

1 MICHELLE L. RICE, SBN 235189
KORY & RICE, LLP
2 9300 Wilshire Blvd., Suite 200
Beverly Hills, California 90212
3 Telephone: (310) 285-1630

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

SEP 21 2015

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

4 Attorney for PLAINTIFFS LEONARD NORMAN COHEN;
5 LEONARD COHEN INVESTMENTS, LLC

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

11 LEONARD NORMAN COHEN, an individual;
12 LEONARD COHEN INVESTMENTS, LLC, a
Delaware Limited Liability Company,

CASE NO.: BC338322
Assigned to the Hon. Robert L. Hess;
Dept. 24

13 Plaintiffs,

14 v.

15 KELLEY LYNCH, an individual; RICHARD A.
16 WESTIN, an individual; DOES 1 through 50,
inclusive,

**PLAINTIFFS' POINTS AND AUTHORITIES
IN OPPOSITION TO DEFENDANT'S
MOTION TO TAX, REDUCE AND/OR
STRIKE COSTS**

17 Defendants.

Hearing Date: October 6, 2015
Time: 8:30 A.M.
Dept.: 24
Complaint filed: August 15, 2005

18
19
20
21
22
23 TO THE COURT AND DEFENDANT AND MOVING PARTY IN PRO PER:

24 Plaintiffs Leonard Norman Cohen and Leonard Cohen Investments, LLC hereby oppose
25 Defendant Kelley Lynch's Motion to Tax, Reduce and/or Strike Costs filed with this Court on July
26 28, 2015 ("July 2015 MTC"). The Opposition is based on the attached Points and Authorities, the
27 Court file in this matter, and upon such evidence as may be introduced at the hearing.

28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION AND SUMMARY OF ARGUMENT.....1

II. LYNCH FAILED TO BRING A NOTICED MOTION TO STRIKE OR TAX COSTS WITHIN 10 DAY LIMIT PURSUANT TO CCP §685.070(c).....2

III. LYNCH’S CHALLENGE TO POSTJUDGMENT ACCRUED INTEREST ON THE MAY 15, 2006 DEFAULT JUDGMENT CANNOT BE MADE PURSUANT TO CCP §685.070 AND IS WITHOUT MERIT.....3

 A. A Motion to Tax Costs Brought Under CCP §685.070 is Directed to Challenges to Postjudgment Enforcement Costs, Not Postjudgment Interest.....3

 B. Lynch’s Attack On Plaintiffs’ Claimed Postjudgment Interest Has No Merit5

IV. LYNCH’S MOTION TO TAX COSTS IS PROCEDURALLY DEFECTIVE IN THAT A MOTION MADE UNDER CCP §685.070 IS NOT THE CORRECT PROCEDURAL DEVICE TO ATTEMPT TO VACATE THE UNDERLYING MAY 15, 2006 DEFAULT JUDGMENT OR THE JULY 13, 2015 RENEWAL OF JUDGMENT.....7

 A. Lynch Reprises Arguments That Were Previously Raised in Her 2013 Motion to Vacate and 2015 Motion for Terminating Sanctions7

 B. Lynch Cannot Challenge Claimed Damages and the Award of Pre-judgment Interest Postjudgment Through a Motion to Tax Costs Brought Pursuant to CCP §685.070(c).....10

V. CONCLUSION.....13

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>California State Cases</u>	<u>Page Number(s)</u>
<i>Goldman v. Simpson</i> , 160 Cal. App. 4 th 255 (Cal. Ct. App. 2 nd 2008).....	11
<i>Green v. Zissis</i> , 5 Cal. Ct. App. 4 th 1219 (Cal. Ct. App. 6 th 1992).....	10
<i>Hernandez v. Siegel</i> , 230 Cal. App. 4 th 165 (Cal. Ct. App. 1 st 2014).....	5
<i>Iliff v. Dustrud</i> , 107 Cal. App. 4 th 1201 (Cal. Ct. App. 4 th 2003).....	4, 5
<i>In Re Marriage of Henderson</i> , 225 Cal. App. 3d 531 (Cal. Ct. App. 1 st 1990).....	4
<i>Jonathan Neil & Associates, Inc. v. Jones</i> , 138 al. App. 4 th 1481 (Cal. Ct. App. 5 th 2006).....	6
<i>Lucky United Properties Investment, Inc. v. Lee</i> , 185 Cal.App.4th 125 (Cal. Ct. App. 1 st 2010).....	2, 3, 10
<i>Molen v. Friedman</i> , 64 Cal. App. 4 th 1149 (Cal. Ct. App. 3 rd 1998).....	11, 12
<i>OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.</i> , 168 Cal. App. 4 th 185 (Cal. Ct. App. 2 nd 2008).....	4, 6
<i>Simke, Chodos, Silberfeld & Anteau, Inc. v. Athans</i> , 195 Cal. App. 4 th 1275 (Cal. Ct. App. 2 nd 2011).....	12
<i>Sporn v. Home Depot USA, Inc.</i> , 126 Cal. App. 4 th 1294 (Cal. Ct. App. 4 th 2005).....	11, 12
<i>Steven M. Garber & Associates v. Eskandarian</i> , 150 Cal. App. 4 th 813 (Cal. Ct. App. 4 th 2007).....	10, 11

