

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re Establishment of WHAT’S  
HAPPENING’S TRI-CITY VOICE as a  
Newspaper of General Circulation.

WILLIAM MARSHAK,

Petitioner and Appellant,

v.

BAY AREA NEWS GROUP–EAST BAY,

Contestant and Appellant.

A124667

(Alameda County  
Super. Ct. No. FG08374520)

Legal notices must be published in a “newspaper of general circulation.” (Gov. Code, § 6040.)<sup>1</sup> Petitioner and appellant William Marshak, the publisher and editor-in-chief of the newspaper “What’s Happening’s TRI-CITY VOICE” (the Voice), filed a petition seeking adjudication of the Voice as a newspaper of general circulation (§ 6000 et seq.) for the cities of Fremont and Union City. The trial court entered judgment establishing the Voice as a newspaper of general circulation for both cities. Contestant and appellant Bay Area News Group–East Bay (BANG), publisher of the Argus (a newspaper published in Fremont), filed a motion to vacate that judgment. The trial court granted the motion to vacate its previous adjudication as to Fremont, but denied the

<sup>1</sup> All statutory references are to the Government Code unless otherwise stated.

motion as to Union City. The court denied motions for reconsideration by both Marshak and BANG.

Both parties have appealed. Marshak appeals the trial court's determination that the Voice is not a newspaper of general circulation for Fremont; BANG appeals the court's ruling that the Voice is a newspaper of general circulation for Union City. We affirm.

### **I. THE STATUTORY FRAMEWORK**

Sections 6000 and 6008 specify alternative criteria for qualifying a newspaper as a newspaper of general circulation. “ ‘The impact of becoming a newspaper of general circulation . . . is significant’ because certain legal notices—such as probate and foreclosure notices—‘must . . . be published in a newspaper of general circulation . . . .’ [Citations.]” (*In re Establishment of Eureka Reporter* (2008) 165 Cal.App.4th 891, 895 (*Eureka Reporter*); see also § 6040 “[w]henver any official advertising, notice, resolution, order, or other matter of any nature whatsoever is required by law to be published in a newspaper, such publication shall be made only in a newspaper of general circulation”].) The purpose of requiring that official notices be published in “ ‘newspapers of general circulation’ is ‘to assure that the published material will come to the attention of a substantial number of persons in the area affected . . . .’ [Citation.]” (*In re Tri-Valley Herald* (1985) 169 Cal.App.3d 865, 870 (*Tri-Valley*)).

Section 6000 defines a newspaper of general circulation as a newspaper “[1] published for the dissemination of local or telegraphic news and intelligence of a general character, [2] which has a bona fide subscription list of paying subscribers, and [3] has been established, printed and published at regular intervals in the State, county, or city where publication, notice by publication, or official advertising is to be given or made for at least one year preceding the date of the publication, notice or advertisement.” This definition has been a part of California law since 1905, first in the Political Code and later in the Government Code. (See Historical and Statutory Notes, 32A pt. 2 West’s Ann. Gov. Code (2008 ed.) foll. § 6000, p. 205; *Tri-Valley*, *supra*, 169 Cal.App.3d at pp. 870–871.)

In 1974, the Legislature added section 6008 to provide “ ‘alternative criteria’ to those in section 6000 for qualifying a newspaper as a newspaper of general circulation. [Citation.]” (*Tri-Valley*, *supra*, 169 Cal.App.3d at p. 871; accord *Eureka Reporter*, *supra*, 165 Cal.App.4th at p. 897, fn. 4; *Medeiros v. South Coast Newspapers* (1992) 7 Cal.App.4th 982, 984 (*Medeiros*); *In re Carson Bulletin* (1978) 85 Cal.App.3d 785, 792 (*Carson Bulletin*).) Section 6008 states in part that “[n]otwithstanding any provision of law to the contrary, a newspaper is a ‘newspaper of general circulation’ if it meets the following criteria: [¶] (a) It is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers and has been established and published at regular intervals of not less than weekly in the city, district, or judicial district for which it is seeking adjudication for at least three years preceding the date of adjudication. [¶] (b) It has a substantial distribution to paid subscribers in the city, district, or judicial district in which it is seeking adjudication. [¶] (c) It has maintained a minimum coverage of local or telegraphic news and intelligence of a general character of not less than 25 percent of its total inches during each year of the three-year period. [¶] (d) It has only one principal office of publication and that office is in the city, district, or judicial district for which it is seeking adjudication. . . .”

A principal difference between the statutes is that section 6008, unlike section 6000, does not require that a newspaper be printed and published in the same place. (*Eureka Reporter*, *supra*, 165 Cal.App.4th at p. 897, fn. 4; *Tri-Valley*, *supra*, 169 Cal.App.3d at p. 871.) Section 6008, however, sets forth additional requirements not found in section 6000, including specifying that the newspaper must have a “substantial distribution” to paid subscribers in the jurisdiction in which it is seeking adjudication, and must have only one principal office of publication, which must be in the jurisdiction for which the newspaper is seeking adjudication. (§ 6008, subds. (b), (d); see *Tri-Valley*, at p. 871 [analyzing differences between §§ 6000 & 6008]; *Eureka Reporter*, at p. 897, fn. 4; *In re San Diego Commerce* (1995) 40 Cal.App.4th 1229, 1233 (*San Diego Commerce*); *Medeiros*, *supra*, 7 Cal.App.4th at pp. 984–985.) Both statutes require that

the newspaper have a “bona fide subscription list of paying subscribers.” (§§ 6000, 6008, subd. (a).)

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. *Adjudication of the Voice as a Newspaper of General Circulation***

In March 2008, Marshak filed a petition seeking adjudication of the Voice as a newspaper of general circulation in Union City (under § 6000) and Fremont (under § 6008).<sup>2</sup> Marshak stated the Voice, a weekly newspaper, is “printed and published” in Union City and has a “bona fide list of paying subscribers” there. As to Fremont, Marshak stated the Voice has a “bona fide subscription list of paying subscribers” and “a substantial distribution to paid subscribers”; in addition, Marshak stated the Voice is “published” in Fremont, and has “only one principal office of publication,” which is in Fremont. According to Marshak’s petition, “[o]ver the past three (3) years,” the Voice had 84 paid subscribers in Union City and 512 paid subscribers in Fremont. He stated the newspaper is “distributed by personal delivery weekly to each paid subscriber,” and “is further distributed to the general public with multiple copies at commercial, public, and private sites,” including “ ‘stacks and racks’ ” at over 2,700 locations in Fremont, Union City and other cities. Marshak stated the Voice prints and circulates over 25,000 copies weekly.

