Supreme Court of California
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Supreme Court of California
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

California Capital Insurance Company	)	Supreme Court
	)	no. S277510
	)	
	)	Court of Appeal case
Plaintiff & Respondent.		) no. C092450
	)	
v.	)	Superior Court case
	)	no. SCV0026851
Cory Michael Hoehn,	)	
	)	
Defendant & Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT
OF PLACER COUNTY

Hon Michael Jones, Judge

After the unpublished Decision of the Court of Appeal
Third Appellate District, Div SF - Affirmed in full

RESPONDENT'S BRIEF

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA Supreme Court case no. S277510

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL xxx **APPELLATE DISTRICT, DIVISION** xxxx

COURT OF APPEAL CASE NUMBER: C092450

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SUPERIOR COURT CASE NUMBER: Placer County SCV0026851

APPELLANT/
PETITIONER: Corey Michael Hoehn

RESPONDENT/
REAL PARTY IN INTEREST: California Capital Insurance Company etc et al.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(*Check one*): [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Sequoia Concepts Inc dba Sequoia Financial Services

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

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

	Full name of interested entity or person	Nature of interest (*Explain*):
(1)	California Capital Insurance Company	Original Plaintiff (Assignor)
(2)	Sequoia Concepts Inc	dba Sequoia Financial Services (Assignee)
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

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

Date: 3-7-2023

Edmond B Siegel
(TYPE OR PRINT NAME)

/s/ Edmond B Siegel
(SIGNATURE OF APPELLANT OR ATTORNEY)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
DIVISION ___

California Capital Insurance Company etc, Plaintiff and Respondent, v. Cory Michael Hoehn, Defendant and Appellant.	Court of Appeal No C092450 Superior Court No SCV0026851

Appeal from the July 10, 2020 Order
of the Superior Court, for the County of Placer
Hon. Michael W. Jones, Judge

After the unpublished Decision of the Court of Appeal
Third Appellate District, Div SF - Affirmed in full

RESPONDENT'S BRIEF

Corey Michael Hoehn ("Hoehn" or "Appellant") seeks review of the unpublished Decision of the Court of Appeal Third Appellate District, Div SF ("Decision") which Affirmed in full the July 10, 2020 Order of

Hon. Michael W. Jones, Judge of the Superior Court, for the County of Placer, denying his motion to vacate the April 8, 2011 default Judgment entered against him ("Order").

STATEMENT OF THE CASE

As set forth in the Decision, at Appellant's Appendix ("AAX") pages 241-245 is a copy of the trial Court's Minute Order and ruling denying Appellant's motion to vacate the April 8, 2011 Judgment. The Court' issued a tentative ruling and adopted it as a final ruling, denying Hoehn's motion to vacate the 4-8-2011 Judgment. The trial Court's Order was issued only after Appellant waived oral argument, and both parties submitted on the tentative ruling which became the Court's final ruling.

Hoehn never presented any argument to the trial Court to alter or overturn the existing applicable case law in his motion and he waived oral argument.

Appellant did argue that the statutory language did not contain any time limitation, but Appellant did not fully brief the applicable authorities to the trial Court, which were controlling, and which did contain well established time limitations as to the use of extrinsic evidence to attack the Judgment by law and motion.

The controlling issue and applicable authorities are: that when a party attacks a Judgment in the trial Court by law and motion, courts distinguish between orders and judgments that are void on the face of the record and orders that appear valid on the face of the record but are shown to be invalid through consideration of extrinsic evidence." *Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1021.

"This distinction is essential to the Court's determination as to the timing and procedural mechanism available, to attack a judgment or order and after well established time limits, set by well established controlling authority, extrinsic evidence may not be presented in a law and motion proceeding, to argue a Judgment is invalid. *OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1326 [Review denied].

Appellant did not present any such argument to the trial Court, that it was not bound by the existing controlling case authority or that it should overturn or not follow the applicable and controlling case authority. As such, Appellant cannot do so for the first time on appeal. Mattco Forge Inc vs Arthur Young (1997) 52 Cal.App4th 820.

Lastly, Appellant was not required to seek to attack the Judgment by law and motion after the applicable limitations periods had expired.

