day/year) 11/09/2016		
35. PLACE OF DEATH (Name, address, and city, state, and ZIP Code) LOS ANGELES		
36. CITY LOS ANGELES		
37. COUNTY LOS ANGELES		
38. ZIP CODE 90019		
39. CAUSE OF DEATH (Name, address, and city, state, and ZIP Code) CARDIAC ARRHYTHMIA		
40. DURATION OF ILLNESS (e.g., 30 MINS, 6 HRS, 1 YR) 30 MINS		
41. TYPE OF DEATH (Natural/Unnatural/Unknown) RESPIRATORY FAILURE		
42. TYPE OF DEATH (Natural/Unnatural/Unknown) ACUTE MYELOGENOUS LEUKEMIA		
43. TYPE OF DEATH (Natural/Unnatural/Unknown) NO		
44. TYPE OF DEATH (Natural/Unnatural/Unknown) NO		
45. TYPE OF DEATH (Natural/Unnatural/Unknown) NO		
46. TYPE OF DEATH (Natural/Unnatural/Unknown) NO		
47. TYPE OF DEATH (Natural/Unnatural/Unknown) NO		
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98. TYPE OF DEATH (Natural/Unnatural/Unknown) NO		
99. TYPE OF DEATH (Natural/Unnatural/Unknown) NO		
100. TYPE OF DEATH (Natural/Unnatural/Unknown) NO		

CERTIFIED COPY OF VITAL RECORD
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

This is a true certified copy of the record filed in the County of Los Angeles
Department of Public Health if it bears the Registrar's signature in purple ink.



Jeffrey Gunzenhauser, MD
Health Officer and Registrar
VD

DATE ISSUED
DEC 28 2016

This copy is not valid unless prepared on an engraved badge, displaying the date, seal and signature of the Registrar.



STATE OF CALIFORNIA

CERTIFICATION OF VITAL RECORDS

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH

3052016217005

AFFIDAVIT TO AMEND A RECORD NO ERASURES, WHITEOUTS, PHOTOCOPIES, OR ALTERATIONS

3201819048628

STATE FILE NUMBER

LOCAL REGISTRATION NUMBER

1.1

[] BIRTH [X] DEATH [] FETAL DEATH

TYPE OR PRINT CLEARLY IN BLACK INK ONLY - THIS AMENDMENT BECOMES AN ACTUAL PART OF THE OFFICIAL RECORD

PART I INFORMATION TO LOCATE RECORD

Form with fields for Name (Leonard Cohen), Sex (M), Date of Event (11/07/2016), City of Event (Los Angeles), County of Event (Los Angeles), Full Name of Father (Nathan B Cohen), Full Name of Mother (Masha - Klunitzky).

PART II STATEMENT OF CORRECTIONS TO BIRTH, DEATH, OR FETAL DEATH RECORD

Table with 3 columns: I. ITEM NUMBER TO BE CORRECTED (12), II. INCORRECT INFORMATION THAT APPEARS ON ORIGINAL RECORD (WIDOWED), III. CORRECTED INFORMATION AS IT SHOULD APPEAR (NEVER MARRIED). Includes handwritten '2 OF 2'.

REASON FOR CORRECTION: TO CORRECT ERROR

Affidavits and Signatures section with fields for Signatory Name (Randy Ziegler), Title (Funeral Director), Date Signed (11/08/2016), and another signatory (Lorca Cohen, Daughter, Date Signed 11/16/2016).

Office of Vital Records or Local Registrar section with fields for Office Name (State Registrar - Office of Vital Records) and Date Accepted for Registration (12/12/2016).

STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC HEALTH, OFFICE OF VITAL RECORDS. FORM VS 244 (REV. 1/09) 1.1

CERTIFIED COPY OF VITAL RECORD STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

This is a true certified copy of the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.



001154200

Health Officer and Registrar signature: [Signature] DATE ISSUED: DEC 28 2016

DEC 28 2016

This copy is not valid unless prepared on an engraved border, displaying the date, seal and signature of the Registrar.



