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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S277510

CALIFORNIA CAPITAL INSURANCE COMPANY, et al.,
Plaintiffs and Respondents,

v.

CORY MICHAEL HOEHN,
Defendant and Appellant.

Court of Appeal of California
Third District
No. C092450

Superior Court of California
Placer County
No. SCV0026851
Hon. Michael Jones

APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

This is the initial certificate of interested entities or persons submitted on behalf of Amicus curiae Consumer Attorneys of California, American Association for Justice in the case number listed above.

The undersigned certifies that there are no interested entities or persons that must be listed in this Certificate under California Rules of Court, rule 8.208.

Dated: July 14, 2023 By: /s/ Alan Charles Dell'Ario

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APPLICATION TO FILE AMICUS CURIAE BRIEF

Consumer Attorneys of California and American Association of Justice request that the attached amicus brief be submitted in support of defendant Cory Michael Hoehn. Counsel are familiar with all of the briefing filed in this action to date. The concurrently-filed amicus brief addresses the principles of fundamental jurisdiction established by the Court as relate to void and voidable judgments.[1] A judgment rendered by a court lacking fundamental jurisdiction is void and is subject to direct or collateral attack *at any time*. The brief also examines the history of Code of Civil Procedure section 473, subdivision (d) which reveals the error in the Court of Appeal's adoption of a two-year limitation on motions brought pursuant to its provisions.

STATEMENT OF INTEREST

Consumer Attorneys of California is a voluntary membership organization representing over 6,000 associated consumer attorneys practicing throughout California. The organization was founded in 1962. Its membership consists primarily of attorneys who represent individuals who are injured or killed because of the negligent or wrongful acts of others, including governmental agencies and employees. CAOC has taken a leading role in advancing and protecting the rights of Californians in both the courts and the Legislature.

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[1] *People v. Lara* (2010) 48 Cal.4th 216, 224–225 *(Lara)*, accord *Kabran v. Sharp Mem'l Hosp.* (2017) 2 Cal.5th 330, 340 *(Kabran)*.

The American Association for Justice is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions. For more than 75 years, AAJ has served as a leading advocate of the right of all Americans to seek legal recourse for wrongful injury.

As organizations representative of the consumers' trial bar throughout California and the country, CAOC and AAJ are interested in the significant issues presented by the Court of Appeal's narrow interpretation of section 473 that consigns defendants who suffer defaults without notice of having been served to suits in equity for relief from the ensuing void judgments.

No party to this action has provided support in any form with regard to the authorship, production or filing of this brief.

AMICUS CURIAE BRIEF

In 2020, Cory Hoehn brought a motion to vacate a 2010 judgment against him that was void because he had never been served with process. In affirming the trial court's determination that Hoehn's motion was untimely under Code of Civil Procedure section 473, subdivision (d), the Court of Appeal misinterpreted the principles of fundamental jurisdiction established by the

Court.[2] A judgment rendered by a court lacking fundamental jurisdiction is void and is subject to direct or collateral attack *at any time*.

In addition, the Court of Appeal hewed to an erroneous "analogy"[3] to the two-year limitation found in Code of Civil Procedure section 473.5 that has been adopted by other appellate courts. In so doing, the Court of Appeal perpetuated an erroneous statutory analysis unsupported by anything in the legislative history of section 473, subdivision (d).

I. A judgment rendered by a court lacking fundamental jurisdiction is void.

No one disputes the basic principle, founded in due process, that a court lacking jurisdiction over the parties or the subject matter of the dispute lacks the power to render a valid judgment.

> Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties. (Citation.) Familiar to all lawyers are such examples as these: . . . A court has no jurisdiction to render a personal judgment against one not personally served with process within its territorial borders, under the rule of *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565. . . .

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[2] *Lara*, *supra*, 48 Cal.4th at pp. 224–225, accord *Kabran*, *supra*, 2 Cal.5th at p. 340.

[3] Section 473, subdivision (d) has no time limit on bringing the motion it authorizes.

(*Abelleira v. Dist. Court of Appeal, Third Dist.* (1941) 17 Cal.2d 280, 288.)

