S253295

IN THE

SUPREME COURT OF CALIFORNIA

FRANK C. HART and CYNTHIA HART,

Plaintiffs and Petitioners,

v.

KEENAN PROPERTIES, INC.,

Defendant and Respondent.

AFTER A DECISION BY THE FIRST DISTRICT COURT OF APPEAL, DIVISION FIVE, CASE NO. A152692
FOLLOWING APPEAL FROM A JUDGMENT OF THE ALAMEDA COUNTY SUPERIOR COURT
HON. BRAD SELIGMAN • CASE NO. RG16838191

PETITIONERS' REPLY BRIEF ON THE MERITS

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
dclancy@kazanlaw.com

**ATTORNEYS FOR PLAINTIFFS AND PETITIONERS
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INTRODUCTION

This Court granted review to settle two legal questions: (1) whether a witness' identification of a defendant's logo or name is inadmissible hearsay; and (2) what constitutes sufficient evidence for authentication of destroyed documents (invoices) discussed in secondary-evidence testimony. [*See* Petition for Review at 8].

Plaintiffs' Opening Brief ("OB") therefore discusses those two issues, in the context of this case's facts, showing that the trial court did not abuse its discretion in ruling either that (1) foreman John Glamuzina's eyewitness testimony of what he saw on pipe-delivery invoices—the Keenan name and its "K" logo—was not "hearsay" but simply "non-hearsay statements of identification" [OB at 27-35]; and (2) in the alternative, as found by the dissent below, the evidence before the trial court collectively sufficed to authenticate the long-ago destroyed pipe-delivery invoices as Keenan invoices, so that any hearsay "statement" therein was a Keenan party-opponent statement admissible under Evidence Code section 1220. [OB at 36-48].

In response, Keenan's Answer Brief ("AB") scarcely addresses these legal issues for which this Court granted review. First, Keenan does not contest that our Courts of Appeal hold, contrary to the majority opinion, that eye witness testimony about seeing a name or logo is admissible as circumstantial, non-hearsay evidence of identification. Second, on the alternative grounds that this secondary evidence was admissible as statements of a party opponent, Keenan does not dispute that statements made on its own invoices would necessarily be such

statements, nor does Keenan defend the majority opinion's rejection of this legal principle on the mistaken basis that the foreman Mr. Glamuzina, not Keenan, was the declarant.

Having conceded the central legal principles at the heart of this Court's review, what does Keenan argue?

Keenan argues a new evidentiary issue that it did not appeal, and is not before this Court: First, Keenan argues that the trial court erred in admitting some, but not all, Johns-Manville invoices that Keenan hoped to use to show that Johns-Manville, not Keenan, supplied the asbestos-cement pipe used at the McKinleyville jobsite. This line of argument is baffling, as Keenan did not raise this issue as a separate point of error below; indeed, the majority opinion does not discuss it. This issue is unquestionably waived, and has no bearing on the issues before this Court. Moreover, Keenan offered these third-party invoices as admissible under the business records exception to the hearsay rule, but Keenan admits that it provided no evidence of their mode of preparation, making it reversible error for the trial court to admit them. [AB at 35; *see also* Evid. Code. 1271 (requiring evidence of the mode of preparation for a document to be admissible as a business record)]. Finally, the McKinleyville job was a "large job;" with over 60,000 feet of asbestos pipe installed. [12 RT 3344:1-19]. The excluded invoices do not show, nor does Keenan argue they demonstrate, that Johns-Manville was the exclusive supplier of asbestos-cement pipe to this major job. Thus, Keenan could not show prejudicial error, especially in light of the fact that the jury found that Mr. Hart was exposed to asbestos released from asbestos-cement pipe supplied by Keenan [2 AA 242], and allocated 24% fault to Johns-Manville, and 17% to Keenan. [2 AA 246].

Second, Keenan argues that there was no substantial evidence supporting the trial court's discretionary evidentiary rulings: Having conceded that the trial court properly articulated the law as to evidence of identification and statements of a party opponent, Keenan argues there was no substantial evidence either (i) corroborating Mr. Glamuzina's identification testimony, or (ii) authenticating the invoices as Keenan invoices. [*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711 (a trial court's findings of fact in support of its discretionary order are reviewed for substantial evidence)]. Keenan does not come close to meeting its burden to show that the discretionary rulings were not supported by substantial evidence, especially in light of the applicable standard of review (all conflicts and inferences resolved in favor of trial court's ruling).

First, Keenan falsely claims that the "only" evidence that Keenan sold the asbestos-cement pipe is Mr. Glamuzina's testimony that he saw the Keenan name and "K" logo on the delivery invoices. In so stating, Keenan ignores that Keenan always supplied invoices (with its Keenan name and unique "K" logo) with its shipments; and Keenan had entered into a distributorship agreement with Johns-Manville to supply asbestos-cement sewer pipe, including in remote Humboldt County, the location of the McKinleyville job site. Second, as the dissenting opinion held, substantial evidence supports the trial court's determination that the invoices to which Mr. Glamuzina testified were authenticated as Keenan invoices, including that Mr. Glamuzina's description of the logo was consistent with the Keenan exemplar invoice; Keenan always issued invoices with its deliveries; and it was part of Mr. Glamuzina's duties to check the invoices issued with the loads of asbestos-cement pipe.

In sum, Keenan does little to defend the majority opinion's erroneous reasoning and holding. Instead, Keenan concocts a new issue for review, never before raised before the Court of Appeal. Further, Keenan attempts to raise conflicts in the facts, ignoring that all such alleged conflicts must now be resolved in favor of the trial court's discretionary order.

Petitioners request that this Court reverse the majority opinion below, and remand for the court of appeal's consideration of the remaining issues preserved, but not yet addressed, below.

ARGUMENT

I. Standard of review: abuse of discretion for discretionary rulings, and substantial evidence for factual findings.

The trial court's discretionary rulings are reviewed for abuse of discretion, and its factual findings for substantial evidence. [*Haraguchi v. Superior Court*, 43 Cal.4th at 711]. In a review for substantial evidence, "the appellate court accepts the evidence most favorable to the order as true and discards the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact." [*In re Michael G.* (2012) 203 Cal.App.4th 580, 595]. The trial court's application of law to the facts is reversible only if arbitrary and capricious. [*See Smith v. Selma Comm. Hosp.* (2008) 164 Cal.App.4th 1478, 1515].

