SUPREME COURT OF CALIFORNIA
Electronically RECEIVED on 2/1/2019 at 1:33:13 PM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 2/1/2019 by F. Castuera, Deputy Clerk

**S253295**
**A152692**

# IN THE
# SUPREME COURT OF CALIFORNIA

---

**FRANK C. HART and CYNTHIA HART,**

*Plaintiffs and Petitioners*,

vs.

**KEENAN PROPERTIES, INC.,**

*Defendant and Respondent*.

---

ON REVIEW OF DECISION OF THE FIRST DISTRICT COURT OF APPEAL, DIVISION FIVE
FOLLOWING APPEAL FROM A JUDGMENT OF THE ALAMEDA COUNTY SUPERIOR COURT
HON. BRAD SELIGMAN • CASE NO. RG16838191

---

## REPLY TO ANSWER TO PETITION FOR REVIEW

---

DAVID L. AMELL (SBN 227207)
MARISSA Y. UCHIMURA (SBN 284385)
Maune Raichle Hartley French & Mudd LLC
70 Washington Street, Suite 200
Oakland, California 94607
Tel: (800) 358-5922
Fax: (314) 241-4838
damell@mrhfmlaw.com

DENYSE F. CLANCY (SBN 255276)
TED W. PELLETIER (SBN 172938)
Kazan, McClain, Satterley & Greenwood
A Professional Law Corporation
Jack London Market
55 Harrison Street, Suite 400
Oakland, California 94607
Tel: (510) 302-1000
Fax: (510) 835-4913
tpelletier@kazanlaw.com

**ATTORNEYS FOR PLAINTIFFS AND PETITIONERS**
**FRANK C. HART and CYNTHIA HART**

## TABLE OF CONTENTS

**Page**

INTRODUCTION ........................................................................ 5

DISCUSSION ........................................................................ 10

I. Keenan fails to refute that the majority opinion upsets "uniformity of decision" in the lower courts. ..... 10

A. Operative facts: Testimony that a witness saw a logo or name is simply not hearsay. .......... 10

1. Keenan ignores the Petition's numerous cited cases. ................................ 10

2. The Petition does not "mischaracterize" any facts. ...................... 12

B. Party-admission hearsay exception: If the Keenan "K" logo was somehow a hearsay statement, it was uttered by a party opponent. ........................................................ 13

C. Authentication: The majority's rule gives plaintiffs an insuperable barrier and defendants an incentive to destroy documents. ........................................................ 15

II. Keenan fails to refute that the majority opinion raises important questions of law with statewide importance for this Court to settle. ................................ 16

CONCLUSION ........................................................................ 19

CERTIFICATE OF WORD COUNT ………………………………….20

# TABLE OF AUTHORITIES

**Page(s)**

**Cases**

*Brown-Forman Distillers Corp. v. Walkup Drayage and Warehouse Co.*
(1945) 71 Cal.App.2d 795 .......... 10, 11

*Continental Baking Co. v. Katz*
(1968) 68 Cal.2d 512 .......... 15

*People ex. Rel. Harris v. Sarpas*
(2014) 225 Cal.App.4th 1539 .......... 7, 15, 16

*Jazayeri v. Mao*
(2009) 174 Cal.App.4th 301 .......... 6, 13, 14

*Osborne v. Todd Farm Service*
(2016) 247 Cal.App.4th 43 .......... 7, 16

*Pacific Gas & Electric Company v. G.W. Thomas Drayage & Rigging Company, Inc.*
(1968) 69 Cal.2d 33 .......... 6, 12, 13, 14

*People v. Freeman*
(1971) 20 Cal.App.3d 488 .......... 11

*People v. Skiles*
(2011) 51 Cal.4th 1178 .......... 15

*People v. Williams*,
3 Cal.App.4th 1535 .......... 5, 10, 11

*Ramos v. Westlake Services LLC*
(2015) 242 Cal.App.4th 674 .......... 15

*Vaccarezza v. Sanguinetti*
(1945) 71 Cal.App.2d 687 .......... 11

**Statutes**

Evidence Code section 1220 .......... 6

Evidence Code section 1400 .......... 15

Evidence Code section 1401 .......... 7

Evidence Code section 1410 .......... 15

Evidence Code section 1411 .......... 15

**Other Authorities**

6 Wigmore on Evidence (3d ed.) p. 240 .......... 6

## INTRODUCTION

The 2-1 published majority opinion squarely presents both primary grounds for review: (1) disturbing "uniformity of decision" by conflicting directly with longstanding precedent on the admissibility of identifying information like a product logo or company name; and (2) presenting an "important question of law" that will recur on a daily basis in civil and criminal cases statewide. As a result of the majority opinion, trial courts and counsel have no clear answer to this recurring and critical question of evidentiary law: *How do plaintiffs and prosecutors identify a defendant?*

