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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

STEVEN RAMBAM, Plaintiff and Respondent, v. LUBOMYR PRYTULAK, Defendant and Appellant.	B166388 (Los Angeles County Super. Ct. No. BC271433)

APPEAL from a judgment of the Superior Court of Los Angeles County. James R. Dunn, Judge. Reversed.

Lubomyr Prytulak, in pro. per., for Defendant and Appellant.

Gary Kurtz for Plaintiff and Respondent.

SUMMARY

A nonresident defendant appeals from the trial court's entry of a default judgment against him on the ground that his conduct in posting a passive Web site on the Internet is insufficient for a California court's exercise of jurisdiction over him. Because we have already held such conduct to be insufficient (in an action brought by the *same* plaintiff represented by the *same* counsel relating to the *same* conduct against different defendants) (*Jewish Defense Organization, Inc. v. Superior Court* (*Rambam*) (hereinafter *JDO*) (1999) 72 Cal.App.4th 1045, 1060 ["without more," "defendants' conduct in . . . posting passive Web sites on the Internet is not sufficient to subject them to jurisdiction in California"]) and because our Supreme Court concurs in this view (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 274, quoting *JDO, supra,* 72 Cal.App.4th at p. 1060 ["'conduct in . . . posting [a] passive Web site[ ] on the Internet is not,' by itself, 'sufficient to subject' [the defendant] 'to jurisdiction in California'"]), we reverse.

FACTUAL AND PROCEDURAL SYNOPSIS

In 1997, Steven Rambam filed a complaint against Jewish Defense Organization, Inc. (JDO) and Mordechai Levy for defamation and related causes of action, alleging that JDO and Levy had posted a World Wide Web page containing false statements about him. Levy (a New York resident since 1985) and JDO (an organization operating in New York since 1985) moved to quash service of process against them and, when their motion was denied, petitioned this court for a writ of mandate challenging the trial court's ruling. (*JDO, supra,* 72 Cal.App.4th 1045.) At that time, we addressed at length the issue of whether California could properly exercise jurisdiction over nonresident defendants on the basis of contracts with California Internet service providers to maintain World Wide Web sites from New York and concluded that the defendants' conduct in posting passive

Web sites on the Internet was insufficient to subject them to jurisdiction in California. (*JDO, supra,* 72 Cal.App.4th at pp. 1055-1062.)

Five years later (in April 2002), Rambam filed a complaint for defamation and "false light invasion of privacy" alleging that Lubomyr Prytulak, a resident of Canada, had posted a Web page on the Internet in which he republished the same defamatory information originally published by Levy and JDO.[1] In the action before us on this appeal, Rambam served Prytulak in Canada with the complaint (and statement of damages seeking more than $1.5 million) shortly thereafter.

Representing himself, Prytulak submitted various communications ("motions" as well as a number of letters and related documents) in which he repeatedly urged the court that it lacked jurisdiction over him under our decision in *JDO*, *supra,* 72 Cal.App.4th 1045. Although Prytulak's submissions were placed in the court file and are included in the record, most were never filed for various procedural deficiencies.[2] In May, relying on *JDO, supra,* 72 Cal.App.4th 1045, Prytulak submitted a document entitled "motion to quash," but it was rejected for failure to pay the necessary filing fee.[3] In August,

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[1] One month before, Rambam stated, a *New York* jury had awarded him $850,000 in damages arising out of the original publication.

[2] Apparently, Rambam initially filed his complaint against Prytulak as a limited jurisdiction case, and that action remained pending for some months after he filed the complaint before us here. Prytulak says he raised a timely jurisdictional objection in that case in the first instance and requested that we take judicial notice of documents submitted in the limited jurisdiction case, but we denied Prytulak's request. These documents are unnecessary to our determination in any event.

[3] Two weeks later, finding that his motion was not reflected in the Case Summary on the Los Angeles Superior Court Web site, Prytulak wrote to the trial court to inquire as to its status among other things and asked to be advised of any deficiencies in his papers just as Rambam had been (apparently referring to Rambam's default papers). When he received no response, he wrote a letter of complaint to the Presiding Judge of the Superior Court. In August, the trial court then served the parties with a minute order stating that the motion had not been filed for failure to pay the necessary filing fee. The

Prytulak tried again, submitting a "motion to quash service of summons for lack of jurisdiction," but it was rejected, too. In the interim, Rambam had filed his request for entry of default against Prytulak, and the clerk had entered Prytulak's default.

