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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

PACIFIC WEST GROUP, INC.,

Plaintiff and Respondent,

v.

GIANFRANCO INTERLANDI,

Defendant and Appellant.

B278422

(Los Angeles County  
Super. Ct. No. BC342152)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark A. Borenstein, Judge. Affirmed.

Michael Shemtoub for Defendant and Appellant.

John W. Tulac for Plaintiff and Respondent.

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A default judgment was entered against Gianfranco Interlandi in 2006 for the failure to repay a \$61,500 note. Ten years later, Interlandi moved to vacate the default judgment on a number of grounds, including that he was the victim of identity theft and he did not know about the lawsuit until 2016. The trial court denied his motion to vacate. We affirm the judgment.

### **FACTS**

On December 22, 2003, GreenPoint Mortgage Funding, Inc. (GreenPoint Mortgage) lent \$61,500 to Interlandi. The note was secured by a second mortgage on property located in Texas. However, the note, the disclosures, and the deed of trust were not personally signed by Interlandi. Instead, they were signed, “Gianfranco Interlandi by Danny Carder.” A power of attorney for real estate transactions dated December 19, 2003, showed Interlandi authorized Carder to purchase and borrow on the property in Texas. The power of attorney was signed and notarized in Los Angeles, where Interlandi lives.

The property in Texas was sold in foreclosure and the proceeds from the sale were used to extinguish the first mortgage; there was no remainder to apply to the note at issue in this case. The note was eventually assigned to respondent The Pacific West Group, Inc. (Pacific West) and Pacific West chose to pursue Interlandi personally for payment of the note. A demand for payoff was made by Pacific West in August 2005. On October 27, 2005, Pacific West sued Interlandi for failure to pay on the note. The proof of service showed the summons and complaint, along with other documents, were personally served on Interlandi on February 23, 2006, at his home address of 6152 Woodland

View Dr., Woodland Hills, CA. Interlandi failed to answer or otherwise respond to the complaint.

As a result, the clerk entered a default against Interlandi. After the default was entered, Pacific West's attorney reported to the trial court that he was attempting to settle the matter with Interlandi and requested an extension of time to present the default prove-up. Pacific West subsequently advised the court a settlement was not reached "because a proposed security interest in real property to secure a new note for the debt could not be accomplished in the manner intended. Title was not as represented by Defendant." Pacific West then presented its prove-up by declaration. The trial court entered a default judgment in the amount of \$81,077.53 on December 20, 2006.<sup>1</sup> The subsequent abstract of judgment showed a stay of enforcement was not ordered.

Nevertheless, it does not appear from the record that Pacific West aggressively pursued the judgment in court until May 3, 2010, when it sought Interlandi's appearance at a judgment debtor's examination.<sup>2</sup> According to Pacific West, someone claiming to be Interlandi's daughter advised its counsel that Interlandi was too sick to attend. As a result, Pacific West took the appearance off calendar.

The record then discloses another multi-year gap in the proceedings in this matter. In February 2016, Interlandi

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<sup>1</sup> This amount represented the original \$61,500 loan plus 10 percent interest.

<sup>2</sup> During the trial proceedings, Pacific West's counsel explained that Pacific West was no longer an ongoing concern, having gone out of business during the Great Recession. In 2016, it was merely unwinding its affairs.

received correspondence from Pacific West regarding the default judgment. On March 29, 2016, Interlandi moved to vacate the default judgment on a number of grounds. He stated in a declaration he had never been to the state of Texas and had never authorized anyone to buy property for him or borrow money on his behalf. Moreover, he claimed he did not know about the default judgment until February 2016, when he received a letter from Pacific West's attorney. He also submitted evidence showing Pacific West's corporate powers had been suspended by the California Secretary of State, rendering it unable to enforce the judgment against him. He further contested the validity of the assignment of the note. Finally, Interlandi argued the claims against him were invalid under Texas law.

