

Daily Journal

SEPTEMBER 18, 2019

BERNARD ALEXANDER MICHAEL ALEXANDER CRISTINA C. ARGUEDAS MIKE ARIAS AHILAN T. ARULANANTHAM MICHAEL W. BIEN THEODORE J. BOUTROUS, JR. KEVIN BOYLE KIMBERLY BRANSCOME BRAD D. BRIAN JOSHUA BRIONES BRUCE BRULLET HANNAH SUZANNE BROOME ELIZABETH J. CABRASER DAVID S. CASEY, JR. MORGAN CHU RICK CLIMAN JOSEPH W. COTCHETT CARISSA COZE ROBYN C. CROWTHER ALAN DENENBERG HARMEET K. DIXON KEVIN DIXON JEFFREY DINTZER JEFFREY DUMAS BRIAN DUNN MICHAEL ESQUIVEL KEITH FLAUM DANA FOX ERIC M. GEORGE THOMAS V. GIRARDI PATRICIA L. GLASER ARTURO GONZALEZ HERMIE KAREN P. HENNING THOMAS W. HILTIAGH COLLEJ MARK HOLSCHER JOHN HUSTON MANN JEFF KIN ROBERT J. KOEHLER JOE L. LARSON BRIAN S. KABATECK STEVEN KAUFMANN RON KAYE KEVIN KEKER CHARLIE KIM JING KENNETH KLEINBERG M. KOEY ERIC KOEY JIMMY MICHAEL KUMF STEPHEN G. LARSON JASON LEE MARK LEMLEY ROBERT F. LEWIS GARY S. LINCENBERG CHRISTOPHER LOVRIEN JENNIFER LYNN KELLER KATHLEEN DANIEL D. MCMILLAN RAPHAEL METZGER DARRELL D. MILLER SEAN MORRIS ANN MARIE MORTIMER ANTON N. NATSIS NANCIE E. NISHIMURA G. L. OLSON BRIAN PARRIS ANDREW C. PARRIS BRIAN PARRIS JAMES J. PARRIS ELLIOTT PETER DAVID E. PLOCE JAMES R. PUTZ ALAN R. RINGLER MICHAEL S. RINGLER ROBINSON, JR. HEATHER S. ROBINSON ROBIN KELLI L. SAGER NANCY SARACINO JOSEPH R. SAVERI KEVIN HENKMAN ROMAN SILBERFELD BRUCE L. SIMON QUYEN TA MATTHEW THOMPSON ROBERT VAN NEST PETER H. WATSON BART H. WILLIAMS SHAWNA WILLIAMS DAVID WILLINGHAM DONNA L. WILSON DEBRA WONG YANG MICHAEL WORONOFF

TOP 100 LAWYERS IN CALIFORNIA 2019

LITIGATION

JOHN W. KEKER

KEKER, VAN NEST & PETERS | SAN FRANCISCO

SPECIALTY: WHITE COLLAR CRIMINAL DEFENSE AND COMMERCIAL LITIGATION

Keker, Van Nest & Peters LLP lead name partner John W. Ke-ker is a veteran of decades of jury trials in white collar criminal cases, complex commercial and intellectual property litigation as well as securities and antitrust matters. He’s currently battling for reduced bail and a new trial for client Sushovan Hussain, a former Autonomy Corp. chief financial officer convicted last year following a nine-week trial and sentenced to five years in prison for accounting fraud against Hewlett-Packard Co. in its acquisition of Hussain’s United Kingdom-based firm. *U.S. v. Hussain*, 3:16-cr-00462 (N.D. Cal., filed Dec. 21, 2016). In June 2019 a 9th U.S. Circuit Court of Appeals motions panel ruled on the Ke-ker team’s motion, filed by New York colleagues at Shapiro Arato Bach LLP. The panel granted the bail motion pending Hussain’s appeal, noting that it raises a substantial question of law or fact that could “result in reversal or an order for a new trial of all counts...” *U.S. v. Hussain*, 19-10168 (9th Cir., motion filed May 21, 2019). “We’ve been very involved” in the post-trial work said Ke-ker, who was Hussain’s lead trial counsel and is pushing hard to overturn the verdict. Following the motion panel’s ruling in favor of

bail, U.S. District Judge Charles Breyer of San Francisco set the amount at \$10.1 million.

“Grotesquely unreasonable,” Ke-ker said. “It is encouraging to have the motion panel’s ruling, but it will likely be a different panel of judges that decides the appeal.” The issues on appeal include whether the wire fraud statute applies to foreign nationals working abroad, like Hussain and whether Hussain’s conduct was sufficiently connected with any U.S.-listed security to constitute securities fraud under U.S. law, Ke-ker’s pleadings say. Also on Ke-ker’s docket is client Wetlands Preservation Foundation’s suit against the California Department of Water Resources and The Nature Conservancy over their alleged mismanagement of an island in the Sacramento-San Joaquin Delta. The complaint contends that the defendants’ acts threaten the long-term viability of the 9,000 acre Staten Island, northwest of Stockton, and its wintering sandhill crane population.

“There’ll be a bench trial in November in Stockton,” Ke-ker said. “We’re seeking a writ of mandate to compel the defendants to promote wildlife diversity and sustainable agriculture. We hope to save the winter home of this prehistoric,



magnificent bird. Without this suit, the danger is that levees will fail, the island will sink and the cranes won’t have anywhere to go.” *Wetlands Preservation Foundation v. Department of Water Resources*, STK-cv-UMW-2018-8957 (San Joaquin Super. Ct., filed July 23, 2018).