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Statutes

Page Number(s)

California Code of Civil Procedure

§577.....10

§578.....10

§580.....12

§680.010.....3, 6

§680.150.....4

§680.300.....6

§683.170.....2, 4, 7

§683.170(a).....4

§683.170(c).....4

§685.010.....3, 5, 6

§685.020.....3

§685.020(a).....6

§685.040.....3

§685.070.....1, 2, 3

§685.070(c).....1, 2, 3, 4, 7, 10

§685.070(d).....2, 3

§685.070(f).....3

§685.090.....3

§695.210(b).....6

§1008.....7, 8

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Statutes</u>	<u>Page Number(s)</u>
§1008(d).....	8
§1013(a).....	3
§1013(c).....	3
California Rules of Court	
3.1113(d).....	2
3.1700.....	3

1 Lynch cannot use a Motion to Tax Costs to challenge statutory postjudgment interest; (3) Lynch's
2 Motion is procedurally defective because CCP §685.070 is the incorrect procedural device to
3 advance arguments to vacate the underlying May 15, 2006 Default Judgment or to move to vacate
4 the July 13, 2015 Renewal of Judgment; (4) Lynch improperly seeks to avoid page limit
5 restrictions for memoranda under California Rule of Court 3.1113(d) and improperly uses the
6 current motion as a vehicle to supplement/augment her arguments to vacate the July 13, 2015
7 Renewal of Judgment made in her concurrently filed Motion to Set Aside July 13, 2015 Renewal
8 of Judgment brought under CCP §683.170; (5) Lynch's Proposed Order is defective in that it does
9 not request any affirmative relief from the Court. *See* Defendant's [Proposed] Order to Tax,
10 Reduce and/or Strike Costs.

11 **II. LYNCH FAILED TO BRING A NOTICED MOTION TO STRIKE OR TAX**
12 **COSTS WITHIN 10 DAY LIMIT PURSUANT TO CCP §685.070(c)**

13 CCP §685.070, subdivision (c) provides the procedure for challenging the claimed costs
14 incurred in enforcing a judgment: "Within 10 days after the memorandum of costs is *served* on the
15 judgment debtor, the judgment debtor may apply to the court on noticed motion to have the costs
16 taxed by the court." CCP §685.070(c)(emphasis supplied). Thus, by the clear language of CCP
17 §685.070(c), the debtor has 10 days from the *date of service* to file a noticed motion to tax costs,
18 not from the date the MC-012 is filed with the Court. Section 685.070(d) provides that if the
19 judgment creditor files a memorandum of costs and the judgment debtor does not timely file a
20 motion to tax costs, then the court is required to allow all of the costs claimed in the memorandum
21 of costs. CCP §685.070(d). "There are no exceptions to this rule, and the language of subdivision
22 (d) is mandatory." Lucky United Properties Investment, Inc. v. Lee, 185 Cal.App.4th 125, 146
23 (Cal. Ct. App. 1st 2010).

24 Plaintiffs served Lynch the Memorandum of Costs After Judgment, Acknowledgement
25 of Credit, and Declaration of Accrued Interest on Judicial Council mandatory Form MC-012 via
26 overnight express mail delivery on July 10, 2015. Rice Decl. ¶¶4-6; Proof of Service MC-012;
27 July 2015 MTC, p. 2, lines 18-19 (acknowledging service by overnight delivery). Lynch
28 acknowledged receipt of Plaintiffs' Memorandum of Costs on July 11, 2015 in an email to

1 Plaintiffs' counsel. Rice Decl. ¶9, Exh. 4. As is stated clearly at the bottom of Form MC-012,
2 Lynch had 10 days "after *service* of the Memorandum", to file a motion to tax costs. Form MC-
3 012; CCP §685.070(c). Section 685.070(f) provides that "Section 1013, extending the time within
4 which a right may be exercised or an act may be done, applies to this section." Section 1013(a)
5 provides the "time period or date is prescribed by statute or rule of court, shall be extended five
6 calendar days, upon service by mail, if the place of address and the place of mailing is within the
7 State of California." CCP §1013(a). Thus, CCP §1013(a) gave Lynch at most 15 days (10 days
8 plus 5 days for mailing) to file her Motion to Tax Costs. However, since Plaintiffs sent the
9 Memorandum by *overnight express mail* on July 10, 2015 (of which Lynch acknowledged receipt
10 on July 11, 2015) section 1013(c) requires 2 court days be added, which would have made
11 Lynch's Motion to Tax Costs due on July 22, 2015. CCP §1013(c).