Ultimately, however, before Rambam's scheduled default prove-up hearing, Prytulak succeeded in filing a "motion to vacate default or default judgment joined with motion to quash service of summons for lack of personal jurisdiction." Citing Code of Civil Procedure section 473, subdivision (d), which states that the court may set aside any void judgment or order, as well as authorities including *JDO, supra,* 72 Cal.App.4th 1045, he argued that the default and any resulting judgment were "void" because the "[c]ourt lacks personal jurisdiction over . . . Prytulak." (All further statutory references are to the Code of Civil Procedure.) For the first time, he also submitted a supporting declaration detailing his lack of contacts with California.

In his opposition papers, Rambam argued: "[Prytulak] has not presented any direct argument that might support a motion to set aside the default. The primary legal basis is [section] 473[, subdivision] (*b*), which allows a party to seek relief from a judgment *on the grounds of 'mistake, inadvertence, surprise or excusable neglect*.' The moving papers do not invoke the protection of this statute[;] however, it is most likely that [Prytulak] seeks to avail himself of this statute. . . . [Prytulak] admits that his position is that the default should be set aside **because** of his jurisdictional objection. Of course, it does not work that way. Evidence to support an objection to personal jurisdiction does not satisfy the requirements of a motion to set aside a default. The cart cannot come before the horse." (Italics added, bold type in original.) He also filed separate objections to the document (as he had to Prytulak's earlier submissions) on the grounds that Prytulak had failed to properly notice the hearing date for the motion and

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order further stated that, even if a fee had accompanied it, the motion still would have been rejected because Prytulak's default had already been entered at the time of the attempted filing. Contrary to the court's minute order, however, default was not entered until a month after Prytulak sought to file this document.

that his points and authorities contained no legal basis to set aside a default in violation of rules 311(b) and 313(b) of the California Rules of Court because Prytulak's conduct did not amount to excusable neglect under section 473, subdivision (*b*). (All further references to rules are to the California Rules of Court.) Prytulak submitted a lengthy reply and response.

In its minute order, the trial court stated: "The Court notes that [Prytulak's] papers are not in compliance with California law: see, e.g., [rules] 201 [(]re form of papers presented for filing[)], 311 [(]re general format[)] and 313 [(]re Points & Authorities, contents, case citation, and page limitation[)]. On this basis, the motion is DENIED."

The trial court further stated as follows: "Even though the motion is denied on procedural grounds, the court has considered the substantive grounds as well, and for the reasons stated on the record during the hearing and in the opposing papers filed by [Rambam], the motion would also be DENIED on substantive grounds."[4] Essentially adopting Rambam's arguments in their entirety and ignoring Prytulak's citation of section 473, subdivision (d) altogether, the trial court said Prytulak had "cite[d] no authority for the relief requested" but "assum[ed]" Prytulak was invoking subdivision (*b*) of section 473 and went on to state: "There is no adequate showing of inadvertence, mistake, surprise or excusable neglect necessary to support an order setting aside the default. . . . Rather than rely on the grounds stated in [section] 473, [subdivision (b), Prytulak] relies on his unsupported argument that the default should be set aside because any default judgment would be void for lack of personal jurisdiction. *Regardless of the merit of that argument* [(]and the Court is stating no opinion on that subject[)], the issue is *irrelevant* here as a ground for vacating a default under [section] 473. It is also improper to combine a motion to quash service of a summons and complaint with a

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[4] The reporter's transcript is not included in the record on appeal, and, in any event, Prytulak did not attend the hearing. He had advised the trial court at the outset that he could not afford to hire an attorney or to attend hearings himself.

motion to set aside a default, and the former cannot be considered unless and until the moving party is successful in having the default set aside."[5] (Italics added.)

One month later, however, (with the default prove-up under submission), the trial court set a hearing on an "order to show cause why the default in this case should not be set aside" based on the trial court's discovery of the decision in *Pavlovich, supra,* 24 Cal.4th 262, a decision filed on the same day as the prior hearing on Prytulak's motion to vacate default. Notwithstanding the fact that Prytulak consistently cited our decision in *JDO, supra,* 72 Cal.App.4th 1045, on the same issue, the trial court stated: "[I]n view of this important pronouncement by the California Supreme Court in the rapidly evolving area of [I]nternet jurisdiction, and the similar issues which defendant attempted to raise in this case, the court is giving consideration to vacating the default on its own motion, and proceeding with a hearing on the challenge to jurisdiction."

