

AUG - 1 2013

**S208173**

Frank A. McGuire Clerk

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
Deputy

BEACON RESIDENTIAL ) Case No. S208173  
COMMUNITY ASSOCIATION, )  
)  
Plaintiff and Appellant, ) District Court of Appeal Case No.  
) A134542  
vs. )  
) San Francisco Co. Case No. CGC-08-  
SKIDMORE OWINGS MERRILL ) 478453  
LLP; HKS, INC., individually and )  
doing business as HKS )  
ARCHITECTS, INC., )  
)  
Defendants and Respondents. )  
\_\_\_\_\_ )

**PLAINTIFF AND APPELLANT'S AMENDED MOTION FOR JUDICIAL  
NOTICE**

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Attorneys for Plaintiff and Appellant  
BEACON RESIDENTIAL COMMUNITY ASSOCIATION

Plaintiff and Appellant Beacon Residential Community Association (“BRCA”) hereby submits this amended motion, and moves, in compliance with California Rules of Court, Rule 8.520(g) and Rule 8.252(a), for the Court to take judicial notice that a “Keystone wall” is one of various types of retaining walls made of interlocking masonry units, that are sold by Keystone Retaining Wall Systems LLC (“Keystone”), and that have standardized structural details published by Keystone.

The relevance of this request for judicial notice is that the Court of Appeal opinion in the case of *Weseloh Family Ltd. Partnership v. K.L. Wessell Construction Co., Inc.* (2004) 125 Cal.App.4<sup>th</sup> 152 (*Weseloh*) mentions twice that certain engineers involved in that case provided designs for “Keystone walls” (*id.*, at pp. 159, 166) but the opinion in *Weseloh* provides no further explanation or background on the nature of “Keystone walls.” In order to understand the holding of *Weseloh*, it may be helpful for this Court to take notice of the standardized nature of “Keystone wall” designs. There is no reason to conclude that the fundamentally standardized nature of “Keystone wall” designs is materially different now than it was in 2004 when *Weseloh* was decided.

Judicial notice regarding “Keystone walls” was not requested by Appellant in the trial court. The nature of a “Keystone wall” has no relevance or involvement whatever to the present case. Thus, while the case was before the trial court, Appellant did not realize that there was any need to request judicial notice of the nature of “Keystone walls.” “Keystone walls” are mentioned twice, without explanation, in the *Weseloh* opinion. However, after the time when this case was briefed and argued in the trial court, including, in Respondents’ Petition for Review and Opening Brief, Respondents’ have placed great emphasis on *Weseloh*, a decision never cited by this Court. This requires this Court to, at least potentially, understand otherwise minor details of *Weseloh*, as *Weseloh* is a decision affirming a trial court summary judgment, whose holding is explicitly highly dependent on the developed factual record in that case. For this reason, Appellant has submitted this motion for judicial notice to provide the Court with a proper basis to take judicial notice, should the Court conclude that it is important to analyze the facts of *Weseloh* in depth.

This Court has authority to take judicial notice. (E.g., *Reynolds v. Bement* (2005) 36 Cal.4<sup>th</sup> 1075, 1083.) Judicial notice is proper,

pursuant to Evidence Code § 452(h), in that the nature of “Keystone walls” is a fact or proposition not reasonably subject to dispute and that is capable of immediate and accurate determination by resort to a source of reasonably indisputable accuracy, namely, the on-line “web site” published by Keystone Retaining Wall Systems, LLC. The Keystone web site generally illustrates the walls constructed of interlocking masonry units made by Keystone that are known as “Keystone” walls, that is, a wall whose masonry pieces fit together like pieces of a puzzle. Keystone publishes, on its web site, standardized structural designs for use when Keystone walls are used as retaining walls.

According to the “Keystone walls” web site referenced below, and reprinted in the Attachment A to this Motion, Keystone publishes “typical cad details to assist you when designing your site.”

Attached to this Motion, pursuant to Evidence Code § 459, are the following:

- a. A print out of the “CAD Details -- PDF” tab underneath “CAD Details” and “Technical Info” on the website entitled [www.keystonewalls.com](http://www.keystonewalls.com).

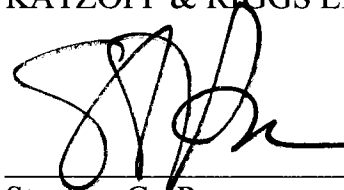
b. Two sample print outs of standard retaining wall details which are listed on that page.

