

No. 25-671

In the Supreme Court of the United States

IN RE
MARK CHRISTOPHER TRACY
Petitioner,

*ON PETITION FOR A WRIT OF MANDAMUS TO THE
CALIFORNIA SUPERIOR COURT FOR THE COUNTY OF
SANTA CLARA*

PETITION FOR A WRIT OF MANDAMUS

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QUESTION PRESENTED

Whether the California state court violated the Due Process Clause of the Fourteenth Amendment by failing to issue a writ of execution following entry of judgement where no stay or supersedeas had been granted and the court has a clear and undisputable ministerial duty to act under state law.

PARTIES TO THE PROCEEDINGS

Petitioner Mark Christopher Tracy is judgment creditor. Respondent is the Superior Court of California, County of Santa Clara, including its presiding judge or clerk responsible for issuing writs of execution. R. Steve Creamer (deceased) is the judgment debtor and real party in interest.

Although a motion to substitute parties was neither submitted nor granted after Creamer's death during proceedings, the respondent court permitted both appearance and filings by nonparties Ryan and Tyson Creamer as the "personal representatives of the estate of Defendant R. Steve Creamer."

In separate but related False Claims Act proceedings before this Court, Tracy was the US ex rel. plaintiff-petitioner and Creamer (et al.) was defendant-respondent.

RELATED PROCEEDINGS

Superior Court of California, County of Santa Clara
(Super. Ct. Santa Clara Cnty.):

Tracy v. Cohen Kinghorn P.C. et al.
No.: 23CV423435 (October 9, 2025)

California Supreme Court (Cal.):

Tracy v. Court of Appeal 6th Appellate District
et al. (*Creamer*)
No.: S291330 (July 14, 2025)

Court of Appeal for the Sixth Appellate District
(Cal. App. 6th):

Tracy v. Ryan Creamer et al.
No.: H053022 (April 21, 2025)

United States Supreme Court (US):

US ex rel. Tracy v. Emigration Improvement
District et al.
No.: 22A636 (March 31, 2023)

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PETITION FOR A WRIT OF MANDAMUS

Mark Christopher Tracy respectfully petitions for a writ of mandamus to the California Superior Court for the County of Santa Clara directing issuance of a writ of execution consistent with the judgment entered by the court against R. Steve Creamer.

OPINIONS BELOW

Following default and upon Tracy's written application, the respondent court entered judgment against Creamer. App. 1a–2a and 3a–4a. There is no formal opinion or order denying the issuance of the writ of execution—the refusal is an administrative denial. App. 3a–4a and 8a–9a. In the same underlying action, the respondent court granted a motion to vacate default but rejected a proposed declaration nullifying the judgement submitted by nonparties Ryan and Tyson Creamer as the “personal representatives of the estate of Defendant R. Steve Creamer.” App. 5a–7a and 22a–24a. The respondent court then granted a motion filed on behalf of the deceased to quash service of the complaint and summons for lack of personal jurisdiction. App. 10a–21a. The Court of Appeal for the Sixth Appellate District dismissed the appeal without opinion. App. 25a. The California Supreme Court denied the petition for writ of mandate and subsequent request for rehearing without opinion. App. 26a and 27a–28a.

JURISDICTION

The jurisdiction of this Court is invoked under Article III, § 2 of the United States Constitution and 28 U.S.C. 1651 (All Writs Act), authorizing the

issuance of writs of mandamus in aid of this Court's appellate jurisdiction as the petition involves a federal question arising from state court proceedings (violation of U.S. Const. amend. XIV, § 1).

The respondent court's failure to issue a writ of execution occurred on March 21 and November 14, 2024. App. 4a and 9a. State remedies were exhausted with the denial of the request for rehearing of a Petition for Writ of Mandate by the California Supreme Court on July 14, and order of dismissal by the respondent court on October 9, 2025. App. 27a–28a and 29a.

This petition is timely as there is no specific deadline for extraordinary writs, and petitioner has acted diligently.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. XIV, § 1:

No state shall [...] deprive any person of life, liberty, or property, without due process of law [...]

California Code of Civil Procedure § 387(a):

A nonparty shall petition the court for leave to intervene by noticed motion or ex parte application. The petition shall include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests.

California Code of Civil Procedure § 473(b):

The court may, upon any terms as may be just, relieve a party [...] from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment [...] was taken.

California Code of Civil Procedure § 585:

Judgment may be had, if the defendant fails to answer the complaint, as follows:

- (a) In an action arising upon contract or judgment for the recovery of money or damages only, if the defendant has [...] been served, other than by publication, and no answer [*or*] [...] notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, [...] within the time specified in the summons, or within further time as may be allowed, the clerk, upon written application of the plaintiff, and proof of the service of summons, shall enter the default of the defendant or defendants, so served, and immediately thereafter enter judgment for the principal amount demanded in the complaint, [*or*] in the statement required by Section 425.11 [*i.e. statement of damages*][....]

(Full text and all pertinent constitutional and statutory provisions are reprinted at App. 30a–33a.)

STATEMENT

A. Court Judgment Against Creamer

This petition arises from the failure of the respondent court to issue a writ of execution following entry of judgment against Creamer. The salient facts are as follows:

1. As a politically influential land developer,¹ and former engineer at the Utah Division of Drinking Water entrusted with distribution of federal funds to “economically disadvantaged communities” per 42 U.S.C. 300f et seq. (Safe Drinking Water Act of 1974), Creamer is alleged to be the primary initiator, and economic benefactor in allegedly the longest and most lucrative water grabs in the history of Utah.²

2. To prevent this Court’s reconciliation of a two-way circuit spit regarding the statute of repose under the False Claims Act,³ Creamer is alleged to have

¹ See e.g. Lee Davidson, *Utah’s Biggest Individual Political Donor* [...], Salt Lake Tribune, August 13, 2018, at <https://www.sltrib.com/news/politics/2018/08/13/utahs-biggest-individual>.