It’s the diversity of work that keeps him engaged, Ke-ker said, adding, “I hate the idea of specialization.”

— John Roemer

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TOP 100 LAWYERS IN CALIFORNIA 2019

LITIGATION

ROBERT VAN NEST

KEKER, VAN NEST & PETERS | SAN FRANCISCO
SPECIALTY: INTELLECTUAL PROPERTY

Van Nest specializes in translating the technical and deconstructing the complex to connect with judges and juries in cases with billions at stake.

Among his longest-running cases pits his talents as a technology copyright trial lawyer defending Google LLC against claims by Oracle America Inc. that Google infringed on its Java application programming interface packages.

“Complexity always makes for a more interesting case, and complexity in many ways requires more preparation and more thought and more creativity in making the issues as simple as you can for the fact finder,” Van Nest said.

The case, originally filed in 2010, currently awaits the U.S. Supreme Court’s decision on his petition for certiorari. Van Nest persuaded two different federal juries to see the issue Google’s way, but both those outcomes were reversed on appeal. A sign the high court may take up the matter came in April 2019 when the justices invited the Solicitor General to brief the views of the U.S. government. *Google LLC v. Oracle America Inc.*, 18-956 (S. Ct., cert petition filed Oct. 19, 2018).

One of Van Nest’s biggest trials came in January 2019 when, representing

Qualcomm Inc., he served as lead counsel in shepherding a team that included lawyers from Kekker; Cravath, Swaine & Moore LLP; Morgan, Lewis & Bockius LLP and Norton Rose Fulbright LLP defending the chipmaker against claims by the Federal Trade Commission that it failed to fairly license its patents.

“It was a very exciting 10-day trial at the cutting edge of antitrust and patent law,” Van Nest said. “We presented extensive evidence, but Judge [Lucy H.] Koh didn’t agree with us. What’s remarkable is that the Department of Justice, the Department of Energy and the Department of Defense all have now weighed in on Qualcomm’s side. We continue to contend that there was no harm to competition whatsoever.” *FTC v. Qualcomm Inc.*, 17-cv-00220 (N.D. Cal., filed Jan. 17, 2017).

The 9th U.S. Circuit Court of Appeals agreed in July 2019 to expedite Qualcomm’s appeal. In August, a circuit panel stayed Koh’s injunction against Qualcomm.

At the same time Van Nest was preparing the FTC case, he also led the litigation team defending Qualcomm against antitrust claims by a class of 250 million cell phone users seeking \$5 billion and accusing the defendant of in-



flating mobile device prices through its licensing tactics. Koh certified the class, and the 9th Circuit granted a rare interlocutory appeal to stay the matter pending further appellate action. *Stromberg v. Qualcomm Inc.*, 19-15159 (9th Cir., filed June 3, 2019).

“I remain optimistic notwithstanding Judge Koh’s rulings,” Van Nest said.

— John Roemer

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TOP 100 LAWYERS IN CALIFORNIA 2019

LITIGATION

ELLIOT PETERS

KEKER, VAN NEST & PETERS | SAN FRANCISCO

SPECIALTY: WHITE COLLAR CRIMINAL DEFENSE, PROFESSIONAL LIABILITY

Peters, a name partner with Keker, Van Nest & Peters LLP, specializes in white collar criminal defense and professional liability cases. Among his current clients are Genentech Inc.; SPI Holdings; the former CEO of Bumble Bee Foods, Christopher Lischewski; John and Ines Crosby, former executives of the Rolling Hills Casino; John Wessman, the developer of Town & Country Plaza in Palm Springs; and Tour de France winner Lance Armstrong.

For Genentech, Peters last fall filed a trade secret theft suit alleging that several of its former scientists stole confidential and proprietary information to help a foreign company develop biosimilar versions of its medicines Rituxan, Herceptin, Avastin and Pulmozyme. *Genentech Inc. v. JHL Biotech Inc.*, 3:18-cv-06582 (N.D. Cal., filed Oct. 29, 2018).

“This is a fascinating case,” Peters said. “Genentech realized that a senior scientist might be working for a competitor. We did an internal investigation and turned the results over to the U.S. attorney, who also got interested in pursuing criminal charges.”

In March 2019, U.S. District Judge William H. Alsup of San Francisco granted a preliminary injunction in Genentech’s

favor and denied most of JHL Biotech’s dismissal motions. Alsup, citing a 2008 U.S. Supreme Court case, held that “Genentech has established all four Winter factors as to its trade secret misappropriation claims and that certain provisional relief is warranted.” Peters’ complaint says he has documentary evidence including emails, test messages, Skype logs and audit records showing that Taiwan-based JHL Biotech conspired with former Genentech employees “to give JHL an illegal and corrupt advantage in the biotechnology industry...”

The government’s criminal trade secret theft case against three former Genentech scientists is set for trial in May 2020.

“Our trial will follow, though we’re trying to negotiate,” Peters said. “We caught them pretty much red handed.”

Peters is defending key individuals associated with the development of the 58-story Millennium Tower luxury condominiums on San Francisco’s Mission Street facing multiple lawsuits over its rate of settlement — about 16 inches to date — its two-inch tilt, and the claim that the developer did not disclose that information to potential home buyers. The plaintiffs include the Tower’s homeowners association, private individual condo owners and an array of contractors,



subcontractors and vendors. *Lehman v. Transbay Joint Powers Authority*, CGC-16-553758 (S.F. Super. Ct., filed Aug. 17, 2016).

“This is a construction defects case on steroids,” Peters said. “We’re trying to resolve it for this high-end developer. There is insurance, but it’s getting eaten up in litigation when it could be going to fix the building.”

— John Roemer