The petition was uncontested and on May 2, 2008, the trial court entered judgment establishing the Voice as a newspaper of general circulation for Union City, Fremont, the county of Alameda, and the State of California. The judgment stated the Voice is “printed and published” in Union City and has a “bona fide list of paying subscribers” there. The judgment also stated the Voice has a “bona fide subscription list of paying

---

<sup>2</sup> Marshak argued that adjudication of the Voice as a newspaper of general circulation for Union City and/or Fremont would establish, as a matter of law, that the newspaper was also one of general circulation for the county of Alameda and the State of California. (See *Newspaper of General Circulation*, 63 Ops.Cal.Atty.Gen. 176, 181–183, 185–187 (1980) [newspaper that qualifies as a newspaper of general circulation for a city, under either § 6000 or § 6008, qualifies as a newspaper of general circulation for the county and the State as well].)

subscribers” and a “substantial distribution to paid subscribers” in Fremont, is “published” in Fremont, and has “only one principal office of publication,” which is in Fremont.

B. *Adjudication of the Argus as a Newspaper of General Circulation*

On June 3, 2008, in a separate proceeding, BANG filed a petition to have the Argus adjudicated a newspaper of general circulation in Fremont under section 6008. BANG argued the Argus has a “substantial distribution to paid subscribers” in Fremont. BANG stated that 18,912 individuals in Fremont regularly pay a fee for a subscription to the Argus, and that Fremont has a population of approximately 204,525; accordingly, approximately 9.2 percent of Fremont’s population subscribes to the Argus.

Marshak contested the petition, arguing the Argus does not meet the requirement of section 6008, subdivision (d), i.e., that the Argus have only one principal office of publication, which must be in Fremont.

On July 28, 2008, the trial court entered judgment establishing the Argus as a newspaper of general circulation for Fremont under section 6008.

C. *BANG’s Motion to Vacate the Voice Adjudication*

On November 24, 2008, BANG filed a motion to vacate the May 2, 2008 judgment adjudicating the Voice as a newspaper of general circulation for Union City and Fremont. BANG argued the Voice does not qualify under section 6000 in Union City because it is not “published” there within the meaning of the statute; BANG contended the Voice is published only in Fremont. BANG also contended the governing statutes do not permit a newspaper to obtain “multiple city adjudications,” such as the Voice’s adjudication in Union City under section 6000 and in Fremont under section 6008.

In support of its argument that the Voice is not published in Union City, BANG asserted the Voice has been “located in Fremont from its inception,” and, other than using a printing company located in Union City, the Voice has “no office, plant, distribution center or other physical operations in Union City.” BANG submitted documents showing the Voice uses a Fremont address on its letterhead and advertising contracts, and

directs persons wishing to pay for subscriptions to the Voice to send payments to that address.

BANG contended the Voice does not qualify under section 6008 in Fremont because it does not have a “substantial distribution to paying subscribers” there. BANG argued the Voice is a free newspaper, although it offers subscriptions for various prices as well. BANG submitted census data showing Fremont had, in 2006, an estimated population of 201,961. BANG noted that, assuming the Voice has 512 paying subscribers in Fremont (as Marshak stated in his petition), that figure is approximately 0.25 percent of Fremont’s population.

In its moving papers, BANG did not argue the Voice’s adjudication in Union City or Fremont should be vacated on the ground that it does not have a “bona fide subscription list of paying subscribers.” (See §§ 6000, 6008, subd. (a).)

D. *Opposition and Reply*

Marshak requested a continuance of the hearing on BANG’s motion, so he could conduct discovery and investigation. The court continued the hearing (which had originally been scheduled for December 19, 2008, and was then re-noticed by BANG for January 9, 2009) to March 6, 2009.

On February 23, 2009, Marshak filed his opposition to BANG’s motion. Marshak contended the Voice qualifies as a newspaper of general circulation in Union City under section 6000, because it is printed and published there and has a bona fide subscription list of paying subscribers. Marshak argued a newspaper may be published in more than one location. In a supporting declaration, Marshak described the “procedure for printing and ultimate delivery” of the Voice. He stated the newspaper is printed in Union City. Some copies of the paper are picked up at the printer and delivered directly to locations in Union City and elsewhere; the remaining copies are picked up at the printer, brought back to the Voice’s office in Fremont, and then delivered to other locations. Marshak also argued the governing statutes do not prohibit the Voice from simultaneously qualifying as a newspaper of general circulation under section 6000 in Union City and under section 6008 in Fremont.

Marshak contended the Voice qualifies under section 6008 in Fremont because it has its principal office of publication in Fremont and has a substantial distribution to paid subscribers there. Marshak stated that, since its adjudication in May 2008, the Voice had substantially increased its distribution to paying subscribers, to approximately 9,000 subscribers in Fremont and 1,000 subscribers in Union City. The Voice had increased its paid circulation “primarily through group subscriptions.”

Finally, Marshak submitted a copy of a 2007 audit of the Argus, showing its circulation figures. The audit shows a Sunday circulation of 17,443 copies in Fremont, and a weekday circulation of 19,143 copies.

In its reply in support of its motion to vacate, BANG reiterated its position that the Voice does not qualify as a newspaper of general circulation in Union City under section 6000 because it is not published there. BANG criticized Marshak for focusing on other issues in his opposition, including “the irrelevant issues of whether the Voice is ‘printed’ in Union City and has a ‘bona fide’ list of paying subscribers.” (Italics omitted.) BANG noted that “Contestant [i.e., BANG] raised neither of those elements as a basis for its motion to vacate. Instead, the sole basis of its motion under Section 6000 is whether the Voice is ‘established, printed, and published’ in Union City within the meaning of that provision.” (Italics omitted.) BANG also argued the Voice could not be “published from multiple cities” and could not obtain multiple city adjudications under sections 6000 and 6008; according to BANG, these statutes are “mutually exclusive, alternative methods of adjudication[.]”

As to Fremont, BANG contended the Voice’s new “group subscriptions” did not satisfy the requirement of a substantial distribution to paid subscribers. The increase in the Voice’s paid circulation in Fremont was due mainly to 13 new group subscriptions. BANG argued that the group subscriptions should not be considered because Marshak’s counsel invoked trade secrets objections at Marshak’s deposition to prevent full cross-examination about the subscriptions. BANG contended the members of the 13 groups should not count as individual paying subscribers.

In a supplemental memorandum, Marshak stated that, in response to BANG's arguments about not having the opportunity to conduct discovery as to the Voice's new paying subscribers, he would "present [the Voice's] subscription lists to the court under seal, appropriately redacted to protect privacy rights and trade secret rights."

BANG filed objections, arguing the court should not consider the Voice's subscription list, because Marshak had not followed proper procedures for filing documents under seal, and because BANG had not been able to cross-examine Marshak about the list.