12 Lynch did not file and serve her Motion to Tax Costs until July 28, 2015, or 18 days after
13 the date of Plaintiffs' service of the Memorandum and 17 days after she acknowledged receipt of
14 the overnight delivery on July 11, 2015. Lynch cites in her Notice of Motion to California Rules
15 of Court 3.1700(b), which is applicable only to *pre-judgment*, not post-judgment costs. Thus,
16 Lynch's Motion to Tax Costs is untimely and should be denied as the time limit in CCP
17 §685.070(d) is mandatory. CCP §685.070(d); Lucky, 185 Cal. App. 4th at 146.

18 **III. LYNCH'S CHALLENGE TO POSTJUDGMENT ACCRUED INTEREST ON THE**
19 **MAY 15, 2006 DEFAULT JUDGMENT CANNOT BE MADE IN A MOTION TO**
20 **TAX COSTS BROUGHT UNDER CCP §685.070 AND IS WITHOUT MERIT**

21 **A. A Motion to Tax Costs Brought Under CCP §685.070 is Directed to Challenges to**
22 **Postjudgment Enforcement Costs, Not Postjudgment Interest**

23 Chapter 5 of the Enforcement of Judgments Law (CCP §680.010, §685.010 et seq.) treats
24 interests and costs separately. Costs are primarily addressed in sections 685.040, 685.070, and
25 685.090 while sections 685.020 and 685.030 address interest. Section 685.070 (c) provides a
26 procedure for challenging *costs* sought in enforcing a judgment, but Chapter 5 does not provide an
27 analogous vehicle for attacking the amount of interest added to the renewed judgment.

28 California Code of Civil Procedure §685.070(c) provides in pertinent part that:

1 (c) Within 10 days after the memorandum of costs is served on the judgment debtor, the
2 judgment debtor may apply to the court on noticed motion to **have the costs taxed by the**
3 **court**. The notice of motion shall be served on the judgment creditor. Service shall be
4 made personally or by mail. The court shall make an order allowing or disallowing the
costs to the extent justified under the circumstances of the case. (emphasis supplied)

5 Section § 680.150 defines "costs" as "costs and disbursements, including but not limited to
6 statutory fees, charges, commissions, and expenses." The law revision comment provides Section
7 680.150 defines costs broadly to include all types of expenditures in the collection process.

8 Thus, Lynch cannot challenge postjudgment interest in a Motion to Tax Costs brought
9 under CCP §685.070(c) as that section is specifically addressed to postjudgment *costs*. Lynch's
10 challenge to the amount of statutory accrued interest, to the extent that it challenges the amount of
11 the judgment as renewed, should have been addressed in her motion to vacate the July 13, 2015
12 Renewal of Judgment brought pursuant to CCP §683.170. In Re Marriage of Henderson, 225 Cal.
13 App. 3d 531, 535 (Cal. Ct. App. 1st 1990)(father challenged accuracy of the amount of renewed
14 judgment which did not reflect partial payment of debt and contained calculation errors in a
15 motion to vacate renewed judgment pursuant to CCP §683.170); *See also OCM Principal*
16 *Opportunities Fund, L.P. v. CIBC World Markets Corp.*, 168 Cal. App. 4th 185 (Cal. Ct. App. 2nd
17 2008)(judgment debtor brought a *motion to vacate* a renewed judgment and challenged
18 postjudgment interest); Iliff v. Dustrud, 107 Cal. App. 4th 1201, 1209 (Cal. Ct. App. 4th
19 2003)(motion to vacate included a challenge to amount of postjudgment interest). CCP
20 §683.170(a) provides that the "renewal of a judgment...may be vacated on any ground that would
21 be a defense to an action on the judgment, including the ground that the amount of the renewed
22 judgment as entered pursuant to this article is incorrect . . ." CCP §683.170(a). CCP §683.170(c)
23 further declares that a renewal may be vacated, "and another and different renewal may be
24 entered, including, but not limited to, the renewal of the judgment in a different amount if the
25 decision of the court is that the judgment creditor is entitled to a renewal in a different amount."
26 Lynch in her concurrently filed Motion to Vacate the July 13, 2015 Renewal of Judgment brought
27 under CCP §683.170 ("July 2015 MTV") did not challenge statutory postjudgment interest, but
28 rather challenged the renewal of the judgment based upon grounds directed toward vacating the

1 underlying May 15, 2006 Default Judgment. Specifically, in her July 2015 MTV, Lynch alleges
2 the following grounds: (1) lack of service of the summons and complaint; (2) the May 15, 2006
3 Default Judgment was obtained by extrinsic fraud; and (3) Cohen lacked standing to bring suit or
4 enter judgment against Lynch. July 2015 MTV.