On appeals challenging discretionary trial court rulings, it is appellant's burden to establish an abuse of discretion. [*Dreamweaver Andalusians, LLC v. Prudential Ins. Co. of America* (2015) 234 Cal.App.4th 1168, 1171 (noting appellants seeking reversal of trial court discretionary rulings have a "daunting task")]."

II. The eyewitness testimony as to the Keenan name and "K" logo is non-testimonial, circumstantial evidence of identity.

Keenan does ***not*** dispute the trial court's conclusion of law that "a logo, emblem, or similar designation of identity [is not] testimonial hearsay; rather, it is circumstantial evidence of identi[t]y." [Opn. at 9-10; 1 AA 118; *see also* OB at 27-33].

Instead, Keenan contests the trial court's application of the law to the facts in this case, contending that: (i) foreman Mr. Glamuzina's testimony that he saw the "Keenan" name and "K" logo is not credible, because it was the "only" evidence that Keenan sold the Johns-Manville asbestos-cement pipe to the McKinleyville jobsite [AB 9-10]; (ii) Mr. Glamuzina could not have seen a logo, because he did not use the magic word "logo" in describing what he saw on the Keenan invoices [AB 41]; (iii) Mr. Glamuzina's testimony as to what he saw on the invoices was not offered for the purpose of identity, "but to prove that Keenan sold and/or delivered the asbestos-containing 'transite' pipe on the truck" [AB 43]; and (iv) anything seen on an ***invoice*** is necessarily hearsay. [AB 40-41]. None of these arguments withstands scrutiny.

A. Substantial evidence corroborates Mr. Glamuzina's testimony that he saw "Keenan" on the invoices.

First, Keenan argues that "Glamuzina's testimony is the *only* evidence establishing any connection between plaintiff Frank Hart and a product supplied by Keenan," thereby suggesting that Mr. Glamuzina's testimony is not credible. [AB 9-10 (original emphasis)]. This is plainly false.

All of the "closely related" circumstances listed below are corroborative evidence that make the admissibility of foreman

Mr. Glamuzina's testimony as what he saw—the name "Keenan" and "K" logo—a matter of discretion resting with the trial judge. [*See* AB at 30-32 (discussion of how identity evidence gains its "force" or relevancy from the totality of the circumstances)].

1. Keenan's business was to supply piping and plumbing materials, including asbestos-cement pipe. [13 RT 3685:13-3682:2]. By 1977, Keenan owned 27 branches in diverse geographical areas, so that it could cater to local customers, and conform to the different local rules and ordinances that bore upon the stock Keenan sold. [13 RT 3697:10-3698:13].

2. Keenan bought an existing Eureka facility that stocked and distributed Johns-Manville asbestos-cement pipe. [8 RT 2207:4-2209:5]. Eureka is in Humboldt County [13 RT 3662:12-3663:25]. Keenan's Eureka facility was remote ("100 miles from nowhere"). [8 RT 2207:4-2209:5]. However, Eureka was only 20 minutes from McKinleyville, also in Humboldt County.[1] Keenan had a distributorship agreement with Johns-Manville to distribute its asbestos-cement pipe to "Humboldt County and surrounding areas." [13 RT 3673:11-3674:25, 3745:1-3].

3. Keenan's Eureka branch bid and won contracts to sell asbestos-cement pipe to Humboldt County during the 1970's. [13 RT 3662:12-3664:3].

4. In 1976, Mr. Hart's employer, Christeve, won the contract with Humboldt County to install sewer pipe in McKinleyville. [9 RT 2432:16-2433:3]. Christeve's contract was with Humboldt County. [9 RT 2432:14-15].

5. Mr. Hart worked installing Johns-Manville asbestos pipe from September 1976 to March 1977 in McKinleyville. [12 RT 3344:1-13; 3324:10-3326:24; 3370:17-20; 3310:2-5]. Mr. Hart testified that he thought that 60,000 feet of pipe was installed on the job generally, and that he personally installed "thousands of feet of pipe." [*Id.*].

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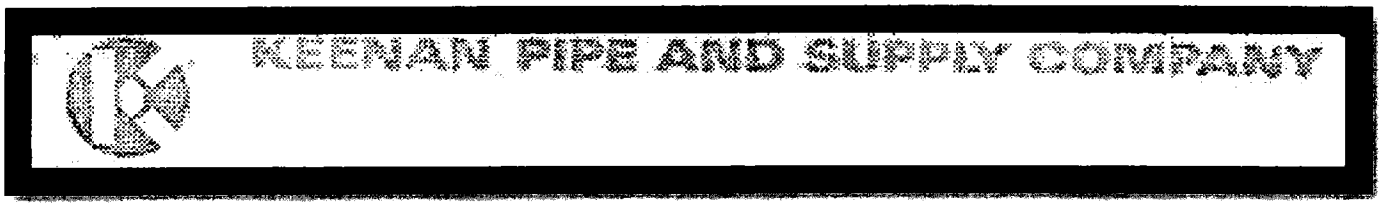
[1] Google Maps <maps.google.com> [as of June 12, 2019].

Keenan's distribution agreement with Johns-Manville existed through 1977 for Keenan's Eureka branch, and specifically included the eight-inch sewer pipe installed by Mr. Hart. [8 RT 3673:24-2674:25; 13 RT 3663:6-3665:7].

6. Before Mr. Hart started working on the McKinleyville job, Keenan had already supplied the job with Johns-Manville pipe. Specifically, the McKinleyville project was split into three phases, and Mr. Hart's employer Christeve won the bid for Phase 3. [9 RT 2434:8-25]. On an earlier project phase, won by Christeve's competitor Thibodo, the Johns-Manville pipe was supplied by Keenan. [15 RT 3242:3-19; 13 RT 3711:17-3712:16 (admitted by Keenan representative Garfield)].

7. Keenan's corporate representative testified that Keenan used a logo of a K made of a straight pipe and a bent pipe, to "reflect Keenan's business or at least a portion of its business which involves the sale and supply of piping related equipment and pipes." [13 RT 3655:25-3656:17].



[2141A; 9 RT 2463-2464].

Foreman Mr. Glamuzina testified that what "sticks out in his mind" from the invoices is the "K," "maybe it's worked into my head." [12 RT 3415:17-20]. Keenan's name recognition and trade logo—its signature "K"—were valuable—*e.g.*, sales volume of about $186,000,000 in 1981 alone. [15 RT 3234:1-3235:21; 13 RT 3723:19-25]. And when Keenan sold its name and logo to a third party in a 1983 asset sale, the buyer continued to use that valuable name and Keenan "K" logo in trade. [8 RT 2206:3-12; 13 RT 3698:14-18]. Keenan offered no evidence that its valuable name and logo were ever infringed upon by a "copycat" user.