These retaining wall details for Keystone walls, and other standard Keystone wall details like it, may be viewed, downloaded, and printed by anyone with internet access, by going to the [www.keystonewalls.com](http://www.keystonewalls.com) web page, and then clicking the “technical info” tab. Underneath that tab there are sub-tabs for “CAD details” and “CAD details – PDF.” This is the source where the materials in the Attachment A were obtained.

Dated: July 31, 2013.

LAW OFFICES OF ANN RANKIN  
KATZOFF & RIGGS LLP

By:



Stephen G. Preonas

Counsel for Appellant BEACON  
RESIDENTIAL COMMUNITY  
ASSOCIATION

# ATTACHMENT A

**Print outs of pages from Keystone Retaining Wall Systems, LLC, web site  
[<http://www.keystonewalls.com>]**

**“CAD Details – PDF” page**

**Example 1: “Standard – Straight – 18 in.”**

**Example 2: “Standard III – Straight – 21 in.”**



*Retaining Excellence*

PRODUCT PORTFOLIO

PHOTO GALLERY

TECHNICAL INFO

WHERE TO BUY

**Landscape Products**

- Patio Products
- Edging Products
- Wall Products
- Step-by-Step Kits

**Structural Wall Products**

**Miscellaneous Products**

**Keystone Do-It-Yourself**

[CAD DETAILS - DWG](#)

[CAD DETAILS - PDF](#)

[CAD DETAILS - METRIC](#)

[SPECIALTY DETAILS](#)

[CONTECH HEADWALL](#)

## CAD DETAILS

The following are typical cad details to assist you when designing your site. For best DWG printing results in AutoCad®, use the Keystone2001.ctb plot file from this link.