Instead, Appellant could have mounted a collateral attack on the Judgment by a new lawsuit, but he did not do so. See *Rochin v. Pat Johnson Manufacturing* Co. (1998) 67 Cal.App.4th 1228, 1240, *Olivera v. Grace* (1942) 19 Cal.2d 570, 574; *Baird v. Smith* (1932) 216 Cal. 408, 410.

A collateral attack is an attempt to avoid the effect of a judgment or order . . . made in some other proceeding. *Wouldridge v. Burns* (1968) 265 Cal.App.2d 82, 84. "[A]ny procedural challenge that does not constitute a direct attack is collateral." 8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 6, p. 590.

“ When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and ‘thus vulnerable to direct or collateral attack at any time.’ (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 119 (*Barquis*).)” (*People v. American Contractors Indemnity Co.,* at p. 660.)” However, where the evidence is in conflict, a reviewing court must defer to the trial court's factual determinations under the substantial evidence standard. Ramos v. Homeward Residential, Inc. (2014) 223 Cal.App.4th 1434, 1441, fn. 5.) Where findings of fact are challenged, we consider whether they are supported by any substantial evidence, contradicted or uncontradicted. Pope v. Babick (2014) 229 Cal.App.4th 1238, 1245. "When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." Shamblin v. Brattain (1988) 44 Cal.3d 474, 478-479.)

Whether the unpublished Decision of the Court of Appeal Third Appellate District, Div SF which affirmed the trial Court's Orders in full, and declined to follow Appellant's contentions that the trial Court abused its discretion, in denying Hoehn's Motion to set aside the April 11, 2011 default Judgment, under any of the alleged grounds for relief asserted by Hoehn to the trial Court, or in denying his evidentiary objections to the evidence presented in Opposition to the Motion, as the trial Court's ruling was valid and was not an abuse of the trial Court's discretion.

The question presented, in Appellant's Opening Brief, at page 9, last paragraph, as framed by Appellant, is a red herring, because Appellant waived oral argument in the trial Court, and should not be permitted to argue for a change of the existing controlling authority, on appeal, without first having presented such arguments to the trial Court.

Furthermore, Appellant's assertion that a party seeking to collaterally attack a Judgment for "extrinsic fraud" when moving to vacate a judgment which is alleged to be void for lack of proper service, should require proof not only of improper service, but also an additional showing of scienter involving "inequitable conduct" that "lulled [the defendant] into a state of false security?" is contrary to existing controlling authority. Id. See OC Interior Services LLC vs Nationstar Mortgage LLC (2017) 7 Cal.App5th 1318 [Review Denied], *Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1021, Trackman vs Kenney (2010) 187 Cal.App4th 175, 181 cited by the trial

Court.

SUMMARY OF RESPONDENT'S ARGUMENT

Respondent respectfully submits that the instant review should be denied, because the relief requested as set forth in the underlying motion to vacate the April 11, 2011 default Judgment, was not available to Appellant, under any of the grounds asserted by Appellant to the trial Court.

The underlying default Judgment appears valid on its face, and on the face of the Court's record. Appellant moved for an Order to vacate the judgment as void for improper service of the Summons and Complaint using extrinsic evidence.

Despite Appellant's arguments, that the Judgment was void on its face, it was apparent to the trial Court that the default Judgment was not void on its face.

Appellant was attempting to use extrinsic evidence, his self-serving declaration testimony to argue that Ms Smith was not a person who could have been properly substituted served ignoring the facts stated in the proof of service [APX 49-52] and the evidentiary presumption of validity of a return of service by a registered process server.

Appellant never presented any argument to the trial Court to overturn controlling authority, and should not be permitted to do so on appeal.

The instant motion to vacate was time barred under controlling authority, just as the trial Court adjudicated it to be.

Appellant arguments that the trial Court abused its discretion in denying his motion and in overruling his evidentiary objections regarding the Opposition to the motion. However, the extrinsic evidence submitted by Respondent was clearly admissible and the objections asserted insufficient. Also under the controlling authorities, any extrinsic evidence submitted by the parties, was of no consequence or relevance, because the motion was time barred under the applicable case law. There is no record that the trial Court considered any of the extrinsic evidence in making its ruling denying the motion, as oral argument was waived, and no reason that it should have done so.