Keenan's opposition confirms that review is necessary. Indeed, Keenan concedes that the majority opinion represents so significant a development in California law that a Westlaw search for "*Is a logo or name hearsay?*" returns the opinion as the first result. [Opp. at 6-7].

**Disturbing Uniformity of Opinion:** California trial judges and counsel, in both civil and criminal cases, now face directly conflicting precedents:

1. **The non-hearsay operative fact doctrine**: The majority opinion ***directly conflicts*** with *People v. Williams*, 3 Cal.App.4th 1535, 1541, 1543 (name on utility bill found in residence is circumstantial evidence that a person with that name resides there, "regardless of the truth of any express or implied statement contained in those documents"). [*See* Opn. at 1 (foreman's testimony that he saw Keenan name/logo on invoice "inadmissible hearsay"; *cf.* Opn. at 9-10; 4 RT 923:17-924:6 (trial-court ruling that "a logo, emblem, or similar designation of identify [is not] testimonial hearsay; rather, it is circumstantial evidence of identi[t]y")].

2. **<u>The hearsay exception for a statement of a party opponent</u>**: The majority opinion ***directly conflicts*** with *Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 324-325 (invoices or accountings prepared by the defendant are admissible as an exception to the hearsay rule under Evidence Code section 1220). As the dissent below held, "[s]ufficient evidence supported the hearsay exception for a statement of a party-opponent." [Opn. at 17; *see* Opn. at 13-14 and 1 AA 118-119 (trial court finding sufficient evidence to authenticate secondary evidence and therefore establish party-opponent exception)].

Keenan's attempts to reconcile these direct conflicts in California precedent fail for three reasons:

1. Keenan has no answer to the well-settled operative-fact doctrine, other than to repeatedly argue that the testimony as to the "Keenan" name and "K" logo was offered to prove the "truth" of the matter asserted. This conflicts with established precedent that "[u]tterances serving to identify are admissible as any other circumstances of identification would be." [6 Wigmore on Evidence (3d ed.) p. 240].

2. Keenan relies on inapposite authority in attempting to distinguish the party-admission hearsay exception. Specifically, *Pacific Gas & Electric Company v. G.W. Thomas Drayage & Rigging Company, Inc.* (1968) 69 Cal.2d 33 has no relevance to this case. As set forth in *Jazayeri*, *Pacific Gas* applies only when *third-party* invoices are offered for the truth of the matter asserted. [*See Jazayeri*, 174 Cal.App.4th at 325]. In contrast, as the dissenting opinion held, party opponent Keenan was the author of the invoices at issue, thus invoking the hearsay exception set forth in Evidence Code section 1220.

3. Keenan seeks to elevate the authenticity requirement under Evidence Code section 1401 (as applied to secondary evidence) to an impossible bar. Remarkably, Keenan argues that evidence of a business's customary practice of issuing invoices, as occurred in this case, does not support the claim that the defendant continued to do so in the case at hand. [Opp. at 20]. This novel and draconian requirement for authentication conflicts with *People ex. Rel. Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1571 (evidence of bank's custom and practice in accepting and negotiating checks was sufficient to authenticate the checks for the purpose for which they were admitted). Additionally, *Osborne v. Todd Farm Service* (2016) 247 Cal.App.4th 43 does not apply because that defendant testified that he never supplied invoices or receipts with his deliveries, and the plaintiff offered no evidence of this practice. Therefore, there was no authentication sufficient to qualify the oral testimony as secondary evidence. In contrast, the evidence here was that Keenan always supplied its delivery with an invoice that would have been marked with its distinctive "K" logo – just what the foreman saw. [13 RT 3655:25-3657:4, 3710:1-19; Petition at 15.]