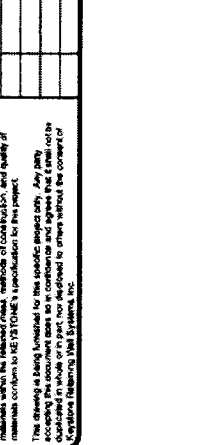
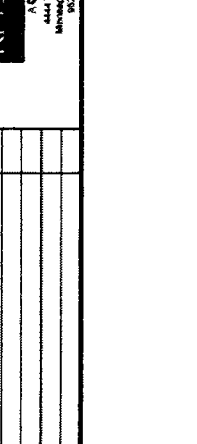
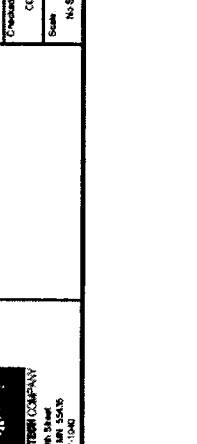
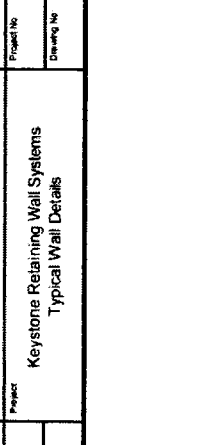
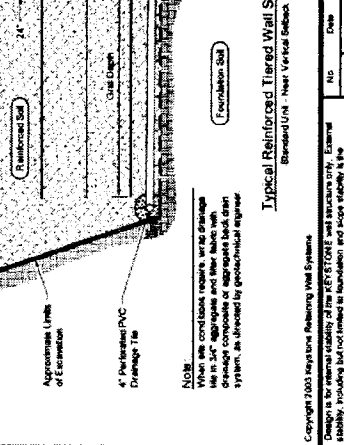
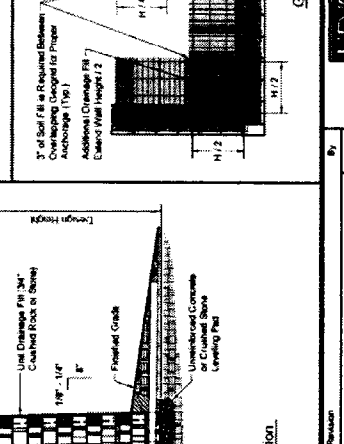
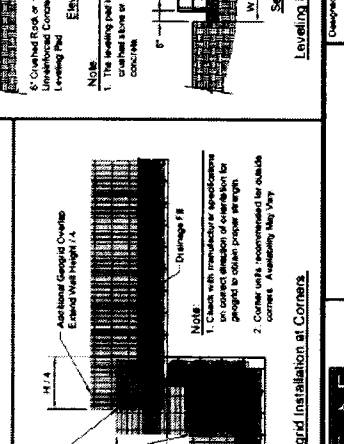
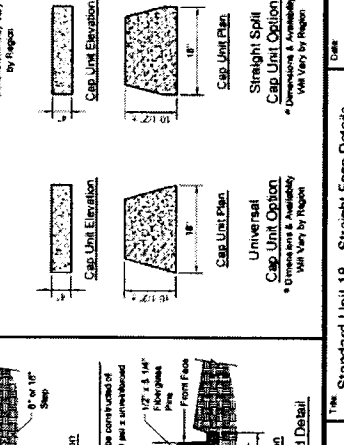
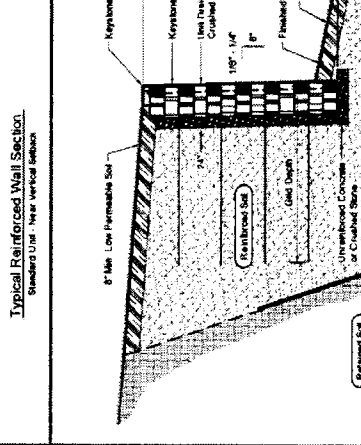
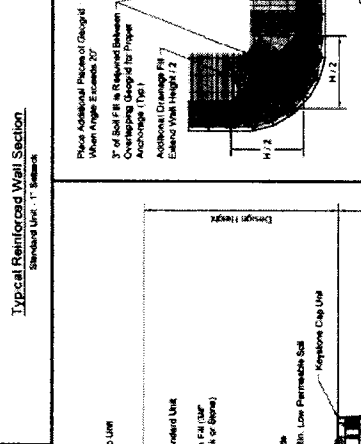
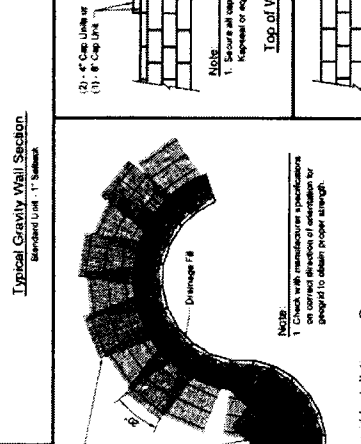
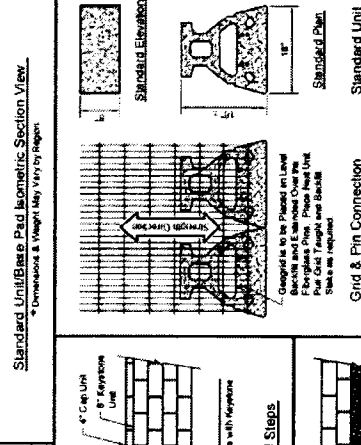
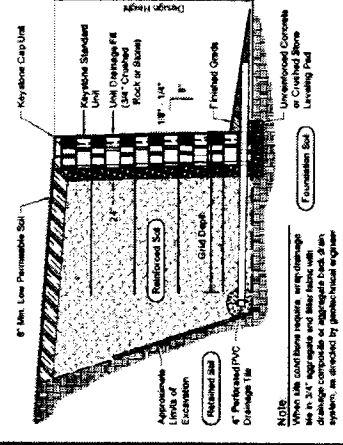
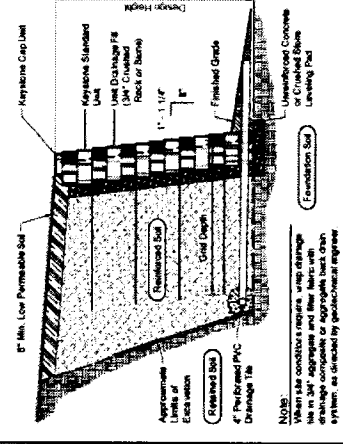
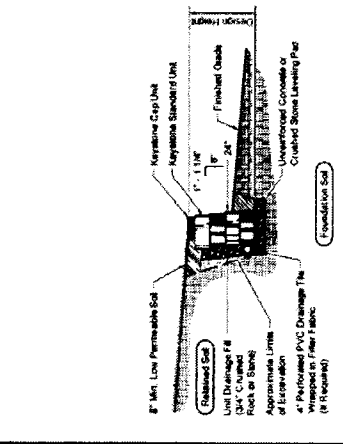
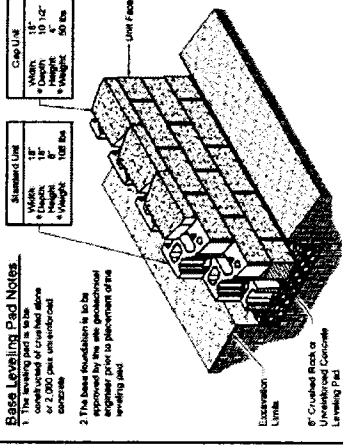
### Typical Details - (DWG) Downloads

