

S262032

---

---

In the  
**Supreme Court**  
of the  
**State of California**

---

---

GREGORY GEISER,

*Plaintiff/Petitioner, Appellant, and Cross-Respondent, and Respondent,*

v.

PETER KUHNS, PABLO CAAMAL, MERCEDES CAAMAL,

*Defendants/Respondents, Respondents, and Cross-Appellants, and Petitioners.*

APPEAL FROM THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,  
SECOND APPELLATE DISTRICT, DIVISION FIVE, CASE No. B279738  
SUPERIOR COURT OF LOS ANGELES COUNTY, Nos. BS161018, BS161019& BS161020

---

---

**RESPONDENT'S OPPOSITION TO PETITIONERS'  
MOTION FOR JUDICIAL NOTICE**

---

---

\*FRANK SANDELMANN, ESQ. (186415)  
JOSHUA A. VALENE, ESQ. (292109)  
DINSMORE & SANDELMANN, LLP  
*Attorneys for Plaintiff/Petitioner,  
Appellant, Cross-Respondent,  
and Respondent Gregory Geiser*  
324 Manhattan Beach Boulevard, Suite 201  
Manhattan Beach, California 90266  
(310) 318-1220

**TABLE OF CONTENTS**

**MEMORANDUM OF POINTS & AUTHORITIES IN  
OPPOSITION TO MOTION FOR JUDICIAL NOTICE ..... 4**

**I. PETITIONERS’ MOTION IS UNTIMELY. .... 4**

**II. EXHIBITS 1 THROUGH 4 AND 6 THROUGH 9 ARE  
VERSIONS OF ARTICLES TAKEN FROM THE  
INTERNET ON OCTOBER 19, 2020 AND OCTOBER 20,  
2020, WITHOUT ANY EVIDENCE OF THE TITLES OR  
THE CONTENTS OF THE ORIGINAL ARTICLES. .... 5**

**III. EXHIBITS 1 THROUGH 9 ARE INADMISSIBLE  
HEARSAY AND LACK RELEVANCE..... 6**

**IV. EXHIBITS 1 AND 2 SHOULD BE EXCLUDED FOR  
LACK OF A CERTIFIED TRANSLATION. .... 7**

**V. CONCLUSION ..... 8**

**PROOF OF SERVICE..... 9**

## TABLE OF AUTHORITIES

### Cases

<i>In re Marriage of Eustice</i> (2015) 242 Cal.App.4th 1291 .....	4
<i>North Beverly Park Homeowners Assn. v. Bisno</i> (2007) 147 Cal.App.4th 762 .....	6
<i>People v. Preslie</i> (1977) 70 Cal.App.3d 486.....	5
<i>Vons Companies, Inc. v. Seabest Foods, Inc.</i> (1996) 14 Cal.4th 434 .....	4
<i>Weiss v. City of Del Mar</i> (2019) 39 Cal.App.5th 609 .....	4, 5

### Statutes

Evid. Code, § 210 .....	6
Evid. Code, § 350 .....	6
Evid. Code, § 452 .....	6
Evid. Code, § 753 .....	7

### Treatises

1 Witkin, Cal. Evidence (4th ed. 2000) Judicial Notice, § 25.....	6
3 Witkin, Cal. Evid. 5th Presentation §§ 39-40.....	7

### Regulations

Cal. Rules of Court, 3.1110.....	7
----------------------------------	---

**MEMORANDUM OF POINTS & AUTHORITIES IN**  
**OPPOSITION TO MOTION FOR JUDICIAL NOTICE**

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE OF  
THE CALIFORNIA SUPREME COURT:

Plaintiff/Petitioner, Appellant, Cross-Respondent, and Respondent Gregory Geiser (“Geiser”) hereby respectfully requests that Defendants/Respondents, Respondents, Cross-Appellants, and Petitioners Peter Kuhns’, Pablo Caamal’s, and Mercedes Caamal’s (“Petitioners”) Motion for Judicial Notice (the “Motion”) be denied as to Exhibits 1 through 9. Specifically, the Motion should be denied for the following reasons:

- 1) The Motion is untimely as to Exhibit 1 through 9;
- 2) Exhibits 1 through 4 and 6 through 9 are copies of internet articles taken from the internet on October 19, 2020 and October 20, 2020, without providing evidence of the original titles or the content of the articles;
- 3) Exhibits 1 through 9 are inadmissible hearsay and lack relevance; and
- 4) Exhibits 1 and 2 are not accompanied by a certified translation into English.