8. While Ms. Mitrovich, the accountant for Christeve, did not remember if Keenan supplied the pipe for the McKinleyville job, she was certain that Christeve had ordered from Keenan: "I know that we

[Christeve] have dealt with them in the past." [9 RT 2461:25-2462:4]. This is in direct contradiction to Keenan's assertion that Ms. Mitrovich did not know "if Christeve ever ordered asbestos-cement pipe from Keenan." [AB 25]. Ms. Mitrovich recognized the Keenan name and distinctive "K" logo. [9 RT 2461:25-2462:4, 2463:10-2465:22, 2505:21-2506:12]. She recalled the "K" logo ***"[b]ecause I know we dealt with them,*** and it was unique, and I like it." [9 RT 2463:10-22 (emphasis added)].

9. Keenan ***always*** supplied its Keenan invoices with its deliveries, because Keenan commonly employed a "direct sales" business model. When a customer ordered Johns-Manville pipe, Keenan then bought the pipe from Johns-Manville and arranged for its delivery (by either Johns-Manville or a common carrier). [13 RT 3666:11-3669:1]. Under this model, the Keenan invoices accompanying the delivery were critical – the only way for the customer to identify and pay Keenan for the delivery. [8 RT 2218:19-2220:1].

10. Keenan argues that Christeve "was ordering materials from Southern California." [AB 20]. This is a purposeful obfuscation of the record. Christeve was based in Southern California, but won the contract from Humboldt County to install sewer pipe for the northern city of McKinleyville. [9RT 2431:7-2433:3]. Thus, Mr. Mitrovich was physically in Southern California when he ordered pipe, but the source of the pipe was from up north: "He would order pipe, I don't know why he'd order pipe down there, ***and it would always come from up north or wherever we were working***, it would always come from a different place." [12 RT 3417:22-3418:3 (emphasis added)]. Mr. Mitrovich worked with "local suppliers." [9 RT 2436:21-2437:12].

11. Keenan argues that "Johns-Manville historically sold asbestos-cement pipe directly to the end users like Christeve, and would not go through distributors like Keenan." [AB at 14]. This statement is demonstrably false. The record citation that Keenan relies on is the testimony of Fred Keenan explaining that Keenan did not sell high-pressure ***water main*** pipe, because (i) that was not Keenan's niche; and (ii) Johns-Manville historically sold "high pressure ***water main pipe***" directly to the end user. [8 RT 2228:2-17 (emphasis added)]. In contrast, the McKinleyville job exclusively involved the installation of asbestos-cement sewer pipe. [12 RT 3344:1-13]. Mr. Keenan

testified that Keenan's Eureka branch stocked and supplied Johns-Manville asbestos-cement sewer pipe, which Keenan sold directly to end-users. [8 RT 2207:4-2210:10].

Thus, replete circumstantial evidence corroborated Mr. Glamuzina's testimony that he saw the "Keenan" name and "K" logo on invoices accompanying deliveries of asbestos-cement pipe to the McKinleyville job.

B. An eyewitness does not have to use the specific word "logo" to describe seeing a "logo."

Keenan argues that a witness cannot have seen a "logo" unless, in describing what he saw, he uses the magical incantation "logo." [AB at 41 ("Glamuzina *never* used the word 'logo' or any synonym thereof to describe anything he saw on the disputed writings." (original emphasis)]. Thus, when Mr. Glamuzina testified that the "K" "sticks out" in his mind [12 RT 3415:17-20], Keenan erroneously claims that "[i]t is Plaintiffs' and the Trial Court's speculation that Glamuzina was referring to a 'logo' with this testimony." [AB 41].

1. The trial court's adjudication that Mr. Glamuzina was referring to a "K" logo is supported by substantial evidence.

First, Mr. Glamuzina testified that he saw the "K" logo in conjunction with the name Keenan, exactly as presented in the Keenan exemplar reviewed by the trial court, and confirmed by Keenan's corporate representative that Keenan provided invoices that bore its distinctive Keenan logo. [13 RT 3706:18-23, 3710:1-19].

The fact that Keenan's logo had a distinctive style (a circle K made up of pipes) shows why Keenan's "K" sticks out in Mr. Glamuzina's mind: it worked, making the logo noticeable and

recognizable to consumers. Ms. Mitrovich likewise recalled Keenan's distinctive K. [9 RT 2463:10-13, 2463:17-22].

2. No case holds that statements of identification must necessarily include the type of identification being offered (e.g. "logo;" "emblem," or "identity").

Plainly, it is sufficient if the witness identifies what he or she saw, without the added gloss as to the "type" of identification offered. [*See People v. Williams* (1992) 3 Cal.App.4th 1535, 1541-1543 (identification of name of person on utility bill); *see also Brown-Forman v. Walkup* (1945) 71 Cal.App.2d 795, 797-798 (testimony that a truck was marked "Walkup"); *Vaccarezza v. Sanguinetti* (1945) 71 Cal.App.2d 687, 693 (testimony the salami was Columbo Brand); *People v. Freeman* (1971) 20 Cal.App.3d 488, 492 (witness heard the statement "Hi, Norman"); *Dege v. United States* (9th Cir. 1962) 308 F.2d 534, 535-536 (evidence that the caller was "A"); *Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 596 (statements from the murder victim to the battered women's shelter identifying herself as "Nicole"); *People v. Herman* (1920) 49 Cal.App. 592, 596 (telephone conversation with a man who said his name was "Herman" from the "American Junk Company")].

3. Keenan had every opportunity to show its logo to Mr. Glamuzina at his deposition; he was too ill to testify at trial.

Finally, Keenan argues that this "speculation" [AB 41] as to whether Mr. Glamuzina's actually saw the "K" logo would have been clarified had Plaintiffs not "intentionally refused" to bring him to trial. [AB 11, 24]. At the outset, Mr. Glamuzina's testimony was preserved by means of a videotaped deposition, at which Keenan's counsel was present and asked questions. [2 RT 302; 12 RT 3208 (Keenan counsel,

Mr. Clawson)]. If Keenan's counsel wanted to explore whether Mr. Glamuzina actually saw the Keenan logo, then Keenan had the motive, means, and opportunity to show him a Keenan exemplar invoice.