E. *The March 6, 2009 Hearing*

At the March 6, 2009 hearing on BANG's motion to vacate, BANG's counsel again argued that the Voice: (1) could not qualify in Union City under section 6000 because it is published in Fremont;<sup>3</sup> (2) could not obtain adjudications in multiple cities under sections 6000 and 6008; and (3) could not qualify in Fremont under section 6008 because it does not have a substantial distribution to paid subscribers. In connection with the Fremont adjudication, BANG's counsel argued the court should count the 13 new group subscriptions to the Voice as 13 paying subscribers, rather than counting the groups' thousands of members as paying subscribers. BANG's counsel again objected to Marshak's effort to submit under seal a list of paying subscribers, because he had not followed appropriate procedures and because BANG had not been able to question Marshak about the list at his deposition.<sup>4</sup>

---

<sup>3</sup> With respect to Union City, BANG's counsel noted that the other requirements for adjudication under section 6000 were not at issue. BANG's counsel stated: "The particular criteria that we're addressing today is that under [section] 6000, the paper has to be both printed and published within the jurisdiction it's seeking to be adjudicated under [section] 6000. There are other requirements as well, but that is the criteria that we're dealing with here today."

<sup>4</sup> BANG's counsel also suggested that the court should vacate the Voice's adjudication for Alameda County (an argument BANG had not raised in its motion), because BANG had learned in discovery that most of the Voice's individual subscribers do not receive the paper via home delivery; instead, the papers are delivered in bulk to locations from which individuals can pick them up. BANG's counsel argued the Voice



Marshak's counsel responded by withdrawing his proposal to submit the list under seal. He offered to submit to the court a declaration attaching a redacted list of groups and individual subscribers that omitted identifying information. BANG's counsel again objected that Marshak had not followed appropriate procedures for filing a redacted document and that BANG had not been permitted to cross-examine Marshak about the subscribers at his deposition. The court ultimately admitted the declaration and attached list as an exhibit. The declaration states that the Voice has: (1) in Fremont, 812 individual paying subscribers, and 6,150 persons as members of group subscriptions, for a total of 6,962 "paid subscribers"; and (2) in Union City, 122 individual paying subscribers, and 850 persons as members of group subscriptions, for a total of 972 "paid subscribers." Attached to the declaration is an approximately 30-page list on which the names and street addresses are blank; only cities and zip codes are shown.

Questioned by the court, Marshak's counsel confirmed that, in Fremont, 13 groups account for the group subscriptions. The 13 groups pay for copies of the newspaper. The groups do not resell copies of the paper to their individual members; instead, they give the paper to their members. Marshak's counsel argued, however, that the group members pay, indirectly or vicariously, for the paper because they "pay membership dues and fund the group, and then that group buys the paper. So it's not free. It's bought."

The court took BANG's motion under submission.

F. *The Court's March 10, 2009 Ruling*

On March 10, 2009, the court issued an order granting BANG's motion to vacate the Voice's adjudication as to Fremont, but denying the motion as to Union City. As to Union City, the court stated that "[t]he sole basis for BANG's motion is that [the Voice] is not printed and published in Union City and therefore has an insufficient connection with Union City." The court noted the Voice is printed in Union City by Fricke-Park Press. As to whether the Voice is "published" in Union City, the court stated section

---

does not qualify for county adjudication "because it wouldn't qualify under the bona fide subscription list or substantial distribution to paying subscribers, the two different requirements under [section] 6008."

6004.5 “requires that the newspaper must be printed and published in the same city.”

The court noted the Voice “claims 122 individual paying subscribers in Union City and a total circulation of 972.” The court stated: “*The newspapers circulated in Union City are picked up at Fricke-Park Press and delivered to subscribers or placed in racks in Union City for distribution.* Government Code Sections 6000, 6004, 6004.5 and 6005 only require a bona fide list of paying subscribers and do not require a substantial list of paying subscribers.” (Italics added.) The court concluded the Voice is printed and published in Union City and is a newspaper of general circulation there.

As to Fremont, the court agreed with BANG that the Voice does not qualify under section 6008 because it does not have a substantial distribution to paid subscribers. Addressing the Voice’s group subscriptions, the court stated that, “[a]t best, 13 paying groups constitute 13 paying subscribers,” and noted that it was not clear what the groups do with the papers after receiving them. The court stated that recipients of free papers are not paying subscribers. The court noted that “[a] bona fide list of subscribers requires an agreement to pay for the paper[,]” and there was no evidence that the group members agreed to pay for the Voice.

The court, still addressing the Fremont adjudication, stated “a list of zip codes purportedly representing a list of recipients of [the Voice] (Exhibit 1 [i.e., the redacted list submitted by Marshak]) does not constitute a subscription list. [(*Eureka Reporter, supra*, 165 Cal.App.4th at p. 897.)]” The court found the Voice has 525 paying Fremont subscribers (512 individual subscriptions plus 13 group subscriptions); the population of Fremont is 204,000; and therefore the ratio of paying subscribers to inhabitants is 0.26 percent. The court found this percentage is too small to be considered “substantial” within the meaning of section 6008.

#### G. *Subsequent Proceedings*

On March 17, 2009, Marshak filed a timely notice of appeal challenging the portion of the court’s order vacating the Voice’s adjudication for Fremont. On March 19, 2009, Marshak filed a motion to vacate and/or for reconsideration of the court’s March 10 order; Marshak contended BANG’s motion to vacate had been untimely.

On March 25, 2009, BANG filed a motion to vacate or clarify, or for reconsideration of, the court's March 10 order. In its motion to vacate or clarify, BANG argued that the court's statement in its March 10 order that "[t]he newspapers circulated in Union City are picked up at Fricke-Park Press and delivered to subscribers or placed in racks in Union City for distribution" was inconsistent with Marshak's deposition testimony. In support of reconsideration, BANG argued that new evidence—a post-March 10 editorial by Marshak in the Voice—showed that the Voice's paying subscribers are given a group location at which to pick up a paper.

The court heard oral argument on the parties' motions on April 1, 2009. BANG's counsel argued that, according to Marshak's deposition testimony, the Voice's individual paying subscribers do not receive home delivery and instead pick up their papers from a group location. BANG argued that therefore those persons do not qualify as paying subscribers, and the Voice does not have a bona fide subscription list for purposes of adjudication in Union City under section 6000. BANG's counsel acknowledged that BANG did not raise that argument in its original motion to vacate. Marshak's counsel responded by arguing that the evidence showed some copies of the Voice are mailed to subscribers; BANG's counsel conceded this, but argued Marshak had not shown how many of those subscribers were in Union City.

As to whether the Voice was "published" in Union City under section 6000, the court questioned BANG's counsel about whether copies of the paper delivered directly from the printer in Union City to locations in Union City are published in Union City. BANG's counsel responded that this distribution procedure should not qualify as publication under section 6000 because the Voice is published in Fremont. BANG's counsel also argued that, according to Marshak's deposition testimony, 12 of the Voice's 14 distributors pick up papers from the Voice's office in Fremont rather than from the printer in Union City. BANG's counsel stated that the two distributors who pick up from the printer "distribute to a broad area, not just Union City. But as I concede, they do have some papers picked up in Union City."