² Brian Maffly, *‘We Don’t Need Your Water’: Emigration Canyon Water Fight Breaks Out In Court*, Salt Lake Tribune, June 18, 2015, A1, at <https://archive.sltrib.com/article.php?id=2618507&itype=CMSID>; Emma Penrod, *Paranoia and a ‘Preposterously’ Oversized Water Tank*, High County News, June 28, 2019, at [https://www.hcn.org/issues/51.12/water-paranoia-and-a-preposterously-oversized-water-tank-in-utah](https://www.hcn.org/issues/51.12/water-paranoia-and-a-preposterously-oversized-water-tank-in-utah;).

³ *US ex rel. Tracy v. Emigration Improvement District et al.*, No. 22A636 (S.Ct., cert. pet. extension application approved on January 13, 2023); see also Scott K. Zesch, *When Does Statute of Limitations Begin to Run in Action under False Claims Act* (31 U.S.C.A. §§ 3729-3733), 139 A.L.R. 645 § 4 (1997).

commenced and coordinated a concerted public smear campaign against Tracy as a citizen and resident of California via an internet server located in San José.⁴

3. On September 21, 2023, Tracy filed legal action against Creamer (et al.) in California state court for defamation, false light and intentional infliction of emotional distress.⁵

4. On November 28, 2023, Creamer acknowledged receipt of the verified Complaint and Summons.

5. Creamer failed to comply with the summons and thus waived objection to the California court's exercise of personal jurisdiction per Cal. Code Civ. P. § 418.10(a)(1); *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 705

⁴ See e.g., supra note 1.

⁵ The undisputed Complaint alleges that Creamer—with the active assistance of renowned Salt Lake City law firm Cohne Kinghorn P.C.—in concert with land developers Kem C. Gardner and Walter J. Plumb III, perpetuated a fraudulent scheme to retire senior perfected water rights vis-a-vis duplicitous water claims stripped from the only active federal military cemetery created by an Act of Congress, signed into law by United States President Ulysses S. Grant in 1874, subject to the reversionary interest to be “forever used for the burial of the dead,” but however misappropriated for the construction and massive expansion of a luxurious private urban development, marketed and sold as the “Bel Air of Salt Lake City” to unsuspecting California citizens and residents immediately following the 2002 Winter Olympics. See *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 773–74 (1984)(circulating print media for sale establishes sufficient contact with the forum state to exercise personal jurisdiction of a libel claim against an out-of-state defendant); *Calder v. Jones*, 465 U.S. 783, 789–90 (1984)(intentional, and allegedly tortious, actions expressly aimed at a California citizen and resident are sufficient to establish personal jurisdiction of an out-of-state defendant).

(1982)(“expression of legal rights is often subject to certain procedural rules [...] the failure to enter a timely objection to personal jurisdiction constitutes [...] a waiver of the objection”).

6. On January 5, 2024, Tracy served Creamer the “Request for Entry of Default” and “Statement of Damages” pursuant to Cal. Code of Civ. P. § 585(a) in conjunction with § 425.11.

7. Thirteen days later, unbeknownst to Tracy, Creamer died.

8. The respondent court entered Creamer’s default on March 6, 2024. App. 1a–2a.

9. Although a state court appointed Ryan and Tyson Creamer as representatives of Defendant Creamer’s probate estate four days after entry of default, no action was taken by the same following service of the “Notice of Court Order” on March 8, 2024.

10. On March 21, 2024, the trial court entered judgment against Creamer (effective date 03/19/2024) in the amount of \$154,350,530.00 with the cursory notation “NO PROPOSED JUDGEMENT FORM PROVIDED” thereby rendering the instrument unsuitable as a writ of execution per 28 U.S.C. 1738 *et seq.* (Full Faith and Credit Act). App. 3a–4a.

11. That same day, Tracy filed California Judicial Council form JUD-100. App. 8a–9a.

12. To date, no order vacating the judgement against Creamer has been entered by any state or federal court.

B. Judicial Acts and Omissions in Violation of Petitioner's Federal Constitutional Rights

1. More than six months after entry of judgement, Ryan and Tyson Creamer filed a motion as the “personal representatives of the estate of Defendant R. Steve Creamer” to vacate default (not judgement) but failed to substitute parties, cited no reason for “mistake, inadvertence, surprise, or excusable neglect” other than the “unexpected” death of Creamer, falsified the proof of service under penalty of perjury, and failed to include an answer or proposed motion as required under Cal. Code of Civ. P. § 473(b).

2. Although nonparties to the proceedings, the respondent court granted Ryan and Tyson Creamer's motion to vacate default but entered no order regarding the judgment entered against Creamer more than six months prior thereto. App. 6a–7a.

3. Tracy filed timely notice of appeal.

4. Contrary to the mandate of Code of Civ. P. § 585(a) in conjunction with § 425.11 requiring “immediate” issuance of a writ following default, on November 14, 2024 (i.e. 238 days after submittal) the respondent court returned the proposed Judicial Council form JUD-100 with the notation “the form is not filled out” although damages were recorded both in the default judgment and Statement of Damages filed with the respondent court and served on Creamer prior to his death. App. 8a–9a.

5. During appellate review, Ryan and Tyson Creamer filed a motion now in the name of the deceased defendant to quash service of the complaint and summons for lack of personal jurisdiction

although Creamer had waived objection to the same during his lifetime. Cal. Code Civ. P. § 418.10(a)(1).⁶

6. Ryan and Tyson Creamer submitted sworn affidavits that the deceased defendant did not conduct business “on behalf of himself” in the forum state but recorded no basis for their “personal knowledge” of deceased defendant’s activities and contrary to Creamer’s own obituary evidencing extensive and continuing business in California over three decades and the undisputed allegations of the verified Complaint.

7. Although the order vacating Creamer’s default was under appellate review, despite having filed no motion to substitute parties, the respondent court granted the motion to quash service of the summons for lack of personal jurisdiction filed by nonparties on behalf of the deceased defendant and ruled that jurisdictional discovery would be “futile” contrary to the affidavits before the court. App. 10a–21a.