Pacific West acknowledged its corporate powers were suspended, but assured the court it had remedied the suspension. It also opposed the motion to vacate on timeliness grounds. Further argument and briefing were accepted by the trial court regarding these issues and Interlandi was allowed to inspect Pacific West's loan file. Pacific West argued the loan was fully documented; it contained copies of bank statements and tax returns for Interlandi and his business. Pacific West argued this demonstrated there was no identity theft in procuring the loan because no one could have provided this documentation to GreenPoint Mortgage except for Interlandi. Pacific West also contended Interlandi knew about the lawsuit since he spoke with Pacific West's counsel about it in 2006 when they attempted to settle the matter.

During this time, Interlandi reported to the police that he was the victim of identity theft. He requested a stay of enforcement of the default judgment pursuant to the Rosenthal Fair Debt Collection Practices Act. (Civ. Code § 1788, et seq.)<sup>3</sup> Although it was uncertain whether Pacific West qualified as a debt collector under the Rosenthal Act, the trial court stayed the matter to allow Pacific West time to investigate Interlandi's claim of identity theft.

On July 20, 2016, Pacific West deposed Interlandi at the court regarding his claim of identity theft. At its conclusion, the trial court lifted the stay. It found that Pacific West had determined in good faith that Interlandi was the party responsible for the debt. Interlandi then argued the assignment from GreenPoint Mortgage to Pacific West was invalid.

On August 17, 2016, the trial court heard Interlandi's motion to vacate. The trial court disbelieved Interlandi's contention that he did not see any documents or communications from Pacific West until 2016, when his lawyer gave them to him. It found Interlandi's "carefully worded" declaration to be insufficient to dispute the proof of service and Pacific West's evidence that it communicated with Interlandi about the lawsuit after 2005. The trial court denied Interlandi's motion to vacate the judgment. The trial court noted the motion to vacate was

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<sup>3</sup> Civil Code section 1788.18, subdivision (a), provides that a debt collector must cease all debt collection activities and conduct an investigation if the debtor properly informs the collector that he or she is a victim of identity theft. "The debt collector may recommence debt collection activities only upon making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question." (Civ. Code, § 1788.18, subd. (d).)

clearly a motion directed to Code of Civil Procedure section 473, subdivision (d), alleging the judgment was void on its face. The trial court declined to exercise its equitable powers to set aside the default judgment, finding Interlandi had failed to meet his burden to prove extrinsic mistake or fraud. Interlandi timely appealed.

## **DISCUSSION**

Interlandi asserts multiple grounds for reversal of the judgment: he challenges Pacific West's ability to enforce the default judgment; he contends the renewal of the default judgment is invalid; and he claims Pacific West lacks standing to sue. Interlandi further claims the trial court erroneously denied his motion to vacate, and contends the clerk's entry of default was deficient. We find no error.

### **I. The Renewal of Judgment Was Validated Upon the Revival of Pacific West's Corporate Powers**

Interlandi contends Pacific West's corporate powers were suspended at the time it renewed the 2006 default judgment. As a result, the renewal of judgment is invalid and we must vacate the judgment. We disagree.

#### **A. Procedural Background**

On April 29, 2016, Interlandi reported to the trial court that Pacific West had a status of "FTB suspended" on the California Secretary of State's website. Pacific West submitted a certificate of revival from the Franchise Tax Board to the trial court, demonstrating it "was relieved of suspension or forfeiture and is now in good standing with the Franchise Tax Board" effective April 27, 2016.

Upon this showing, the parties continued litigating the matter, which culminated in the denial of Interlandi's motion to vacate the judgment on August 17, 2016. On September 1, 2016, Pacific West requested and received a renewal of the 2006 default judgment against Interlandi.<sup>4</sup> Two days later, Interlandi filed his notice of appeal.