**ACCEPTANCE OF APPOINTMENT AS SOLE SUCCESSOR TRUSTEE
OF THE LEONARD COHEN FAMILY TRUST**

I, ROBERT B. KORY, the undersigned, declare:

1. October 2, 1998, LEONARD COHEN, as Settlor, executed that certain declaration of trust entitled "LEONARD COHEN FAMILY TRUST", creating a revocable trust by that name (hereinafter referred to as "the Trust"). Said original declaration of trust was subsequently amended and restated in its entirety by Restatement of the Leonard Cohen Family Trust, executed by LEONARD COHEN on May 12, 2005 (hereinafter referred to as "the Trust Instrument").

2. From the inception of the Trust until the present, LEONARD COHEN served as sole Trustee of the Trust.

3. Paragraphs 3.1 and 3.2 of the Trust Instrument read as follows:

"3.1 Appointment of Trustees. Settlor, during his lifetime, shall have the power to remove a Trustee or Co-Trustee, to appoint a Co-Trustee or Co-Trustees to serve with the Trustee, or to appoint a successor Trustee or Co-Trustees, said appointees to serve at the pleasure of Settlor, but not beyond the date of death or incapacity of Settlor unless Settlor shall specifically so designate by a writing filed with the Trustee.

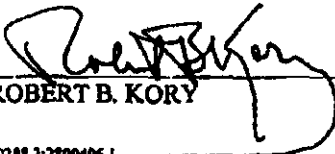
"3.2 Successor Trustees. If Settlor shall cease to serve as Trustee and no designation of a continuing successor Trustee or Co-Trustees shall have been made pursuant to Paragraph 3.1 above, then ROBERT B. KORY shall serve as successor Trustee. If ROBERT B. KORY shall be unable or unwilling to serve as Trustee, then ADAM COHEN and LORCA COHEN shall serve as successor Co-Trustees or, if either of them shall be unable or unwilling to so serve, then the other shall serve as sole successor Trustee. Thereafter, if there is a vacancy in the trusteeship, then the last serving Trustee shall have the power to appoint successor Trustees and/or Co-Trustees, including the naming of a succession of Trustees and/or Co-Trustees, by delivering a signed writing to the successor Trustee so designated by him or her."

4. LEONARD COHEN did not exercise his power to name a successor Trustee pursuant to Paragraph 3.1 of the Trust Instrument.

5. LEONARD COHEN died on November 7, 2016. A photocopy of his death certificate is attached hereto. By reason of the death of LEONARD COHEN, I am nominated to serve as sole successor Trustee of the Trust, pursuant to the aforesaid Paragraph 3.2 of the Trust Instrument.

6. I do hereby accept appointment as said successor Trustee of the Trust, effective as of November 7, 2016.

Dated: January 4th, 2017



ROBERT B. KORY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document

State of California)
) ss
County of Los Angeles)

On January 4th, 2017, before me, Lauren Wilhite, a Notary Public for California, personally appeared ROBERT B. KORY, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Lauren Wilhite
Notary Public

(Seal)



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 January 25, 2017, I served the foregoing document described as **"MOTION TO SUBSTITUTE TRUSTEE IN PLACE OF RESPONDENT LEONARD COHEN; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ROBERT B. KORY; [PROPOSED] ORDER"** on the interested parties in the action entitled Leonard Norman Cohen vs. Kelley Lynch; Los Angeles County Superior Court Case No.: BC338322; Court of Appeal, Second Appellate District, Division Seven Case No.: B267794.

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

Kelley A. Lynch, Pro Per
1754 North Van Ness Avenue
Los Angeles, CA 90028

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.

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

Executed on January 25, 2017, at Ventura, California.



Alice Duran

B265753

FILED

Jan 26, 2017

JOSEPH A. LANE, Clerk

James Renteria Deputy Clerk

~~PROPOSED~~ ORDER

The court has read and considered the motion of Robert B. Kory, Trustee of the Leonard Cohen Family Trust, to substitute as respondent in place of the late Mr. Cohen. Good cause appearing, IT IS HEREBY ORDERED:

Robert B. Kory, Trustee of the Leonard Cohen Family Trust, may continue as respondent in this appeal, in place of Leonard Cohen.

Dated: Jan 26, 2017, ~~XXIX~~



Presiding Justice

DECLARATION OF
MICHELLE L. RICE, ESQ.