Appellant is incorrect in arguing that the damages awarded in the default Judgment, exceeded the notice of potential damages in the complaint, served on him. The complaint, APX 42 to 45, at pp 14a (2) provided notice that damages of $472,326.00 were being sought (APX 44) and at GN-1 (5) (APX 45).

The default Judgment entered APX 48 to 49 at pp 6a, awarded $472,326.00 in damages, which is the same amount as the Complaint.

As such, proper notice of the damages being requested, was given as determined by the trial Court at APX 240 to 243.

The Request for entry of default (APX 54 and 55) also provided notice that $472,326.00 in damages was being sought at pp 2 APX 54 before Appellant's default was entered.

This same form also contained the affidavit required by Code of Civil Procedure § 587 as determined by the trial Court. APX 240 to 243. Appellant is incorrect in arguing that Code of Civil Procedure § 587 required an additional affidavit of service of the application for a Judgment, after his default had already been entered.

ARGUMENT

FACTUAL STATEMENT AS TO THE UNDERLYING MOTION TO VACATE

Appellant filed the underlying Motion to vacate the default Judgment on March 18, 2020, 11 years, 8 months, and 11 days, after entry of the April 11, 2011 default Judgment. Appellant's Appendix ('APX") pages 147-149 (the "default Judgment"), APX pages 10-22 (the "Motion to Vacate"), APX pages 23-25 ("Mr Hoehn's Declaration"), APX pages 26-198 ("Ms Clancy's Declaration with documentary evidence - exhibits A to Q").

The motion requested relief to vacate the default Judgment as void, using extrinsic evidence to try to vacate the default Judgment as void for lack of personal service regarding whether Ms Smith could properly be substitute served [which is contrary to the face of the Proof of Service documents and as to the face of the default Judgment. Appellant alleged factual matters outside the Court record as to the service, which did not appear on the face of the Court's record]: (1) Code of Civil Procedure § 473 (d) for lack of actual personal service on Appellant, (2) Code of Civil Procedure § 587 for not serving a copy of the application for a default judgment [after a default had already been entered],(3) that the damages awarded exceed the damages pled in the complaint or set forth in a statement of damages served citing Heidary v. Yadollahi (2002) 99 Cal.App.4th 857, 864, and (4) Code of Civil Procedure § 473 (d) for extrinsic fraud or mistake based on lack of personal service on Appellant. APX pages 10-22.

Respondent filed Opposition to the Motion. A copy is found at APX pages 201 -215 ("Opposition"), which included a declaration of attorney Mr Michael Schroeder at APX pages 207 - 215 [offering evidence that Hoehn had actual notice of the lawsuit just after service occurred, when he telephoned Mr Schroeder, Plaintiff's Counsel's office].

Appellant filed a reply brief. APX pages 216 to 226 ("Reply"), which along with the motion did argue that the statutory language did not contain a time limit, but did not fully brief or argue the existing applicable case law or argue that these cases were not controlling and

should be overturned.

Appellant ignored the controlling authority's precedential effect on the trial Court, and instead offered an incomplete case law and statutory analysis, without arguing that the controlling authority was not binding on the trial Court or that the trial Court should act contrary to it.

Hoehn also offered self-serving extrinsic testimony as to the service of the summons and complaint to allege defects in service and extrinsic fraud or mistake, ignoring the undisputed fact that Ms Smith was served by the process server at his residence. Ms Smith was inside his residence with apparent and ostensible control of it as a co-occupant.

Also, the arguments that the amount of damages awarded were improper, and that after his default was properly entered, he was entitled to service of a request for default judgment, are simply incorrect.

Appellant filed Evidentiary Objections to the declaration of attorney Mr Michael Schroeder submitted in opposition to the motion. APX pages 227-231.

The trial Court issued the instant Order adopting its tentative ruling denying the Motion to vacate the default Judgment on July 10, 2020, only after Appellant withdrew his request for oral argument and both parties submitted on the trial Court's tentative ruling. APX pages

240-243.

Appellant filed a Notice of appeal on August 7, 2020. APX pages 244-245.

The underlying complaint APX 42 to 45, at pp 14a (2) provided notice to Appellant that damages of $472,326.00 were being sought (APX 44).