8. Tracy filed timely notice of appeal.

9. The California Court of Appeal for the Sixth Appellate District dismissed appeal without opinion. App. 25a.

10. Tracy timely filed petition for writ of mandate with the California Supreme Court requesting an order for the issuance of a writ of execution per Cal. Code Civ. P. § 1085(a) in conjunction with § 1086.

11. The California Supreme Court denied the petition without opinion. App. 26a.

⁶ *Ins. Corp. of Ir.*, 456 U.S. at 705, *supra*.

12. Tracy timely filed request for rehearing.

13. The clerk of the California Supreme Court rejected the request via correspondence dated July 14, 2025. App. 27a–28a.

14. Despite having entered no order vacating the judgment against Creamer,⁷ the respondent court dismissed the action on October 9, 2025. App. 29a.

REASONS FOR GRANTING THE WRIT

A court may issue a writ of mandamus when (1) the petitioner’s “right to issuance of the writ is ‘clear and indisputable’”; (2) “no other adequate means [exist] to attain the relief he desires”; and (3) “the writ is appropriate under the circumstances.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam) (quoting *Cheney v. United States Dist. Court*, 542 U.S. 367, 380–81 (2004)) (brackets in original).

Each of those prerequisites for mandamus relief is met here—the court record documents a violation of a federal constitutional right to property, a clear and indisputable duty to act by a judicial officer of a state court, and no adequate alternative relief available.

⁷ Having filed a defective, unsuitable motion on behalf of a deceased party, in a blatant attempt to nullify the judgment entered against Creamer, Ryan and Tyson Creamer submitted a proposed order for the respondent court to declare “**IT IS ORDERED, ADJUDGED, AND DECREED** that Plaintiff MARK CHRISTOPHER TRACY, shall take nothing by his Complaint from Defendant R STEVE CREAMER” (emphasis in original). The filing was however aptly rejected by the respondent court clerk as inconsistent with the court record. App. 22a–24a.

A. Violation of Property Rights

A claim for monetary damages reduced to judgment vests petitioner with a constitutionally protected property interest in the debt. *See e.g., Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982)(a cause of action is a species of property); *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (property rights include “expectations of entitlement” created under state law); *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 352 (1909)(courts may render judgment by default under the circumstances provided for in the statute). *Morris v. Jones*, 329 U.S. 545, 551 (1947)(default judgment is entitled to full faith and credit in another State regardless if the underlying claim would not be enforced in the forum state).

The respondent court’s refusal to issue a suitable writ of execution deprives petitioner of this right to property without due process, rendering the judgment unenforceable and void in effect. U.S. Const. Amend. XIV, § 1; *see e.g., Tyler v. Hennepin County*, 598 U.S. 631, 632 (2023) (state actions affecting property must comply with constitutional rights).

This violation implicates a federal question reviewable by this Court. 28 U.S.C. 1651.

B. The Respondent Court Has a Clear and Indisputable Ministerial Duty

Under California state law, the issuance of judgment and a writ of execution are not discretionary but ministerial once default exists and a proper application is filed. Cal. Code Civ. P. § 585(a) in conjunction with § 425.11. The respondent’s refusal to issue an instrument suitable for the seizure of

property under the Full Faith and Credit Act constitutes a clear and indisputable violation of an administrative duty and thus an omission in excess of its jurisdiction. *Will v. United States*, 389 U.S. 90, 95 (1967); *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976) (mandamus for clear abuse or usurpation of authority); *Virginia v. Rives*, 100 U.S. 313, 323 (1880) (“[*mandamus to a state court*] is an established remedy to oblige inferior courts and magistrates to do that justice which they are in duty, and by virtue of their office, bound to do.”)

Likewise, even if the judgment were disturbed by motions attacking the preceding default and/or service of process, under binding state law, the respondent court lacked jurisdiction vacate judgement after six months,⁸ to grant a motion during appellate proceedings,⁹ to grant a motion filed by nonparties to the proceedings,¹⁰ to ignore defendant’s waiver of objection to the court’s exercise of personal jurisdiction,¹¹ to consider a motion submitted with a falsified proof of service,¹² or enter an order for a

⁸ Cal. Code of Civ. P. § 473(b); *Rappleveya v. Campbell*, 8 Cal.4th 975, 980 (1994)(citing *Aldrich v. San Fernando Valley Lumber Co.*, 170 Cal.App.3d 725, 735, fn. 3. (1985) (“the six-month time limit for granting relief under section 473 is jurisdictional and relief cannot be granted if the application for such relief is instituted more than six months after the entry of the judgment, order or proceeding from which relief is sought.”))

⁹ *Gold v. Superior Court*, 3 Cal.3d 275, 280 (1970); *Chamberlin v. Dale’s R.V. Rentals, Inc.*, 188 Cal.App.3d 356, 359 (1986).

¹⁰ Cal. Code of Civ. P. § 387(a).

¹¹ *Ins. Corp. of Ir.*, 456 U.S. at 705, *supra*.

¹² *Lee v. Placer Title Co.*, 28 Cal.App.4th 503, 511 (1994) (defective service will be given no effect).

known deceased party to the proceedings.¹³ *Pennoyer v. Neff*, 95 U.S. 714 (1877) (court orders lacking jurisdiction are null and void).

C. No Adequate Alternative Remedy Exists

All state remedies have been exhausted, and further delay would cause irreparable harm should estate assets be unlawfully distributed prior to satisfaction of the monetary claims reduced to judgement. App. 3a–4a.

Following Creamer’s waiver of objection to the exercise of personal jurisdiction and upon expiration of the six-month period, no court can vacate the binding judgment entered against Creamer, and only this Court may order issuance of a suitable writ for the seizure of properties under the Full Faith and Credit Act. *Cheney*, 542 U.S. at 380, *supra* (mandamus requires no adequate alternative);

D. Exceptional Circumstances Warrant This Court’s Discretionary Action

The respondent court’s willful noncompliance with clear and indisputable statutory duties undermines the finality of judgments and fundamental federal due process protections established by this Court. Without mandamus, petitioner faces a grave miscarriage of justice of having to relitigate claims already reduced to judgement. *Ex parte Peru*, 318 U.S. 578, 583 (1943) (mandamus appropriate as an expeditious and

¹³ *Grappo v. McMills*, 11 Cal.App.5th 996, 1008 (2017)(citing *Herring v. Peterson*, 116 Cal.App.3d 608, 612 (1981); and 2 Witkin, Cal. Procedure (5th ed. 2008) Jurisdiction, § 317, p. 929).

effective means of compelling an inferior court to exercise its authority when it is its duty to do so).