In sum, Keenan fails to refute that the published majority opinion conflicts directly with California precedent, disturbing uniformity of decision and thus warranting review.

**<u>Presenting an important question of law</u>**: The majority opinion also raises important issues of statewide importance for this Court to settle.

As the Petition shows, the majority opinion will foment chaos as to identification issues in statewide trial courts, civil and criminal. In the civil courts, this confusion will recur not just in asbestos cases (which

routinely turn on product identification) but in innumerable other scenarios. [*See* Petition at 36 (listing examples including tainted-food, trip-and-fall, mail-fraud, and dog-bite cases).] The criminal courts will have the same problem. [*See id.* (*e.g.*, hit-and-run, bank-robbery, criminal-assault, and gang-killing cases).]

Keenan's opposition addresses none of these examples. Instead, Keenan's only answer is that the majority opinion ruled only on logos on "documents," claiming the majority opinion left "untouched" the "issue" of a "company's name or logo on a product." [Opp. at 24-25 (*citing* Opn. at 10).] According to Keenan, "[n]othing has changed" in cases involving a company name on a "bag of cement" or a "truck," even though neither Keenan nor the majority opinion explain how the opinion's unqualified novel rule of law would exempt things but not documents. [Opp. at 24.]

The fact of the matter is that the majority opinion holds that a witness cannot testify as to a name or logo that he saw. [Opn. at 9-10]. Keenan's argument that trial judges will somehow thread the needle to apply the majority's opinion's published precedent to documents but not objects not only defies credulity but ignores the obligation of lower courts to adhere to published holdings of the higher courts.

Notably, the other asbestos-defense firm requesting publication below was more forthright, acknowledging that publication would now allow defendants to exclude evidence of "what someone saw on a document ***or thing***." [Low, Ball & Lynch Letter (Nov. 14, 2018) at 1 (emphasis added)]. Acknowledging these requests, and the attendant use for which they sought publication, the majority below published its opinion.

In the end, the published majority opinion foists upon the trial courts an evidentiary rule that lacks legal justification and defies common sense. No longer can eyewitnesses testify freely about their personal observation of things. Under the majority opinion, testimony that a witness *saw* some type of identification – whether company letterhead on an invoice, a logo on a product, or a name on a mailbox – is now subject to exclusion as "hearsay."

This cannot be right. As Justice Needham sagely observed in dissent, the foreman (Mr. Glamuzina) "had personal knowledge of the facts *to which he testified* – that he personally saw invoices bearing Keenan's name." [Opn. at 22 (emphasis in original)]. It was then properly left to the jury to determine whether that personal-knowledge testimony, coupled with all other record evidence, showed by a preponderance that Keenan supplied the asbestos-cement pipe at issue.

This case cleanly presents an issue of surpassing importance to state evidentiary law. Petitioners pray that this Court grant review.

## DISCUSSION

### I. Keenan fails to refute that the majority opinion upsets "uniformity of decision" in the lower courts.

On the first ground for review, Keenan fails to refute that the majority opinion upsets uniformity of California decisional law, conflicting directly with published precedent.

#### A. Operative facts: Testimony that a witness saw a logo or name is simply not hearsay.

The Petition shows that the majority opinion, in ruling that Mr. Glamuzina's testimony about seeing the Keenan ("K") logo on invoices was "hearsay," directly conflicts with California precedent. [Petition at 21-26; *see, e.g.*, *People v. Williams*, 3 Cal.App.4th at 1541-1543]. This existing precedent applies the "operative fact" doctrine, whereby evidence that "words were spoken or written" is "admissible as nonhearsay evidence." [*Id.* at 21 (*quoting People v. Fields* (1998) 61 Cal.App.4th 1063, 1068-1069]. *People v. Williams* applied this rule to hold that evidence of seeing a name on a utility bill was non-hearsay, "circumstantial" evidence that a person with that name lived on the premises. [*Id.* at 23 (*citing People v. Williams*, 3 Cal.App.4th at 1541-1543)].

Keenan fails to refute this showing.

##### 1. Keenan ignores the Petition's numerous cited cases.

The Petition shows that the operative-fact rule has applied in not just *Williams* but decades of well-settled California law:

- *Brown-Forman Distillers Corp. v. Walkup Drayage and Warehouse Co.* (1945) 71 Cal.App.2d 795, 797-798 (name "Walkup" on side of truck admissible "identifying" evidence).