During the pendency of the appeal, Interlandi moved to strike Pacific West's respondent's brief and sought reversal of the renewal of judgment on the ground Pacific West's corporate powers were suspended at the time of renewal. In support, Interlandi submitted a certificate of status from the Secretary of State, certifying that he suspended Pacific West's "powers, rights and privileges on May 26, 2016, pursuant to the provisions of the California Corporations Code, and the entity's powers, rights and privileges remain suspended" as of February 21, 2018.<sup>5</sup>

Pacific West opposed the motion to strike, asserting it was no longer suspended. In support of the opposition, Pacific West submitted a declaration by its president, Wayne Enderle. Enderle explained that Pacific West's corporate powers were initially suspended for failure to pay past-due franchise taxes. He paid the taxes on April 27, 2016, and discovered he was also required to file an updated statement of information. He obtained the statement of information form, filled it out, and

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<sup>4</sup> The Code of Civil Procedure provides a ten-year period for enforcement of a judgment, at which time the judgment must be renewed. (Code Civ. Proc., §§ 683.020, 683.130, subd. (a).)

<sup>5</sup> We grant Interlandi's request for judicial notice, filed May 21, 2018, of the documents demonstrating the suspension of Pacific West's corporate powers, its revival, and the renewal of judgment.

mailed it on April 27, 2016. The Secretary of State never received the form.

Upon learning a statement of information was not received, Pacific West e-filed the updated statement on April 4, 2018. Although Pacific West assured this court its reinstatement to good standing “will appear shortly on the website for the Secretary of State,” it remained on suspended status as of April 24, 2018. As a result, we issued an order to show proof of its reinstatement with the Secretary of State by May 4, 2018.

Pacific West did so. Pacific West explained it was required to change the name of the corporation from “The Pacific West Group, Inc.” to “The Pacific West Mortgage Group, Inc.” in order to be reinstated. However, the entities bore the same California corporation number, C2247643. Pacific West further explained that the name, “The Pacific West Group, Inc.” had been taken by another entity during the time the corporation was suspended. Pacific West accused Interlandi’s counsel of orchestrating a “dirty trick” to take the name, “The Pacific West Group, Inc.,” because it appeared that the person who incorporated under that exact name has been represented by Interlandi’s counsel in previous cases.

As a result of Pacific West’s showing, we denied the motion to strike the respondent’s brief and deferred to the panel the question of whether the renewal of judgment, completed while Pacific West was suspended, was invalid. We now address that question.

### **B. Applicable Law**

Under California law, a suspended corporation is disqualified from exercising any right, power, or privilege. This includes the ability to prosecute or defend an action, appeal



from an adverse judgment, or renew a judgment. (Rev. & Tax. Code, § 23301; Corp. Code, § 2204; *Casiopea Bovet, LLC v. Chiang* (2017) 12 Cal.App.5th 656, 662; *Timberline, Inc. v. Jaisinghani* (1997) 54 Cal.App.4th 1361, 1365 (*Timberline*).) A corporation's powers may be suspended for failure to pay taxes or for failure to file a required statement of information under Corporations Code section 1502, among other things. However, a suspended corporation may be revived once it pays its taxes or files the required information statement. (Corp. Code, § 2205, subd. (d).) As one court put it, "[t]he legal rights of a suspended corporation are then revived, as an unconscious person is revived by artificial respiration." (*Benton v. County of Napa* (1991) 226 Cal.App.3d 1485, 1490.)

Further, the California Supreme Court has made clear that acts performed by a corporation during the time of suspension may be validated when the corporation is revived. (*Peacock Hill Assn. v. Peacock Lagoon Constr. Co.* (1972) 8 Cal.3d 369, 371 (*Peacock Hill*).) "In a number of situations the revival of corporate powers by the payment of delinquent taxes has been held to validate otherwise invalid prior action." (*Id.* at p. 371.) The high court explained that "as to matters occurring prior to judgment the revival of corporate powers has the effect of validating the earlier acts and permitting the corporation to proceed with the action. We are satisfied that the same rule should ordinarily apply with respect to matters occurring subsequent to judgment . . . . [¶] In the instant case, the corporate powers of construction have been revived by the payment of the taxes, and it may proceed with its appeal." (*Id.* at pp. 373–374.) Likewise, in *Bourhis v. Lord* (2013) 56 Cal.4th 320, 323, the court held that a corporation whose powers were

suspended at the time it filed its notices of appeal may nevertheless proceed with the appeals after those powers were revived, even if the revival occurred after the time to appeal had expired.