In opposition, Rambam asserted (without substantiation) that the case had been "marked by outside efforts to influence the Court . . . [f]rom nasty and inflammatory letters and Internet postings from [Prytulak] to rumors of improper and possible illegal contacts with the Court by third parties who **should** have no interest in the outcome of this case" and said the trial court's "(virtually unheard of) procedure creates some unfortunate concerns that some of the improper contacts by [Prytulak] and third parties may have had some influence on this Court's decision making process."[6] Because the

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[5] Section 418.10, subdivision (d) specifically authorizes the filing of a motion to quash with a motion to set aside a default.

[6] Urging the trial court that Prytulak is a "bad man," Rambam referred to text printed from what Rambam described as an "outrageous neo-Nazi [W]eb site" (not Prytulak's Web site) in which the following statement is attributed to Prytulak: "Up to now, I've been enjoying myself seeing if I could beat the Rambam suit without hiring a lawyer, but if he has the misfortune to win in front of Judge Dunn, I will hire a lawyer to overturn Dunn." (Prytulak denied posting the remark.) The parties' animosity toward each other is evidenced throughout the record. We limit our discussion to the issues relevant to this appeal.

Pavlovich decision was not "on point with **any** of the reasons [the trial] Court denied [Prytulak's] motion," Rambam argued, the court had no authority to reconsider its prior denial of the motion to vacate the default.

After taking the matter under submission, the trial court declined to reconsider its prior ruling for the reasons stated in Rambam's papers. One month later, based on Rambam's testimony and documentary evidence, the trial court entered a default judgment against Prytulak in the amount of $75,000 ($50,000 for a job Rambam said he had lost because of Prytulak's Web site and $25,000 for emotional distress).[7] Prytulak appeals.

DISCUSSION

I. Prytulak Did Not Waive His Jurisdictional Objection.

Prytulak says "the gist" of his appeal is that his "jurisdictional ties to California are non-existent" and that California lacks personal jurisdiction over him under *JDO, supra,* 72 Cal.App.4th 1045—the same argument he made to the trial court in his motion to vacate default. According to Rambam, because Prytulak did not file a timely motion to quash and "presented no basis to vacate the default," he waived any objection to the trial court's exercise of jurisdiction over him. Accordingly, Rambam says, he "does not . . . address the substantive jurisdiction issues." Rambam's position is not well taken.

It is true that a defendant may challenge the court's exercise of jurisdiction over him by filing a motion to quash. (§ 418.10, subd. (a).) However, "[a] *judgment* is *void* if the court rendering it lacked . . . jurisdiction over the parties." (*Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 691, italics added; see also Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 200e) ¶¶ 5:484-5:485, p. 5-113 [a

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[7] Rambam had sought over $1.5 million, but the trial court found the evidence of additional damages speculative and insufficient for a punitive award.

judgment entered where the court lacks personal jurisdiction over the defendant is void].) Accordingly, even if a motion to quash is not timely filed and default and default judgment are entered, a defendant still may file a motion to vacate the default judgment in the trial court on the ground that it is void (just as Prytulak attempted to do, though perhaps prematurely), and he may appeal from any adverse determination of his motion. (§ 473, subd. (d) [the court may set aside "any void judgment or order"]; § 904.1, subd. (a)(2); Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, *supra,* ¶ 5:488, p. 5-114.)

Alternatively, the defendant may simply file a timely appeal from the default judgment (among other options not at issue here).[8] (*Corona v. Lundigan* (1984) 158 Cal.App.3d 764, 766-767 [a default judgment is appealable on the issue of jurisdiction]; *Misic v. Segars* (1995) 37 Cal.App.4th 1149, 1153-1154 ["A default judgment is reviewable on appeal the same as any other civil judgment. The fact that defendant defaulted in the trial court does not bar [his] right to appeal the judgment entered"]; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2002) ¶ 2:115, p. 2-56; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, *supra,* ¶¶ 3:401-402, p. 3-97 and ¶¶ 5:272-5:273, p. 5-60; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 355, p. 403.) Thus, Rambam's argument that Prytulak waived his challenge to the court's exercise of jurisdiction over him by merely failing to file a timely motion to quash or by failing to have the default set aside in the trial court ignores the applicable law.