EXHIBIT C

Substitution of Party: ^_B265753^_ - Cohen v. Lynch

From: Renteria, James (James.Renteria@jud.ca.gov)

To: mrice@koryrice.com; wlascher@fcoplaw.com; kelley.lynch.2010@gmail.com

Date: Thursday, January 26, 2017, 09:23 AM PST

Please See Attached.

-JR

James Renteria, Deputy Clerk

COURT OF APPEAL, SECOND APPELLATE DISTRICT

300 South Spring Street Ÿ Second Floor North Tower Ÿ Los Angeles, CA 90013

General: 213-830-7000 Ÿ Direct: 213-830-7130

james.renteria@jud.ca.gov Ÿ courts.ca.gov/2dca Ÿ [facebook.com/2dcoa](https://www.facebook.com/2dcoa)

Committed to providing fair and equal access to justice for all Californians



B265753_OFF.pdf

115.6kB

B265753

FILED

Jan 26, 2017

JOSEPH A. LANE, Clerk

James Renteria Deputy Clerk

~~PROPOSED~~ ORDER

The court has read and considered the motion of Robert B. Kory, Trustee of the Leonard Cohen Family Trust, to substitute as respondent in place of the late Mr. Cohen. Good cause appearing, IT IS HEREBY ORDERED:

Robert B. Kory, Trustee of the Leonard Cohen Family Trust, may continue as respondent in this appeal, in place of Leonard Cohen.

Dated: Jan 26, 2017, ~~XXIX~~



Presiding Justice

DECLARATION OF
MICHELLE L. RICE, ESQ.

EXHIBIT D

Party Substituted: ^_B267794^_ - Cohen v. Lynch

From: Renteria, James (James.Renteria@jud.ca.gov)

To: kelley.lynch.2013@gmail.com; mrice@koryrice.com; wlascher@fcoplaw.com

Date: Thursday, January 26, 2017, 09:33 AM PST

Please See Attached.

-JR

James Renteria, Deputy Clerk

COURT OF APPEAL, SECOND APPELLATE DISTRICT

300 South Spring Street Ÿ Second Floor North Tower Ÿ Los Angeles, CA 90013

General: 213-830-7000 Ÿ Direct: 213-830-7130

james.renteria@jud.ca.gov Ÿ courts.ca.gov/2dca Ÿ [facebook.com/2dcoa](https://www.facebook.com/2dcoa)

Committed to providing fair and equal access to justice for all Californians



B267794_OFF.pdf
113.8kB

FILED

Jan 26, 2017

JOSEPH A. LANE, Clerk

James Renteria Deputy Clerk

~~PROPOSED~~ ORDER

The court has read and considered the motion of Robert B. Kory, Trustee of the Leonard Cohen Family Trust, to substitute as respondent in place of the late Mr. Cohen. Good cause appearing, IT IS HEREBY ORDERED:

Robert B. Kory, Trustee of the Leonard Cohen Family Trust, may continue as respondent in this appeal, in place of Leonard Cohen.

Dated: Jan 26, 2017, ~~2017~~




Presiding Justice

DECLARATION OF
MICHELLE L. RICE, ESQ.

EXHIBIT E

Appellate Courts Case Information

2nd Appellate District

Change court 

Court data last updated: 03/20/2019 04:14 PM

Docket (Register of Actions)

Kory v. Lynch

Division 7

Case Number B267794

Date	Description	Notes
10/27/2015	Notice of appeal lodged/received.	Kelley Lynch noa 10/16/15
10/27/2015	Civil case information statement filed.	
10/30/2015	Order waiving filing fee.	
11/05/2015	Received copy of document filed in trial court.	8.122 with reporter's transcript.
01/14/2016	Default re: 8.130(b) rptrs fees not deposited rcvd. dtd.	
01/14/2016	Appeal dismissed per rule 8.140(b).	
01/19/2016	Motion filed.	by appellant to vacate dismissal and amend designation of record on appeal
02/16/2016	Order of dismissal vacated.	Good cause appearing, the order of dismissal filed January 14, 2016, is vacated and the appeal filed October 16, 2015, is reinstated. Appellant is granted relief from any and all current defaults occasioned by his/her failure to perform acts required by the rules of court for procuring the record on appeal, including leave to amend designation of record. Appellant shall within 30 days from the date of this order perform any act for which the superior court has placed appellant in default. All acts in compliance with this relief order are to be performed in the Los Angeles Superior Court at 111 North Hill Street, Room 111, Los Angeles, California.