### **C. Analysis**

Given this guidance from the California Supreme Court, we find the renewal of judgment to be valid despite the fact that Pacific West's corporate powers were suspended at the time of renewal. Just as in *Peacock Hill* and *Bourhis*, the previously invalid action was validated once Pacific West received its certificate of revival from the Secretary of State. Like *Bourhis*, Pacific West's corporate powers were suspended at the time it filed its renewal of judgment. Now that it has been revived, the renewal of judgment is validated even though the revival occurred after the time to renew had passed. Although the *Peacock Hill* and *Bourhis* courts addressed corporation suspensions for failure to pay taxes and not corporate suspension for failure to file a statement of information, we see no reason to exclude this situation from their holdings.

*Timberline*, *supra*, 54 Cal.App.4th 1361, the case relied upon by Interlandi, is distinguishable. There, the court held a suspended corporation which had not revived its powers may not take advantage of California's legal processes for renewing a judgment. (*Id.* at p. 1363.) However, the *Timberline* court specifically noted that the corporation could have avoided the result by reviving itself. (*Id.* at p. 1369.) Here, Pacific West's corporate powers have been revived. Accordingly, its renewal of the judgment against Interlandi was validated. Interlandi's motion to dismiss and request to vacate the renewal of judgment is denied.

## II. Pacific West Has Standing

Interlandi next asserts Pacific West lacks standing because it is not the plaintiff in this action. Citing to Code of Civil Procedure, section 367,<sup>6</sup> Interlandi contends Pacific West has sued under the wrong name. The plaintiff named in this action is “Pacific West Group, Inc.,” which, according to Interlandi, is a Delaware corporation with no authority to conduct business in California. Instead, the real party in interest is “The Pacific West Group, Inc.” Thus, Interlandi contends “Pacific West Group, Inc.” has no right to proceed and we are duty bound to dismiss the action because it was not filed by the correct entity. We decline to dismiss the matter for a missing definite article—“the”—when there is no showing of prejudice to Interlandi.

The court in *County of Riverside v. Loma Linda University* (1981) 118 Cal.App.3d 300, 319–320, explained that “lack of standing as a real party in interest is not jurisdictional; it is equivalent only to a failure to state a cause of action. [Citations.] While a failure to state a cause of action may be raised at anytime, during trial or appeal, reversal of a judgment on that ground is justified and required only if the error resulted in a miscarriage of justice. [Citations.]”

Interlandi has failed to show a miscarriage of justice in this instance. He knows who the real party in interest is and he has not demonstrated any harm resulting from a plaintiff named Pacific West Group, Inc. rather than The Pacific West Group, Inc. There is no contention that the Delaware corporation, Pacific West Group, Inc., has a valid claim against Interlandi on this

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<sup>6</sup> Code of Civil Procedure section 367 provides: “Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.”

note or that it has pursued this claim against him. Instead, the record shows the Pacific West entity litigating this matter is in possession of Interlandi's loan file, including Interlandi's application, power of attorney, note, and bank statements.

We reject Interlandi's contention that he was prejudiced because he "focused the main of his filings to demonstrate that 'Pacific West Group' was not [a] legitimate entity to proceed with this action." Interlandi was notified of the correct entity bringing this suit along with its California entity number, C2247643, in the opposition to his motion to vacate. Even before the motion to vacate was filed, Pacific West's counsel informed Interlandi in March 2016 that he had misidentified the corporate entity suing in this matter. We perceive no prejudice to a party who chooses to focus his defense on a specious standing argument even after he was notified of his error.

In his reply brief, Interlandi takes this issue even further, arguing that Pacific West may not change its name during the pendency of this appeal. As discussed above, Pacific West was forced to change its name from "The Pacific West Group, Inc." to "The Pacific West Mortgage Group, Inc." after Interlandi filed his motion to strike the respondent's brief. Again, however, Interlandi has shown no harm resulting from Pacific West's change of name when he is fully aware of the new name adopted by the same entity with the same California entity number.

### **III. The Trial Court Properly Denied the Motion to Vacate**

Interlandi contends the trial court erred in denying his motion to vacate pursuant to Code of Civil Procedure section 473,

subdivision (d) (section 473(d)) because the judgment was facially void.<sup>7</sup> We conclude there is no merit to Interlandi's argument.