The Request to enter Appellant's default was served on the address where service was effected. APX 54 and 55 (the entered Request for entry of default) p 6 (b) on 55.

The default Judgment entered APX 48 to 49 at pp 6a, awarded $472,326.00 in damages which is the same amount as pled in the Complaint.

THERE ARE TWO APPLICABLE STANDARDS OF REVIEW

Code of Civil Procedure § 473 (d) provides a trial court "may, on motion of either party after notice to the other party, set aside any void judgment or order." "[I]nclusion of the word 'may' in the language of section 473, subdivision (d) makes it clear that a trial court retains discretion to grant or deny a motion to set aside a void judgment [or order]." *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495. However, the trial court "has no statutory power to set aside a judgment [or order] that is not void." *Id*. at pp. 495-496.

There are time limits on the Court's jurisdiction under well settled law, to vacate an alleged void judgment or order, when the judgment or order appears to be valid and cannot be determined to be void, on the face of the Judgment or Court's record, and instead a Court must consider extrinsic evidence, to determine if the judgment or order is void. See further discussion below, *Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1021, Trackman vs Kenney (2010) 187 Cal.App4th 175, 181 cited by the trial Court, and OC Interior Services LLC vs Nationstar Mortgage LLC (2017) 7 Cal.App5th 1318 [Review Denied].

On appeal, there are two separate standards of review. "generally [a reviewing Court] faces two separate determinations when considering an appeal based of a motion to vacate under Code of Civil Procedure § 473 (d): (1) whether the order or judgment is void; and, (2) if so, whether the trial court properly exercised its discretion in setting it aside." *Nixon Peabody LLP v. Superior Court* (2014) 230 Cal.App.4th 818, 822.

The trial Court's determination whether an order is void is reviewed de novo. The trial Court's decision whether to set aside a void order is reviewed for an abuse of discretion. *Ibid*, see also *Airs Aromatics, LLC v. CBL Data Recovery Technologies, Inc.* (2018) 23 Cal.App.5th 1013, 1018, and *Cruz v. Fagor America, Inc.*, *(2007)*, 146 Cal.App.4th 488, at p. 496. Under both standards of review, the trial Court exercised its discretion properly and subject to applicable controlling authorities.

Here, four grounds were set forth in the notice and motion to vacate the default Judgment at APX pages 11 and 12: (1) Code of Civil Procedure § 473 (d) for lack of actual personal service on Appellant, (2) Code of Civil Procedure § 587 for not serving a copy of the application for a default judgment after a default had already been entered [even though the request to enter default was served],(3) where the damages awarded exceed the damages pled in the complaint or set forth in a statement of damages served citing Heidary v. Yadollahi (2002) 99 Cal.App.4th 857, 864, and (4) Code of Civil Procedure § 473 (d) for extrinsic fraud or mistake based on lack of personal service on Appellant.

As determined by the trial Court, the motion to vacate was time barred and otherwise incorrect as to its grounds and the evidentiary objections asserted. APX pages 240-243.

TIME LIMITS OF EITHER 6 MONTHS OR UP TO 2 YEARS EXIST TO LIMIT A COURT'S JURISDICTION TO VACATE A DEFAULT JUDGMENT, WHEN THE JUDGMENT OR ORDER APPEAR VALID ON ITS FACE; AND EXTRINSIC EVIDENCE IS PRESENTED TO ALLEGE IT IS VOID

"In determining whether an order is void for purposes of considering relief under Code of Civil Procedure § 473 (d), courts distinguish between orders and judgments that are void on the face of the record and orders that appear valid on the face of the record but are shown to be invalid through consideration of extrinsic evidence." *Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1021.

“This distinction is essential to the Court’s determination as to the timing and procedural mechanism available, to attack a judgment or order. *OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1326 [Review denied].

There is no time limit to challenge a judgment which is void on its face or void on the face of the court’s record. *Pittman* (2018) 20 Cal.App.5th at p. 1021, *OC Interior Services* (2017) 7 Cal.App.5th at p. 1326, and *Ramos v. Homeward Residential, Inc.* (2014) 223 Cal.App.4th 1434, 1440. Here the default Judgment appears valid on its face as does the proof of service and Appellant challenged them by using extrinsic evidence. See APX pages 147-149.