Second, Plaintiffs did not "refuse" to bring Mr. Glamuzina to trial. Keenan sought his trial testimony at the end of June 2017, but just ten days earlier, Mr. Glamuzina had been released from the hospital after suffering from "severe back pain, lumbar myopathy, . . . a stroke, pulmonary embolism, and DVT (deep vein thrombosis) . . . in the groin going to his lung." [9 RT 2527:8-16]. Not only did Mr. Glamuzina's doctor testify that "[i]t's too soon for him to be traveling any long distances" [9 RT 2527:13-16], but he also explained that Mr. Glamuzina was on Fentanyl patches (opioids) and both the pain and the pills would affect his cognition. [9 RT 2529:14-2530:16]. Mr. Glamuzina was "out of it:" "When this stroke was going on, he had some swelling on the brain and that would affect his mentation. He was out of it, in other words." [9 RT 2532:16-21]. Under the circumstances, Keenan's assertion that Plaintiffs should have forced Mr. Glamuzina to testify is shockingly inhumane. It also defies credulity to suggest that Mr. Glamuzina, addled by stroke, opioids and pain, would have been lucid enough to clarify his Keenan logo testimony.

C. Mr. Glamuzina's identification evidence was not as to the content of the invoices.

Keenan erroneously contends, as did the majority opinion, that "the wording on these invoices or delivery tickets were out-of-court statements offered to prove the truth of the matter asserted: namely, that Keenan supplied the pipes." [Majority Opinion at 9; *see also* AB at 43 ("The writings described by Glamuzina were not offered for the mere

purpose of identity of the declarant, but to prove that Keenan sold and/or delivered the asbestos-containing 'transite' pipe on the truck.")].

1. The only words Mr. Glamuzina saw on the invoices was the Keenan name and "K" logo.

First, Mr. Glamuzina did not rely on the invoices for his knowledge that the pipe delivered was asbestos-cement sewer pipe. He could identify such pipe from his approximately 50 years in the pipe laying trade. [8 RT 3398:6-3399:14; 12 RT 3413:9-14].

Second, Mr. Glamuzina did not recall seeing any other words on the invoices other than the Keenan name and "K" logo:

> Q. Do you know if it just said Keenan or if there were any other words?
>
> A. I couldn't answer that.

[12 RT 3413:6-8].

Finally, the Court of Appeal did not unanimously hold that Mr. Glamuzina's statements were hearsay. [AB 11]. The dissenting opinion did not reach this issue: "***Assuming*** that the out-of-court statement (pipe invoices with the name 'Keenan') was offered for its truth . . ." [Dissenting Opn. at 19 (emphasis added)].

2. The facts mirror the identification evidence held to be admissible, non-hearsay in *Williams* and *Freeman*.

Keenan's attempt to distinguish Mr. Glamuzina's identification evidence from *People v. Williams* and *People v. Freeman* does not withstand scrutiny. [*See* AB at 44-45].

In *Williams*, the trial court held (like the majority below) that identification information on documents within the defendants' home was inadmissible hearsay, because the documents "were being offered

for the truth of the matter being asserted therein . . ." [*Williams*, 3 Cal.App.4th at 1541]. The Court of Appeal reversed, holding that "regardless of the truth of any express or implied statement contained in those documents, they are circumstantial evidence that a person with the same name as the defendant resided in the apartment from which they were seized." [Id. at 1542]. *Williams*' holding that evidence of identification is non-hearsay, circumstantial evidence applies with equal force to this case. Just as a "utility bill" is "more likely to be found in the residence of the person name on those documents than in the residence of any other person" [*id.* at 1542], evidence of the invoice with the name of the pipe seller is likely to accompany the delivery of the asbestos-cement pipe to the jobsite, especially when (as here), it was consistent with the seller's practice.

Keenan's attempt to distinguish *People v. Freeman* is similarly unavailing. *Freeman* held that statements of identification are non-hearsay, circumstantial evidence. [*People v. Freeman*, 20 Cal.App.3d at 492 (hearing "Hi Norman" was non-hearsay, circumstantial evidence that "one Norman had come to the house . . .")]. Keenan argues that "Glamuzina's testimony regarding the writing cannot be carved out to a simple statement of identity; namely, that *a* company called 'Keenan' had come to the McKinleyville site." [AB at 46 (original emphasis)]. But all that Mr. Glamuzina offered from the invoices was a "simple statement of identity." First, he did not remember any other words on the invoice except for the name "Keenan" and the "K" logo. [12 RT 3413:6-8]. Second, the trial court admitted Mr. Glamuzina's testimony specifically as to the Keenan name and logo. [1 AA 118; 4 RT 923:17-

924:6 (witness can properly testify that he saw a "yellow cab," or a "hat that had a big letter on it," or a document with "a big K on it")].

D. Statements of identification are non-hearsay, even if on an invoice.

Both Keenan and the majority opinion attempt to expand this Court's holding in *Pacific Gas* to stand for the novel proposition that ***any information*** on an invoice—including just the "supplier's name or identity"—is necessarily hearsay offered for the truth of the matter asserted. [*See, e.g.* Majority Opinion at 12 ("When the statement of the supplier's name or identity appears in an invoice or on a delivery ticket, then it is an out-of-court statement," *citing Pacific Gas*, 69 Cal.2d at 42-43); *see also* AB at 40-41, 43]. This is wrong.

First, *Pacific Gas* did not hold that every word on an invoice is *per se* hearsay. In *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 43 this Court held that third party invoices, bills, and receipts are "inadmissible independently to prove that liability for the repairs was incurred, that payment was made, or that the charges were reasonable." [*Id.* at 42-43].

Here, contrary to *Pacific Gas*, Mr. Glamuzina's testimony that he saw the name "Keenan" and "K" logo was not offered to show the content of the invoices—*e.g.* that the invoices substantively stated they were deliveries of asbestos-cement sewer pipe. Indeed, Mr. Glamuzina could not recall any other words on the invoices. [12 RT 3413:6-8]. Mr. Glamuzina knew he was receiving asbestos-cement sewer pipe from a visual examination based on his over 50 years of experience. [8 RT 3398:6-3399:14].

In sum, the identification testimony here mirrors that which the Courts of Appeal hold is admissible, non-hearsay in both *Williams* and *Freeman*. The trial court did not abuse its discretion in admitting it, and the majority opinion below erred in reversing the trial court's order.