5 **B. Lynch's Attack On Plaintiffs' Claimed Postjudgment Interest Has No Merit**

6 Lynch argues "as there are no costs in the Memorandum, Lynch is requesting that the
7 Court strike the Memorandum, and post-judgment interest in its entirety." July 2015 MTC, p. 1,
8 lines 10-11. Lynch argues that the "requested post-judgment interest is unreasonable, excessive,
9 not authorized by law, and the judgment itself is void due to lack of service of the summons &
10 complaint." July 2015 MTC, Notice of Motion, p. 1. This Court has found in denying Lynch's two
11 prior motions seeking equitable relief from the May 15, 2006 Default Judgment that the May 15,
12 2006 Default Judgment is valid and has been subsisting since May 15, 2006. (RT 6/23/15 at 2:24-
13 25). Lynch's argument that the May 15, 2006 Default Judgment is void due to lack of service of
14 the summons and complaint has no merit as jurisdictional issues have been previously adjudicated.
15 Jan. 17, 2014 Minute Order; June 23, 2015 Order.

16 Lynch argues that the claimed postjudgment interest is "unreasonable, excessive, not
17 authorized by law" and that Plaintiffs' Memorandum of Costs "improperly demands accrued
18 interest in the amount of \$6,718,808.80." July 2015 MTC, p. 3, lines 4-5. Lynch asserts that the
19 postjudgment interest is "unreasonable" and "excessive" (in that it is greater than zero because
20 according to her Plaintiffs are not entitled to any postjudgment interest) yet fails to explain how
21 the postjudgment interest is incorrectly calculated in the renewed judgment. Her bare assertions
22 provide no basis to attack the amount of postjudgment interest in the renewed judgment. Iiff, 107
23 Cal. App. 4th at 1209.

24 A money judgment automatically accrues interest by force of law, regardless of whether it
25 explicitly declares as much. Hernandez v. Siegel, 230 Cal. App. 4th 165, 172 (Cal. Ct. App. 1st
26 2014). By statute, interest accrues on the principal amount of a money judgment at an annual rate
27 of 10 percent and generally accrues on the principal amount of every money judgment from the
28 date of entry until the judgment is satisfied. CCP §685.010(a) provides: "interest accrues at the

1 rate of 10 percent per annum on the principal amount of a money judgment remaining
2 unsatisfied.” In turn, the term [p]rincipal amount of the judgment” is defined as “the total amount
3 of the judgment as entered or as last renewed,” together with costs added to the judgment, with
4 adjustments for partial satisfaction of the sums in question. CCP §680.300. Further, CCP
5 §685.020(a) provides: “except as provided in subdivision (b), interest commences to accrue on a
6 money judgment on the date of entry of the judgment.” CCP §685.020(a). Accrual of
7 postjudgment interest increases the judgment without creating a new judgment. Jonathan Neil &
8 Associates, Inc. v. Jones, 138 Cal. App. 4th 1481, 1489 (Cal. Ct. App. 5th 2006). Accrued
9 postjudgment interest on the judgment is incorporated into the principal of the renewed judgment,
10 which then bears interest at the legal rate. OCM, 168 Cal. App. 4th at 193. That the judgment
11 renewal provisions incorporate accrued interest does not violate constitutional limits on interest.
12 Id. at 195. The amount required to satisfy a money judgment is characterized as “the total amount
13 of the judgment entered or renewed” with the addition of “interest added to the judgment as it
14 accrues pursuant to Section 685.010.” Id. at 192; CCP §695.210(b).

