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SHARON KRAMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

BRUCE KELMAN, GLOBALTOX, INC.,	)	Case No.: GIN 044539
)	
Plaintiffs,	)	DECLARATION OF SHARON KRAMER IN
	)	REPLY TO PLAINTIFF'S OPPOSITION TO
v.	)	MOTION TO STRIKE PLAINTIFFS'
	)	COMPLAINT PURSUANT TO C.C.P. §
SHARON KRAMER, and DOES 1 through 20,	)	425.16
inclusive,)	
	)	DATE: 9/30/05
Defendants.	)	TIME: 1:30 p.m.
	)	DEPT: 28
	)	Initial pleading: 5/16/05
	)	Trial date: Not set

I, Sharon Kramer, hereby declare that I am a licensed member of the California Association of Realtors in good standing, and the Defendant in the above entitled action. As such, if called as witness, I could and would, of my own personal knowledge, testify to the following:

1. Regardless of Dr Kelman's and Mr. Shurer's malicious false characterization of me and glaring sidestepping of documentation I provided regarding the true reason for this SLAPP suit,

1 Kelman altered his under oath statements- not once but several times. The picture Mr. Shurer is
2 attempting to paint of a cool and collected expert witness is not correct.

3 2. When originally asked by the attorney for Adair Homes, “And, what effect can someone
4 get from mold? Dr Kelman answered, “Well, the American College of Occupational and
5 Environmental Medicine has divided effects into three areas, this is in their positions statement.
6 And, I think it’s important to understand the physician statement, although I said I was one of the
7 authors, I only began the process.” Attached collectively hereto as Exhibit 1 are true and correct
8 copies of a portion of the deposition transcript of Bruce Kelman in the case of Haynes v Adair
9 Homes. (See P.16:21-P.17:4) and e-mails among and between the authors of the ACOEM
10 statement.

11 3. But when questioned later in his testimony by the plaintiff attorney, Mr. Vance, about the
12 ACOEM Statement, Kelman changed to say he not only “began the process” but he also
13 participated in the revisions. Attached as Exhibit 2 is a true and correct copy of a portion of the
14 deposition transcript of Bruce Kelman in the case of Haynes v Adair Homes. P.53:17- P.54:10.

15 Vance: Okay, Now, this revision of the Colleges of Occupation Environmental
16 Medicines state-

17 Kelman: What revision?

18 Vance: The revision –said that you were instrumental in writing the statement, and then
19 later on you said you and a couple of other colleagues wrote a revision of that statement,
20 isn’t that true?

21 Kelman: No, I didn’t say that.

22 Vance: Well-

23 Kelman: To help you out I said there were revisions of the position statement that went
24 on after we had turned in the first draft.

1 Vance: And, you participated in those revisions?

2 Kelman: Well, or course, as one of the authors.

3 4. The next question of Kelman was regarding money that the Manhattan Institute, a
4 national political think-tank, had paid Kelman's company, GlobalTox, for a broadly marketed
5 version (Manhattan Institute Version) of the mold paper he had coauthor for the ACOEM.

6 5. The Manhattan Institute Version is an edit of the original paper written for the ACOEM .
7 It is designed to be more direct in its propagating the falsehood that indoor mold does not cause
8 illness. It was on the National Association of Realtors Website, acknowledging the GlobalTox
9 principals as authors and ending with the catch phrase "Thus the notion that 'toxic mold' is an
10 insidious secret killer as so many media reports and trial lawyers would claim, is Junk Science
11 unsupported by actual scientific study." Attached hereto as Exhibit 3 is a true and correct copy of
12 the article entitled "Moldy Claims" by the National Association of Realtors.

13 6. When the payment from the Manhattan Institute, was brought into question, the
14 interaction between Vance and Kelman, took on a more confrontational tone. When originally
15 asked the question by Vance, "All right. And, isn't it true that the Manhattan Institute paid
16 GlobalTox \$40,000 to make revisions in that statement?" Kelman replied "That is one of the
17 most ridiculous statements I have ever heard." Vance then referenced the case from Arizona, and
18 said "Well you admitted to it in the Killian deposition, sir." Kelman replied, "No I did not." See
19 Exhibit 2, P.54:11 through P.55:22.