02/23/2016 Order filed.	This Court's order issued on February 16, 2016, is corrected as follows: Appellant's designation of record for notice of appeal filed October 16, 2015, is amended and the clerk of the Superior Court is ordered to proceed with the preparation of the a clerk's transcript as designated on October 27, 2015, and appellant will lodge reporter's transcript dated October 6, 2015, directly with the Court of Appeal.
02/23/2016 Reporter's transcript filed.	R-1 (10/6/2015)
04/11/2016 Email sent to:	Civil Appeals, re Regarding the non-compliance of the order vacating the dismissal order; what did appellant not do? docket ## 180 190 and schedule action dtd 4/11/2016 docket ## 180 190 and schedule action dtd 4/11/2016
04/11/2016 Default notice received-appellant notified per rule 8.140(a)(1).	superior court sent non-compliance of our order vacating the dismissal 2/16/2016; see emit to superior court (4/11/2016)
04/19/2016 Change of address filed for:	Attorney Michelle Rice for respondent, Leonard Cohen
05/31/2016 Association of attorneys filed for:	Ferguson Case Orr Paterson LLP associate in for respondent
10/17/2016 Email sent to:	Justin; sent the 2/23/2016 order
10/18/2016 Appellant's notice designating record on appeal filed in trial court on:	8.122 with reporter's transcript 10/27/2016
10/18/2016 To court.	Proposed order
10/21/2016 Order filed.	THE COURT: On the Court's own motion the Superior Court is ordered to proceed with the preparation of the preparation of the clerk's transcript as designated on October 27, 2015. The reporter's transcript was lodged with this Court on February 23, 2016. The clerk's transcript shall be filed with this court within 30 days from the date of this order.
11/15/2016 Record on appeal filed.	Clerk's transcript due (in 30 days from 10/21/2016 pursuant to order) reporter's transcript is on the shelf in pre-docket section) C-2 (420 Pages) R-1 (10/6/2015)
11/18/2016 Requested - extension of time	Appellant's opening brief. Requested for 01/17/2017 By 21 Day(s)
11/18/2016 Granted - extension of time.	Appellant's opening brief. Due on 01/15/2017 By 21 Day(s)
12/02/2016 Record imaged.	
01/10/2017 Stipulation of extension of time filed to:	Appellant's opening brief. Due on 02/15/2017 By 31 Day(s)
01/25/2017 Motion filed.	Motion to substitute Robert Kory as trustee of the respondent's family trust in place of respondent, now deceased.
01/26/2017 Order filed.	Robert Kory, Trustee of the Leonard Cohen Family Trust, may continue as respondent in this appeal, in place of Leonard Cohen.
02/14/2017 Record omission letter received.	Dated February 14, 2017 Seeking supplemental clerk's transcript with Motion to vacate renewal of judgment filed below in July 28, 2015

02/14/2017 Suspend briefing.	Defendant and Appellant: Kelley Lynch Pro Per
02/16/2017 Email sent to:	Civil Appeals re 2/14/2017 Record Omission Letter.
02/24/2017 Supplemental record/transcript filed.	Clerk's-1 (73 Pages)
04/05/2017 Appellant notified re failure to timely file opening brief.	Appellant's opening was due on March 27, 2017
04/20/2017 Appellant's opening brief.	Defendant and Appellant: Kelley Lynch Pro Per
04/20/2017 Received document entitled:	exhibits to AOB [27 pages] received from appellant Kelly Lynch
04/21/2017 Default appellant; no certificate of interested persons filed.	Appellant Kelly Lynch
04/24/2017 Certificate of interested entities or persons filed by:	Party: Kelly Lynch
04/24/2017 Order filed.	Permission to file Appellant's Exhibit to Appellant's Opening Brief, received for filing on April 20, 2017, is hereby denied.
04/28/2017 Email sent to:	email to appellant requesting copies of AOB at soonest convenience.
04/28/2017 Email received from:	email from appellant Lynch re: copies of AOBs
05/19/2017 Requested - extension of time	Respondent's brief. Requested for 06/21/2017 By 30 Day(s)
05/19/2017 Granted - extension of time.	Respondent's brief. Due on 06/21/2017 By 30 Day(s)
06/19/2017 Requested - extension of time	Respondent's brief. Requested for 07/21/2017 By 30 Day(s)
06/19/2017 Granted - extension of time.	Respondent's brief. Due on 07/21/2017 By 30 Day(s)
07/20/2017 Respondent's brief.	Plaintiff and Respondent: Robert B. Kory Attorney: Michelle Lorraine Rice Attorney: Wendy C. Lascher
07/20/2017 Certificate of interested entities or persons filed by:	Respondent (See Respondent's Brief filed 7/20/17)
07/21/2017 Something is due; see note.	\$390 Responsive filing fee
07/24/2017 Motion/application to augment record filed.	Filed by Respondent re: (1) Complaint filed 8/15/2005 *Attached* (2) Incorporate the record in case B265753
07/26/2017 Stipulation of extension of time filed to:	Appellant's reply brief. Due on 09/11/2017 By 33 Day(s)