Relief is not available elsewhere, as lower federal courts lack jurisdiction to issue mandamus to state courts in this context. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983).

CONCLUSION

For the foregoing reasons, the petition for a writ of mandamus should be granted.

PRAYER FOR RELIEF

Petitioner respectfully prays that this Court:

1. Direct the Superior Court of California, County of Santa Clara to issue a writ of execution consistent with the judgment entered by the respondent court against Creamer.
2. Grant further relief as the Court deems just and proper.

Respectfully Submitted.

Mark Christopher Tracy
Pro Se Petitioner
 1130 Wall St., No. 561
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 60322 Frankfurt am Main
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**APPENDIX A
Order of Default
Against R. Steve Creamer
(March 6, 2024)**

[...]

FILED 3/1/2024 Clerk of the Court Superior Court of CA County of Santa Clara 23CV423435 By: suy
--

Mark Christopher Tracy
1130 Wall St. #561
La Jolla, CA 92037
Telephone No.: 929-208-6010
E-mail Address: m.tracy@echo-association.com

[...]

Superior Court of California
County of Santa Clara
201 N. First Street Attn: Civil Dept
San José 95113
Downtown Superior Court

REQUEST FOR ENTRY OF DEFAULT

[...]

TO THE CLERK: On the complaint [...] filed on September 21, 2023 by Mark Christopher Tracy | Enter the default of defendant R. Steve Creamer

Date: February 16, 2024

/s/ Mark Christopher Tracy
Mark Christopher Tracy

FOR COURT USE ONLY

Default entered as requested on *(date)*:

3/1/2024

3/6/2024 Clerk, by broman-antunez, Deputy

Form Adopted for Mandatory Use Judicial Council of
California CIV-100 [Rev. January 1, 2023]

APPENDIX B
Judgement Against
R. Steve Creamer
(March 19, 2024)

[...]

FILED
3/19/2024
Clerk of the Court
Superior Court of CA
County of Santa Clara
23CV423435
By: suy

Mark Christopher Tracy
1130 Wall St. #561
La Jolla, CA 92037
Telephone No.: 929-208-6010
E-mail Address: m.tracy@echo-association.com

[...]

Superior Court of California
201 N. First Street Attn: Civil Dept
San José 95113
Downtown Superior Court

REQUEST FOR COURT JUDGMENT

[...]

TO THE CLERK: On the complaint [...] filed on
(*date*): **September 21, 2023** by (*name*): **Mark**
Christopher Tracy I request a court judgment
under Code of Civil Procedure sections 585(b),
585(c), 989 ect., against defendant (*names*): **R.**

Steve Creamer [Note: Default against R. Steve Creamer entered on March 6, 2024; [...]]

Judgment to be entered.

a. Demand of complaint (See CCP 425.10 (b))	
b. Statement of damages*	
(1) Special	\$151,000,000.00
(2) General	\$3,350,000.00
c. Interest	0
d. Costs (see reverse)	\$530.00
e. Attorney fees	0
f. TOTALS	\$154,350,530.00

Date: **March 19, 2024**

/s/ Mark Christopher Tracy
Mark Christopher Tracy

FOR COURT USE ONLY

Default entered as requested on *(date)*:

3/19/2024

**NO PROPOSED JUDGMENT FORM
PROVIDED**

3/21/2024 Clerk, by suy, Deputy

Form Adopted for Mandatory Use Judicial Council of
California CIV-100 [Rev. January 1, 2023]

* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)

APPENDIX C
Order Granting R. Steve Creamer's Motion to
Set Aside and Vacate Default
(October 22, 2024)

[...]

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MARK CHRISTOPHER TRACY, an individual,

Plaintiff,

v.

COHNE KINGHORN PC, a Utah Professional
Corporation; SIMPLIFI COMPANY, a Utah
Corporation; JEREMY RAND COOK, an
individual; ERIC HAWKES, an individual;
JENNIFER HAWKES, an individual;
MICHAEL SCOTT HUGHES, an individual;
DAVID BRADFORD, an individual; KEM
CROSBY GARDNER, an individual; WALTER
J. PLUMB III, an individual; DAVID
BENNION, an individual; PAUL BROWN, an
individual; GARY BOWEN, an individual, [sic]

Defendants.

Case No. 23CV423435

[...]

Ryan Creamer and Tyson Creamer,
specially appearing as personal representatives
of the probate estate of defendant R. Steve
Creamer's ("Creamer"), motion to set aside and

vacate default came on for hearing before the Court on October 22, 2024. Pursuant to California Rule of Court 3.1308, the Court issued its tentative ruling on October 21, 2024. The parties appeared for argument. The Court was not persuaded to veer from its tentative ruling, and the ruling is accordingly adopted below.

Ryan Creamer and Tyson Creamer, specially appearing as personal representatives of the probate estate of defendant R. Steve Creamer's ("Creamer"), motion to set aside and vacate default is GRANTED. First, even if Plaintiff were correct regarding Creamer's service of this motion, the Court has discretion to consider late papers. (*Gonzalez v. Santa Clara County Dep't of Social Servs.* (2017) 9 Cal.App.5th 162, 168.) And, where a party provides a substantive response to a late paper, the party waives all defects in service. (*Moofly Productions, LLC v. Favila* (2020) 46 Cal. App. 5th 1, 10.) Plaintiff substantively responded to the motion to set aside thereby waiving defects in service, if any existed.

Next, it is undisputed that R. Steve Creamer was deceased at the time default was entered. "A judgment rendered for or against a dead person is void . . ." (*Estate of Parsell* (1923) 190 Cal. 454, 456 [213 P. 401])—language the Supreme Court first used in 1868, in *Judson v. Love* (1868) 35 Cal. 463." (*Grappo v. McMills* (2017) 11 Cal. App. 5th 996, 1007.) "And, of course, a void judgment is subject to attack at any time." (*Grappo v. McMills* (2017) 11 Cal. App. 5th 996, 1009.)