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[8] Indeed, if the jurisdiction issue was not already litigated in the original proceeding, a judgment that is void for lack of personal jurisdiction may also be subject to collateral attack—in a separate action to set aside the judgment or when raised as a defense to a separate action by the judgment creditor to enforce the judgment. (*Yu v. Signet Bank/Virginia* (1999) 69 Cal.App.4th 1377, 1386, internal quotes omitted [a "defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding"]; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, *supra,* ¶ 5:489, p. 5-114.)

An objection to the court's exercise of personal jurisdiction over a defendant is waived if the defendant makes a "general appearance" and proceeds on the merits or otherwise *consents* to the court's exercise of jurisdiction. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, *supra,* ¶¶ 3:161-3:163, pp. 3-44.) In analyzing whether the defendant has made a general appearance, "[w]hat is determinative is whether defendant takes a part in the particular action which in some manner recognizes the authority of the court to proceed." (*Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1147; *Mansour v. Superior Court* (1995) 38 Cal.App.4th 1750, 1756.)

Here, default was entered against Prytulak because he had *not* appeared in the action. Thereafter, he made deficient efforts to file a motion to quash and ultimately succeeded in filing a motion to vacate the default "joined with" a motion to quash. Citing section 473, subdivision (d), which states that the court may set aside any void judgment or order, Prytulak unequivocally argued that the default and any resulting judgment were "void" because the "[c]ourt lacks personal jurisdiction over . . . Prytulak."[9] Because Prytulak consistently *contested* the court's jurisdiction over him and took no steps inconsistent with that position, there was no general appearance and no waiver.[10]

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[9] He also briefly argued that there was good cause for the extension of time to quash service, citing section 418.10, subdivision (d) which provides: "[N]o motion under [s]ection 473 . . . when joined with a motion [to quash service of summons on the ground that the court lacks personal jurisdiction over the defendant] shall be deemed a general appearance by the defendant." (See also *Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 792, fn. 2.) Although Prytulak did not actually file a separate motion to quash, what matters is that his argument in this regard was limited to supporting his challenge to the court's exercise of jurisdiction.

[10] Indeed, the authorities Rambam cites in support of his waiver argument stand for the proposition that it is conduct constituting a general appearance (rather than the mere failure to file a timely motion to quash) that waives an objection to the court's exercise of jurisdiction over the defendant.

II. The Trial Court's Exercise of Jurisdiction Was Improper.

As noted above, a direct appeal may be taken from a default judgment on the issue of jurisdiction even where the defendant did not first seek to vacate the judgment by motion in the trial court, "[b]ut as a practical matter, where the judgment is challenged on jurisdictional grounds, [a]defendant is better off proceeding first by motion to vacate ([section] 473) and then, if the motion is denied, appealing the order of denial" so that "the record on appeal will contain the evidence" "[t]o effectively demonstrate lack of personal jurisdiction." (See Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra,* ¶¶ 2:115-2:116, p. 2-56.)

Here, leaving to one side the issue of the trial court's denial of Prytulak's motion for procedural deficiencies, the motion was nevertheless *filed*, not stricken.[11] Therefore,

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[11] Certainly, parties are to comply with the rules, and there were technical deficiencies in Prytulak's papers. Rule 201 sets forth the specifications for filed documents including line spacing and numbering, first-page format, type size and style and the like. The clerk of the court is not to accept or file any papers that do not comply with this rule, but the court may permit the filing of such papers. (Rule 201(j).) Here, the clerk filed the papers, Rambam filed a response and the court did not strike them; indeed, it proceeded to hear argument on the motion.

Prytulak also apparently failed to designate the date, time and place for hearing on the face of his motion in violation of rule 311(b). (He purported to notice a hearing date on the last page of his papers.) According to the record, however, the clerk wrote in the date, time and place for hearing on the first page of the motion, Rambam received notice (and filed opposition along with procedural objections based on rules 311 and 313), and the original hearing date was continued another three weeks at Rambam's request. We fail to see how rule 311 supports the trial court's denial of Prytulak's motion.