- *Vaccarezza v. Sanguinetti* (1945) 71 Cal.App.2d 687, 693 (salami wrapper marked "Columbo" brand admissible).
- *People v. Freeman* (1971) 20 Cal.App.3d 488, 492 (utterance "Hi, Norman" admissible "circumstantial" evidence of person's identity).

Keenan fails to address any of these cited cases. The opposition notes only that the Petition cites *Williams* and *Freeman*, neither analyzing those cases nor even mentioning *Vaccarezza* or *Freeman*. [Opp. at 9]. Instead, the opposition just insists that the testimony as to the "Keenan" name and "K" logo was offered to prove the "truth" of the matter asserted: "whether it is true or false that Keenan supplied pipe to the McKinleyville jobsite." [Opp. at 10-11].

Not so. As the dissent below correctly observes, the "facts to which [Mr. Glamuzina] testified" were that he "personally *saw* invoices bearing Keenan's name." [Opn. at 22]. Mr. Glamuzina said nothing more about the *content* of the invoices (*e.g.*, no testimony that the invoices *listed* Johns-Manville pipe). He offered only direct evidence of what *he saw*: invoices with the Keenan name/logo accompanied the pipe on delivery. This was the same as if he had seen the Keenan name or logo on the delivery van. [*See Brown-Forman*, 71 Cal.App.2d at 797-798 (name observed on van admissible as operative fact)].

In turn, the jury was asked to infer (from this and other evidence) that Keenan supplied the pipe that Mr. Glamuzina received. On this point, his testimony was *circumstantial* evidence that, coupled with other evidence, allowed the jury to so infer – which it apparently did.

The majority opinion's holding that Mr. Glamuzina's testimony was "hearsay" directly conflicts with *People v. Williams et al*.

**2. The Petition does not "mischaracterize" any facts.**

Keenan insists that the majority opinion is consistent with *Pacific Gas*, under which "invoices, bills, and receipts are hearsay" that may be admitted only "for the limited purpose of corroborating testimony." [Opp. at 13-15 (*citing Pacific Gas*, 69 Cal.2d at 43)].

Of course, this case does not involve the admission of any "invoices." Instead, Mr. Glamuzina simply testified that he saw the Keenan name/logo on invoices that accompanied the pipe delivery. On this point, *Pacific Gas* simply does not apply. But even if it did, the evidence of the invoices was properly admitted (under *Pacific Gas*'s rule) to "corroborate" other circumstantial evidence allowing an inference that Keenan supplied the pipe.

On this point, Keenan incorrectly asserts that the Petition "mischaracterizes" the case facts. [Opp. at 13]. Plaintiffs do not "omit" anything – the Petition shows that other circumstantial evidence beyond Mr. Glamuzina's eyewitness testimony supported the jury's finding of Keenan pipe supply. Any contrary evidence in the record was also considered by the jury, which sided with plaintiffs.

In any case, Keenan's factual accusations lack merit:

1. That Keenan "had to bid on" some other projects in another town is immaterial to whether the contractor Christeve, who successfully bid on the McKinleyville job, got its pipe from Keenan. [*See* Opp. at 14].

2. Fred Keenan's testimony about "historical" sales involved not "asbestos-cement" sewer pipe (installed at McKinleyville) but "high-pressure water main pipe" (not installed there). [*See* Opp. at 14 (*citing* 8 RT 2228:2-14; *cf.* 9 RT 2431:4-23 (Ms. Mitrovich: all "sewer" pipe); 12

RT 3328:22-3329:10 (Mr. Hart: "new sewer line"), 3398:6-8 (Mr. Glamuzina: same)].

3. The Johns-Manville-related documents that Keenan "offered" were properly excluded as hearsay because they were *third party* invoices without a proper foundation laid for business records – a ruling not challenged by cross-appeal. [*See* Opp. at 14 (*citing* 7 RT 1828:16-1835:23)]. This record does not include those invoices, let alone show that they "demonstrat[ed]" anything about Johns-Manville sales. [*See id.*]

The Petition accurately presents the corroborating evidence that allowed the jury to infer that Keenan supplied the pipes to which Mr. Hart was exposed.