15 As part of the statutory renewal of the May 15, 2006 Default Judgment under the
16 Enforcement of Judgments Law (CCP §680.010 et seq.), Plaintiffs prepared and served upon
17 Lynch mandatory Judicial Council form MC-012 to claim accrued statutory interest on the
18 unsatisfied principal amount of the May 15, 2006 Default Judgment. Item 5 of form MC-012,
19 “Declaration of Accrued Interest” shows “interest on the judgment accruing at the legal rate from
20 the date of entry on balances due after partial satisfactions and other credits.” Accrued statutory
21 interest on the principal amount of the \$7,341,345.00 May 15, 2006 Default Judgment from the
22 date of the entry of the default judgment (May 15, 2006) through July 9, 2015, the day before
23 Plaintiffs served the Form MC-012 on Lynch, was calculated to be \$6,717,808.80. CCP
24 §685.020(a), §685.010(a). Plaintiffs attached a detailed calculation of postjudgment accrued
25 interest to Form MC-012. Attachment 1 to Item 5 of MC-012 showed calculations of yearly
26 interest, daily interest and the total number of days (3,340) that had elapsed since the entry of the
27 May 15, 2006 Judgment. Plaintiffs claimed \$6,717,808.80 in accrued postjudgment statutory
28 interest. Form MC-012; Attachment 1 to Item 5.

1 Lynch has not shown any errors in Plaintiffs' calculations of postjudgment interest.
2 Lynch's sole argument for disallowing Plaintiffs accrued statutory interest is that the postjudgment
3 interest is "excessive, unreasonable and not authorized by law" because the May 15, 2006 Default
4 Judgment is void for lack of personal jurisdiction has no merit because this Court has already
5 determined that the service of the summons and complaint on Lynch was proper in January 2014.

6 **IV. LYNCH'S MOTION TO TAX COSTS IS PROCEDURALLY DEFECTIVE IN**
7 **THAT A MOTION MADE UNDER CCP §685.070 IS NOT THE CORRECT**
8 **PROCEDURAL DEVICE TO ATTEMPT TO VACATE THE MAY 15, 2006**
9 **DEFAULT JUDGMENT OR THE JULY 13, 2015 RENEWAL OF JUDGMENT**

10 **A. Lynch Reprises Arguments That Were Previously Raised and Denied in Her**
11 **August 2013 Motion to Vacate and March 2015 Motion for Terminating Sanctions**

12 Lynch's Notice of Motion indicates that she is moving pursuant to CCP §685.070(c) to tax
13 and/or strike costs sought by Plaintiffs. Notice of Motion, p. 1. In addition to the instant motion,
14 Lynch also filed a 14-page Motion to Set Aside the July 13, 2015 Renewal of Judgment pursuant
15 to CCP §683.170 on July 28, 2015. Lynch's Motion to Tax Costs incorporates by reference not
16 only her two previously denied motions, including the Motion to Vacate and/or Modify Default
17 Judgment Entered May 15, 2006 filed on August 9, 2013 ("August 2013 Motion") and the 1,100
18 page Motion for Terminating and Other Sanctions filed on March 17, 2015 ("March 2015
19 Motion"), but also her concurrently filed Motion to Vacate the July 13, 2015 Renewal of
20 Judgment ("July 2015 MTV"). July 2015 MTC, pp. 2-3 (incorporating each motion by reference).

21 In her Motion to Tax Costs, brought pursuant to CCP §685.070, Lynch improperly raises
22 identical arguments seeking to attack the validity of the underlying May 15, 2006 Default
23 Judgment that were previously made in her August 2013 Motion and March 2015 Motion, both of
24 which were denied with prejudice by the Court on January 17, 2014 and June 23, 2015,
25 respectively. Lynch cites to no authority for her proposition that a judgment debtor may challenge
26 the validity of the underlying judgment or challenge a renewed judgment by means of a Motion to
27 Tax costs brought pursuant to CCP §685.070. To the extent that this motion is intended as a
28 renewed motion to vacate the May 15, 2006 Default Judgment, it violates CCP §1008 because
Lynch once again fails to meet the statutory requirements and has not shown "new or different

1 facts, circumstances or law.” CCP §1008. As such, it may be “punished as a contempt and with
2 sanctions as allowed by Section 128.7.” CCP §1008(d).

3 In her Motion to Tax Costs, Lynch reasserts the following five arguments, all of which
4 have been raised and denied in her two previously denied motions. Plaintiffs outline the following
5 citations to her previously filed motions to call the Court’s attention to Lynch’s abusively
6 repetitive motions practice which seeks to relitigate issues that have already been adjudicated.

7 1. The May 15, 2006 Default Judgment is void for lack of service of process and as a
8 consequence, the court lacked jurisdiction to enter the judgments (July 2015 MTC, Motion, p. 1,
9 lines 22-23; pp. 3-6; Exh. A, Lynch Decl. (July 28, 2015) ¶¶2-3 (“the proof of service is evidence
10 of extrinsic fraud.”)). Lynch has repeatedly asserted this argument in each of her previously filed
11 motions and relies upon the same case authorities cited in her August 2013 Motion¹:

12 - August 2013 Motion: Notice of Motion, p. 2; “a false proof of service, as in this case,
13 constitutes extrinsic fraud”; Motion, pp. 3-23; Lynch Decl. (Aug. 4, 2013) ¶2; Case History, p. 6,
14 lines 9-10, p. 71, lines 14-22.