The court denied both parties' motions to vacate the March 10 order. As to Marshak's motion, the court found Marshak's notice of appeal had divested the court of jurisdiction as to the Fremont adjudication; Marshak's motion was procedurally defective; and BANG had presented new facts and law showing the Voice did not have a substantial circulation to paid subscribers in Fremont. As to Union City, the court found "[t]here is sufficient evidence before the Court that [the Voice] is printed and published in the City of Union City."

On April 6, 2009, BANG filed a timely notice of cross-appeal from the portion of the court's March 10 order denying BANG's motion to vacate the Union City adjudication.

### **III. DISCUSSION**

#### **A. *Standard of Review***

As we discuss further below, the parties' arguments on appeal require us to interpret portions of the relevant statutes and to review certain of the trial court's factual findings. The principal issues presented here are interpretation and application of the term "published" in section 6000, and of the terms "substantial distribution" to "paid subscribers" in section 6008.

We review questions of statutory interpretation de novo. (*Eureka Reporter, supra*, 165 Cal.App.4th at p. 896 [de novo review of whether newspaper had a "bona fide subscription list of paying subscribers" under § 6000]; see also *Medeiros, supra*, 7 Cal.App.4th at p. 986 [appellate court considered "whether the trial court erred as a matter of law" in concluding newspaper had "a substantial distribution to paid subscribers" under § 6008, subd. (b)]; *Tri-Valley, supra*, 169 Cal.App.3d at p. 869 [interpretation of "principal office of publication" under § 6008, subd. (d)].) To the extent the parties challenge the trial court's factual findings, we review those findings under the substantial evidence standard. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, superseded by statute on another ground as stated in *DeBerard Properties, Ltd. v. Lim* (1999) 20 Cal.4th 659, 668.)

B. *The Fremont Adjudication*

Marshak contends the trial court erred in concluding the Voice does not have a “substantial distribution to paid subscribers” in Fremont, as required by section 6008, subdivision (b). We disagree.

In calculating the number of paying subscribers to the Voice, the trial court concluded the paper’s 13 group subscriptions count as 13 paid subscribers; the 6,150 individual members of those groups are not paid subscribers. This conclusion was correct. Section 6008 does not define the term “paid subscriber.” This court has previously construed the term “paying subscribers” in section 6000. (*Eureka Reporter, supra*, 165 Cal.App.4th at pp. 896–897.) We stated: “Section 6000 does not define the term ‘paying subscriber,’ but in the publishing context, a ‘subscriber’ is one who ‘contract[s] to receive and pay for a certain number of issues of a publication.’ (American Heritage Dict. (4th ed. 2000) p. 1726.) Another definition of ‘subscriber’ is one who ‘receive[s] a periodical or service regularly on order.’ (Merriam-Webster’s Collegiate Dict. (11th ed. 2004) p. 1244.)” (*Eureka Reporter, supra*, 165 Cal.App.4th at p. 896.) In *Eureka Reporter*, a small percentage of the recipients of a free newspaper participated in a “ ‘Voluntary Pay Program’ (the Program),” through which they contributed money to the paper to offset the cost of delivering it. (*Id.* at pp. 894–895.) We held that these recipients were not “paying subscribers” within the meaning of section 6000, because there was “no evidence in the record of the existence of a contract between [the newspaper] and the participants in the Program wherein the participants agree to pay for (and receive) a certain number of issues of [the newspaper].” (*Id.* at pp. 894, 896, 899.) Residents of the county in which the newspaper was located who did not participate in the Program would continue to receive the newspaper for free. (*Id.* at p. 896.)

Applying the same definition here, the individual members of the 13 Fremont groups that pay for group subscriptions to the Voice are not “paying subscribers.” As the trial court recognized, no evidence appears in the record of the existence of a contract between the Voice and the individual members of these groups wherein the individual

members agree to pay for (and receive) a certain number of issues of the Voice. Instead, the groups (not their individual members) pay the Voice for copies of the newspaper, which the members can then obtain without payment. As the trial court later noted in its written opinion, it is “unclear” what the groups do with the papers after paying for them. The trial court correctly held that individuals who do not pay for a newspaper are not paying subscribers.<sup>5</sup>

On appeal, Marshak offers no authority or analysis supporting a conclusion that the individual group members should be considered paying subscribers under section 6008.<sup>6</sup> After determining that the 13 group subscriptions count as only 13 paid subscribers, the trial court found the Voice has 525 paid subscribers (i.e., 512 individual paid subscribers plus 13 groups), that Fremont has a population of 204,000, and that therefore the ratio of paid subscribers to inhabitants is 0.26 percent. The court concluded this ratio was “too small a number to be declared ‘substantial’ as that term is used in [s]ection 6008.” Again, the trial court was correct.<sup>7</sup>

---

<sup>5</sup> Marshak’s counsel argued in the trial court that the individual members of the groups should be viewed as paying indirectly for the newspaper because they pay membership dues to their groups. As BANG notes, however, no evidence appears in the record as to the identities of the 13 groups or as to whether they are dues-collecting or member-funded organizations.

<sup>6</sup> BANG refers to *Dunham v. Clayton* (Iowa Ct.App. 1991) 470 N.W.2d 362, 365–366 (*Dunham*), in which the court held that a recipient of a “business gift subscription” (purchased and given away by a local bank) was not a “bona fide subscriber” under the governing Iowa statute, unless the recipient made an “affirmative assent” to the subscription; a “mere failure to cancel” the subscription was not enough. Here, there is no evidence of affirmative assent by the individual group members to receive the Voice. In any event, section 6008 requires “paid subscribers,” not just assent by persons who receive a paper for free. (§ 6008, subd. (b); see *Eureka Reporter*, *supra*, 165 Cal.App.4th at p. 899 [distinguishing *Dunham* because it involved Iowa statute rather than § 6000].)

<sup>7</sup> At the time of its adjudication in May 2008, the Voice had 512 paid subscribers in Fremont; during the proceedings on the motion to vacate, Marshak claimed the Voice had 812 individual paying subscribers in Fremont. In connection with its motion to vacate, BANG submitted census data showing Fremont had an estimated population of 201,961. Using the larger number of paid subscribers (825, i.e., 812 individuals plus 13 groups) and the more recent population data (201,961), the ratio of paying subscribers

Section 6008 does not define the term “substantial.” In *Carson Bulletin*, the court stated: “The term ‘substantial’ in the context of distribution to paid subscribers may be made reasonably certain by reference to other definable sources. The unabridged version of the Random House Dictionary of the English Language (1966) page 1418, gives as its first and primary definition of ‘substantial’ that it is something ‘of ample or considerable amount, quantity, size, etc.’ Similarly, in common legal usage, the term ‘substantial’ has been defined as ‘ “important” or “material” ’ [citation] and ‘considerable amount or value in opposition to that which is inconsequential or small’ [citations].” (*Carson Bulletin*, *supra*, 85 Cal.App.3d at p. 795.) The *Carson Bulletin* court held that 12 paid subscribers in a city with a population of about 79,000, “less than two-hundredths of 1 percent (0.02 percent) of the local population, could not be deemed ‘substantial’ under the foregoing definitions in view of the purpose of the law to limit publication of official notices to newspapers meeting certain standards in order ‘to assure that the published material will come to the attention of a substantial number of persons in the area affected’ [citation].” (*Ibid.*, fn. omitted.)