- Standard - Straight - 18in.dwg
- Standard - Triplane - 18in.dwg
- Standard - Straight - 21in.dwg
- Standard - Triplane - 21in.dwg
- Standard II- Straight.dwg
- Standard II- Triplane.dwg
- Standard III- Straight - 18in.dwg
- Standard III- Triplane - 18in.dwg
- Standard III- Straight - 21in.dwg
- Standard III- Triplane - 21in.dwg
- Compac - Straight.dwg
- Compac - Triplane.dwg
- Compac II- Straight.dwg
- Compac II- Triplane.dwg
- Compac III- Straight.dwg
- Compac III- Triplane.dwg
- KS Century Wall-4in.dwg
- KS Century Wall-8in.dwg
- KS Century Wall-Patterns.dwg
- KS Century Wall-Random.dwg
- KS Century Wall-Corners-4in.dwg
- KS Century Wall-Corners-8in.dwg
- KS Century Wall-Corners-Random.dwg
- KS Century Wall-Corners.dwg
- KS Country Manor.dwg
- KS 133Elite.dwg
- CIP Coping.dwg
- CIP Traffic Barrier.dwg
- Conceptual Details.dwg
- Planting Details.dwg



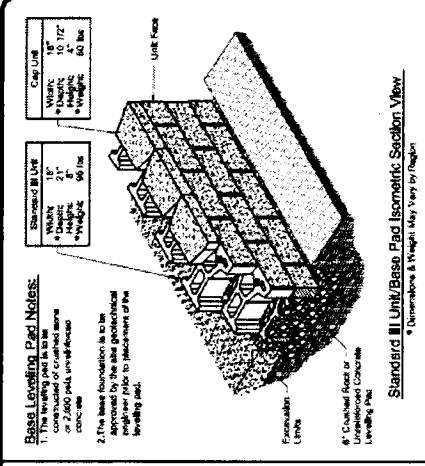
Click here for  
Keystone's Green Solutions!

[FAQ](#) | [RESOURCES](#) | [ABOUT US](#) | [CONTACT US](#) | [HOME](#)

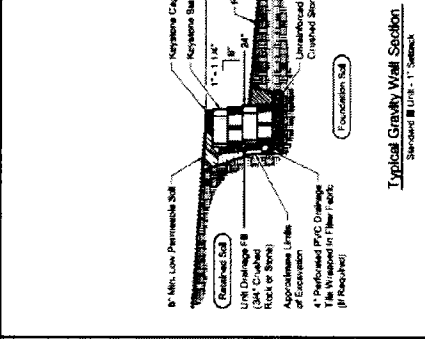


<p>Copyright 2003 Keystone Retaining Wall Systems, Inc.</p> <p>Keystone Retaining Wall Systems, Inc. is not responsible for the design or construction of any retaining wall system unless the design is based on the assumption that the materials when the retained mass, method of construction, and quality of materials conform to AASHTO's specifications for this project.</p> <p>This drawing is being furnished for this specific project only. Any other use of this drawing without the express written consent of Keystone Retaining Wall Systems, Inc. is prohibited.</p>		<p>By _____</p> <p>Date _____</p>
<p>Keystone Retaining Wall Systems, Inc.</p> <p>10000 Highway 100</p> <p>Manchester, NH 03103</p> <p>603.897.1040</p>	<p>Standard Unit 18 - Straight Face Details</p> <p>Keystone Retaining Wall Systems</p> <p>Typical Wall Details</p>	<p>Drawn By _____</p> <p>Checked By _____</p> <p>Scale No Scale</p> <p>Project _____</p> <p>Sheet No _____</p> <p>Project No _____</p> <p>Drawing No _____</p>