15 - March 2015 Motion: Motion, p. 1, lines 16-19; p. 2, lines 15-16 (“On January 17, 2014,
16 without obtaining jurisdiction over Defendant, the Court denied Lynch’s request to vacate the
17 default judgment.”); p. 13; Exh. 4, Lynch Decl. (March 17, 2015) ¶58; Exh. HHHH ¶¶ 4, 7, 9, 14,
18 16, 18, 19, 21, 32, 33, 72-74.

19 - March 2015 Motion Reply: Motion, p. 3, lines 23-24 (“Kelley Lynch was not served
20 Leonard Cohen’s summons and complaint and, this Court has failed to obtain jurisdiction over
21 her.”), p. 9, lines 2-4 (“A false recital of service although not deliberate is treated as extrinsic
22 fraud...”); Lynch Decl. (June 16, 2015) ¶¶ 12-13, 24, 48.

23 - July 2015 MTV: Motion, pp. 4-12. On Motion page 4, Lynch states: “Lynch was never
24 served with the summons and complaint and the December 5, 2005 default judgment, May 15,
25 2006 judgment (and imposition of constructive trust), together with the July 13, 2015 renewal of
26 that judgment are void for lack of jurisdiction.”; Exh. A, Lynch Decl. (July 28, 2015) ¶¶2, 6, 9.

27
28 ¹ For example, compare page 4 of July 2015 MTC, with page 11 of August 2013 Motion.

1 2. The corporate entities are suspended or never registered to do business in California and
2 the Court never obtained jurisdiction over the corporate entities (July 2015 MTC, pp. 7-8; Exh. A,
3 Lynch Decl. ¶26; Exh. B “Schedule of Corporations”). This argument has been previously raised
4 in the following motions:

5 - August 2013 Motion: Case History, pp. 22-26; p. 71, lines 20-21.

6 - July 2015 MTV: Motion, pp.13-14.

7 3. The lawsuit is “retaliation” for Lynch allegedly reporting Cohen to the IRS for alleged
8 “tax fraud” (July 2015 MTC, pp.8-9; Exh. A, Lynch Decl. ¶9). Lynch has previously asserted this
9 claim in the following motions:

10 - August 2013 Motion, “Case History”, p. 7, lines 5-7; p. 8, lines 10-15; p. 10, lines 12-19;
11 p. 11, lines 27-28; p. 12, lines 1-8; p. 18, lines 4-5; p. 19, lines 1-16; p. 66, lines 16-17; p.
12 70, lines 22-23; Lynch Decl. (Aug. 4, 2013) ¶4.

13 - March 2015 Motion: Exh. 4, Lynch Decl. (March 17, 2015) ¶¶58, 63, 104.

14 - March 2015 Motion Reply: Lynch Decl. (June 16, 2015) ¶27.

15 - July 2015 MTV: Motion, p. 10, lines 17-28; Exh. A, Lynch Decl. (July 28, 2015) ¶12.

16 4. The accounting supporting the May 15, 2006 Default Judgment is “evidence of
17 financial and accounting fraud” (July 2015 MTC, pp. 9-10; Exh. A, Lynch Decl. (July 28, 2015)
18 ¶¶10, 15, 16). Lynch has previously asserted this claim in the following motions:

19 - March 2015 Motion, Motion, p. 10, lines 18-21; Exh. 4, Lynch Decl. (March 17, 2015)
20 ¶58, 90.

21 - March 2015 Motion Reply: Lynch Decl. (June 16, 2015), ¶33

22 - July 2015 MTV: Exh. A, Lynch Decl. (July 28, 2015), ¶10.

23 5. Cohen allegedly testified in the March 2012 bail hearing of her criminal prosecution
24 that Lynch never stole from him (July 2015 MTC, pp.10-13; Exh. A, Lynch Decl. (July 28, 2015)
25 ¶21). Lynch has previously asserted this claim in the following motions:

26 - March 2015 Motion: Exh. 4, Lynch Decl. (March 17, 2015) ¶¶19, 23.

27 - March 2015 Motion Reply: Lynch Decl. (June 16, 2015) ¶3.