"'Failure to give notice violates 'the most rudimentary demands of due process of law.'(Citation.)" (*Peralta v. Heights Med. Ctr., Inc.* (1988) 485 U.S. 80, 83.[4])

The Court has followed this principle consistently, distinguishing those situations where:

> a court may have jurisdiction in the strict sense but nevertheless lack jurisdiction (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.

(*Lara*, *supra*, 48 Cal.4th at p. 224.)

Here, the plaintiff attempted to serve Hoehn by substituted service on a purported member of his household. (Code Civ. Proc., § 415.20, subd. (b), AA 50.) Hoehn presented evidence establishing that the person with whom the process was left was not a member of his household, that he was never served with process and that the declaration of substituted service was incorrect. (AA 23–24.)

Where the defendant:

> Establishes that he or she has not been served as mandated by the statutory scheme, no personal jurisdiction by the court will have been obtained and

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[4] *Peralta* held that a party was entitled to set aside a judgment void for lack of personal service without any showing of a meritorious defense. This Court anticipated *Peralta* by 99 years. (*Hill v. City Cab & Transfer Co.* (1889) 79 Cal. 188, 190.)

> the resulting judgment will be void as violating fundamental due process. (See *Peralta*, *supra*, 485 U.S. at p. 84, 108 S.Ct. 896.)

(*Cnty. of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1227 *(Gorham)*.)

Without personal jurisdiction over Hoehn, the trial court's fundamental jurisdiction to issue a judgment never attached. As such, the judgment was void.[5]

II. No basis exists to limit a statutory attack on a void judgment to one that is "void on its face."

"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.' (Citation)." (*People v. Am. Contractors Indem. Co.* (2004) 33 Cal.4th 653, 660 *(Am. Contractors)*.) To this straightforward rule, some courts have attached limitations as to the means of attack, including the Court of Appeal here, holding that a direct attack by motion, under section 473, subdivision (d) or under the court's inherent powers must be made within two years if the voidness does not appear "on the face" of the judgment. These courts have adopted, by "analogy" the two-year limitation found in Code of Civil Procedure section 473.5, even though subdivision (d) is silent as to any time limit. (Opn. 8, *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181.)

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[5] Neither the trial court nor the Court of Appeal determined Hoehn's showing failed to demonstrate lack of service or notice to him of the pending proceedings.

Other courts have rejected such a limitation. Where the defendant:

> established through extrinsic evidence that the default judgment was void for want of personal jurisdiction over him, it had the same effect as if it had been void on its face and the court had the inherent power to set it aside even though any statutory periods had run.

(*Gorham*, *supra*, 186 Cal.App.4th at p. 1231 [citing *Thompson v. Cook* (1942) 20 Cal.2d 564, 569, *Munoz v. Lopez* (1969) 275 Cal.App.2d 178, 182–183, *City of Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726, 732], see also *Deutsche Bank Nat'l Tr. Co. v. Pyle* (2017) 13 Cal.App.5th 513, 526.)

The origin of the erroneous notion that a time limit might exist on a statutory challenge to a void judgment traces to statehood.

> Under the effect of the decisions heretofore made by this Court, we think it must be considered as settled in this State that no motion can be entertained by a District Court to set aside a judgment on any ground, including that of want of jurisdiction over the person of the defendant in the action in which the judgment was entered, after the expiration of the term in which it was entered, unless its jurisdiction is saved by some motion or proceeding at the time, except in the case provided for by the sixty-eighth section of the Practice Act.[6]

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[6] Now section 473. (*English v. IKON Bus. Solutions, Inc.* (2001) 94 Cal.App.4th 130, 138.)

(*Bell v. Thompson* (1862) 19 Cal. 706, 708–709, see also *Baldwin v. Kromer* (1852) 2 Cal. 582, 583.)

Although the Legislature abolished terms of court (*Norton v. Atchison, T. & S.F.R. Co.* (1893) 97 Cal. 388, 392), the rule that a void judgment, valid on its face, could not be attacked unless brought within a specified time limit persisted. "[A]s to motions such as the one here made, based on the ground that no service of process was made on the defendant, it is expressly held that in no case can the time of making them be extended beyond the time limit specified in section 473 for making similar motions under that section." (*Smith v. Jones* (1917) 174 Cal. 513, 516 *(Smith)*.)

> Section 473 of the Code of Civil Procedure, heretofore referred to, provides that motions made under its provisions to set aside a judgment shall be made within six months after it is taken, save when the motion is on the ground that from any cause the defendant has not been personally served with summons, when one year is allowed within which to make it.