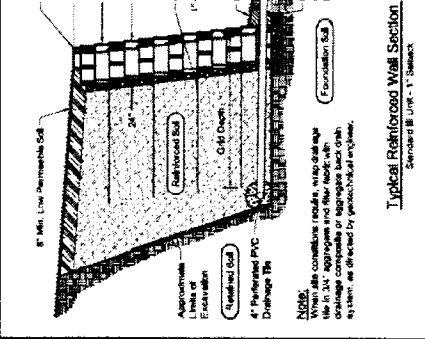




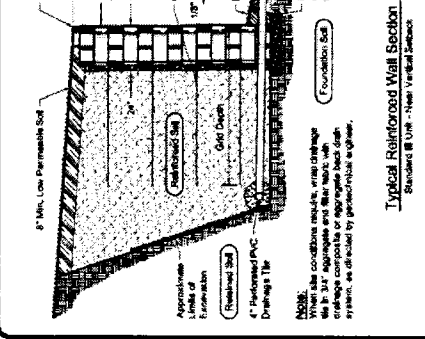
**Base Leveling Pad Notes:**  
 1. The leveling pad is to be constructed of crushed stone or crushed stone with a concrete base.  
 2. The base pad is to be approved by the local geotechnical engineer prior to placement of the leveling pad.



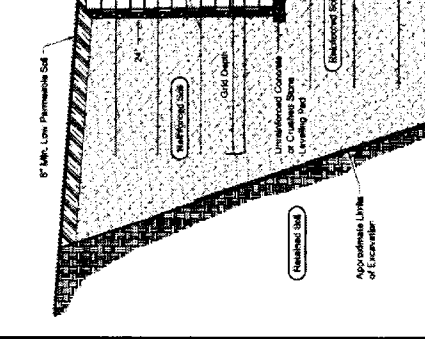
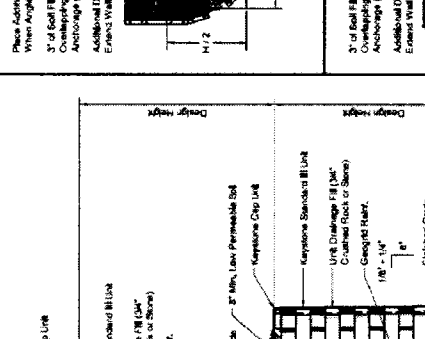
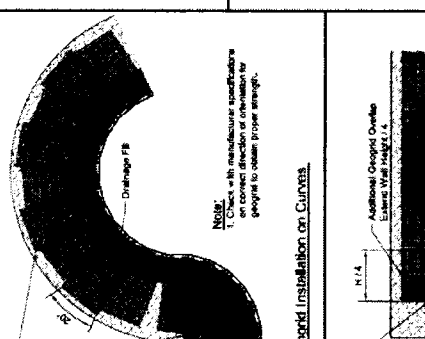
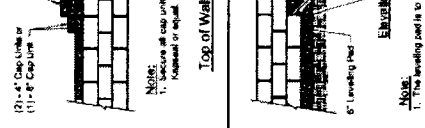
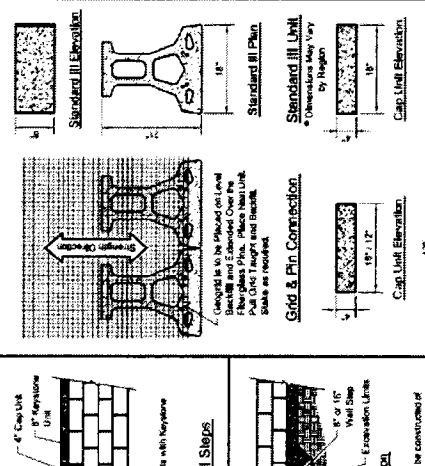
**Typical Gravity Wall Section**  
 Standard III Unit - 1' Section