#### **A. Applicable Law and Standard of Proof**

“‘A judgment or order is said to be void on its face when the invalidity is apparent upon an inspection of the judgment-roll.’ [Citation.] In a case in which the defendant does not answer the complaint, the judgment roll includes the proof of service. [Citation.]” (*Dill v. Berquist Construction Co.* (1994) 24

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<sup>7</sup> At the trial court, Interlandi moved to vacate the default judgment pursuant to the court's equitable powers as well as the statutory provisions under Code of Civil Procedure section 473, subdivision (b) and section 473.5, subdivision (a). A party moving to set aside a default judgment on these three grounds may rely on extrinsic evidence to support the motion. (*Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181 (*Trackman*); *Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 314.) On appeal, Interlandi appears to have abandoned these grounds for vacating the default judgment. Instead, he relies solely on the argument that the judgment is facially void under section 473(d), which does not allow for extrinsic evidence. (*Trackman, supra*, 187 Cal.App.4th at p. 181.) As a result, in this section of the opinion, we do not address Interlandi's extensive arguments that extrinsic evidence showed he was the victim of identity theft and was not properly served. For example, Interlandi devotes much of his opening brief to highlighting the deficiencies of the loan file, including that certain loan documents should have been, but were not, notarized or were left blank. Other “badges of fraud” are the three different loan numbers assigned to the note and the fact the title company information predated the loan application and sale by three months. However, Interlandi does not cogently explain how this extrinsic evidence of fraud warrants reversal of the denial of the motion to vacate. In any case, as we discuss below, the trial court disbelieved Interlandi's claims of identity fraud and failure of service.

Cal.App.4th 1426, 1441 [judgment facially void because proof of service showed summons was mailed to the corporation directly, rather than its agents for service of process or other valid persons]; *Morgan v. Clapp* (1929) 207 Cal. 221, 224.) Under section 473(d), a judgment's facial invalidity appears only on the judgment roll; no extrinsic evidence is allowed. (*Trackman, supra*, 187 Cal.App.4th at p. 181; *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 496; Code of Civ. Proc., § 670, subd. (a).)

The California Supreme Court has approved a liberal construction of the rules governing service of process to effectuate service and uphold the jurisdiction of the court in order to “‘eliminate unnecessary, time-consuming, and costly disputes over legal technicalities, without prejudicing the right of defendants to proper notice of court proceedings.’” (*Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 778; see also *Davis v. Allstate Ins. Co.* (1989) 217 Cal.App.3d 1229, 1232 [“Where a reasonable attempt has been made to comply with a statute in good faith, and there was no attempt to mislead or conceal, the doctrine of substantial compliance holds that the statute may be deemed satisfied.”].)

“Whether a judgment is void due to improper service is a question of law that we review de novo.” (*Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 858.)

### **B. The Judgment Is Not Facially Void**

The proof of service of summons shows Interlandi was personally served on February 23, 2006 at 7:00 p.m. at his home by Betty Arambula, who resided in La Verne at that time. The home address does not include the zip code. Although she checked the box identifying herself as an independent contractor,

she failed to specify whether she was a registered California process server or her registration number or county.

Interlandi contends the proof of service is not valid because it does not list his home zip code and does not identify whether the process server was registered, and her registration identification information. (Code of Civ. Proc., § 417.10, subd. (f).) Interlandi contends these defects in the proof of service render the judgment void on its face. We conclude these minor defects in the proof of service are insufficient to defeat service and do not render the judgment facially void.

First, the lack of a zip code in the proof of service does not prove service was not made. The proof of service clearly and correctly listed the street number, street name, city, and state where personal service was affected. Interlandi has presented no authority for the proposition that the lack of a zip code, when a city and state is clearly specified, defeats personal, rather than mailed, service of process. The judgment is not void on this basis.