However, ‘[w]here a party moves for [relief] under Code of Civil Procedure § 473 (d) to set aside ‘a judgment that is valid on its face, claiming the Judgment is void for lack of proper service, the courts have adopted by analogy the six month period of Code of Civil Procedure § 473 (b), and for other challenges the maximum statutory period for relief from a default judgment by analogy is the two year time period of section 473.5.’ *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 180; accord, *Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 97 [relief is subject to the time period specified in section 473.5 when the party seeking relief maintains the judgment, although facially valid, is void due to lack of proper service of process. See *Pittman* at p. 1021 “If the invalidity can be shown only through consideration of extrinsic evidence, such as declarations or testimony, the order is not void on its face. Such an order must be challenged within the six-month time limit

prescribed by Code of Civil Procedure § 473 (b). *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 180; accord, *Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 97, *OC Interior Services*, at p. 1328; *Ramos*, at p. 1440; *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 19 and two years by analogy to 473.5 for all other challenges.

APPELLANT'S ARGUMENT SEEKING TO ALTER WELL SETTLED PRECEDENT AS TO THE TRIAL COURT'S DECISION THAT HIS MOTION WAS TIME BARRED IS MISPLACED & OVERTURNING CASE LAW WAS NOT ARGUED

Appellant's arguments to this Court are misplaced, seeking to overturn well settled precedent is improper, using arguments already rejected contained in many opinions, especially when review was recently denied by the Supreme Court. Hoehn should have first presented his arguments to overturn these controlling authorities to the trial Court.

Throughout his opening brief, and at Section III pages 41-46 of Appellant's Brief ("AB"), Appellant argues that the trial Court abused its discretion in denying his motion to vacate and abused its discretion by overruling his evidentiary objections, asserted to parts of the declaration testimony of Mr Schroeder and documentary evidence.

Appellant's arguments are also incorrect because Hoehn's statements to Mr Schroeder's office are party admissions under Evidence Code § 1220, and Mr Schroeder's testimony and records were admissible as business

records of his law office under Evidence Code §1271. The objections asserted to the trial Court were incorrect.

However, all of the extrinsic evidence submitted by both parties, regarding Hoehn's motion to vacate, and the trial Court's ruling denying the motion and overruling the evidentiary objections as to the Mr Schroeder's declaration, were of no consequence and not relevant to the proceeding or the decision, as the Court expressly held the motion was untimely citing Trackman vs Kenney (2010) 187 Cal.App4th 175, 181 in its Order applying well settled legal authority.

The trial Court correctly held that all of the relief requested in the motion was time barred under applicable case law. *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 180; accord, *Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 97, *OC Interior Services*, at p. 1328; *Ramos*, at p. 1440; *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 19.

As such, there would have been no reason to consider any of the extrinsic evidence submitted regarding the motion, to determine if the default Judgment was void as the motion was untimely. There is also no record indicating that the trial Court considered the extrinsic evidence in ruling on the motion and no evidence of any abuse of discretion by the trial Court by not doing so. Appellant's arguments on statutory construction, seeking to overturn well settled precedent, which the Supreme Court has recently declined to review, is misplaced and were

not presented to the trial Court.

Instead, Hoehn seeks to alter well settled case law for the first time on appeal, and to improperly use extrinsic evidence, to argue his own version of the factual background, which is not accurate based on the totality of the circumstances before the trial Court:

(1) a lack of personal jurisdiction due alleged defective service of the Summons and Complaint under Code of Civil Procedure § 473 (d) based on extrinsic evidence offered concerning the validity of the proof of service of the summons and complaint [AAX 34-37],

(2) the incorrect contention that after entry of Defendant's default in the underlying case, Plaintiff was still required to serve its application for a default judgment on the defaulted party under Code of Civil Procedure § 587, Heidary v. Yadollahi (2002) 99 Cal.App.4th 857, 864, Extrinsic fraud under Code of Civil Procedure § 473 (d)
Since the default Judgment appears valid on its face and the time limits which govern Code of Civil Procedure § 473 (d) under the test set forth in OC Interior Services LLC vs Nationstar Mortgage LLC (2017) 7 Cal.App5th 1318 [Review denied]; (2) the motion to set aside sought to challenge the default judgment through the use of extrinsic evidence AX 10-22 Motion, 23-25 Hoehn's Declaration, and 26-198 Ms Clancy's Declaration and documentary evidence - exhibits A to Q; (3) was untimely under the applicable and controlling case authorities.