In *Medeiros*, a newspaper’s ratio of paying subscribers to city inhabitants was 1,898 to 128,398, or about 1.48 percent. (*Medeiros*, *supra*, 7 Cal.App.4th at p. 986.) The *Medeiros* court stated: “Given the legislative concern that the persons who are to receive legal notices be likely to read the newspapers publishing those notices, on this record we cannot say a subscriber to population ratio of approximately 1.48 percent amounts to a substantial distribution to paid subscribers as required by section 6008. Standing alone, 1.48 percent is too small a number to be declared to be substantial, nor can we say definitively that it is insubstantial because there is little to which it can be compared. While 1.48 percent is not large, it may be substantial if other newspapers in the area have similar percentages of the population as paid subscribers.” (*Id.* at pp. 986–987.) The appellate court remanded to permit the introduction of evidence of the paid

---

to inhabitants would be 0.41 percent. This figure also is not “substantial” within the meaning of section 6008.

subscribership ratios of other newspapers in the county that qualified under section 6008. (*Id.* at p. 987.)

Applying the framework established in *Carson Bulletin* and *Medeiros*, the Voice's paid subscribership ratio of 0.26 percent, standing alone, is too small a number to be declared substantial. (*Medeiros, supra*, 7 Cal.App.4th at pp. 986–987.) Nor is there evidence in the record showing that other newspapers in the area have similar percentages of the population as paid subscribers. To the contrary, the evidence showed that the Argus (which has been adjudicated as a newspaper of general circulation in Fremont) had, as of 2007, a paid weekday circulation of 19,143, out of a population of approximately 204,000, for a ratio of 9.38 percent, many times higher than the Voice's ratio. Moreover, Marshak had the opportunity to obtain and present evidence of the paid subscribership ratios of other newspapers, as he obtained a continuance of the hearing on BANG's motion to vacate to allow him to conduct discovery.

Marshak states that, at the time of the Voice's initial adjudication in May 2008, neither the Argus nor any other newspaper had yet been adjudicated a newspaper of general circulation in Fremont. He contends that therefore the trial court's initial finding that the Voice had a substantial distribution to paid subscribers was correct. We disagree. The absence of an existing newspaper of general circulation in a given area does not provide a basis for excusing the statutory requirement of a substantial distribution for a newspaper that happens to be the first to seek adjudication there.<sup>8</sup>

Marshak also argues that, in determining what constitutes a “substantial distribution to paid subscribers,” we should consider such factors as nationwide declines in newspaper subscriptions, the size of the Voice's total circulation (about 25,000), and the Voice's quality and popularity. But we cannot rewrite the statute to replace the requirement of a “substantial distribution to *paid* subscribers” with a test focusing on overall (paid plus unpaid) circulation, or on whether a newspaper is well-respected in the

---

<sup>8</sup> When no newspaper of general circulation is published in a jurisdiction, any official notice “shall be given or made in a newspaper of general circulation published nearest thereto.” (§ 6042.)



community. (See *Eureka Reporter*, *supra*, 165 Cal.App.4th at p. 899 [declining to “rewrite” statutory requirements]; *San Diego Commerce*, *supra*, 40 Cal.App.4th at pp. 1235, 1237 [same].) As to general declines in newspaper subscriptions, the *Medeiros* court recognized that even a very low paid subscriber to inhabitant ratio could be substantial if there were evidence that other newspapers in the area have similar ratios. (*Medeiros*, *supra*, 7 Cal.App.4th at pp. 986–987.) Here, there was no such evidence. To the contrary, the evidence showed the Argus alone had a significantly higher paid subscriber to inhabitant ratio than the Voice.

The trial court correctly concluded the Voice does not have a “substantial distribution to paid subscribers” in Fremont, within the meaning of section 6008, subdivision (b). Accordingly, we affirm the trial court’s ruling vacating its prior order establishing the Voice as a newspaper of general circulation in Fremont.

### C. *The Union City Adjudication*

#### 1. *Standing*

Marshak argues that BANG lacks standing to appeal the trial court’s ruling declining to vacate the Voice’s Union City adjudication, because BANG is not aggrieved by that ruling. Marshak argues that neither the Argus nor any other BANG newspaper has been adjudicated a newspaper of general circulation for Union City. Therefore, he contends, BANG has no interest in seeing the Voice’s adjudication in Union City vacated.

A party aggrieved by a judgment or an appealable order has standing to appeal. (Code Civ. Proc., § 902.) The standing test is two-fold: one must be both a party of record and aggrieved. (*Stonegate Homeowners Assn. v. Staben* (2006) 144 Cal.App.4th 740, 745, fn. 1.) A party whose rights or interests are adversely affected by a judgment is aggrieved; the party’s interest must be immediate and substantial, not nominal or remote. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.)

BANG became a party to the underlying proceedings by filing its motion to vacate. (See § 6024 [decision adjudicating a newspaper as one of general circulation “may be vacated, modified or set aside by the court on its own motion, or on the motion

of any person, whether a party to the original proceeding or not”]; *Stonegate Homeowners Assn. v. Staben*, *supra*, 144 Cal.App.4th at p. 745, fn. 1 [“nonparty who moves to vacate [a] judgment is permitted to appeal as if [it] were a party”].)

The record also supports a finding that BANG is aggrieved by the Voice’s adjudication in Union City. In the trial court, BANG submitted evidence that, although the Argus has not been adjudicated a newspaper of general circulation in Union City, it has published legal notices for Union City since at least 1972. After the Voice was adjudicated a newspaper of general circulation, Union City awarded its contract for publication of legal notices to the Voice. BANG thus is aggrieved by the Voice’s adjudication; BANG’s financial interests are affected due to lost revenue from the publication of notices by a rival newspaper.<sup>9</sup>

2. *Whether the Voice is Published in Union City*

Section 6000 provides for adjudication of a newspaper as one of general circulation in a city in which it is “printed and published[.]” It is undisputed that the Voice is printed in Union City. BANG contends the trial court should have vacated the Voice’s adjudication in Union City under section 6000 because the Voice is not “published” in Union City. Under section 6004, a newspaper is “published” within the meaning of section 6000 if it is “issued from the place where it is printed and sold to or circulated among the people and its subscribers . . . .” (§ 6004.)<sup>10</sup> “The word ‘publish’ ordinarily means to disclose, reveal, proclaim, circulate or make public.” (*Application of*

---

<sup>9</sup> We do not determine whether it would be permissible for the Argus (which has not been adjudicated as a newspaper of general circulation in Union City, but has been adjudicated in Fremont, Alameda County, and the State of California) to publish Union City’s legal notices if the Voice’s adjudication were vacated. (See §§ 6040 [official notices may only be published in a newspaper of general circulation], 6042 [if no newspaper of general circulation is published in a jurisdiction, notices are to be published in “a newspaper of general circulation published nearest thereto”].)