Accordingly, Creamer's motion is GRANTED. Creamer is ordered to respond to the complaint within 20 days of service of the formal order, which the Court will prepare. **IT IS SO ORDERED.**

Date: October 22, 2024

[Signature illegible]

The Honorable Evette P. Pennypacker
Judge of the Superior Court

APPENDIX D
Clerk Order Rejecting Judicial Council Form
JUD-100 (for optional use)
Against R. Steve Creamer,
(November 14, 2024)

[electronically submitted] on 3/21/2024 at
5:07 PM
Reviewed By: L. Martinez
Envelope: 14782227

FILED
November 15, 2024
Clerk of the Court
Superior Court of CA
County of Santa Clara
23CV423435
By: ychavez

[...]

Mark Christopher Tracy
1130 Wall St. #561
La Jolla, CA 92037
Telephone No.: 929-208-6010
E-mail Address: m.tracy@echo-association.com

[...]

Superior Court of California
201 N. First Street Attn: Civil Dept
San José 95113
Downtown Superior Court

JUDGMENT by Default
BY DEFAULT

- a. Defendant was properly served with a copy of the summons and complaint.
- b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
- c. Defendant's default was entered by the clerk upon plaintiff's application.

Parties.

Judgment is: for plaintiff (*name each*):

Mark Christopher Tracy, an individual

and against defendant (*names*):

R. Steve Creamer, an individual

Amount.

*[calculation table voided out by respondent
court with single diagonal line]*

The form is not filled out
11/14/2024 1:31:08 PM

Date: 11/14/2024

[Signature illegible]
JUDICIAL OFFICER

Form Approved for Optional Use Judicial Council
of California JUD-100 [Rev. January 1, 2024]

APPENDIX E
Order Granting Granting R. Steve Creamer's
Motion to Quash and Dismissing Action for
Lack of Personal Jurisdiction
(December 19, 2024)

[...]

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MARK CHRISTOPHER TRACY, an individual,

Plaintiff,

v.

COHNE KINGHORN PC, a Utah Professional Corporation; SIMPLIFI COMPANY, a Utah Corporation; JEREMY RAND COOK, an individual; ERIC HAWKES, an individual; JENNIFER HAWKES, an individual; MICHAEL SCOTT HUGHES, an individual; DAVID BRADFORD, an individual; KEM CROSBY GARDNER, an individual; WALTER J. PLUMB III, an individual; DAVID BENNION, an individual; PAUL BROWN, an individual; GARY BOWEN, an individual, [*sic*]

Defendants.

Case No. 23CV423435

[...]

Specially appearing personal representatives of the probate estate of Defendant R. Steve Creamer's ("Decedent") motion to quash service of summons came on for hearing before the Court on December 19, 2024.

Pursuant to California Rule of Court 3.1308, the Court issued its tentative ruling on December 18, 2024. The parties appeared for argument, the Court was not persuaded to veer from its tentative ruling, and that ruling is accordingly adopted below.

I. Alleged Facts

Plaintiff claims he is a “federal whistleblower in what [is] alleged to be the longest and most lucrative water grab [] [sic] in the State of Utah.” (Complaint ¶ 1.) According to the complaint, Defendants “perpetuated a fraudulent scheme to retire senior water rights vis-à-vis duplicitous water claims for the construction and massive expansion of a luxurious private urban development” in Salt Lake City, Utah. (Complaint ¶ 2.)

On September 26, 2014, Plaintiff filed suit under the Federal Claims Act in the Federal Court for the District of Utah relating to a public drinking water system in Salt Lake County operated by the Emigration Canyon Improvement District (“ECID”), a public entity. Plaintiffs suit was ultimately dismissed after several appeals. (Complaint ¶¶ 7, 61-64.)

In this action, Plaintiff asserts claims for libel, libel per se, false light, and intentional infliction of emotional distress based on emails sent by some of the Defendants and statements posted on the ECIDs web-site, www.ecid.org. (Complaint ¶¶ 79-111.) Plaintiff alleges that “each Defendant was acting as the agent, servant, employee, partner, co-conspirator,

and/or joint venture of each remaining Defendant.” (Complaint ¶ 20.) Plaintiff acknowledges the individual Defendants are Utah residents and the corporate Defendants are organized in Utah, their headquarters are located in Utah, and they operate in accordance with the laws of Utah. (Complaint ¶¶ 7-20.) Plaintiff also acknowledges the alleged false and defamatory statements were made in association with ECID and in Utah. (Complaint ¶¶ 65-78.) Plaintiff nevertheless alleges this Court has jurisdiction because (1) the ecid.org website, though directed at Utah residents, is “routed through San Jose, California; and (2) “Defendants published false and defamatory statement[s] for the purpose of obtaining continued payment of monies from property owners residing in California.” (Complaint ¶¶ 4, 21.)

II. Legal Standard

A defendant may specially appear and move to quash service of summons for lack of personal jurisdiction under Code of Civil Procedure section 418.10, subdivision (a) (1). When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. (*Jayone Foods, Inc. v. Aekyung Industrial Co. Ltd.* (2019) 31 Cal.App.5th 543, 553.) “[T]he burden of proof is upon the plaintiff to establish the facts of jurisdiction by a preponderance of the evidence.” (*Evangelize China Fellowship, Inc. v. Evangelize*

Ching Fellowship Hong Kong (1983) 146 Cal.App.3d 440, 444.)