Finally, rule 313 addresses the contents of a memorandum of points and authorities including the required discussion of authority, case citation format and page limitations. Contrary to Rambam's claim that Prytulak had stated "no legal basis to set aside the default," Prytulak properly cited to statutory authority (section 473 and 418.10 among others) as well as personal jurisdiction case law in support of his motion. Subdivision (d) of this rule grants the court discretion to refuse to consider a memorandum of points and authorities in support of this type of motion if it exceeds 15

Prytulak's declaration—the supporting evidence on which he bases his claim that the court lacks jurisdiction over him—is a part of the record before us. Resolution of the jurisdiction issue is then a simple matter. [12]

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pages. Even though Prytulak's font appears small, it does not appear that the use of the proper font would have transformed Prytulak's nine-page memorandum into one exceeding 15 pages. Thus, even considering the page limitation provision, this rule does not appear to authorize the trial court's denial of Prytulak's motion. In any event, even where the page limit is exceeded, the document may *not* be rejected for *filing* under this rule.

Although tables of contents and authorities are required for a memorandum exceeding 10 pages (and Prytulak provided such tables), Rambam provided no table of authorities for his 15-page opposition (and apparently received guidance regarding deficiencies in his default prove-up papers and was permitted to resubmit them). (See *Morgan v. Ransom* (1979) 95 Cal.App.3d 664, 669, italics added ["It has often been said that a layman who represents himself is not entitled to any greater privileges than an attorney. *But neither should he receive any less consideration and courtesy*."].)

[12] As for the trial court's gratuitous comments regarding the substance of Prytulak's motion, as previously noted, the court's conclusions were premised on the unfounded assumption that Prytulak relied upon subdivision (b) of section 473. Both Rambam and the trial court ignored the fact that Prytulak had expressly cited subdivision (*d*) of section 473 (providing that the court may "set aside any *void* judgment or order") as authority for the court to "set aside any existing default or default judgment as void." (Italics added.)

Although the clerk's entry of default is a "ministerial act" and not an order or judgment (*Peltier v. McCloud River R.R. Co.*. (1995) 34 Cal.App.4th1809, 1815), it would be anomalous to hold that the trial court has no power to acknowledge undisputed evidence that personal jurisdiction over the defendant is lacking and is compelled to proceed to enter judgment simply because the defendant's motion to set aside is brought after entry of default but prior to entry of judgment—the "inviolate interval" as Prytulak calls it. (See *Dill v. Berquist Constr. Co.* (1994) 24 Cal.App.4th 1426, 1443 ["Such a vacation [of the entry of *default and* default judgment] is authorized by section 473, which provides in relevant part that a trial court 'may, on motion of either party after notice to the other party, set aside any void judgment or order'"].) In any event, Prytulak's evidence is in the record, and the issue of jurisdiction is properly before us on appeal from the judgment.

In his declaration, Prytulak said that he was a Canadian citizen and provided his residential address in Vancouver, British Columbia. He said he had never engaged in business in California, never owned property in the state and never contracted with anyone in California by mail, Internet or otherwise for any performance in California. He further stated that he had maintained a mailing address, telephone number and bank account in California while a graduate student at Stanford from 1966 to 1969 but had not set foot in California since that time. He said his "[W]eb site, the Ukrainian Archive at www.ukar.org, passively disseminates information over the Internet for the purpose of refuting the defamation of the Ukrainian people and the Ukrainian nation, and does so without in any way targeting California. If the information on my [W]eb site does reach Californians, then it does so incidentally and peripherally to reaching people everywhere."

Prytulak added that a recent search for Rambam and Pallorium, Inc. showed a New York address and New York telephone numbers as did the Pallorium, Inc. homepage at www.pallorium.com. (See *JDO, supra,* 72 Cal.App.4th at p. 1051 ["From 1988 to the present [opinion filed in 1999], Rambam was the president of a licensed private investigative agency, Pallorium, Inc., located in Brooklyn, New York"].) In his own declaration in support of default judgment in this case, Rambam stated that he was a private investigator licensed in New York, Texas and Louisiana "as well as other jurisdictions . . . also legally permitted to act as an investigator in the State of California."