28

1 A Motion to Tax Costs is not a proper vehicle by which to renew arguments that have
2 been previously considered and denied by the Court in two successive motions seeking equitable
3 relief from the May 15, 2006 Default Judgment or to raise new arguments or legal theories that
4 were not made in previously denied motions. To the extent that Lynch is attempting to use a
5 motion brought under CCP §685.070 to attempt to improperly renew previously denied arguments
6 or to raise new legal theories or arguments attacking the May 15, 2006 Default Judgment, her
7 motion is procedurally defective, fatally deficient, and should be denied.

8 **B. Lynch Cannot Challenge Claimed Damages and the Award of Pre-judgment**
9 **Interest Postjudgment Through a Motion to Tax Costs Brought Pursuant to CCP**
10 **§685.070(c)**

11 On pages 6 and 7 of her Motion, Lynch raises a number of arguments, all of which are
12 directed to attacking the underlying May 15, 2006 Default Judgment. All of Lynch's arguments
13 are improper at this procedural juncture (renewal of the judgment) and are not properly brought in
14 a Motion to Tax Costs. Most of her arguments are unsupported by citation to case authority.
15 Lynch improperly attempts to reargue the merits of the underlying May 15, 2006 Default
16 Judgment, which is a final judgment. A judgment becomes final either upon expiration of the
17 period within which an appeal can be taken or if an appeal is taken, upon the issuance of a
18 remittitur when the judgment has been affirmed. Green v. Zissis, 5 Cal. App. 4th 1219, 1223 (Cal.
19 Ct. App. 6th 1992). A judgment is the final determination of the rights of the parties in an action or
20 proceeding. CCP §577. "There may be, in some circumstances, judgment for or against one or
21 more of several plaintiffs or defendants in a single case, but there is always one judgment that
22 determines the rights of any one particular party or parties vis-à-vis another party on the other
23 side." CCP §578; Lucky United Properties Investment, Inc. v. Lee, 185 Cal. App. 4th 125, 136
24 (Cal. Ct. App. 1st 2010).

25 With regard to Lynch's attempt to argue merits of the underlying complaint, procedurally
26 and substantively, the entry of default and default judgment cut off Lynch's rights to argue the
27 merits of the underlying action. Steven M. Garber & Associates v. Eskandarian, 150 Cal. App. 4th
28 813, 824 (Cal. Ct. App. 2nd 2007). The effect of the default judgment is to admit all of the well-

1 pleaded claims in the complaint. Garber, 150 Cal. App. 4th at 824; Sporn v. Home Depot USA,
2 Inc., 126 Cal. App. 4th 1294, 1303 (Cal. Ct. App. 4th 2005)(default admits allegations of the
3 complaint.)

4 As is addressed in Plaintiffs' Opposition to Lynch's Motion to Vacate the July 13, 2015
5 Renewal of Judgment, the renewal of a judgment may be vacated on any ground that would be a
6 defense to an action on the judgment. Goldman v. Simpson, 160 Cal. App. 4th 255, 261 (Cal. Ct.
7 App. 2nd 2008). In an independent action on the judgment, the debtor may challenge the judgment
8 "in accordance with the rules and principles governing collateral attack." Goldman, 160 Cal. App.
9 4th at 262. Such a collateral attack challenges the jurisdiction of the court to enter the original
10 judgment. Id. Nonjurisdictional errors are not appropriate targets in this context. Id. "A
11 collateral attack will lie only for a claim that the judgment is void on its face for lack of personal
12 or subject matter jurisdiction or for the granting of relief which the court has no power to grant.
13 The lattermost category extends to a claim that a default judgment exceeds the amount demanded
14 in the complaint." Molen v. Friedman, 64 Cal. App. 4th 1149, 1156-1157 (Cal. Ct. App. 4th 1998).
15 A collateral attack will not lie for a claim that the judgment is not supported by substantial
16 evidence nor for the failure of the complaint to state a cause of action. Molen, 64 Cal. App. 4th at
17 1156-1157.

18 Lynch first argues that "the complaint failed to address the written contracts and
19 agreements, corporate records, as well as compensation agreements -- including stock ownership --
20 with respect to her ownership interest, with Blue Mist Touring Company, Inc., Traditional
21 Holdings, LLC and/or Old Ideas, LLC." Motion, p. 6, lines 13-16. To the extent that Lynch
22 attempts to argue merits of the underlying suit, the well-pleaded complaint doctrine holds that the
23 effect of the default judgment is to admit all of the well-pleaded claims in the complaint. Garber,
24 150 Cal. App. 4th at 824; Sporn, 126 Cal. App. 4th at 1303. Lynch cannot challenge the sufficiency
25 of the complaint on a collateral attack. Molen, 64 Cal. App. 4th at 1156-57.