Plaintiff cannot rely on vague and conclusory assertions of ultimate facts. (*Strasner v. Touchstone Wireless Repair & Logistics, LP* (2016) 5 Cal.App.5th 215, 222.) Plaintiff must provide affidavits and other authenticated documents to demonstrate competent evidence of specific evidentiary facts that would permit a court to form an independent conclusion on the issue of jurisdiction. (*In re Automobile Antitrust Cases I & 11* (2005) 135 Cal.App.4th 100, 113.) Evidence of the jurisdictional facts or their absence may be in the form of declarations. “Where there is a conflict in the declarations, resolution of conflict by the trial court will not be disturbed on appeal if the determination is supported by substantial evidence. However, where the evidence of jurisdictional facts is not conflicting, the question of whether a defendant is subject to personal jurisdiction is one of law. (*Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305, 1312-1313; see also *Greenwell v. Auto-Owners Ins. Company* (2015) 233 Cal.App.4th 783, 789, citing *Elkman*.)

Under the minimum contacts test, personal jurisdiction may be either general or specific. (*Snowney v. Harrahs Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062.) Where general jurisdiction exists due to a non-resident defendants [*sic*] “continuous and systematic” activities in a state, the defendant can be sued on causes of action not related to its activities within the state. (*Cornelison v. Chaney* (1976) 16 Cal.3d

143, 147.) Absent the showing adequate to confer general jurisdiction, a defendant may still be subject to specific jurisdiction, meaning “jurisdiction in an action arising out of or related to the defendants contacts with the forum state.” (*Healthmarkets, Inc. v. Super. Ct.* (2009) 171 Cal.App.4th 1160, 1167.)

If a non-resident defendants [*sic*] contacts with California are not sufficient for general jurisdiction, it may still be subject to California’s specific personal jurisdiction if a three-prong test is met: (1) defendant must have purposefully availed itself of the states [*sic*] benefits, (2) the controversy must be related to or arise out of the defendants [*sic*] contacts with the state, and (3) California’s exercise of jurisdiction over the defendant comports with fair play and substantial justice. (*Pavlovich v. Super. Court* (2002) 29 Cal.4th 262, 269.) Plaintiff bears the burden of establishing the first two requirements. If the plaintiff does so, the burden shifts to the defendant to show that California’s exercise of jurisdiction would be unreasonable. (*Greenwell*, 233 Cal.App.4th at 792.)

III. Jurisdictional Discovery

“A plaintiff is generally entitled to conduct discovery with regard to a jurisdictional issue before a court rules on a motion to quash. Granting of a discovery request lies in the discretion of the trial court.” (*Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 911, internal quotes and citations omitted.) A court may deny such a request when it “could reasonably conclude further discovery would not

likely lead to production of evidence establishing jurisdiction.” (*Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 487.)

Plaintiff requests leave to conduct jurisdictional discovery before the Court decides this motion. However, Plaintiff provides no information about what discovery he would conduct, or evidence he could possibly obtain to establish jurisdiction over the Decedent in California. There must be some basis in fact for jurisdictional discovery. (*In re Automobile Antitrust Cases* (2005) 136 Cal.App.4th 100, 127 [“In order to prevail on a motion for a continuance for jurisdictional discovery, the plaintiff should demonstrate that discovery is likely to lead to the production of evidence of facts establishing jurisdiction”].) When a plaintiff is not able to make an offer of proof of the existence of “additional relevant jurisdictional evidence,” a court does not abuse its discretion in denying jurisdictional discovery. (*Ibid.*)

Plaintiff’s request for jurisdictional discovery is accordingly **DENIED**.

III. [sic] Analysis

To assert general jurisdiction over Decedent, Plaintiff has the burden of showing Decedent’s continuance and systematic contact with the State of California “as to render it essentially at home in the forum State”. (*Saimler AG v. Bauman* (2014) 571 U.S. 117, 127.) In assessing a defendant’s contacts with the forum state for purposes of general jurisdiction, the court looks at the contacts as they existed from

the time the alleged conduct occurred to the time of service of summons. (*Strasner v. Touchstone Wireless Repair & Logistics, LP* (2016) 5 Cal.App.5th 215, 222-223.)

To assert specific jurisdiction, Plaintiff has the burden of showing Decedent purposefully (1) directed his activities at California residents, (2) derived a benefit from his activities in California, or (3) invoked privileges and protections of California's laws by purposefully engaging in significant activities within the State or by creating continuing obligations between himself and the residents of California. In tort cases, "purposeful availment" is based on "intentional actions expressly aimed at the forum state causing harm, the brunt of which is suffered -and [sic] which the defendant knows is likely to be suffered -in [sic] the forum state." (*Jewish Defense Organization, Inc. v. Sup. Ct. of Los Angeles County* (Rambam) (1999) 72 Cal.App.4th 1045, 1054.) Once Plaintiff has shown purposeful availment, Plaintiff must then show that the defamation, false light, and emotional distress claims are related to or arose out of Decedent's contacts with the State of California.

Here, the complaint alleges Decedent was a resident of Utah and the former Chairman for ECID (Emigration Canyon Improvement District) Advisory Committee. The only wrongdoing alleged against Decedent is that he "assisted in construction of two large-diameter commercial wells and a "preposterously oversized" water reservoir of the Emigration Oaks Water Systems on him [sic] private 203-acre

estate with federal funds administered by Utah State Division of Drinking Water under the Safe Drinking Water Act of 1974 with the legal assistance of Defendant Kinghorn at taxpayer expense.” (Complaint ¶ 17.) Plaintiff does not allege Decedent made any defamatory and/or libelous remarks against Plaintiff. According to the complaint, the alleged defamatory statements were made by Mr. Hawkes, Mr. Hughes, and Mr. Bradford.