<sup>10</sup> The term “published” in section 6008 has a similar definition but omits the requirement that a newspaper be printed where it is published. (See § 6008, subd. (2) [as used in § 6008, “ ‘[p]ublished’ means issued from the place where the newspaper is sold to or circulated among the people and its subscribers during the whole of the three-year period”].)

*Monrovia Evening Post* (1926) 199 Cal. 263, 266 (*Monrovia Evening Post*); accord *Western States Newspapers, Inc. v. Gehringer* (1962) 203 Cal.App.2d 793, 797–798 (*Western States*).) However, as the term is used in section 6000, it means that “the newspaper shall have been actually *issued from* the identical city or political subdivision where it is printed.” (*Monrovia Evening Post*, at p. 266, italics added [construing former Political Code, §§ 4460 & 4463, the predecessors of §§ 6000 & 6004]; *Tri-Valley, supra*, 169 Cal.App.3d at pp. 870–871; *In re Lynwood Herald American* (1957) 152 Cal.App.2d 901, 906 (*Lynwood Herald American*).)

The trial court concluded that the Voice is published in Union City because “[t]he newspapers circulated in Union City are picked up at Fricke-Park Press and delivered to subscribers or placed in racks in Union City for distribution.” The evidence in the record supports the conclusion that some copies of the Voice are issued from, and therefore published in, Union City, because they are picked up from the printer and distributed to delivery locations, including locations in Union City. Marshak testified in his deposition that, after the Voice is printed, *some* copies are picked up at the printer by distributors and distributed to delivery locations, although the majority of the copies are brought back to the Voice’s office in Fremont, where they are later picked up for distribution by the Voice’s distributors. Specifically, of the Voice’s 14 distributors, two (one third-party delivery service and one employee of the Voice) pick up copies of the Voice from the printer and deliver them to assigned locations, including locations in Union City and in other cities. At the April 1, 2009 hearing on the parties’ motions for reconsideration, BANG’s counsel, in response to questioning by the court, conceded that two distributors pick up copies of the Voice directly from the printer and deliver them.

Based on this evidence, the copies of the Voice that are picked up at the printer in Union City and delivered to locations in Union City are “issued from” the place where they are “printed and sold to or circulated among the people and its subscribers . . . .” (§ 6004; see *In re News-Ledger* (1967) 255 Cal.App.2d 211, 213–214 [papers that were “mailed or otherwise circulated” from a location in Yolo County were “issued from,” and therefore “published in,” Yolo County within the meaning of § 6004].)

On appeal, BANG concedes that some of the Voice’s distributors pick up copies of the Voice directly from the printer in Union City. And, BANG does not articulate an argument as to why these copies should not be viewed as being “issued from” Union City, as required by section 6004’s definition of “published.”

Instead, BANG contends the Voice is not “published” in Union City, and therefore does not qualify as a newspaper of general circulation there, for two interrelated reasons. First, BANG contends the governing statutes and the underlying “legislative intent” preclude a newspaper from obtaining, as the Voice initially did, “multiple city adjudications” (i.e., adjudication under section 6000 in one city and adjudication under section 6008 in another city). BANG asserts the two sets of statutory criteria are “mutually exclusive”—“either a newspaper is published and printed from one jurisdiction and thus qualifies to carry legal notices in that jurisdiction under Section 6000, or it prints other than where it publishes and in that case it may seek adjudication under Section 6008’s more exacting standards.”

Second, BANG contends that both section 6000 and section 6008 “*require that a newspaper be published from only one place* and that place be where the adjudication is sought[.]” (Italics added.) BANG argues that the Voice must be deemed to be published solely in Fremont, because it has a greater “connection” to that city—the Voice’s office has always been located in Fremont; it has more distribution sites and more paid subscribers in Fremont than in Union City; the employees who manage its subscriptions are based in Fremont; and the majority of the copies of the Voice, after printing, are returned to the Fremont office for distribution from there. In contrast, BANG argues, the Voice’s only connection with Union City is that it “prints from there” and “has some circulation and distribution sites” there, a connection BANG asserts is insufficient to permit adjudication under section 6000. BANG concludes that the Voice’s “fixed and permanent domicile and substantial distribution—is in Fremont, not Union City.” (Fn. omitted.)

We need not address the first of these arguments, i.e., BANG’s contention that a newspaper may not obtain adjudication in one city under section 6000 and in another city

under section 6008. As discussed in part III.B. above, the trial court correctly vacated the Voice’s adjudication in Fremont under section 6008. Accordingly, any prohibition on “multiple city adjudications” would provide no basis for vacating the Voice’s adjudication in Union City.

BANG’s second argument is that (1) to obtain adjudication in a city under section 6000, a newspaper must “publish” *only* in that city, and (2) the Voice must be deemed to publish solely in Fremont. We find this contention unpersuasive. As an initial matter, we note that, applying the statutory definition of “published” applicable to adjudications under section 6000, the Voice is *not* published in Fremont, because it is not printed there. (See § 6004 [to be “published” within the meaning of section 6000, a newspaper must be “issued from *the place where it is printed* and sold to or circulated among the people and its subscribers”], italics added; *Monrovia Evening Post*, *supra*, 199 Cal. at p. 266 [rejecting ordinary definition of “published” and holding it means “the newspaper shall have been actually *issued from* the identical city or political subdivision where it is printed”], italics added; *Tri-Valley*, *supra*, 169 Cal.App.3d at pp. 870–871; *Lynwood Herald American*, *supra*, 152 Cal.App.2d at p. 906.) Accordingly, for purposes of adjudication under section 6000, the only city in which the Voice is published is Union City.

Moreover, we are not persuaded by BANG’s argument that a newspaper seeking adjudication under section 6000 must be published in (or issued from) only one city. Section 6000 itself does not specify such a requirement—section 6000 states only that a newspaper must be “printed and published” in the city for which it seeks adjudication; it does not state that a newspaper must be published solely in that city.