(*Smith*, *supra*, 174 Cal. at p. 516.)

This was the state of the law in 1933 when the Legislature undertook to amend section 473 to add what is now subdivision (d).

What did the Legislature do? It split section 473, placing the provision to set aside a judgment for lack of personal service into section 473a (now Code Civ. Proc., § 473.5). (Stats. 1933, ch 744, §§ 34, 35, pp. 1851–1852.) And it added the language to section 473 at issue here, empowering a court "upon motion of either party after notice to the other party, set aside any void motion or

order." (*Id.* at § 34, p. 1852.) It joined that language to other language in the same paragraph authorizing a court to "correct clerical mistakes" so as to "conform to the judgment entered."

What the Legislature did not do was set a time limit on making such a motion. As to clerical mistakes, the common law was then settled. "[A] court of record has the inherent right and power at any time to correct or amend its judgment, which has been entered as the result of clerical error or misprision, in order to make it conform to the judgment which was actually rendered by the court, and so as to speak the truth in that respect." (*City & Cnty. of San Francisco v. Brown* (1908) 153 Cal. 644, 650.) The Legislature codified that power *and* the power to vacate void judgments in the same paragraph. Although time limits were provided for relief based on excusable mistake and for relief based on lack of personal service, none was put into this paragraph. Such a motion could be made at any time.

The Court of Appeal's interpretation (and that of the other Courts of Appeal) of subdivision (d), that the Legislature intended the time limitations on setting aside a judgment for lack of personal service to be applied by "analogy" to a trial court's new statutory powers, makes no sense. The Legislature *separated* those very provisions from section 473 at the same time it added the language that became subdivision (d). As petitioner Hoehn demonstrates, the Court of Appeal's decision contravenes every rule of statutory interpretation.

"The Legislature is presumed to be aware of all laws in existence when it passes or amends a statute." (*Tuolumne Jobs & Small Bus. Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1039.) Chapter 744 of the 1933 statutes was part of a massive

revision to the Code of Civil Procedure along with chapters 740, 741, 742, 743 and 745. No inference can exist except that the Legislature intended to do what its language indicates–create a means of attacking a void judgment at any time without the cumbersome and expensive proceedings of an independent action in equity.

Moreover, "[t]he Legislature is presumed to draft limitations periods in light of the 'hornbook law that limitations periods are 'customarily subject to 'equitable tolling.'(Citation.)" (*Saint Francis Mem'l Hosp. v. State Dep't of Pub. Health* (2020) 9 Cal.5th 710, 722.) An absolute limit on the time to bring a statutorily-authorized motion to set aside a void judgment flies in the face of this rule. Nothing in the record suggests Hoehn was dilatory once he learned of the judgment. He was well within two years of his discovery of the adverse judgment.

More than one hundred years ago, the Court stated the rule that must control. "A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one." (*Bennett v. Wilson* (1898) 122 Cal. 509, 513–514.) It is subject to attack "at any time." (*Am. Contractors*, *supra*, 33 Cal.4th at p. 660.) The societal interest in the "stability of judgments" (Opn. 6, fn. 5) cannot outweigh due process. (*Peralta v. Heights Med. Ctr., Inc.*, *supra*, 485 U.S. at p. 84.)

CONCLUSION

A young individual, unaware of a ruinous judgment against him, learns of it a decade later when his wages are garnished. He moves promptly to set the judgment aside only to be told, "you're too late," solely because he must dispute the piece of paper that says his girlfriend was served in his stead. This cannot be the law.

In 1933, the Legislature gave Hoehn the remedy he invokes. The judicial interpretation of that remedy by the Courts of Appeal is a confused jumble. The Court should reverse the decision of the Court of Appeal and make clear that Legislature provided for no time limit on motions brought under section 473, subdivision (d).

Respectfully submitted,

Dated: July 14, 2023

By: /s/ Alan Charles Dell'Ario

Attorney for Amici Curiae
Consumer Attorneys of
California, American
Association for Justice

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **2,315** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.520(c) or by Order of this Court.

Dated: July 14, 2023 By: /s/ Alan Charles Dell'Ario

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Date

/s/Alan Charles Dell'Ario

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