08/14/2017 Order filed.	The court has read and considered respondent's July 24, 2017 motion to augment. No opposition thereto was filed. Good cause appearing therefor, IT IS HEREBY ORDERED that respondent's motion is granted. The record on appeal is augmented with the Complaint filed August 15, 2005, as attached to the motion. IT IS FURTHER ORDERED that court incorporates by reference the clerk's and reporter's transcripts that comprise the record in the prior appeal B265753 as part of the record on appeal in B267794.
09/11/2017 Appellant's reply brief.	Defendant and Appellant: Kelley Lynch Pro Per
09/11/2017 Case fully briefed.	
09/11/2017 Notice sent to parties re: case fully briefed.	
09/26/2017 Email sent to:	email to appellant re: copies of ARB not received [e-filed on 9/11/17];
09/05/2018 Calendar notice sent. Calendar date:	October 4, 2018 at 10:00 a.m.
09/11/2018 Request filed to:	Ferguson Case ORR Paterson LLP dated 9/11/18 in re request to continue oral argument
09/24/2018 Oral argument rescheduled	Please note that oral argument for the matter mentioned above has been continued to November 2, 2018 at 1:30 p.m.
09/26/2018 Letter sent to:	COUNSEL: Both appellant Kelley A. Lynch and respondent Robert B. Kory, as Trustee, reference the allegations of the complaint in their briefs, although the complaint is not included in the appellate record. We request appellant by October 4, 2018 to file a conformed copy of the complaint she filed in the superior court on August 15, 2005. If appellant does not have a copy of the complaint, she is promptly to notify counsel for respondent, and respondent is to file a conformed copy...
10/02/2018 Calendar notice sent. Calendar date:	November 2, 2018 at 1:30 p.m. *appellant Lynch's calendar notice sent by US Mail
10/10/2018 Request filed to:	respondent's request to continue oral argument
10/15/2018 Oral argument rescheduled	Oral argument for the case mentioned above has been continued to December 14, 2018 at 1:30 p.m. The court has twice rescheduled the date for oral argument at the request of the parties after calendar notices were sent. Continuing a case at that point seriously interferes with the court's ability to effectively manage its caseload. No further continuances will be permitted.
11/09/2018 Calendar notice sent electronically. Calendar date:	December 14, 2018 at 1:30 p.m.
11/16/2018 Request for oral argument filed by:	Wendy Lascher of Ferguson Case Orr Paterson LLP for respondent Robert B. Kory -- (805) 659-6800
12/14/2018 Cause argued and submitted.	
01/16/2019 Opinion filed.	(Signed Unpublished)
01/31/2019 Rehearing petition filed.	respondent Kory
01/31/2019 Request for judicial notice filed.	respondent Kory

02/04/2019 Order filed.

Respondent's January 31, 2019 petition for rehearing and request for judicial notice are denied.

03/18/2019 Remittitur issued.

03/18/2019 Case complete.