The authorities cited by BANG do not support its position. BANG cites section 6004.5, which states: “In order to qualify as a newspaper of general circulation the newspaper, if either printed or published in a town or city, shall be both printed and published in one and the same town and city.” BANG emphasizes the word “one” in the phrase “printed and published in one and the same town and city,” and suggests that this language means a newspaper must be published in only one city. However, BANG does

not cite any cases construing section 6004.5 in this manner. As we discuss, in our view, the statute simply codifies the rule that a newspaper seeking adjudication under section 6000 must be printed and published in the same jurisdiction.

The language of section 6004.5, which was enacted in 1951, mirrors language in the Supreme Court's 1926 decision in *Monrovia Evening Post* where it interpreted the statutory provisions defining the terms "established," "printed," and "published" (currently found in §§ 6002–6004). (*Monrovia Evening Post*, *supra*, 199 Cal. at pp. 265–268.) The court concluded that the Legislature had adopted those definitions to overrule a prior Supreme Court decision, *In re McDonald* (1921) 187 Cal. 158, in which the court had held that a newspaper could qualify as one of general circulation for a city where it published, even though the mechanical work of printing the paper was done in a different city. (*Monrovia Evening Post*, at p. 268.) The *Monrovia Evening Post* court stated: "[I]t is now very clearly the legislative intention to require that a newspaper of general circulation be printed, published and issued from *one and the same* city, town, county or place where the place of publication or official advertising is to be given or made . . . ." (*Ibid.*, italics added.) In a subsequent decision, *In re Christensen* (1951) 104 Cal.App.2d 375, 377–378 (*Christensen*) (decided in 1951 but prior to the enactment of § 6004.5), the appellate court applied *Monrovia Evening Post* and held that a newspaper qualified as one of general circulation for a *county* when it was published and printed in different cities within that county. (See also *Lynwood Herald American*, *supra*, 152 Cal.App.2d at p. 907.)

Finally, in *Lynwood Herald American*, the appellate court held that section 6004.5 did not alter the holdings of *Monrovia Evening Post* or *Christensen*. (*Lynwood Herald American*, *supra*, 152 Cal.App.2d at pp. 908–910.) In *Lynwood Herald American*, a publisher sought county adjudications for two newspapers, each of which was printed in one city in the county and published from a different city in the county. (*Id.* at pp. 902–903.) An opposing party (Publisher's Association) argued the newspapers did not qualify because they were not issued or published from the same town or city in which they were published, as required by section 6004.5. (*Id.* at p. 903.) The appellate court rejected this

argument, stating: “If the Legislature intended section 6004.5 to achieve the result desired by respondent Publisher’s Association it could and should have spelled it out in detail. There is nothing in its present language that does more than reaffirm the holding in the *Monrovia* and *Christensen* cases, namely, that a newspaper of general circulation must be both printed and published in the jurisdiction within which the legal publication is required by law to be made.” (*Id.* at pp. 909–910.)

Similarly, here, we find no basis for concluding that the Legislature’s statement in section 6004.5 that a newspaper seeking city adjudication must be “printed and published in one and the same” city means anything more than that the newspaper must be printed and published in the same city for which adjudication is sought. The Supreme Court’s decision in *Monrovia Evening Post*, which used the language later used in section 6004.5, addressed that requirement. (*Monrovia Evening Post*, *supra*, 199 Cal. at pp. 265–268.) Neither that case nor any case interpreting section 6004.5 has stated that a newspaper that is both printed and published in a city is disqualified from adjudication in that city merely because it *also* issues from, or publishes in, another city. (Cf. *Christensen*, *supra*, 104 Cal.App.2d at p. 376 [newspaper was published in one city and printed in three other cities].)

BANG also cites the 1962 decision in *Western States*. In that case, the appellate court, addressing a county adjudication, stated: “Although a newspaper printed and published in one city may not qualify as a newspaper of general circulation for another city, it does qualify as a newspaper of general circulation for the county in which it is both ‘printed’ and ‘published.’ [Citations.]” (*Western States*, *supra*, 203 Cal.App.2d at p. 797.) The *Western States* court did not address any argument as to whether a newspaper seeking a city adjudication under section 6000 must be issued from, or published in, only one city.<sup>11</sup>

---

<sup>11</sup> BANG suggests the first portion of the quoted sentence from *Western States* supports the argument that a newspaper may not seek adjudication in one city under section 6000 and in another under section 6008. Although we do not address this argument, we note that *Western States* was decided in 1962, prior to the 1974 enactment

BANG next cites the requirement in section 6008, subdivision (d), that a newspaper seeking adjudication under section 6008 must establish it has “only one principal office of publication and that office is in the city, district, or judicial district for which it is seeking adjudication.” This provision does not assist BANG, because the “principal office of publication” requirement applies only to adjudications under section 6008, not to adjudications under section 6000. (See *Tri-Valley*, *supra*, 169 Cal.App.3d at p. 871 [analyzing differences between sections 6000 and 6008].) We decline to rewrite section 6000 to require that a newspaper must have its “principal office of publication” (or must publish exclusively) in the city where it seeks adjudication. (See *San Diego Commerce*, *supra*, 40 Cal.App.4th at pp. 1232–1235, 1237 [declining to “ ‘rewrite’ ” section 6000 to include the “substantial distribution” requirement unique to section 6008]; see also *In re La Opinion* (1970) 10 Cal.App.3d 1012, 1017–1018 [courts should not add requirements to § 6000].)<sup>12</sup>

Finally, BANG argues generally that the “legislative intent” underlying the adjudication statutes supports a rule that a newspaper can only be published in, and adjudicated in, one city. In particular, BANG relies on *Monrovia Evening Post*, in which the Supreme Court stated: “The very purpose of requiring the publication of official notices is to inform the people concerning proceedings of a public nature for their general welfare. It appears reasonable to require such notices to be published in newspapers having a *fixed and permanent domicile and a substantial circulation* at the city or place where the inhabitants live who are most vitally interested in the transactions respecting which notices are required.” (*Monrovia Evening Post*, *supra*, 199 Cal. at p. 269, italics added.) BANG contends that the Voice’s “fixed and permanent domicile and substantial distribution” is in Fremont, and that the Voice’s connection to Union City (i.e., it “prints

---

of section 6008, so the question of obtaining multiple city adjudications under sections 6000 and 6008 could not have been at issue in that case.

<sup>12</sup> We note that even section 6008 requires only that a newspaper have its “principal” (not necessarily its sole) office of publication in the jurisdiction in which it seeks adjudication. (§ 6008, subd. (d).)



from there” and “has some circulation”) is insufficient to permit adjudication under section 6000.