**B. Party-admission hearsay exception: If the Keenan "K" logo was somehow a hearsay statement, it was uttered by a party opponent.**

Next, the Petition shows that, even if the Keenan name/logo was a "hearsay" statement, it was properly admitted under the hearsay exception for admissions by a party opponent. [Petition at 26-30.] On this point, the Petition shows that the majority opinion "directly conflicts with *Jazayeri v. Mao*." [*Id.* at 27-28].

Keenan fails to refute this.

First, Keenan relies repeatedly on this Court's decision in *Pacific Gas*. [*E.g.*, Opp. at 8-9, 11]. But the Petition shows that *Pacific Gas* applies only to "*third party* invoices." [Petition at 24-25.] *Pacific Gas* notes that a hearsay objection to third-party invoices may be overcome by establishing "the business records exception." [*Pacific Gas*, 69 Cal.2d at 43 n.10].

But the instant case involves not third-party invoices but *Keenan's* invoice – a statement by a party opponent. As the Petition shows, the majority opinion directly conflicts on this point with *Jazayeri*: "Documents prepared by the opposing party are not subject to exclusion under the hearsay rule, because they are admissions." [*Jazayeri*, 174 Cal.App.4th at 325; *see* Petition at 27-28]. On this point, *Jazayeri* differentiated *Pacific Gas*, where the party admission exception did not apply to third-party invoices. [*Id.* (*quoting Pacific Gas*, 69 Cal.2d at 43 n.10)].

Second, Keenan disputes as a factual matter that it "authored the disputed documents." [Opp. at 16-17]. But the trial court found the evidence sufficient that it did. [1 AA 118-119]. And the evidence Keenan cites here does not negate this, *i.e.* establish conclusively that Keenan did not create the "K" invoice that Mr. Glamuzina testified to seeing:

1. Keenan's current "corporate representative" simply "had no information" on whether Keenan sold the pipe to McKinleyville. [Opp. at 16; Opinion at 13]. He did not testify that Keenan did *not* sell the pipe.

2. Ms. Mitrovich recalled that Christeve bought "materials" from Keenan but likewise did not specifically recall "if Keenan supplied" the pipe to "McKinleyville." [9 RT 2463:10-2465:22, 2505:21-2506:12; *see* Opp. at 16-17].

3. Mr. Glamuzina's memory of the "K" logo could have been clearer – but it was not without value. [*See* Opp. at 17].

### C. Authentication: The majority's rule gives plaintiffs an insuperable barrier and defendants an incentive to destroy documents.

The Petition shows that the majority opinion "rejects well-settled law" on authentication, holding that the trial court abused its discretion in ruling that there was sufficient evidence to authenticate the secondary evidence as to the destroyed Keenan invoices. [Petition at 17; *see* 1 AA 118-119; Opinion at 14-16]. Per the majority, Mr. Glamuzina had to "authenticate" the documents himself. [Opinion at 15 ("Glamuzina could not authenticate the purported invoices")].

In response, Keenan argues first that the Petition does not assert a "split among lower courts" on this issue. [Opp. at 20]. Not so. The Petition shows that the majority's ruling runs afoul of numerous cases and statutory provisions dictating that documents can be authenticated by "circumstantial evidence," including the document's contents and any "custom and practice" of issuing the same document types. [*See* Petition at 30-31 (*citing* Evid. Code §§ 1400, 1410, 1411; *People ex. Rel. Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1571 (bank's custom and practice sufficient to authenticate checks); *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 525 ("documents must be authenticated *in some fashion*"); *People v. Skiles* (2011) 51 Cal.4th 1178, 1187 ("a writing can be authenticated by circumstantial evidence and by its contents"); *Ramos v. Westlake Services LLC* (2015) 242 Cal.App.4th 674, 684 (same)].

Disregarding these cited authorities, Keenan asserts that the majority opinion is correct. But under Keenan's analysis, the authenticity requirement is now an insuperable barrier. According to Keenan,

evidence of a business's "customary practice" of issuing invoices cannot be used to show that the business followed that practice in the case at hand. [Opp. at 20]. This rule conflicts directly with *Sarpas*, warranting this Court's review.