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Appellate Courts Case Information

2nd Appellate District

Change court 

Court data last updated: 03/20/2019 04:14 PM

Docket (Register of Actions)

Cohen v. Lynch

Division 7

Case Number B265753

Date	Description	Notes
07/30/2015	Notice of appeal lodged/received.	7/28/15 Kelley Lynch 8.122 clerks no rt
07/30/2015	Notice of appeal lodged/received.	7/28/2015 Kelley Lynch as to appeal of Motion for termination sanctions.
07/30/2015	Order waiving filing fee.	SCLA fees only
07/30/2015	Default notice sent-appellant notified per rule 8.100(c).	
08/11/2015	Order waiving filing fee.	
08/19/2015	Default letter sent; no case information statement filed.	both appeals
08/31/2015	Civil case information statement filed.	6/25/2015 Judgment
08/31/2015	Civil case information statement filed.	5/29/2015 Judgment
09/16/2015	Filed proof of service.	Kelley Lynch
01/19/2016	Record on appeal filed.	Clerk's-6 & Supplemental Clerk's -2 (1703 pages)
02/02/2016	Record imaged.	

02/01/2016 Motion/application by appellant dtd 1/22/2016 re incomplete record on appeal or Motion to
to augment record Augment
filed. supplemental clerks

02/03/2016 Letter sent to: ***NOTICE RE: RULE 8.155(b) (8.340(b)) - BRIEFING STAYED***

02/23/2016 Received SCLA turndown notice on omission letter
document entitled:

02/23/2016 Augmentation Supplemental clerks
granted. (See
order.)

02/23/2016 Augmentation
order faxed to:

04/19/2016 Change of address Attorney Michelle Rice for respondent, Leonard Cohen
filed for:

05/16/2016 Augmented record Clerk's-1
filed.

05/25/2016 Association of Respondent Leonard Cohen's counsel of record associates in Wendy Lascher as
attorneys filed for: co-counsel.

06/15/2016 Appellant's Defendant and Appellant: Kelley A Lynch
opening brief. Pro Per

06/15/2016 Request for judicial Appellant's request for judicial notice of unpublished case of Jordan v. O'Connor
notice filed. Hospital CAL, H038107 (CAL Ct. App. 2013)

06/27/2016 Opposition filed. to appellant's request for judicial notice

06/29/2016 Request for judicial
notice denied.

07/05/2016 Filed document Trial court order on plaintiff's ex parte application for motion to seal portions of the
entitled: court record.

07/05/2016 Motion/application Respondent's motion to augment with attached documents. ***NOTE*** Portions
to augment record of motion filed under seal. See trial court sealing order filed concurrently.
filed. Public/redacted version of motion filed with sealed version.

07/08/2016 Requested -
extension of time Respondent's brief. Requested for 08/19/2016 By 35 Day(s)

07/11/2016 Granted -
extension of time. Respondent's brief. Due on 08/19/2016 By 35 Day(s)

07/11/2016 Opposition filed. Opposition to respondent's motion to augment.

07/12/2016 Filed letter from: Respondent's letter to court re documents attached to motion to augment with
attached documents submitted for filing on July 5, 2016.

07/18/2016 Filed document Proposed order re: motion to augment.
entitled:

07/18/2016 Received: respondent's reply concerning motion to augment

07/22/2016 Reply filed to: Respondent's reply concerning respondent's motion to augment record NOTE*
PERMISSION TO FILE GRANTED

07/25/2016 Received: Appellant, Kelley Lynch, letter in response to respondent's reply
NOTE ** PERMISSION TO FILE NEEDED

07/26/2016 Response filed: Appellant, Kelley Lynch, letter in response to respondent's reply
Note** Permission to file granted.

07/26/2016 Augmentation granted. (See order.) The court has read and considered the motion of respondent Leonard N. Cohen to augment the clerk's transcript and to require compliance with rule 8.45, and the opposition of appellant Kelley Lynch to that motion, and the supporting documents filed by each party. Good cause appearing, IT IS HEREBY ORDERED: (1) The record on appeal is augmented with the pleadings and reporter's transcript submitted as B265753 Cohen Aug. (2) The clerk is directed to keep pages 11-147 of B265753 Cohen Aug. separate from the rest of the clerk's transcript on appeal as required by rule 8.45(c) and as specified in Paragraph 4 of the trial court's sealing order. (3) Pending the outcome of this appeal, the clerk of this court is directed to keep separate from the rest of the appellate record those portions of the clerk's transcript ordered sealed by the trial court's order of May 29, 2015 (a copy of that trial court order was filed in this court on July 5, 2016; another copy appears at pages 36-278 of the Augmentation-Clerk's Transcript filed in this court May 16, 2016) as required by rule 8.45(c). (4) The clerk of the superior court is directed to segregate from public inspection, including electronic viewing, the documents the trial court ordered sealed on May 29, 2015 pursuant to California Rule of Court, Rule 2.551 (5) To the extent appellant's opposition to respondent's motion purports to be a motion to unseal documents, it is denied.