Neither does the failure to specify whether the person serving the summons and complaint was a registered process server invalidate service. Section 413.40 of the Code of Civil Procedure specifies that “[a]ny service of summons which complies with the provisions of this chapter shall not be rendered invalid or ineffective because it was made by a person [failing to comply with the requirements of a registered process server] in violation of Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code.” (Civ. Proc. Code, § 413.40.) Thus, a service of summons is valid even if not served by a registered process server. By extension, the failure to specify whether the person who made the service was a

registered process server in the proof of service should not defeat service. Interlandi has presented no authority holding otherwise.

Finally, Interlandi contends that the proof of service is faulty because the summons and complaint were served at his home address, but the proof of service for the entry of default was sent to a different address. According to Interlandi, the use of two addresses renders the judgment facially void. He also contends the judgment is void because the complaint lists the wrong entity as the plaintiff. Interlandi has provided no authority for the proposition that service of documents to different addresses renders the judgment facially void. Further, there is also no authority for the proposition that a minor discrepancy in the name of the plaintiff renders the judgment facially void. (See *Zisk v. City of Roseville* (1976) 56 Cal.App.3d 41, 47 [“No express statutory authority exists which allows a judge, on the motion of an aggrieved party, to set aside a judgment procured as a result of clerical error.” (Italics omitted)].) Instead, as we have already pointed out, Pacific West does not lack standing because the word “the” is missing from the named plaintiff. In sum, the judgment was not void on its face and relief is not available to Interlandi under section 473(d).

#### **IV. The Trial Court Did Not Make An Ex Parte Ruling Regarding Interlandi’s Identity Theft Claim**

Interlandi next claims his due process rights were abridged because the trial court decided ex parte that he was not the victim of identity theft. Interlandi is mistaken.

##### **A. Proceedings Below**

In May 2016, the trial court ordered a stay of the proceedings to allow Pacific West to conduct an investigation into Interlandi’s claim of identity theft under the Rosenthal Act,



which included taking Interlandi's deposition. Pacific West noticed Interlandi's deposition to be held at the court on July 20, 2016.<sup>8</sup> The parties' counsel appeared in the morning calendar to address Interlandi's deposition; Pacific West's counsel indicated he had a translator and court reporter at the ready. Interlandi's attorney, who appeared by courtcall, confirmed his client would come in for the deposition.

Interlandi was represented at the deposition by Kamelia Jalilvand, who specially appeared for the deposition. Interlandi was questioned about whether he received documents from Pacific West. When the translator indicated she had to leave, Pacific West's counsel adjourned the deposition. He informed Interlandi and Jalilvand: "Because this is in connection with collections of debt, like a judgment-debtor exam, I'm going to follow Department 44 procedure and ask you to be in court at 1:30, so that the deposition can be continued by the judge." Jalilvand indicated she was not aware of any court order to appear back in the department at 1:30 p.m. Pacific West's counsel explained the procedure for a deposition in a judgment creditor examination was posted outside of Department 44 and indicated he would appear. Jalilvand did not agree to appear.

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<sup>8</sup> On March 22, 2018, Pacific West requested this court take judicial notice of the certified deposition transcript of Interlandi. While we decline to take judicial notice of the truth of any statements made during the deposition, we will take judicial notice of the transcript for the limited purpose of showing those statements were made during the deposition. (Evid. Code, §§ 452, subd. (h), 459; Cal. Rules of Court rule 8.252; see *Garcia v. Sterling* (1985) 176 Cal.App.3d 17, 22.)

At the afternoon session, Pacific West appeared before the trial court. The trial court ruled that Pacific West “determined in good faith based on its investigation that Defendant Gianfranco Interlandi is the responsible party for the debt. Accordingly, the Court lifted the stay on enforcement of the judgment imposed on July 20, 2016.” Neither Interlandi nor his attorney were present.

Approximately one month later, on August 17, 2016, the court held a hearing on the motion to vacate. Interlandi’s counsel objected to the “ex parte communication and ruling” that occurred at the afternoon session on July 20. The trial court noted the objection and turned to the motion to vacate, and specifically to the issue of when Interlandi learned about the lawsuit. The court asked why Interlandi failed to do anything closer to 2005 when he received numerous communications from Pacific West regarding the debt. Interlandi’s counsel denied Interlandi knew about the lawsuit in 2005. He acknowledged that Interlandi admitted in his deposition that he had received documents from Pacific West, but pointed out that Interlandi was never asked when he received them. Interlandi’s counsel claimed he gave Interlandi the lawsuit-related documents only after counsel received copies from Pacific West.