As we said in *JDO, supra,* 72 Cal.App.4th 1045, a case involving the same plaintiff (with no apparent change in the extent of his connection to California), the same type of conduct by the defendant and a defendant with somewhat *more* substantial contacts with the State of California, "defendant['s] conduct in . . . posting [a] passive Web site[] on the Internet is not sufficient to subject [him] to jurisdiction in California." (*JDO, supra,* 72 Cal.App.4th at p. 1060, footnote omitted; *Pavlovich, supra,* 29 Cal.4th at p. 274.) "'Creating a site, like placing a product into the stream of commerce, may be felt nationwide—or even worldwide—but, without more, it is not an act purposefully

directed toward the forum state.'" (*JDO, supra,* 72 Cal.App.4th at p. 1060, citations omitted; *Pavlovich, supra,* 29 Cal.4th at p. 274, citations omitted.)

"When a nonresident defendant challenges personal jurisdiction[,] the burden shifts to the plaintiff to demonstrate by a preponderance of the evidence that all necessary jurisdictional criteria are met. . . . This burden must be met by competent evidence in affidavits and authenticated documentary evidence. An unverified complaint may not be considered as an affidavit supplying necessary facts." (*JDO, supra,* 72 Cal.App.4th at pp. 1054-1055, citations omitted.)

Given this burden, when a defendant files a motion to quash on the ground that the court lacks jurisdiction over him, the plaintiff ordinarily is entitled to conduct discovery on the issue of jurisdiction before the hearing on the motion to establish the nature and extent of the defendant's "contacts" with California; if the plaintiff cannot complete such discovery before the hearing on the motion, he may be entitled to a continuance to complete this discovery. (*Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 486-487; *Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710-711; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, *supra,* ¶¶ 3:380-3:386, pp. 3-92 to 3-93.)

Here, however, although Prytulak challenged the court's exercise of personal jurisdiction over him in the trial court, Rambam says he "never sought jurisdictional discovery because a motion to quash was never properly before this [sic, the trial] Court." Although Prytulak is entitled to raise the jurisdiction issue on appeal (and has done so), Rambam says he *still* "*does not seek the ability to conduct discovery or address the substantive jurisdiction issues*. The point is merely that [Rambam] has invested in the proper process." (Italics added.)

Particularly in light of *JDO, supra,* 72 Cal.App.4th 1045, the obvious implication is that Rambam *cannot* contradict Prytulak's evidence that jurisdiction is lacking, relying exclusively on his meritless waiver argument. Where there is no showing that discovery would likely produce evidence of additional California "contacts," there is no basis on which to afford a plaintiff the opportunity to conduct jurisdictional discovery. (*Beckman*

v. Thompson, supra, 4 Cal.App.4th at pp. 486-487.) In choosing not to "seek the ability to conduct discovery or address the substantive jurisdiction issues," it is Rambam who has waived these issues. (*Barnes v. Litton Systems, Inc.* (1994) 28 Cal.App.4th 681, 685, fn. 4; *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4; and see *Hill v. City Cab & Transfer Co.* (1889) 79 Cal. 188, 191 [where a party allows the facts which show the judgment to be void to be established without opposition, "then, as a question of law upon such facts, we do not see why the case is not like that where a judgment is void upon its face"].)[13]

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions to dismiss the proceeding. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701 [on appeal from a void judgment, the reviewing court's jurisdiction is

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[13] At oral argument, Rambam asserted for the first time that this case is distinguishable from the "passive posting line of cases" because Prytulak's Web site is transmitted from a "huge hard disk in Santa Monica" and because the site at issue in *JDO, supra,* 72 Cal.App.4th 1045 was "slightly less interactive" than Prytulak's in that (Rambam says) Prytulak provided links for the viewer to e-mail Prytulak, Rambam, Mike Wallace of *60 Minutes*, the Wiesenthal Center and others. As we already concluded in *JDO,* the mere fact that Prytulak was a customer of an Internet service provider that "happen[ed] to maintain offices or databases in California" is insufficient to constitute "purposeful availment" or to confer personal jurisdiction over a defendant. (*JDO, supra,* 72 Cal.App.4th at pp. 1061-1062.) To the extent Rambam now claims that Prytulak's site was not passive (see *JDO, supra,* 72 Cal.App.4th at p. 1060 [with respect to interactive Web sites "where a user can exchange information with the host computer," "the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site"]), this allegation finds no support in the record and was not timely raised. Consequently, it cannot support the trial court's decision. (*14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1403, fn. 1; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra,* ¶ 8:241, p. 8-117.)

limited to reversing the trial court's void acts].) Prytulak is entitled to his costs on appeal.

WOODS, J.

We concur:

PERLUSS, P.J.

ZELON, J.