III. In the alternative, Mr. Glamuzina's testimony as to the "Keenan" and "K" logo is a statement of a party opponent.

As set forth in the OB, and as held by the dissenting opinion, "[s]ufficient evidence supported the hearsay exception for a statement of a party opponent." [Diss. Opn. at 19 (citing Evid. Code § 1220); *see also* OB 36-40].

Keenan does not contest that Evidence Code section 1220 applies to statements of party-opponents, nor address the OB's cited authority setting forth the party-opponent exception. [*See, e.g.* OB at 36-40]. Keenan's sole argument as to why this statutory exception [Evid. Code § 1220] does not apply here continues to be that the invoices no longer exist; therefore "no one from Keenan can answer in regard to a document that does not exist;" and thus they cannot be authenticated as party opponent statements. [AB 53].

But authentication need not rest on the party opponent's agreement as to the authenticity. If such were the case, then secondary evidence as to the contents of the documents would hardly be necessary, as the party opponent himself is admitting their content.

Nor would such testimony be possible here. Keenan's corporate representative, the grandson of Mr. Keenan, is an attorney [13 RT 3654:6-9] who did not join Keenan until 1983, six years after the completion of the McKinleyville project, and only as a director, and not an employee. [13 RT 3736:16-3737:11]. Within the same year, Keenan

was sold to Hajoca. [*Id*]. Not surprisingly, the representative did not know one way or the other whether Keenan supplied the McKinleyville job with the Johns-Manville asbestos-cement pipe. [13 RT 3750:25-3751:7]. Mr. Keenan himself has passed away. [13 RT 3659:2-10].

Keenan's primary authority that "a level of caution" [AB 52] must be applied to secondary evidence is an 1860 case, *Grimes v. Fall* (1860) 15 Cal. 63 [AB 52], which holds that while hearsay evidence may be admitted as to the execution or existence of a contract to build a dam, the effect of the terms of the deed cannot be established by means of purely oral testimony. [*Id.* at 65]. This case thus has nothing to do with authentication of a statement of a party opponent, and more importantly, was issued 138 years before the Legislature enacted Evidence Code section 1523(b), allowing oral testimony of the content of the writing if "the proponent does not have possession or control of a copy of the writing and the original is lost or has been destroyed without fraudulent intent on the part of the proponent of the evidence." [Evid. Code § 1523(b)].

Additionally, Keenan improperly dismisses as "dicta" the holding in *YDM Mgmt. Co., Inc. v. Sharp Cmty. Med.* (2017) 16 Cal.App.5th 613, that secondary evidence offered against a party-opponent was properly authenticated. [AB at 54]. In *YDM*, the defendant IPA submitted a declaration summarizing the contents of invoices submitted by the party-opponent Doctors Express. In analyzing whether oral testimony as to the contents of invoices was admissible, YDM held that if the contents of the invoices were offered for their truth, then (i) such testimony is not made inadmissible by the hearsay rule when offered against the declarant in an action to which her or she is a party [Evid.

Code § 1220]; and (ii) the summary spreadsheets submitted in lieu of the actual invoices were admissible as secondary evidence [Evid. Code §1521]. [*YDM,* 16 Cal.App.5th at 630-631]. Thus *YDM* refutes Keenan's argument that invoices once destroyed cannot be authenticated for purposes of the secondary evidence rule except through testimony of the party opponent/declarant.

IV. The trial court's authenticity ruling was not an abuse of discretion.

Petitioners' OB shows that the trial court's ruling that the invoices Mr. Glamuzina saw (with pipe deliveries) were authenticated as Keenan invoices – making any statements therein party admissions under Evidence Code section 1220 – was not an abuse of discretion. [OB at 44-47].

Keenan's response fails to refute this showing.

1. Keenan ignores plaintiffs' showing that the majority opinion did not find an abuse of discretion (as was required for reversal).

The OB shows that, not only did no abuse of discretion occur, but the majority opinion rejected the trial court's authenticity finding *without finding* an abuse of discretion. [OB at 44-48; *see* 1 AA 118-119 (trial court's authenticity ruling); Opn. at 14-16 (addressing ruling but not applying abuse-of-discretion standard)].

Keenan's response does not address this showing, let alone refute it. [AB at 51-74]. To the contrary, Keenan in passing simply states incorrectly that the majority opinion "found" an abuse of discretion on the authenticity ruling. [AB at 75].

2. Keenan fails to refute that no abuse of discretion occurred.

Keenan fails to refute plaintiffs' showing that, even putting aside the majority opinion's failure to find an abuse of discretion, no abuse of discretion occurred.

a. No "heightened" authentication standard exists, under *Goldsmith* or otherwise.

After stating that the "standard of review" is for an abuse of discretion [AB at 38-39], Keenan's legal discussion barely acknowledges that standard.

Instead, Keenan advocates for some kind of "higher scrutiny" or "heightened" review standard, citing *People v. Goldsmith* (2014) 59 Cal.4th 258. [*See* AB at 12 ("rationale" of *Goldsmith* "require[s] higher scrutiny for purposes of authentication"), 57, 71].

No such "heightened" standard exists, under *Goldsmith* or otherwise. To the contrary, *Goldsmith* reiterates that the trial-court standard to find authentication is rather low—*a prima facie case*. "'As long as the evidence would support a finding of authenticity, the writing is admissible.'" [*People v. Goldsmith*, 59 Cal.4th at 267 (emphasis added) (*quoting Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 321]. Thus, even if "conflicting inferences can be drawn regarding authenticity," that simply "goes to the document's weight as evidence, *not its admissibility*." [*Id.* at 267 (emphasis added); *accord Jazayeri*, 174 Cal.App.4th at 319].

Goldsmith also reiterates the well-settled abuse-of-discretion review standard: "We review claims regarding a trial court's ruling on the admissibility of evidence for abuse of discretion," *i.e.*, only when the

court "exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.'" [*Id.* at 267 (*quoting People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10)].

In sum, *Goldsmith* does not support Keenan's assertion of a "heightened" authenticity standard.

b. Keenan improperly asks this Court to construe the evidence in Keenan's favor.

Keenan, pressing its unsupported "heightened" review standard, repeatedly asks this Court to ignore the actual *Goldsmith* standard ("prima facie case") and construe the evidence and record in *Keenan*'s favor:

1. Contrary to Keenan's representations, the trial court did not rule that the Keenan invoices were authenticated only by "[Mr.] Glamuzina's own testimony" about what he saw on the pipe-delivery invoices. [AB at 64]. Instead, the court expressly cited additional "facts," including that (1) Mr. Glamuzina, "as part of his duties, checked the invoice[s] and signed off on [them]," and (2) his "description" of what he saw on the invoices was "consistent with an exemplar of a Keenan invoice." [1 AA 118]. And the court considered even more facts discussed at the hearing, including that "Keenan's PMK" confirmed the company's "pattern and practice" to "create invoices" for product shipments. [7 RT 1811:11-17].