08/18/2016 Requested - extension of time Respondent's brief. Requested for 09/19/2016 By 31 Day(s)

08/22/2016 Granted - extension of time. Respondent's brief. Due on 09/19/2016 By 31 Day(s)

09/26/2016 Respondent's brief. Plaintiff and Respondent: Robert Kory
Attorney: Michelle Lorraine Rice
Attorney: Wendy C. Lascher

09/28/2016 Request for judicial notice filed. Respondent Leonard Cohen respectfully requests that the Court take judicial notice of the following items. Copies of each are attached: 1. The list of "Case Document Images" from the Los Angeles Superior Court's online Case Summary. 2. The Notice of Lodging of Court Order on Defendant's Motion to Vacate and/or Modify Default Judgment filed January 28, 2014. 3. The PACER docket sheet of the United States District Court for the Southern District of New York in U.C.C. Lending Corp v. Cohen, S.D.N.Y. case number 1:00-cv-0168-CBM.

10/18/2016 Received: Appellants reply brief received electronically. Brief was due by October 17, 2016. To the court for permission to file.

10/19/2016 Appellant's reply brief. Defendant and Appellant: Kelley A Lynch
Pro Per Permission to file granted.

10/19/2016 Case fully briefed.

10/19/2016 Notice sent to parties re: case fully briefed.

10/19/2016 Request for judicial notice granted. The Court has read and considered the request of respondent Leonard N. Cohen for judicial notice, and the supporting memorandum of points and authorities and Declaration of Wendy Cole Lascher. Good cause appearing, IT IS HEREBY ORDERED: The Court takes judicial notice, under Evidence Code sections 452, subdivision (d) and 459, of the following: 1. The list of "Case Document Images" from the Los Angeles Superior Court's online Case Summary. 2. The Notice of Lodging of Court Order on Defendant's Motion to Vacate and/or Modify Default Judgment filed January 28, 2014. 3. The PACER docket sheet of the United States District Court for the Southern District of New York in U.C.C. Lending Corp v. Cohen, S.D.N.Y. case number 1:00-cv-0168-CBM.

01/25/2017 Motion filed. Motion to substitute Robert Kory as trustee of the respondent's family trust in place of respondent, now deceased.

01/26/2017 Order filed. Robert Kory, Trustee of the Leonard Cohen Family Trust, may continue as respondent in this appeal, in place of Leonard Cohen.

03/07/2017 Calendar notice sent electronically. Calendar date: April 6 @ 10 a.m.

03/16/2017 Request to continue oral arg - to court. Respondent's motion to continue oral argument

03/17/2017 Argument continued to: May 5 at 10 a.m.

04/07/2017 Calendar notice sent electronically. Calendar date: May 5 @ 10 a.m.

04/11/2017 Request for oral argument filed by: Wendy C. Lascher for Respondent Robert Kory [Trustee of Leonard Cohen Family Trust] (805-659-6800)

04/17/2017 Request for oral argument filed by: Kelley Lynch in pro per, requests argument - form to be filed on or before 4/20/17. [323-331-4250]

04/17/2017 Email received from: email from Wendy Lascher [Resp. counsel] to appellant Lynch re: stipulation to continue oral argument.

05/05/2017 Cause argued and submitted. 10:30:59 - 10:49:35

05/17/2017 Opinion filed. (Signed Unpublished) 29p./APD/Sm-P-S
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.

07/20/2017 Remittitur issued. The parties are to bear their own costs on appeal.

07/20/2017 Case complete.

[Click here](#) to request automatic e-mail notifications about this case.

DECLARATION OF
MICHELLE L. RICE, ESQ.