The time to assert these claims as to the April 11, 2011 default Judgment expired after six months on October 11, 2011, and certainly no later than the two year maximum on April 11 2014, under the holding in OC Interior Services LLC vs Nationstar Mortgage LLC (2017) 7 Cal.App5th 1318 [Review Denied].

There four arguments and the evidentiary objections presented by Appellant in Section III pages 41-46 of Appellant's Brief ("AB"), were each time barred, incorrect, and do not provide any evidence of any abuse of the trial Court's discretion. See AAX 227-231. Only evidentiary issues and arguments presented to the trial Court, before Appellant submitted on the papers and tentative ruling, may properly be considered on appeal.

The Order denying the motion must be viewed in light of the fact that the relief requested in the motion was not warranted, and was time barred under the holding in OC Interior Services LLC vs Nationstar Mortgage LLC (2017) 7 Cal.App5th 1318 [Review Denied]. The proof of service documents APX 49-52 are valid on its face.

The trial Court applied the correct applicable legal standard to Hoehn's untimely and procedurally defective motion to vacate the default Judgment filed March 18, 2020 [some 8 years, 8 months, and 11 days after entry of Judgment], because the default Judgment entered on April 8, 2011 AAX 147-149 cannot be challenged through the use of extrinsic evidence, on any of the grounds which Appellant has

improperly attempted to argue: (1) a lack of personal jurisdiction due alleged defective service of the Summons and Complaint under Code of Civil Procedure § 473 (d) based on extrinsic evidence offered concerning the validity of the proof of service of the summons and complaint [AAX 34-37], (2) the incorrect contention that after entry of Defendant's default in the underlying case, Plaintiff was still required to serve its application for a default judgment on the defaulted party under Code of Civil Procedure § 587, Heidary v. Yadollahi (2002) 99 Cal.App.4th 857, 864, Extrinsic fraud under Code of Civil Procedure § 473 (d)

Since the proof of service and the default Judgment appear valid on their face and the time limits which govern Code of Civil Procedure § 473 (d) motions to vacate under the test set forth in OC Interior Services LLC vs Nationstar Mortgage LLC (2017) 7 Cal.App5th 1318; (2) the motion to vacate sought to challenge the default judgment through the use of extrinsic evidence AX 10-22 Motion, 23-25 Hoehn's self serving Declaration, and 26-198 Ms Clancy's Declaration and documentary evidence - exhibits A to Q; were of no consequence and irrelevant under the applicable and controlling case authorities.

THE TRIAL COURT PROPERLY DENIED THE ASSERTIONS THAT THE DEFAULT JUDGMENT EXCEEDED THE AMOUNT PLED IN THE COMPLAINT & DENIED THE § 587 CHALLENGES

Appellant is simply not correct as to his argument that notice of the application for a default judgment had to be served on him under Code

of Civil Procedure § 587. § 587 only requires that an affidavit of service is required when giving notice of the request for entry of default. There is no authority which requires service of the Application for a default Judgment, after a default has already been entered, and none has been cited by Appellant. Rather, entry of default cuts off a defaulting party's right to notice and the right to participate in the proceedings after default. *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385-86.

This affidavit of service on notice of the request to enter Hoehn's default, was served on the address where service occurred before default was entered, and was filed with the trial Court before default was entered. See APX 54 and 55 (the entered Request for entry of default) p 6 (b) on 55. § 587 also provides that the nonreceipt of the notice, shall not invalidate or constitute ground for setting aside any judgment.

CODE OF CIVIL PROCEDURE § 587

An application by a plaintiff for entry of default under subdivision (a), (b), or (c) of Section 585 or Section 586 shall include an affidavit stating that a copy of the application has been mailed to the defendant's attorney of record or, if none, to the defendant at his or her last known address and the date on which the copy was mailed. If no such address of the defendant is known to the plaintiff or plaintiff's attorney, the affidavit shall state that fact.