However, *Monrovia Evening Post*, while discussing the statutory purposes generally, did not establish that a requirement of a “fixed and permanent domicile” (beyond the specified requirement that a newspaper be printed and issued from the place of adjudication) or a requirement of substantial distribution should be read into section 6000. (See *San Diego Commerce*, *supra*, 40 Cal.App.4th at p. 1234 [*Monrovia Evening Post* did not concern “whether a ‘substantial distribution’ requirement should be read into a statute which did not state such a requirement,” thus rendering it “without precedential value” on that question].) *Monrovia Evening Post* “involved *only* the question of whether a newspaper printed in Pasadena could qualify under a predecessor of section 6000 as one of general circulation for the city of Monrovia.” (*San Diego Commerce*, *supra*, 40 Cal.App.4th at p. 1234, citing *Monrovia Evening Post*, *supra*, 199 Cal. at pp. 264–267.) In determining whether the Voice is published in Union City, we cannot replace the statutory definition of “published” (i.e., “issued from the place where it is printed and sold to or circulated among the people and its subscribers”) with a broader inquiry into the newspaper’s “domicile,” such as where it circulates the largest number of papers or where it has its office or performs its editorial and advertising functions.<sup>13</sup> (Cf. *Tri-Valley*, *supra*, 169 Cal.App.3d at pp. 868, 872–873 [under section 6008, trial court did not err in finding a newspaper’s “principal office of publication” was in Pleasanton (from which it distributed papers), although its “publisher’s office” and its editorial, display, classified advertising, and accounting departments were in other cities;

---

<sup>13</sup> BANG refers to the “legislative history” of the adjudication statutes (as discussed in case law). For the reasons discussed above, we do not find BANG’s arguments persuasive. BANG also cites, without discussion, a set of legislative history materials that it submitted to the trial court and included in the record on appeal. Those materials relate to the 1974 enactment of section 6008; they do not address whether a newspaper seeking a city adjudication under section 6000 must publish exclusively in that city.

4,500 paid subscribers resided in Pleasanton, out of a total circulation of approximately 21,000].)

For the foregoing reasons, we conclude the trial court did not err in finding that the Voice is “printed and published” in Union City within the meaning of section 6000.

3. *Bona Fide Subscription List*

BANG contends the trial court erred by failing to address whether the Voice had a “bona fide subscription list of paying subscribers,” as required under both section 6000 and section 6008. As to the Fremont adjudication, we need not address this argument, because we conclude in part III.B. above that the trial court correctly vacated that adjudication on other grounds. As to the Union City adjudication, we reject BANG’s argument.

As BANG concedes, it did not move to vacate the Voice’s adjudication on the ground the Voice lacked a “bona fide subscription list of paying subscribers.” Instead, in its motion, BANG contended the Voice did not satisfy other elements required for adjudication—BANG argued the Voice did not qualify for adjudication in Union City under section 6000 because it is not published there, and did not qualify for adjudication in Fremont under section 6008 because it does not have a “substantial distribution to paying subscribers” there. Indeed, in its reply to Marshak’s opposition to the motion to vacate, BANG criticized Marshak for addressing other issues, including the “irrelevant issues of whether the *Voice* is ‘printed’ in Union City and has a ‘bona fide’ list of paying subscribers.” BANG emphasized it had “raised neither of those elements as a basis for its motion to vacate.” Instead, the sole basis of its motion under Section 6000 is whether the *Voice* is ‘established, printed, and published’ in Union City within the meaning of that provision.” At the hearing on the motion to vacate, Marshak, over BANG’s objection, submitted a redacted list to support his claim of new group subscriptions that would

establish substantial distribution for purposes of the Fremont adjudication; the parties did not brief the question of whether the Voice had a bona fide subscription list.<sup>14</sup>

In its March 10, 2009 ruling, the trial court, consistent with BANG's framing of its motion, stated that "[t]he sole basis for BANG's motion is that [the Voice] is not printed and published in Union City and therefore has an insufficient connection with Union City." The court did not refer to any dispute as to whether the Voice had a bona fide subscription list in Union City. Later in its decision, while addressing the Fremont adjudication and the question of whether the Voice had a substantial distribution to paid subscribers under section 6008, the court did refer to the requirement of a bona fide subscription list, and stated "a list of zip codes purportedly representing a list of recipients of [the Voice] (Exhibit 1 [i.e., the redacted list submitted by Marshak]) does not constitute a subscription list. [(*Eureka Reporter, supra*, 165 Cal.App.4th at p. 897.)]" However, the rest of the court's discussion shows its decision to vacate the Fremont adjudication was based primarily on the Voice's failure to meet the substantial distribution requirement.<sup>15</sup>

In connection with Union City, the trial court did not err by ruling only on the issues BANG raised as grounds for vacating the Voice's adjudication. Moreover, the court's brief statement (in its discussion of the Fremont adjudication) that the document

---

<sup>14</sup> At the hearing, BANG's counsel suggested the court should vacate the Voice's adjudication for Alameda County "because it wouldn't qualify under the bona fide subscription list or substantial distribution to paying subscribers, the two different requirements under [section] 6008." However, BANG's counsel did not argue that the bona fide subscription list element provided a basis for vacating the Voice's adjudication for Union City under section 6000.

<sup>15</sup> In its subsequent motion for reconsideration, and at the hearing on that motion, BANG argued that the Voice's individual paying subscribers do not receive home delivery and instead pick up their papers from a group location. BANG argued that therefore those persons do not qualify as paying subscribers, and the Voice does not have a bona fide subscription list for purposes of adjudication in Union City under section 6000. At the hearing, however, BANG's counsel acknowledged that BANG had not raised this argument in its original motion to vacate. BANG's counsel also conceded that some copies of the Voice are mailed to individual subscribers.

submitted by Marshak did not “constitute a subscription list” did not require the court to rule, as to either city, that the Voice did not have a bona fide subscription list, an issue not raised by BANG in its motion. We decline to determine that issue for the first time on appeal.

We affirm the trial court’s ruling denying BANG’s motion to vacate the Voice’s adjudication for Union City.<sup>16</sup>

#### **IV. DISPOSITION**

The trial court’s March 10, 2009 order granting BANG’s motion to vacate the portion of the court’s May 2, 2008 judgment establishing the Voice as a newspaper of general circulation for the city of Fremont, but denying the motion to vacate the portion of the May 2, 2008 judgment establishing the Voice as a newspaper of general circulation for the city of Union City, is affirmed. The parties shall bear their own costs on appeal.

---

<sup>16</sup> Marshak filed a request for judicial notice of a copy of the Voice, as well as copies of the Argus and other BANG newspapers, all published in April 2010, after the trial court issued its rulings. (Copies of the Voice, the Argus, and other newspapers published prior to judgment are already in the record.) Marshak argues the April 2010 newspapers are relevant to show that BANG publishes papers with similar content in multiple cities, and that the Voice focuses on local affairs. These documents are not relevant to the dispositive issues on this appeal, i.e., whether the Voice has a substantial distribution in Fremont, and whether the Voice is published in Union City. Accordingly, we deny the request for judicial notice.

---

Bruiniers, J.

We concur:

---

Simons, Acting P. J.

---

Needham, J.

A124667