Finally here, *Osborne* does not apply. [*See* Opp. at 20-21 (*citing Osborne*, 247 Cal.App.4th at 53)]. There, the defendant deliverer testified that he *never* supplied receipts – and no evidence showed such a custom and practice. Under those facts, there was no circumstantial evidence of any receipts that could serve to authenticate them or the plaintiff's testimony as secondary evidence. Here, on the contrary, the evidence showed that Keenan *always* supplied invoices with its deliveries – invoices bearing the distinctive "K" logo that Mr. Glamuzina recalled. [13 RT 3655:25-3657:4, 3710:1-19].

In sum, Keenan fails to refute the Petition's showing that the published majority opinion conflicts with other published California authority in several ways, thus upsetting "uniformity of decision" and warranting this Court's review.

## II. Keenan fails to refute that the majority opinion raises important questions of law with statewide importance for this Court to settle.

The Petition shows that this Court's review is necessary also to settle important issues of statewide importance. [Petition at 34-37]. Specifically, the Petition shows that the majority opinion creates confusion in the lower courts about identification issues in both the civil and criminal courts. This chaos will reign not just in civil asbestos cases, nor just in civil cases generally, but in all manner of civil and criminal

contexts. The Petition identifies numerous specific examples. [*Id.* at 35-36].

Keenan barely musters a response. [Opp. at 24-25]. In one short paragraph, Keenan declares that the majority opinion leaves these issues "untouched" because it applies its new "hearsay" rules only to names and logos on "documents," not products. [*Id.*]. Thus, supposedly, nothing has "changed." [*Id.*].

Keenan is wrong.

First, even if going forward the majority opinion applies only to names and logos in "documents," those issues alone will recur statewide in civil and criminal cases. Examples posed in the Petition include not just invoices but other documents like letterhead (mail fraud) and utility bills (criminal defendant's residence). [Petition at 9, 36]. Keenan ignores this showing.

Second, the Petition shows that the majority opinion's reach will not be limited to "documents." [Petition at 34-35 (acknowledging the opinion's express holding)]. As shown, asbestos defendants asked the appellate court to publish its opinion specifically so that it *would apply* to identification issues on both documents and other "*things*." [Low, Ball & Lynch letter at p. 1 (emphasis added).] And the Petition poses many more examples of such "things" to which the majority's new hearsay rules for identification will now apply: *e.g.*, food wrappers; delivery vans; trip-and-fall hazards; dog collars; getaway cars; tattoos; and gang insignia. [Petition at 9-10, 36].

Keenan opposition addresses none of these examples. Instead, Keenan assures this Court that the majority opinion is quite limited and will "not apply" elsewhere. [Opinion at 25].

Even Keenan did not believe this when it requested publication of the majority opinion, telling the Court below that the new rules will apply broadly to "commonly occurring facts in asbestos-related personal injury cases." [Keenan Letter at p. 2; *accord*, Low, Ball & Lynch Letter at pp. 1-2 (issues occur "frequently," "commonly," and "on a regular basis")].

Finally, the Petition notes that this Court's review is particularly important here to set statewide policy, noting that the majority's rule incentivizes defendants to destroy corporate documents. [Petition at 36-37]. In response, Keenan does not dispute this incentivizing effect. [Opp. at 24-25.] Instead, it splits hairs to contend that it did not "destroy" its documents – it either "disposed" of them or gave them to a "successor" who "destroyed" them. [Opp. at 7 n.1 (*citing* Opinion at 9)]. Whether Keenan destroyed its documents, threw them out, or let a successor destroy them, the point is that the majority's rule now gives today's potential defendants a "perverse incentive" to destroy *their* documents, erecting new barriers to showing authentication and overcoming hearsay objections.

This undesirable effect of the majority opinion amplifies the importance of these issues and the corresponding need for this Court's review.

## CONCLUSION

Keenan's opposition not only fails to refute that review should be granted but helps make the case for review. The majority opinion's unprecedented new rules conflict with other published precedent and dramatically shift the governing rules for identifying defendants. Petitioners respectfully pray that this Court grant review.