Ryan and Tyson Creamer (“Creamer Sons”), personal representatives of the probate estate of Defendant R. Steve Creamer, contend personal jurisdiction over Creamer cannot be established since he (1) did not have substantial or continuous contacts with California, (2) did not purposefully direct any actions at California residents, and (3) did not purposefully avail himself of the privilege of conducting activities in California. In support of this motion, Creamers submit the following evidence:

- **Copy of Decedent’s death certificate listing January 13, 2024, as the date of death. (Declaration of Ryan Creamer (“Ryan Creamer Decl.”), Ex. A.)**
- **Copy of the March 5, 2024, Order and Testamentary Letters from the Third Judicial District Court In and for Salt Lake County, State of Utah, in case no. 243900168, titled “In The Matter of the Estate of R Steve Creamer” appointing Ryan Steve Creamer and Tyson Richard Creamer as general personal co-representatives of the Decedent. (Ryan Creamer Decl., Ex. B.)**

• **Representations under oath that prior to his death, Decedent was a resident of Utah and registered to vote in Utah. Decedent did not conduct business on his own behalf in California, did not pay taxes in California, did not have any employees in California, did not consent to California jurisdiction in any lawsuit, and did not appoint anyone to accept service on his behalf in California. (Ryan Creamer Decl.; Declaration of Tyson Creamer.)***[emphasis in original]*

Plaintiff fails to submit any evidence that Decedent engaged in systematic and continuance contacts with California or engaged in any activity that could support purposeful availment or even to allege any claims arising out of conduct in California. Instead, Plaintiff argues (1) the Court lacks jurisdiction to address this motion because the Creamer Sons are not parties, (2) an appeal from the Court's order vacating default entered against Decedent stays the proceeding on this motion, (3) the Creamer Sons waived jurisdictional issues by filing a late motion, and (4) the Creamer Sons lack personal knowledge of Decedent's California contacts.

First, the Creamer Sons submit sufficient evidence to demonstrate they are authorized to act as representatives of the Decedent. Plaintiff's argument that the Court now lacks jurisdiction over the proceeding because the Creamer Sons did not file a motion to substitute as personal representatives for the Decedent is unpersuasive and not supported by legal authority. Plaintiff

named Decedent as a defendant in his complaint. Plaintiff cannot proceed against Decedent, and Plaintiff has not moved pursuant to Code. Civ. Proc. § 377.41 to substitute his personal representatives.

Next, “[a]n order granting a motion to set aside a default before a judgment has been entered is a non-appealable order.” (*Davis v. Taliaferro* (1963) 218 Cal. App. 2d 120, 122, citing *Thomas v. Lee* (1949) 90 Cal.App.2d 44, 45; *Turner v. Follmer* (1948) 84 Cal.App.2d 815; *Bernards v. Grey* (1950) 97 Cal.App.2d 679, 683; *Esquivel v. Raney* (1951) 106 Cal.App.2d 162, 163; 3 Witkin, Cal. Procedure, pp. 2115, 2163.) And, as a vexatious litigant, Plaintiff is not permitted to file appeals without leave of the court of appeal, which leave is not reflected in the record as of the time of this writing. “The trial court is not divested of jurisdiction by an appeal from a nonappealable order.” (*Davis v. Taliaferro* (1963) 218 Cal. App. 2d 120, 122, citing *Maxwell v. Superior Court* (1934) 1 Cal.2d 294, 297; *Central Savings Bank of Oakland v. Lake* (1927) 201 Cal. 438, 442]; *Gregory v. Gregory* (1894) 102 Cal. 50, 51.)

The Court also finds the appeal of its order setting aside default sufficiently separate from the issue of personal jurisdiction to rule on this motion to quash now. Code of Civil Procedure section 916 provides:

- (a) Except as provided in Sections 917.1 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the

judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.

Critical to the analysis here is the phrase: “the judgment or order appealed from or upon the matters embraced therein.” Plaintiff’s latest appeal is from an order setting aside default entered against the Decedent. That order did not concern whether the Court has personal jurisdiction over the Decedent.

Third, under Code. Civ. Proc. § 418.10, a defendant may file a motion to quash “on or before the last day of his or her time to plead or within any further time that the court may for good cause allow.” (Code. Civ. Proc. § 418.10(a).) On October 22, 2024, pursuant to its Order setting aside default, the Court granted Decedent’s representatives twenty days after service of the Order to respond to the complaint. The Court did not limit the representatives to filing an answer to the complaint and instead allowed them to file a responsive pleading, which encompasses this pending motion.

Finally, Plaintiff did not object to the Creamer Sons’ declarations or submit any evidence to support his argument that the Creamer Sons lack personal knowledge of Decedent’s residency, financial dealings, and minimum contacts with California. To the contrary, as the Court-appointed personal

representatives of Decedent's estate, the Creamer Sons are charged with settling his estate, which provides foundation for their knowledge of Decedent's financial affairs and lack of contacts with California.

Plaintiff fails to meet his burden to establish Decedent's minimum contacts with California, and the Creamer Sons' motion to quash service of the summons and complaint is GRANTED.

This action is dismissed as to the Decedent for lack of personal jurisdiction. **IT IS SO ORDERED.**

[Signature illegible]

Hon. Evette D. Pennypacker
Santa Clara Superior Court Judge

Date: December 19, 2024

APPENDIX F
Clerk Order Rejecting Proposed Declaratory
Judgement for R. Steve Creamer,
(January 2, 2025)

**COURT OF CALIFORNIA COUNTY OF
SANTA CLARA
DOWNTOWN COURTHOUSE - CIVIL
DIVISION**
191 North First Street
San José, California 95113
(408) 882-2100

CIVIL FILING REJECTION LETTER

Case Number: 17785925
Case Title: 230V423435

Dear Sir/Madam:

The Document is being returned for the
following reason(s):

Notice: Entry of Order - Item 1 does not match
court record.

Date: 1/2/2025

Clerk of the Court

Clerk, by /s/ T. Phen, Deputy

[...]

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 1/9/2025 12:46 PM
Reviewed By: M. Suarez
Case #23CV423435
Envelope: 17860425**

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ERIC AREVALO (CSB No. 255725)
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30 Corporate Park, Suite 100 Irvine, CA 92606
Telephone (714) 850-0210
Facsimile (714) 850-0551

Attorneys for Specially Appearing Persons
RYAN CREAMER and TYSON CREAMER,
PERSONAL REPRESENTATIVES OF ESTATE
OF DECEDENT, DEFENDANT R. STEVE
CREAMER

[...]

**[PROPOSED] JUDGMENT FOLLOWING
GRANTING OF MOTION BY SPECIALLY
APPEARING RYAN CREAMER AND
TYSON CREAMER, TO QUASH SERVICE
OF PLAINTIFF'S SUMMONS AND
COMPLAINT**

Case No. 23CV423435

[...]