26 Lynch next alleges that Plaintiffs were not entitled to receive damages because "Leonard
27 Cohen, personally, and LC Investments, LLC, an entity solely owned by Leonard Cohen, were and
28 are not the owners of the intellectual property assets." Motion, p. 6, lines 22-23. With regard to

1 claimed damages, on a collateral attack, the *only* claim available to a defendant is that the original
2 judgment in the underlying action awarded an aggregate amount exceeding the amount demanded
3 in the complaint. Molen, 64 Cal. App. 4th at 1157; *See also* Simke, Chodos, Silberfeld & Anteau,
4 Inc. v. Athans, 195 Cal. App. 4th 1275, 1287 (Cal. Ct. App. 2nd 2011)(CCP §580 prevents a default
5 judgment from exceeding the amount demanded in the complaint.) Plaintiffs' complaint was
6 sufficient to put Lynch on notice of the nature of the claims and for the amount of damages
7 requested. As to each of Plaintiffs' claims for breach(es) of fiduciary duty, fraud, breach of
8 contract, and conversion, the Complaint's Prayer for Relief requested "general damages in a sum
9 of not less than \$5,000,000 or an amount according to proof, together with legal interest thereon at
10 the legal rate." Complaint, Prayer for Relief, (First, Second, Third, and Fifth Causes of Action).
11 Thus, the damages awarded to Plaintiffs through Lynch's default did not exceed those claimed in
12 the Complaint. CCP §580.

13 Lynch then argues that the May 15, 2006 Default Judgment was supported by an allegedly
14 "fraudulent financial ledger", a claim which she also raised in her March 2015 Motion. A
15 defaulted defendant lacks standing to complain of the type of evidence offered in the default
16 prove-up. Sporn, 126 Cal. App. 4th at 1303. As Plaintiffs argued in opposition to Lynch's March
17 2015 Motion, her claim that an allegedly "fraudulent financial ledger" was used to support
18 Plaintiffs' damage claims in the default prove-up is a claim of intrinsic, not extrinsic fraud, which
19 did not support her claims for equitable relief from the May 15, 2006 Default Judgment.
20 Plaintiffs' Opp. To March 2015 Motion, pp. 11-12. Further, on a collateral attack on the
21 underlying default judgment a defendant may not claim that the judgment is not supported by
22 substantial evidence. Molen, 64 Cal. App. 4th at 1156-57.

23 Finally, Lynch challenges the award of pre-judgment interest. She argues that Plaintiffs
24 were not entitled to pre-judgment interest because "Leonard Cohen and Leonard Cohen
25 Investments, LLC were not deprived of the use of money or denied the opportunity of investing it
26 *as they had no right to the corporate property and/or assets.*" July 2015 MTC, p. 7, lines 10-13.
27 (emphasis supplied). Again, Lynch attempts to improperly argue the merits of the underlying
28 complaint. The effect of the May 15, 2006 Default Judgment was to admit all of the allegations in

1 the Complaint and to extinguish all of Lynch's interests in Cohen's entities. May 15, 2006 Default
2 Judgment, Attachment, Item 6; July 13, 2015 Renewal of Judgment, Attachment, Item 6(a). Thus,
3 her argument that Plaintiffs had no right to the corporate property or assets and therefore no right
4 to claim pre-judgment interest on the wrongfully converted funds/corporate assets has no merit.

5

6 **V. CONCLUSION**

7 For all of the foregoing reasons, Plaintiffs pray that the Court deny Lynch's Motion to Tax,
8 Reduce and/or Strike Costs.

9

10 **DATED:** September 20, 2015

Respectfully submitted,

11

12

By: 

13

MICHELLE L. RICE
KORY & RICE, LLP

14

15

ATTORNEY FOR PLAINTIFFS

16

17

18

19

20

21

22

23

24

25

26

27

28

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

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

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:
 9300 Wilshire Blvd., Suite 200, Beverly Hills, CA 90212
3. The fax number or electronic service address from which I served the documents is (complete if service was by fax or electronic service):
4. On (date): Sept. 21, 2015 I served the following documents (specify):
 PLAINTIFFS' POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO TAX, REDUCE AND/OR STRIKE COSTS

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

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

(2) Time of service:

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

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

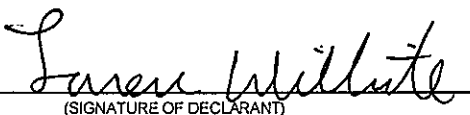
CASE NAME Leonard Norman Cohen; Leonard Cohen Investments v Kelley Lynch	CASE NUMBER: BC338322
---	--------------------------

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

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

Date: Sept. 21, 2015

Lauren Wilhite
(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

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

DECLARATION OF MESSENGER

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

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

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

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

Date:

(NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)