No default under subdivision (a), (b), or (c) of Section 585 or Section 586 shall be entered, unless the affidavit is filed. The nonreceipt of the notice shall not invalidate or constitute ground for setting aside any

judgment.
(Amended by Stats. 1995, Ch. 796, Sec. 12. Effective January 1, 1996.)

Some of the arguments presented by Appellant in Section III pages 41-46 of Appellant's Brief ("AB"), contain new or expanded arguments about the evidentiary issues presented to the trial Court, to try and demonstrate error or the basis for Hoehn to argue that the trial Court abused its discretion should not be considered. See AAX 227-231. Appellant is limited to only the evidentiary objections and arguments presented to the trial Court. Appellant submitted on the papers and on the tentative ruling including overruling the objections he asserted, and cannot expand or present new arguments which he did not present to the trial Court.

However, the trial Court's rulings on each of the evidentiary objections were correct, under Evidence Code §1220 and Evidence Code §1271 as independent of the fact that they are of no consequence or relevance, because the trial Court applied the correct applicable legal standard to Hoehn's untimely and procedurally defective motion filed March 18, 2020 [some 8 years, 8 months, and 11 days after entry of Judgment].

There is no record that any of the evidence that Appellant argues should not have been considered by the trial Court, was actually considered in rendering the trial Court's decision or that it should have done so. Also, the proof of service APX 49-52 was entitled to a presumption of validity under Evidence Code § 647 and on its face

appears valid. Hoehn's self-serving assertions are insufficient to overcome this evidentiary presumption, especially given the undisputed fact that Ms Smith was inside his residence, over 18 years, ostensibly in charge of his residence, and the process server listed her as a co-occupant with Hoehn, when substitute service was effected, and proof of service filed with declarations of mailing and due diligence..

The trial Court correctly held that the default Judgment entered on April 8, 2011 AAX 147-149, could not be challenged by motion, after the expiration of the statute of limitations set forth in controlling case law, as the default Judgment alleged to be void, was not void on its face. The Court cited Trackman vs Kenney (2010) 187 Cal.App4th 175, 181 in its Order. The trial Courtcorrectly held Code of Civil Procedure § 587 did not require an affidavit of service of an application for a default judgment, after default had already been entered. The trial Court also correctly held the principal damages of the default Judgment were the same amount as pled in the Complaint. See the trial Court's Order at AAX 147-149.

CONCLUSION

For the above stated reasons, the trial Court's Order should be sustained and the Decision affirmed.

Respectfully submitted,
Dated: 4-26-2023

/s/ Edmond B Siegel

Edmond B Siegel
Attorneys for Respondent
Sequoia Concepts Inc assignee of California Capital etc

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c), I certify that the above Respondent's Brief contains 5721 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Respectfully submitted,
Dated: 4-26-2023

/s/ Edmond B Siegel

____

Edmond B Siegel
Attorney for Respondent
Attorneys for Respondent Sequoia Concepts Inc assignee of California Capital etc

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA Supreme Court case no. S277510

APP-009E

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Court of Appeal Case Number: C092450

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3. I electronically served the following documents *(exact titles)*:
   Respondent's Brief
4. I electronically served the documents listed in 3. as follows:

   a. Name of person served: Denyse F. Clancy - Kazan, McClain, Satterley & Greenwood
   On behalf of *(name or names of parties represented, if person served is an attorney)*:
   Cory Michael Hoehn Defendant & Appellant

   b. Electronic service address of person served: dclancy@kazanlaw.com

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Date: 4-26-2023

Mischaulette.Johnson
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/s/Mischaulette.Johnson
(SIGNATURE OF PERSON COMPLETING THIS FORM)

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 4/26/2023 by Tayuan Ma, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **CALIFORNIA CAPITAL INSURANCE COMPANY v. HOEHN**
Case Number: **S277510**
Lower Court Case Number: **C092450**

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4/26/2023

Date

/s/EDMOND SIEGEL

Signature

SIEGEL, EDMOND (29350)

Last Name, First Name (PNum)

EDMOND B. SIEGEL & ASSOCIATES

Law Firm