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Via TrueFiling

Chief Justice Tani Cantil-Sakauye and
Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: **California Capital Insurance Company, et al. v Cory Michael Hoehn**
Supreme Court of the State of California, Case Number S277510

Dear Chief Justice Cantil-Sakauye and Associate Justices:

I respectfully submit this amicus letter urging this Court to grant review in the above-titled matter.

I am the LSVF Professor in Law at Stanford University, where I teach and write on civil procedure, among other topics. My recent work focuses on access to justice in the millions of cases, including debt collection, eviction, foreclosure, and child support actions, that shape the lives of Americans each year. I currently serve as the Reporter for the American Law Institute's *Principles of the Law, High-Volume Civil Adjudication*, which will offer guidance to courts on the urgent challenges these cases raise. In addition, I co-direct the Deborah L. Rhode Center on the Legal Profession, which is the premier academic center working to shape the future of legal services and access to the legal system. From 2020 to 2022, I served as a public appointee to the California State Bar's Closing the Justice Gap Working Group, tasked with proposing reforms to foster innovation in legal services. I have been a Stanford professor since 2009. Over the past fourteen years, my scholarship has appeared in *Stanford Law Review*, *Yale Law Journal*, and *Columbia Law Review*, among others, and has been cited in scores of court decisions and litigation briefs. I am an elected member of the American Law Institute, a public member of the Administrative Conference of the United States, and a fellow of the American Bar Foundation.

I. Why review is necessary.

The above-titled case exemplifies the systemic codification of procedural rules that narrow access to justice—here, by "timing out" a defendant from moving to vacate a judgment that is concededly void for lack of proper service. In the decision below, the court joined several other California appellate courts in holding that some void judgments are more void

than others, based on whether a defendant seeks to show a judgment to be void on its face or instead does so by adducing extrinsic evidence of defects in service. The court's holding below unfairly tilts the scales of justice in favor of debt collectors and against those who are already less capable of enforcing their rights. This Court should grant review to address—and correct—this fundamental legal error.

II. California law conflicts starkly with federal law.

California and federal law differ markedly in their treatment of a concededly void judgment. In the opinion below, the court held that a defendant may not attack a void judgment via Code of Civil Procedure section 473(d) more than two years after its entry, except where the defendant alleges fraud or mistake or, alternatively, where the defendant pursues an expensive and time-consuming independent action in equity. The effect is that, in California courts, some "void" judgments are not in fact "void."

In stark contrast, federal courts do not distinguish between a judgment that is void on its face or void as shown by extrinsic evidence. In particular, federal courts applying Federal Rule of Civil Procedure 60(b)(4)—which uses essentially the same language as California Code of Civil Procedure section 473(d)—hold that, if a judgment is void, a court enjoys no discretion to vacate the judgment, and a litigant faces no time limit in mounting an attack to invalidate it. [8 C. Wright & A. Miller, *Federal Practice and Procedure*, § 2862, Void Judgment (3d ed. 2022)]. Moreover, where a defendant alleges that a judgment is void for improper service of process, it is the *plaintiff's* burden to establish that service was properly effected, unless the defendant is proven to have had *actual* notice of the complaint but was delayed in making a motion until after entry of default judgment. [*SEC v. Internet Solutions for Business, Inc.*, 509 F.3d 1161, 1165 (9th Cir. 2007) (shifting burden of proof where defendant admitted he knew that suit had been filed against him)].[1] Yet, even where a defendant had notice of the lawsuit, if she proves she was not properly served, the judgment is still void for all purposes. The presence or absence of actual notice affects only the burden of proof. This rule flows from the bedrock principle that notice is an "elementary and fundamental requirement of due process in any proceeding which is to be accorded finality. . . ." [Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); *see also* Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 84 (1985)].

The decision below in this case unwisely departs from the federal approach by preventing a defendant from challenging a void judgment even where service of process was

[1] The policy behind the federal-level rule that shifts the burden of proof depending on whether the defendant knew about the complaint is that a "defendant who has notice of an action against him may force the plaintiff to prove that service has been made and that jurisdiction is proper by filing a Rule 12(b) motion to dismiss. The defendant who chooses not to put the plaintiff to its proof, but instead allows default judgment to be entered and waits, for whatever reason, until a later time to challenge the plaintiff's action, should have to bear the consequences of such delay." [*SEC, supra*, 509 F.3d at 1166 (internal citations omitted)].

concededly improper because the judgment was found to be void based on extrinsic evidence rather than on its face. The court articulates no policy reason for drawing such an arbitrary distinction apart from "stability in the law" and a vain faith in legislative correction. [Slip. Op. at 3 n.5]. Nor does the leading case offer any rationale. [*See Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 180 ("*Trackman*")].

This Court's review is required to return to Californians their constitutional rights to due process and to level the playing field, so it doesn't skew so sharply toward well-heeled—and sometimes unscrupulous—repeat-players.

III. California's "time's up" rule for vacating void judgments arbitrarily limits access to justice.

By writing a two-year time limit into California Code of Civil Procedure section 473(d) when a judgment is shown by extrinsic evidence to be void for lack of proper service, the opinion below—and the *Trackman* line of cases it continues—narrows access to justice for no good reason. The rule perpetuates the problem of "sewer service" in which unscrupulous process servers skirt or ignore rules and norms around service of process. The all-too-common result is that defendants are left in the dark about the lawsuit, as occurred in this case. In so doing, the rule followed in the opinion below rewards dishonest process servers and their clients by creating a judgment that is patently improper—but nevertheless valid "on its face." And it, in turn, punishes hapless defendants whose only recourse is to show improper service by adducing "extrinsic evidence" establishing mistake or fraud, such as a falsified affidavit, or bringing a time-consuming and expensive action in equity. This approach arbitrarily disadvantages many Californians because a person cannot fight a lawsuit if the person does not know it exists. Worse, a person cannot easily vacate a default judgment under section 473(d) if, as occurred in this case, a clever debt collector waits to enforce the judgment beyond the two-year limitation.

Meaningful access to justice requires notice and an opportunity to appear in the first instance—and our courts should not reward those who cynically trap the unwary, bide their time for two short years, and then lay claim to what they aren't rightfully due. I respectfully request this Court's review on this important issue.

Sincerely,

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cc: See proof of service