2. Keenan insists that the trial court "ignore[d] dissimilarities" between Mr. Glamuzina's testimony and the Keenan invoice "exemplar" cited in the court's authentication order. [AB at 64-65; *see* 1 AA 118]. But Keenan shows no such "dissimilarities." For example, Keenan insists that the "exemplar" reviewed by the trial court did not reflect the

"plant from which the pipe came" [AB at 67], but the exemplar specifically shows delivery ("DEL") from Keenan ("KEENAN PIPE AND SUPPLY COMPANY"). [1 RA 63; *see* 1 AA 121].[2] But even if any such "dissimilarities" exist, raising "conflicting inferences" from the evidence, on an authentication ruling they would simply go to the evidence's weight, not its admissibility. [*See People v. Goldsmith*, 59 Cal.4th at 267; *Jazayeri*, 174 Cal.App.4th at 319].

3. As discussed in Section II.B. above , Keenan insists that "it is not clear" what Mr. Glamuzina meant when he described the "K and stuff" on the pipe-delivery invoices. [AB at 61-62]. But again, on an authentication ruling, the evidence is construed favorably to the proponent, and any ambiguity goes to weight not admissibility.

4. Keenan asserts that Mr. Glamuzina "never testified that the invoices he recalled" were like the "exemplar" reviewed by the trial court – only the trial court "saw an exemplar invoice." [AB at 61-62]. But the trial court did not state that Mr. Glamuzina saw an exemplar. [1 AA 118 (comparing testimony to "exemplar" seen by court)]. And he did not need to see one to testify about what *he saw* with the pipe deliveries.

5. Contrary to Keenan's claim, plaintiffs did not "refuse" to show Mr. Glamuzina an exemplar invoice. [AB at 11, 24, 62]. He was deposed in this case and examined by all parties, including plaintiffs and Keenan. [2 RT 302; 12 RT 3208 (Keenan counsel, Mr. Clawson)].

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[2] The exemplar reviewed by the trial court in ruling on authenticity was Exhibit C to plaintiffs' supplemental opposition to Keenan's motion to exclude Mr. Glamuzina's testimony, found at 1 RA 63. Keenan cites "1 AA 121," a faded copy of the same document that was marked as Exhibit 2141A during the testimony of Olga Mitrovich. [9 RT 2463-2464].

Nothing suggests that plaintiffs were somehow asked to provide an exemplar but "refused." And if Keenan wanted to show Mr. Glamuzina an invoice "exemplar," it could have done so in the deposition.

c. Keenan ignores plaintiffs' showing that *Osborne* is inapposite.

At the center of the authentication rulings of both lower courts is the 2016 decision in *Osborne v. Todd Farm Serv.* (2016) 247 Cal.App.4th 43. [*See* 4 RT 932 (raised by Keenan); 1 RA 36-45 (briefed by plaintiffs); 1 AA 117-119 (discussed in trial court order); Opn. at 11, 16 (cited by appellate court)].

Accordingly, plaintiffs' opening brief addressed *Osborne* directly, showing that *Osborne* does not require a holding that the trial court abused its discretion here. [OB at 46-47]. *Osborne* "shows the flip-side of the abuse-of-discretion standard," holding only that "the trial court there did not abuse *its* discretion in finding that evidence was *not* authenticated." [*Id.*; *see Osborne*, 247 Cal.App.4th at 45-46 (finding no abuse of discretion in trial-court ruling that plaintiff's recollection of seeing a name on a receipt did not authenticate receipt); Dissenting Opn. at 23 (that "*Osborne* found that a trial court's ruling was within its discretion" does not show that this trial court "exceeded *its* discretion")].

Keenan's response never addresses this showing, asserting that *Osborne* somehow "required" the trial court to "exclude" Mr. Glamuzina's testimony. [AB at 47-48]. But *Osborne*'s holding that a different trial court analyzing an entirely different set of facts did not abuse *its* discretion did not "require" this trial court to do anything.

Keenan next asserts that our facts are similar to the *Osborne* facts: *e.g.*, "In *Osborne*, the defendants claimed that no . . . receipt ever

existed," and "Keenan also claims that no [pipe-delivery invoices] ever existed." [AB at 66]. But Keenan ignores the critical factual difference between the cases (cited in the OB): in *Osborne*, the "alleged source" of the receipt testified that it never issued such receipts; here, by contrast, Keenan admitted that it ***always*** issued invoices like the one that Mr. Glamuzina saw. [Diss. Opn. at 23; OB at 47]. In *Osborne*, Todd, the defendant not only denied that the receipt existed, but also explained that Todd had no way of knowing which hay company had originally supplied a given bale of hay that was delivered to a customer. [*Osborne*, 247 Cal.App.4th at 53]. "He did not segregate hay in his barn by supplier and he did not document the supplier of hay included in any delivery.") [*Id*]. In contrast here, as noted above, Keenan admitted that it did issue invoices to its customers. [13 RT 3706:18-23].

Finally, Keenan asserts that the trial court "disregarded" *Osborne* by "narrowly limit[ing] *Osborne* to the issue of discovery sanctions." [AB at 50]. Not so. The trial court correctly noted that *Osborne* arose on an "appeal of discovery sanctions." [1 AA 117; *see Osborne*, 247 Cal.App.3d at 45 (case dismissed with prejudice as "sanction for repeated violations of [trial court] orders excluding hearsay and opinion testimony")]. But the trial court did not "limit" *Osborne*'s effect to discovery-sanctions cases. Instead, the court acknowledged *Osborne*'s "discussion" on the "issue of authenticity" and found the *Osborne* facts about the hay-bale receipt to be "in contrast" with our facts about the pipe-delivery invoices. [1 AA 118].

d. The trial court's authentication ruling is not "circular."

Keenan declares Mr. Glamuzina's "testimony" to be "circular," *i.e.*, "creating its own hearsay exception." [AB at 12, 54-55].