The court indicated it did not believe counsel’s assertion and pointed out that the record contained a declaration from Pacific West’s counsel stating he spoke with and sent letters to Interlandi about the lawsuit shortly after 2005, and there was nothing in the record to dispute the presumption that the mailed correspondence reached Interlandi. The court found Interlandi’s “carefully worded” declaration did not expressly dispute or discredit the evidence provided by Pacific West that Interlandi was served in 2006 and communicated with counsel for Pacific

West thereafter. At that point, the trial court indicated it disbelieved Interlandi's assertion that his identity was stolen and that he knew nothing about the lawsuit until 2016.

### **B. Analysis**

Interlandi misreads the record when he asserts that the trial court improperly made an *ex parte* factual finding that he was not the victim of identity theft. At the afternoon session on July 20, which Interlandi's counsel chose not to attend, the trial court found only that Pacific West had completed its investigation into the issue under the Rosenthal Act and then lifted the stay of enforcement as a result.<sup>9</sup> The record shows the trial court's finding on the identity theft issue was made at a subsequent hearing when Interlandi and his counsel were present.

Simply put, Interlandi was provided ample opportunity to be heard and prove his identity theft claim. Briefing on the identity theft issue was voluminous; the motion to vacate and the attached exhibits extend over two volumes of the clerk's transcript. At the August 17 hearing, Pacific West argued Interlandi's identity was not stolen and that he knew of the lawsuit. The trial court noted that Interlandi did not rebut the evidence presented by Pacific West that Interlandi's personal and business account documents were included in the loan file, that there was a notarized power of attorney authorizing the purchase and loan, that he was personally served with the summons and complaint at his home, that Pacific West had numerous communications with him, including an attempt to settle the

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<sup>9</sup> On appeal, Interlandi does not contend the trial court erred in lifting the stay.

matter in 2006, and that he admitted during his deposition that he received documents from Pacific West.

It is true that the trial court initially expressed concerns about Interlandi's identity theft claim and wondered if an evidentiary hearing on the issue was necessary. By the time of the hearing on the motion to vacate three months later, however, it is apparent the trial court simply did not believe him. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479.) There was no ex parte finding that he was not the victim of identity theft. Interlandi's due process argument is meritless.

#### **V. Interlandi Has Waived His Argument Regarding Service of Entry of Default**

Interlandi further contends the requests for entry of default were mail-served to an incorrect address—6150 Woodland View Dr., Woodland Hills, California 91367—rather than the correct address—6152 Woodland View Dr., Woodland Hills, California 91367. Interlandi contends the incorrect address nullifies the proof of service and is insufficient to constitute legal notice of the default. (*Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 288.) Interlandi has forfeited this issue by failing to raise it below.

Interlandi made numerous arguments to the trial court in support of his motion to vacate. It does not appear, however, that Interlandi argued the clerk's entry of default was improperly served on him due to an incorrect address.

Interlandi denies he forfeited the issue. He claims he raised the issue in paragraph 27 of his 27-paragraph declaration in support of the motion to vacate, which states: "The Plaintiff gave no warning that it was taking a default and never served a request for entry of default, much less notice of entry of a default judgment—ever." This statement is not sufficient to raise the

issue. Contrary to Interlandi's argument on appeal, his declaration does not assert that the entry of default was improper because it was served to the wrong address. Instead, he stated below that no entry of default or default judgment was ever served. The record disputes this bald statement, showing a clerk's entry of default, a default judgment, and a proof of service. Accordingly, Pacific West was not aware it had to focus on the issue of a wrong address and the trial court was unaware of the need to decide that issue. We will not address it for the first time on appeal.

### **DISPOSITION**

The judgment is affirmed. Pacific West to recover its costs on appeal.

BIGELOW, P.J.

We concur:

GRIMES, J.

GOODMAN, J.\*

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