**TO ALL PARTIES, THEIR RESPECTIVE
COUNSEL OF RECORD, AND THIS
HONORABLE COURT:**

PLEASE TAKE NOTICE that on December 20, 2024, the Court issued its Order granting the Motion of Specially Appearing Defendants, RYAN CREAMER, and TYSON CREAMER to Quash Plaintiff's Summons and Complaint, and dismissing Defendant R STEVE CREAMER. In accordance with that Order.

**IT IS ORDERED, ADJUDGED, AND
DECREED** that Plaintiff MARK CHRISTOPHER TRACY, shall take nothing by his Complaint from Defendant R STEVE CREAMER, and that said Defendant is dismissed.

DATED: _____, 2025

Honorable Evette D. Pennypacker
Judge of the Superior Court

APPENDIX G
Order Denying Request to Lift
Stay or Permit Appeal
(April 21, 2025)

IN THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA SIXTH APPELLATE
DISTRICT

MARK CHRISTOPHER TRACY,
Plaintiff and Appellant,
v.
R. STEVE CREAMER,
Defendant and Respondent.

H053022
Santa Clara County Super. Ct. No. 23CV423435

BY THE COURT:

Appellant's request to lift the stay or to issue an order permitting the appeal, made pursuant to Code of Civil Procedure section 391.7, is denied. The notice of appeal filed February 18, 2025, is dismissed.

/s/ [Signature Illegible]
P.J.

Date: 04/21/2025

APPENDIX H
Order Denying Application to
File Petition for Writ of Mandate
(June 26, 2025)

S291330

IN THE SUPREME COURT OF CALIFORNIA

MARK CHRISTOPHER TRACY,
Petitioner,

v.

COURT OF APPEAL, SIXTH APPELLATE
DISTRICT et al.,

Respondents.

R. STEVE CREAMER,

Real Party in Interest.

Before: GUERRERO, Chief Justice

The application of petitioner for leave to file a
petition for writ of mandate is hereby denied.

/s/ Guerrero
Chief Justice

APPENDIX I
Clerk Order Denying Request for Rehearing
(July 14, 2025)

SUPREME COURT OF CALIFORNIA

SENT VIA EMAIL AND USPS

Mark Christopher Tracy
1130 Wall Street, No. 561
La Jolla, CA 92037
m.tracy@echo-association.com

Re: Tracy v. CA 6 (Creamer) - S291330

Dear Mr. Tracy:

This will acknowledge receipt of your documents received July 11, 2025. You are advised that your application and writ of mandate, received and filed on June 9, 2025, has been denied.

The order denying your petition was final forthwith and may not be reconsidered. Please rest assured, however, that the petition, and the contentions made therein, were considered by the entire court, and that the denial expresses the decision of the court on this matter. A copy of the court's denial order was mailed to you on the date

it was issued, an additional copy is enclosed here for your convenience.

Sincerely,

Jorge E. Navarrete
Clerk and
Executive Officer of the Supreme Court

/s/ Robert R. Toy
By: Senior Deputy Clerk

APPENDIX J
Order of Dismissal
(October 9, 2025)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MARK TRACY,

Plaintiff,

v.

COHNE KINGHORN PC, et al.

Defendants.

Case No. 23CV423435

The above entitled case came on for hearing
before Honorable Evette P. PENNYPACKER, in
Department 6 on 10/09/2025 for the following:

Case Status Review

Good cause appearing, it is the ORDER of this
court:

The Court orders Plaintiff's Complaint
dismissed without prejudice.

Entire Complaint.

Date: October 9, 2025

/s/ Judge Evette D. Pennypacker
Honorable Evette D. Pennypacker
Judge of the Superior Court

APPENDIX K
CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

U.S. Const., amend. XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Code of Civil Procedure § 387(a):

A nonparty shall petition the court for leave to intervene by noticed motion or ex parte application. The petition shall include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests.

California Code of Civil Procedure § 418.10(a)(1):

A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes:

To quash service of summons on the ground of lack of jurisdiction of the court over him or her.

California Code of Civil Procedure § 425.11(b):

When a complaint is filed in an action to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff, who shall serve a responsive statement as to the damages within 15 days. In the event that a response is not served, the defendant, on notice to the plaintiff, may petition the court in which the action is pending to order the plaintiff to serve a responsive statement.

California Code of Civil Procedure § 473(b):

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.

California Code of Civil Procedure § 585:

Judgment may be had, if the defendant fails to answer the complaint, as follows:

- (a) In an action arising upon contract or judgment for the recovery of money or damages only, if the defendant has, or if more than one defendant, if any of the defendants have, been served, other than by publication, and no answer, demurrer, notice of motion to strike of the character specified in subdivision (f), notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, or notice of the filing of a petition for writ of mandate as provided in Section 418.10 has been filed with the clerk of the court within the time specified in the summons, or within further time as may be allowed, the clerk, upon written application of the plaintiff, and proof of the service of summons, shall enter the default of the defendant or defendants, so served, and immediately thereafter enter judgment for the principal amount demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for in Section 425.115, or a lesser amount if credit has been acknowledged, together with interest allowed by law or in accordance with the terms of the contract, and the costs against the defendant, or defendants, or against one or more of the defendants. If, by rule of court, a schedule of attorneys' fees to be allowed has been adopted, the clerk may include in the judgment attorneys' fees in accordance with the schedule (1) if the contract provides that attorneys' fees shall be allowed in the event of an action thereon, or (2) if the action is one in which the plaintiff is entitled

by statute to recover attorneys' fees in addition to money or damages. The plaintiff shall file a written request at the time of application for entry of the default of the defendant or defendants, to have attorneys' fees fixed by the court, whereupon, after the entry of the default, the court shall hear the application for determination of the attorneys' fees and shall render judgment for the attorneys' fees and for the other relief demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for in Section 425.115, or a lesser amount if credit has been acknowledged, and the costs against the defendant, or defendants, or against one or more of the defendants.

California Code of Civil Procedure § 1085(a):

A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.

California Code of Civil Procedure § 1086:

The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.