EXHIBIT F

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

024

DIVISION 7

Los Angeles County Superior Court

LEONARD NORMAN COHEN,
Plaintiff and Respondent,
v.
KELLEY A LYNCH,
Defendant and Appellant.
B265753
Los Angeles County No. BC338322

ENTERED ON LINE
REC'D CIVIL APPEALS
ROOM III A
JUL 30 2017
JUL 21 2017

FILED
Superior Court of California
County of Los Angeles

JUL 21 2017

Sherri R. Carter, Executive Officer/Clerk
By J Macias Deputy
Josefa Macias

*** REMITTITUR ***

I, Joseph A. Lane, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on May 17, 2017 and that this order, opinion or decision has now become final.

The parties are to bear their own costs on appeal.

Witness my hand and the seal of the Court
affixed at my office this

JUL 20 2017

Joseph A. Lane, Clerk

by: O. Carbone,
Deputy Clerk



cc: All Counsel (w/out attachment)
File

07/31/2017

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

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)**

COURT OF APPEAL - SECOND DIST.

FILED

MAY 17 2017

JOSEPH A. LANE Clerk

Deputy Clerk

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.

07/31/2017

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

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.

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

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

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.

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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

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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

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

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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.

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

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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.

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.

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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

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

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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

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.)

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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

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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

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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

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

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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.

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

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

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

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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

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.

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

DECLARATION OF
MICHELLE L. RICE, ESQ.

EXHIBIT G

Court of Appeal: B267794 - Kory v. Lynch - Order

From: Dunn, Joshua (Joshua.Dunn@jud.ca.gov)

To: kelley.lynch.2013@gmail.com; mrice@koryrice.com; wlascher@fcoplaw.com

Date: Monday, March 18, 2019, 12:38 PM PDT

Enclosed is a copy of the remittitur that has issued in the above-entitled cause. This notice is sent as required pursuant to Calif. Rule of Court 8.272(d).

For questions, please do not use this e-mail address, but instead call the phone number below so as to avoid ex parte communications.

Any responses to this e-mail address will not be read or responded to.

Deputy Clerk

COURT OF APPEAL, SECOND APPELLATE DISTRICT

300 South Spring Street | Second Floor | North Tower | Los Angeles, CA 90013

213-830-7000

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B267794_RMI_Kory.pdf
220.9kB

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DANIEL P. POTTER, CLERK

DIVISION 7

Los Angeles County Superior Court

ROBERT KORY, as Trustee, etc.,
Plaintiff and Respondent,

v.

KELLEY LYNCH,
Defendant and Appellant.

B267794

Los Angeles County Super. Ct. No. BC338322

*** REMITTITUR ***

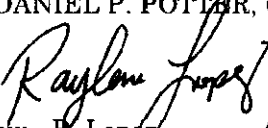
I, Daniel P. Potter, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on January 16, 2019 and that this order, opinion or decision has now become final.

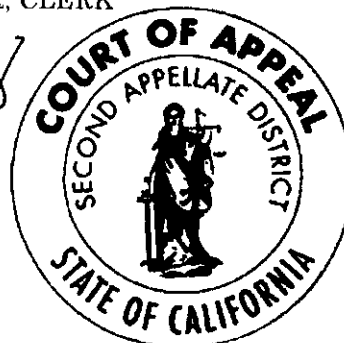
The parties shall bear their own costs on appeal.

Witness my hand and the seal of the Court
affixed at my office this

Mar 18, 2019

DANIEL P. POTTER, CLERK


by: R. Lopez,
Deputy Clerk



cc: All Counsel
File

Filed 1/16/19

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

DIVISION SEVEN

FILED

Jan 16, 2019

DANIEL P. POTTER, Clerk

R. Lopez Deputy Clerk

ROBERT B. KORY, as Trustee,
etc.,

B267794

Plaintiff and Respondent,

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

v.

KELLEY ANN LYNCH,

Defendant and Appellant.

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

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

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

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

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

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

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

FACTUAL AND PROCEDURAL BACKGROUND

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

A. *Factual Background*

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

B. *The Complaint and the Default Judgment*

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

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

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

C. *Lynch’s Motion To Vacate the Default Judgment*

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

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

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

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

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

D. *Lynch's Motion for Terminating Sanctions*

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

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

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

E. *The Renewal of Judgment*

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

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

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

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

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

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

Lynch timely appealed.³

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

DISCUSSION

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

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

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

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

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

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

B. *Standard of Review*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DISPOSITION

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

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

SEGAL, J.