Again, not so. Mr. Glamuzina testified from personal knowledge about what he *saw*: pipe-delivery invoices that bore the name "Keenan," which he remembered based on 'their K and stuff." [Opn. at 6 (saw "the name Keenan on the invoices that [he] personally signed"), 8]. The trial court ruled that these invoices were sufficiently authenticated as Keenan invoices – based ***on all of the evidence before the court***. [1 AA 118-119]. This included, *inter alia*, a comparison with the actual Keenan name and logo, as well as the recognition that Keenan's practice was to always deliver invoices with its goods. [*Id.*; *see also* 7 RT 1811:11-17]. This ruling is properly reviewed for an abuse of discretion, but the majority opinion found no such abuse, instead holding that Mr. Glamuzina alone "could not authenticate the purported Keenan invoices." [Opn. at 15]. That, however, is not the basis of the trial court's ruling.

For admissibility purposes, once the invoices were authenticated as Keenan invoices, based on *all* the evidence, they were Keenan statements. And thus any "statements" made by those invoices were subject to the hearsay exception for party statements.

Of course, this admissibility ruling did not end the factual inquiry. The jury was still free to draw different "inferences" about "authenticity" from the "weight of the evidence." [*See People v. Goldsmith*, 59 Cal.4th at 267; *Jazayeri*, 174 Cal.App.4th at 321]. But this jury weighed the evidence and found that at least some of the "asbestos-cement pipe" to

which Mr. Hart was exposed was "supplied by Keenan." [2 AA 242; Opn. at 4].

The majority opinion improperly upends that finding by rejecting the trial court's authenticity ruling without finding an abuse of discretion.

e. This Court should reject Keenan's request for a policy-based judicial change to the Evidence Code.

Finally, Keenan seeks to invalidate the trial court's discretionary authentication ruling, again not by showing an abuse of discretion, but by asking this Court to change the application of the Evidence Code to asbestos-injury cases for asserted policy reasons. [AB at 72-74].

Conceding that the "Evidence Code" governed the trial court's authentication ruling, Keenan complains that the trial court "applied" that Code with a "liberality" that is not justified in asbestos-injury cases subject to a "more forgiving statute of limitations period." [AB at 73-74]. Keenan offers no proposed rule to solve this purported problem or to govern these cases generally, instead advocating only for an affirmance of the majority's hearsay-based reversal of this jury's verdict.

In any case, Keenan's purported policy problem does not exist. The trial court did not apply the Evidence Code "liberally." It applied the Code correctly and fairly, finding in its discretion that the evidence before it (on Keenan's motion to exclude Mr. Glamuzina's testimony about the pipe-delivery invoices) was sufficient to authenticate the invoices as Keenan documents. [1 AA 118-119 (*citing* Evid. Code §§ 1400, 1401, 1523)]. Beyond professing its dislike of the result, Keenan

fails to show that this application of the Evidence Code was an abuse of the court's discretion.

Likewise, contrary to Keenan's assertion, Code of Civil Procedure section 340.2 does not provide an unduly "forgiving statute of limitations period." [AB at 73]. That provision was enacted expressly to eliminate the prior limitations period that was unduly forgiving *to defendants*. [*See Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1139 (citing section 340.2's "remedial purpose" designed to align limitations period with reality of "gradual" asbestos-disease onset)].

Finally, if applicable, any "policy" concerns militate against Keenan's position. Under Keenan's view, a party seeking to present secondary evidence of a document's contents would face a *higher* burden when those documents have been lost or destroyed. This would provide defendants facing liability for past misconduct with the perverse incentive to destroy documents that could evidence their liability. And while Keenan claims that it did not destroy its documents [AB 29], when specifically asked what happened to documents concerning purchases, Fred Keenan testified that they transferred "one carload" of documents to Keenan purchaser Hajoca and then over the course of two decades threw out the remainder of the Keenan documents. [8 RT 2211:21-2212:13]. Additionally, Hajoca denied that it ever received such documents. [8 RT 2213:17-2214:11, 2236:9-2240:1].

This Court should decline to create any "policy" based exception to the rules of evidence for asbestos-injury claims, much less for situations where defendants have destroyed the very documents that plaintiffs must authenticate.

V. Keenan improperly asks this Court to review an issue that it has unquestionably waived.

Finally, Keenan tries to justify the majority opinion's reversal of the verdict against Keenan by claiming that the supplier of asbestos-cement pipe to the McKinleyville site was not Keenan but "Johns-Manville." [AB at 9].

A. Waiver: Any asserted error in the exclusion of Johns-Manville documents is not preserved for this Court's review.

The only issues before this Court are the propriety of the majority opinion's related hearsay and authentication rulings as to Mr. Glamuzina's testimony. Keenan has not preserved any contention that the trial court erred in excluding any Johns-Manville documents.

Any trial-court error urged as a ground for reversal must be presented in the appellant's opening brief, stated clearly in the argument section under a proper heading. [*Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, 451-452 ("point not raised in opening brief will not be considered")].

But Keenan has never asserted that any Johns-Manville-document ruling was prejudicial error warranting reversal.

1. In the appellate court, Keenan did not preserve as a separate point of error that any ruling "excluding" the Johns-Manville documents was prejudicial error warranting reversal. Thus, any such argument for reversal was then waived. [*Kelly*, 179 Cal.App.4th at 451-452].

2. Because Keenan had not asserted that any ruling excluding Johns-Manville documents was a ground for reversal, the appellate court's opinion did not address any such ruling. Indeed, neither the

majority nor the dissent even mentions any trial-court ruling excluding Johns-Manville documents. [Opn. at 1-24]. The issue was never raised.

3. If Keenan had believed that its appellate brief had in fact challenged the trial court's "exclusion" of Johns-Manville documents (despite the lack of cogent argument), Keenan did not bring that omission to the attention of the appellate court via the rehearing process. [*See* Rule of Court 8.500(c)(2) (rehearing petition required to preserve issue omitted from appellate opinion)].

4. Keenan did not try to raise this issue in the Petition for Review process, including by a Cross-Petition.

In sum, the propriety of the trial court's rulings on the admissibility of Johns-Manville documents is not before this Court.

B. No prejudicial error occurred.

Even if Keenan somehow preserved this issue for appellate review, Keenan fails to show that any prejudicial error occurred.

1. No abuse of discretion: Keenan admittedly failed to meet the business-records hearsay exception.

a. Keenan concedes it did not show the requisite "mode of preparation."

Keenan moved to have the Johns-Manville documents "deemed admitted" under Evidence Code section 1271's "business records exception" to the hearsay rule. [AB at 33; 1 AA 80-81, 89-93]. Keenan concedes that it presented no evidence "regarding the mode of preparation" of these documents. [AB at 35]. Accordingly, the trial court ruled that Keenan had not satisfied the business-records exception. [7 RT 1833:11-20, 1855:14-1856:18, 1857:7-16].