DATED: February 1, 2019

Respectfully submitted,

KAZAN, McCLAIN, SATTERLEY & GREENWOOD
A Professional Law Corporation

By:

Denyse F. Clancy
Ted W. Pelletier
Attorneys for Plaintiffs and Petitioners

## CERTIFICATE OF WORD COUNT

I, Ted W. Pelletier, hereby certify that the text of this brief consists of 3,416 words, in Times New Roman 14-point font, as counted by my word processing program.

DATED: February 1, 2019

Ted W. Pelletier

**PROOF OF SERVICE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is Jack London Market, 55 Harrison Street, Suite 400, Oakland, CA 94607.

On February 1, 2019, I served true copies of the following document(s) described as:

**REPLY TO ANSWER TO PETITION FOR REVIEW**

on the interested parties in this action as follows:

W. Joseph Gunter
jgunter@cmbg3.com
CMBG3 Law, LLC
100 Spectrum Center Drive
Suite 820
Irvine, CA 92618
Telephone: (415) 957-2315
Facsimile: (857) 272-6126
*Attorneys for Keenan Properties, Inc.*

California Court of Appeal
First District, Division Five
350 McAllister Street
San Francisco, CA 94102-7421

**BY ELECTRONIC SERVICE VIA TRUEFILING:** I electronically served the document(s) described above via TrueFiling, on the recipients designated on the Transaction Receipt located on the California Supreme Court website pursuant to the Court Order establishing the case website and authorizing service of documents.

In addition, I served said document(s) on the persons or entities listed below:

The Honorable Brad Seligman
Alameda County Superior Court
1221 Oak Street
Oakland, California 94612

via the following method:

**BY UPS OVERNIGHT:** I enclosed said document(s) in an envelope or package provided by UPS and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of UPS or delivered such document(s) to a courier or driver authorized by UPS to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 1, 2019, at Oakland, California.

E. A. Pawek

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 2/1/2019 by F. Castuera, Deputy Clerk

**STATE OF CALIFORNIA**
Supreme Court of California

## *PROOF OF SERVICE*

**STATE OF CALIFORNIA**
Supreme Court of California

Case Name: **HART v. KEENAN PROPERTIES**
Case Number: **S253295**
Lower Court Case Number: **A152692**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **tpelletier@kazanlaw.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

| Filing Type | Document Title |
|---|---|
| REPLY TO ANSWER TO PETITION FOR REVIEW | Reply to Answer to Petition for Review |

Service Recipients:

| Person Served | Email Address | Type | Date / Time |
|---|---|---|---|
| Denyse Clancy<br>Kazan McClain Satterley & Greenwood<br>255276 | dclancy@kazanlaw.com | e-Service | 2/1/2019 1:33:14 PM |
| Farah Ballout<br>McGivney, Kluger & Cook, P.C.<br>312493 | fballout@mkclaw.us.com | e-Service | 2/1/2019 1:33:14 PM |
| Joseph Gunter<br>CMBG3 Law LLC<br>170810 | jgunter@cmbg3.com | e-Service | 2/1/2019 1:33:14 PM |
| Marissa Uchimura<br>Maune Raichle Hartley French & Mudd, LLC<br>284385 | muchimura@mrhfmlaw.com | e-Service | 2/1/2019 1:33:14 PM |
| Sharon Arkin<br>The Arkin Law Firm<br>154858 | sarkin@arkinlawfirm.com | e-Service | 2/1/2019 1:33:14 PM |
| Sharon Arkin<br>Arkin Law Firm<br>154858 | sarkin@arkinlawfirm.com | e-Service | 2/1/2019 1:33:14 PM |
| Ted Pelletier<br>Kazan McClain Satterley & Greenwood<br>172938 | tpelletier@kazanlaw.com | e-Service | 2/1/2019 1:33:14 PM |
| W. Gunter<br>CMBG3 Law LLC<br>00170810 | jgunter@cmbg3.com | e-Service | 2/1/2019 1:33:14 PM |
| William Ruiz<br>Maune Raichle Hartley French & Mudd, LLC<br>243783 | wruiz@mrhfmlaw.com | e-Service | 2/1/2019 1:33:14 PM |

This proof of service was automatically created, submitted and signed on my behalf through my agreements with

TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

2/1/2019

Date

/s/Ted Pelletier

Signature

Pelletier, Ted (172938)

Last Name, First Name (PNum)

Kazan McClain Satterley & Greenwood

Law Firm