**I. PETITIONERS’ MOTION IS UNTIMELY.**

“Generally, reviewing courts do not take judicial notice of facts not presented to the trial court. Rather, normally when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.” (*Weiss v. City of Del Mar* (2019) 39 Cal.App.5th 609, 625 (*Weiss*), citing *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3 internal quotation marks omitted; see also *In re Marriage of Eustice* (2015) 242 Cal.App.4th 1291.) This is especially true when there are “no

exceptional circumstances” necessitating departure from that general rule and the equities do not favor consideration of the new evidence. (*Weiss, supra*, 39 Cal.App.5th at 625.) It has long been recognized that in order to consider matters not enshrined in the record, “[I]t is desirable to make such a motion at as early a date as practicable.” (See *People v. Preslie* (1977) 70 Cal.App.3d 486, 492.)

Petitioners admit that the internet articles attached as Exhibits 1 through 9 were cited to the Trial Court, but never entered into evidence. Petitioners did not request that the Trial Court take judicial notice of the articles. Moreover, prior to this Request For Judicial Notice, Petitioners did not bring a Motion To Augment The Record or take any other steps to properly add the articles to the appellate record. Instead, Petitioners bring this Motion in response to the Court of Appeal’s critique that Petitioners failed to include the true and correct copies of the original articles in the appellate record at an earlier time. Respondent submits that Petitioners have failed to demonstrate any basis why this Court, at this point in the appellate process, should exercise its discretion and grant Petitioners’ Motion.

**II. EXHIBITS 1 THROUGH 4 AND 6 THROUGH 9 ARE VERSIONS OF ARTICLES TAKEN FROM THE INTERNET ON OCTOBER 19, 2020 AND OCTOBER 20, 2020, WITHOUT ANY EVIDENCE OF THE TITLES OR THE CONTENTS OF THE ORIGINAL ARTICLES.**

Petitioners’ index of exhibits in the Motion makes it seem as if Exhibits 1 through 4 and 6 through 9 are the articles published on the internet in 2015 and 2016. However, that is misleading. Exhibits 1 through 4 and 6 through 9 are versions of articles taken from the internet on October 19, 2020 and October 20, 2020, as indicated by the date on the top left corner or top right corner of each page of those exhibits.

Evidence Code § 452(h) provides that a court may take judicial notice of “Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Petitioners failed to attach the original versions of those articles – or the versions that existed while this case was before the Trial Court.

Without a way to immediately and accurately determine the titles or the contents of the original articles, by resort to sources of reasonably indisputable accuracy, when they were supposedly published in 2015 and 2016 or when this matter was before the Trial Court, Petitioners’ Motion as to Exhibits 1 – 4 & and 6 – 9 should be denied.

### **III. EXHIBITS 1 THROUGH 9 ARE INADMISSIBLE HEARSAY AND LACK RELEVANCE.**

Only relevant evidence is admissible. (Evid. Code, § 350.) Relevant evidence is defined as evidence “having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210.) Additionally, “[T]he hearsay rule applies to statements contained in judicially noticed documents, and precludes consideration of those statements for their truth unless an independent hearsay exception exists.” (*North Beverly Park Homeowners Assn. v. Bisno* (2007) 147 Cal.App.4th 762, 778, citing 1 Witkin, Cal. Evidence (4th ed. 2000) Judicial Notice, § 25, p. 119.)

The grant of review by the California Supreme Court, limited the issues for briefing and argument to: 1) How should it be determined what public issue or issue of public interest is implicated by speech within the meaning of the anti-SLAPP statute (Code of Civ. Proc., § 425.16, subd. (e)(4)) and the first step of the two-part test articulated in *FilmOn.com Inc.*

*v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 149-150, and 2) should deference be granted to a defendant's framing of the public interest issue at this step.

Exhibits 1 through 9 are out-of-court statements, internet and newspaper articles, that constitute inadmissible hearsay which cannot be offered for the truth of the matters asserted therein unless subject to some exception. No such exception has been advanced by Petitioners. Moreover, the fact that articles were published, but the original titles or content of those articles was not preserved and was never admitted into evidence by the Trial Court, or presented to the Court Of Appeals, or this California Supreme Court means that it is not possible to establish any connection between the articles and the issues to be addressed in this appeal.

#### **IV. EXHIBITS 1 AND 2 SHOULD BE EXCLUDED FOR LACK OF A CERTIFIED TRANSLATION.**

Both the Legislature, in adopting the Evidence Code, and the Judicial Council of California, in adopting the California Rules of Court, recognize that written evidence submitted to the Court in a foreign language must be accompanied by sworn translations. (See Evid. Code, § 753(a) [“When the written characters in a writing offered in evidence are incapable of being deciphered or understood directly, a translator who can decipher the characters or understand the language shall be sworn to decipher or translate the writing.”]; Cal. Rules of Court, 3.1110(g) [“Exhibits written in a foreign language must be accompanied by an English translation, certified under oath by a qualified interpreter.”]; see also 3 Witkin, Cal. Evid. 5th Presentation §§ 39-40.) Here, Petitioners’ Exhibits 1 and 2 consist of two Spanish-language articles taken from the Internet that are not accompanied by sworn translations. As a result, this Court should decline to take judicial notice of Exhibits 1 and 2.