Despite this evidentiary gap, Keenan stresses that the Johns-Manville documents at issue "are authentic." [AB at 30-32]. But authenticity does not alone satisfy the business-records hearsay exception. [*Taggart v. Super Seer Corp.* (1995) 33 Cal.App.4th 1697, 1706-1707 (a showing that the records were *authentic* (§ 1561) did not establish the business-records *hearsay* exception (§ 1271) because it did not address the records' "mode of preparation")]. Indeed, the Legislature expressly amended section 1561 to add current subdivision (a)(5), now requiring a records-custodian's affidavit to address the "mode of preparation." [*Cooney v. Superior Ct. (Greenstein)* (2006) 140 Cal.App.4th 1039, 1044-1045; *see* Evid. Code § 1561, subd. (a)(5)].

Keenan purported to show only that the Johns-Manville documents were authentic but not that they were "trustworthy" based on their "mode of preparation." [7 RT 1832:3-9, 1833:11-20, 1855:14-1856:18, 1857:7-16]. Accordingly, the trial court did not abuse its discretion in holding that Keenan had failed to meet the statutory requirement for business records.

Next, instead of trying to show any abuse of discretion, Keenan raises several arguments that Keenan claims would have supported a contrary ruling:

1. Keenan suggests that its failure to satisfy the statute should be excused because this was a "preference case with accelerated discovery deadlines" and it found "documents" just "days before trial." [AB at 35]. But the trial court knew these facts when it made its discretionary rulings. [*See* 1 AA 84 (Keenan motion showing time of "discovery" of documents)]. And the record further reflects that Keenan knew the identity of at least two former Johns-Manville employees but

called no one to describe the mode of document preparation (or indeed called any live witnesses in its case in chief). [1 RA 26:14-16, 26:23-24; 1 AA 127].

2. Keenan cites testimony from plaintiffs' expert Dr. Castleman about the general authenticity of "documents gathered by the Manville Trust." [AB at 32 (*citing* 1 AA 107-112)]. But the documents' admissibility problem was not authenticity but hearsay (and the business-records exception). And in any case, Dr. Castleman's general observations about the Manville Trust documents did not authenticate any particular document and expressly did not extend to "sales records." [*See* 1 AA 112 ("sales records are really beyond the scope of my testimony and interest")].

3. Keenan suggests that it could not have supplied the pipe to McKinleyville (Humboldt County) because Christeve ordered pipe "from Southern California." [AB at 18-19, 66]. But the cited testimony shows only that Christeve's owner (Mike Mitrovich) *placed the orders from* Southern California, where he lived and worked – but the pipe was *shipped* from elsewhere. [12 RT 3417:25-3418:3 ("He would order pipe, I don't know why he'd *order* pipe down there, and it would always *come from up north* or wherever we were working, it would always come from a different place.")].

In sum, Keenan's various arguments in favor of granting its motion below fails to show any abuse of discretion in the motion's denial.

b. Keenan's renewed motion.

Keenan also cites its "renewed motion" to admit a specific invoice on the ground that plaintiffs "opened the door" via "misconduct" of

counsel. [AB at 37-38]. Keenan cites no analysis or legal support for its argument.

No error occurred. Keenan presented the asserted "misconduct" to the trial court, who gave the jury a curative instruction to disregard counsel's statement. [15 RT 3270:18-3271:13, 3274:17-22, 3276:3-8].

Nothing indicates that this curative instruction was insufficient, let alone that the proper remedy was the admission of inadmissible evidence.

Hence, Keenan fails here also to show any abuse of discretion.[3]

2. No prejudice: Keenan fails to show that the admission of additional Johns-Manville documents would have made a different verdict probable.

Even if Keenan could show an abuse of discretion, reversal of the judgment on the jury's verdict would not be warranted unless Keenan also showed prejudice. [*See* Evid. Code § 354 (no reversal for "erroneous exclusion of evidence" unless it "resulted in a miscarriage of justice"); Code Civ. Proc. § 475 (error prejudicial only if a "different result would have been probable if such error . . . had not occurred")].

But Keenan makes no effort to any show such prejudice. [AB at 30-38 (suggesting error but not asserting prejudice)].

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[3] Finally, Keenan argues that, "[e]ven if inadmissible," the J-M documents should have been considered by the trial court in assessing the authenticity question. [AB at 68 and n.7]. Keenan presents no authority or analysis supporting this contention. And indeed Keenan concedes that the "record is not clear as to whether this exculpatory information, even if inadmissible for trial purposes, factored into the trial court's determination of authenticity." [AB at 68 n.7].

Nor could Keenan show prejudice. Mr. Hart testified that the McKinleyville job was "large;" it involved the installation of over 60,000 feet of asbestos-cement pipe. [12 RT 3344:1-10]. Keenan does not purport to represent, nor do the Johns-Manville invoices show, that Johns-Manville would have been the exclusive supplier of asbestos-cement sewer pipe to the McKinleyville job. The jury found that Keenan supplied at least *some* of the asbestos-cement pipe to the McKinleyville jobsite. [2 AA 242]. And the jury found that both Keenan and Johns-Manville were liable for exposing Mr. Hart to asbestos-cement pipe. [2 AA 246 (Keenan 17%; Johns-Manville 24%].

Nothing suggests – and Keenan fails to show – that the admission of additional Johns-Manville invoices would have changed this verdict.

CONCLUSION

Plaintiffs and Petitioners pray that this Court reverse the majority opinion and remand for consideration of the remaining issues, and for such other relief as to which they may be entitled.

DATED: August 21, 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, Denyse F. Clancy, hereby certify that the text of this brief consists of ~~9,091~~ 8169 words, in Times New Roman 14-point font, as counted by my word processing program.

DATED: August 21, 2019

Denyse F. Clancy

PROOF OF SERVICE

Frank C. Hart and Cynthia Hart v. Keenan Properties, Inc.
Supreme Court of California Case No. S253295

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 August 21, 2019, I served true copies of the following document(s) described as:

PETITIONERS' REPLY BRIEF ON THE MERITS

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 TrueFiling pursuant to the California Supreme Court website 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, CA 94612

via the following method:

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Kazan, McClain, Satterley & Greenwood for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Oakland, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 21, 2019, at Oakland, California.

Paula Katayanagi