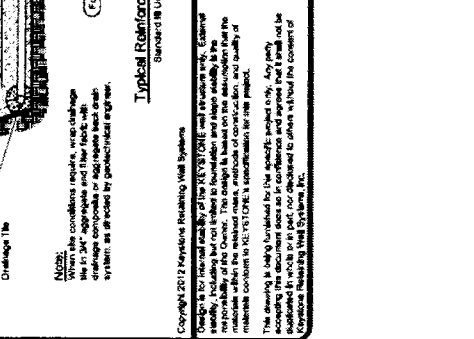
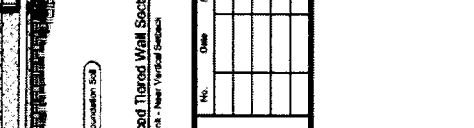
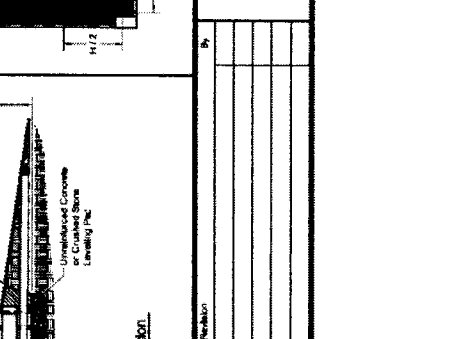
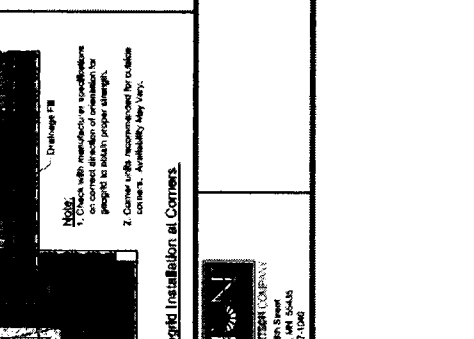
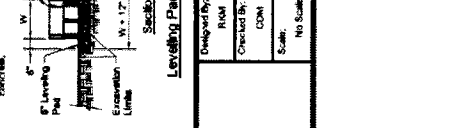
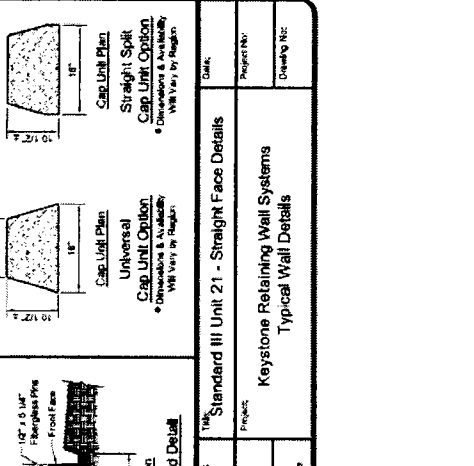
**Typical Reinforced Wall Section**  
 Standard III Unit - 1' Section



**Typical Reinforced Tiered Wall Section**  
 Standard III Unit - Next Vertical Section



**Leveling Pad Detail**  
 Standard III Unit - 1' Section



**Leveling Pad Detail**  
 Standard III Unit - 1' Section

Drawn By:	Checked By:	Scale:	No. Scale:
Designed By:	Project:	Standard III Unit 21 - Straight Face Details	
Checked By:	Scale:	Keystone Retaining Wall Systems	
Project:	Scale:	Typical Wall Details	

Drawn By:	Checked By:	Scale:	No. Scale:
Designed By:	Project:	Standard III Unit 21 - Straight Face Details	
Checked By:	Scale:	Keystone Retaining Wall Systems	
Project:	Scale:	Typical Wall Details	

**RYSTEN**  
 A QUANTUM COMPANY  
 14000 W. 14th Street  
 Aurora, CO 80015  
 303-897-1000

No.	Date	Revision

Copyright 2012 Keystone Retaining Wall Systems  
 Design is for general use only. The user assumes all liability for the use of this design. The design is based on the assumption that the materials within the retained area, methods of construction and quality of materials conform to the RYSTEN's construction for this project.  
 This drawing is being furnished for the specific project only. Any party using this drawing for any other project without the express consent of RYSTEN is doing so at their own risk and without the consent of RYSTEN Retaining Wall Systems, Inc.

**PROOF OF SERVICE**

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen (18) years and not a party to the within action or proceeding. I am employed in the County of Alameda, State of California. My business address is 1500 Park Avenue, Suite 300, Emeryville, CA 94608. I am familiar with the regular mail collection and processing practices of Katzoff & Riggs for correspondence deposited for mailing with the United States Postal Service. On July 31, 2013, I caused to be served the following document(s):

**PLAINTIFF AND APPELLANT'S AMENDED MOTION FOR  
JUDICIAL NOTICE**

addressed to each such addressee respectively as follows:

[SEE ATTACHED SERVICE LIST]

I then caused the addressee(s) to be served in the following manner:

- VIA THE UNITED STATES POSTAL SERVICE** by causing a true copy and/or the original thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail.

I declare under penalty of perjury, under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on July 31, 2013 at Emeryville, California.

  
\_\_\_\_\_  
Nicole Campbell

**SERVICE LIST**

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Peder K. Batalden  
Horvitz & Levy LLP  
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Encino, CA 91436-3000

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