**V. CONCLUSION**

Based on the foregoing, Geiser respectfully requests that this Court deny Petitioners' Motion as to Exhibits 1 through 9.

Dated: January 8, 2021

DINSMORE & SANDELMANN LLP

By: /s/ Frank Sandelmann  
Frank Sandelmann  
Joshua A. Valene  
Attorneys for Plaintiff/Petitioner,  
Appellant, Cross-Respondent, and  
Respondent Gregory Geiser



## PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within action. My business address is 324 Manhattan Beach Blvd., Suite 201, Manhattan Beach, California 90266.

On January 8, 2021, I served the foregoing document described as **RESPONDENT'S OPPOSITION TO PETITIONERS' MOTION FOR JUDICIAL NOTICE** on the interested parties in this action.

I caused the above document(s) to be served on each person on the attached list by the following means:

**[X] BY MAIL**

I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on January 8, 2021, following the ordinary business practice. As indicated in the service list attached, each listed individual or court is served as indicated.

**[X] BY TRUEFILING**

I electronically served a copy of the foregoing document via the court's TrueFiling portal on January 8, 2021, following the ordinary business practice. As indicated in the service list attached, each listed individual or court is served as indicated.

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on 8th day of January, 2021, at Manhattan Beach, California.

/s/ Frank Sandlemann

**SERVICE LIST**

*Geiser v. Kuhns, et al.*

California Supreme Court, Case No. S262032

Second Appellate District, Division Five, Case No. B279738

Superior Court of Los Angeles County, Case Nos. BS161018, BS161019 and  
BS161020

MATTHEW D. STRUGAR (232951)  
LAW OFFICES OF MATTHEW STRUGAR  
3435 Wilshire Boulevard, Suite 2910  
Los Angeles, California 90010  
(323) 696-2299  
matthew@matthewstrugar.com

-and-

COLLEEN M. FLYNN (234281)  
LAW OFFICES OF COLLEEN FLYNN  
3435 Wilshire Boulevard, Suite 2910  
Los Angeles, California 90010  
(213) 252-9444  
cflynnlaw@yahoo.com

*Attorneys for Defendants and Respondents/Cross-Appellants  
Peter Kuhns, Pablo Caamal and Mercedes Caamal  
(Served via TrueFiling Portal)*

HONORABLE ARMEN TAMZARIAN, DEPT. 84  
THE SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES  
STANLEY MOSK COURTHOUSE  
111 North Hill Street  
Los Angeles, California 90012  
(213) 830-0784  
*(One paper copy served via United States Postal Service)*

ELECTRONICALLY FILED  
COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION FIVE  
*(Filed via TrueFiling Portal)*

ELECTRONICALLY SERVED  
SUPREME COURT OF CALIFORNIA  
*(Served via TrueFiling Portal)*

**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **GEISER v. KUHNS**

Case Number: **S262032**

Lower Court Case Number: **B279738**

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: **jvalene@lawinmb.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
BRIEF	S262032, ROB, Geiser
OPPOSITION	S262032, Opposition to Motion, Geiser

Service Recipients:

<b>Person Served</b>	<b>Email Address</b>	<b>Type</b>	<b>Date / Time</b>
Eugene Volokh Scott & Cyan Banister First Amendment Clinic 194464	volokh@law.ucla.edu	e-Serve	1/8/2021 4:30:47 PM
Mark Fingerman ADR Services, Inc.	mfingerman@adrservices.org	e-Serve	1/8/2021 4:30:47 PM
Brett Stroud Dinsmore & Sandelmann LLP 301777	bstroud@lawinmb.com	e-Serve	1/8/2021 4:30:47 PM
David Greene Electronic Frontier Foundation 160107	davidg@eff.org	e-Serve	1/8/2021 4:30:47 PM
Alan Dettelbach Court Added	adettelbach@wedgewood-inc.com	e-Serve	1/8/2021 4:30:47 PM
Matthew Strugar Law Offices of Matthew Strugar 232951	matthew@matthewstrugar.com	e-Serve	1/8/2021 4:30:47 PM
Colleen Flynn Law Offices of Colleen Flynn	cflynnlaw@yahoo.com	e-Serve	1/8/2021 4:30:47 PM
Frank Sandelmann Dinsmore & Sandelmann LLP 186415	fsandelmann@lawinmb.com	e-Serve	1/8/2021 4:30:47 PM
Noah Grynberg Los Angeles Center for Community Law and Action 296080	noah.grynberg@laccla.org	e-Serve	1/8/2021 4:30:47 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.

1/8/2021

---

Date

/s/Joshua Valene

---

Signature

Valene, Joshua (292109)

---

Last Name, First Name (PNum)

Dinsmore & Sandelmann, LLP

---

Law Firm