20 7. Thereafter, the Kilian trial transcript was admitted into the record, which is the only way
21 this line of questioning was allowed to continue. Kelman was then asked by Vance, "Would you
22 read into the record the highlighted portions of that transcript, sir?" Kelman read from the Kilian
23 transcript, "And that new version that you did for the Manhattan Institute, your company,
24 GlobalTox got paid \$40,000, Correct?" "Yes the company was paid \$40,000 for it." Attached
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1 hereto as Exhibit 4 are true and correct copies of pages 905 and 906 (P.905:24 – P.906:1) of the
2 trial transcript from Kilian vs Equity Residential Trust, et al., Case No. CIV 02-1272-PHX-FJM,
3 United States District Court for the District of Arizona (Kilian)

4 8. In the above referenced exchange, the direct question was asked of Kelman if the
5 Manhattan Institute had paid GlobalTox for revisions to the ACOEM Statement. Kelman replied
6 with an indignant and false denial. If Kelman was confused, as he now claims he was, as to
7 whether Vance was asking about the ACOEM Statement or the Manhattan Institute Version, yet
8 he was intending to be forthright in his testimony, a more appropriate answer may have been
9 “Yes, GlobalTox was paid \$40,000 for a revision of the ACOEM Statement, but that was much
10 later.” Kelman did not choose to do this.

11 9. Because of the tension the Manhattan Institute money question caused between Vance
12 and Kelman, and because Kelman already had to alter to admit he was involved in the revisions
13 of the ACOEM Statement, I do not believe Kelman was confused as he now states. As told to me
14 by those who were in courtroom, Kelman’s demeanor was agitated. I believe he was angry and
15 not intending to truthfully answer the question. I do not think he was not aware Vance had the
16 entire Kilian transcript.

17 10. To the question, “...So you participated in writing the study, your company was paid
18 very handsomely for it, and then you go out and you testify around the country legitimizing the
19 study that you wrote. Isn’t that a conflict of interest, sir?” Kelman responded, “Sir, that is a
20 complete lie.”

21 11. Contrary to the picture Mr. Shurer attempts to paint of Kelman when he writes, “Kelman
22 did not waver during direct or cross-examination, despite Mr. Vance’s best effort to muddy the
23 waters”, the eyewitness accounts coupled with Kelman’s comments of “That is one of the most
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1 ridiculous things I have ever heard,” and “Sir, that is a complete lie,” are indicative of lost
2 decorum.

3 12. When the judge dismissed Kelman, he did so with the statement “I bet he is gonna to
4 appreciate that.” This is further indication of an agitated and unprofessional testimony. See
5 Exhibit 2, P.58:1-7.

6 13. The fact of the matter is, Kelman was asked verbatim “All right. And, isn’t it true that the
7 Manhattan Institute paid GlobalTox \$40,000 to make revisions in that statement?” Kelman
8 denied the payment as being ridiculous.

9 14. Only after the Kilian transcript was permitted into the record, was Kelman forced to read
10 “And that new version that you did for the Manhattan Institute, your company, GlobalTox got
11 paid \$40,000, Correct?” “Yes the company was paid \$40,000 for it.”

12 15. Shurer claims that “Dr. Kelman’s Arizona testimony did not differ one iota from the
13 testimony that he gave in the Oregon lawsuit.” This is obviously an incorrect statement.

14 16. Kelman is a paid professional expert witness with much experience answering all kinds
15 of questions. Kelman chose not to clarify the payment from the Manhattan Institute until he was
16 forced to, by the Kilian transcript being permitted into the court record.

17 17. In his attempted explanation of the true relationship of the two papers, Kelman rambled
18 and altered back and forth about the papers’ connections. Vance made the statement, “Well,
19 you’re vouching for your own self (inaudible). You write a study and you say, ‘And, it’s an
20 accurate study’.” Kelman responded, “We were not paid for that. In fact the sequence was in
21 February of 2002, Dr. Brian Harden, and (inaudible) surgeon general that works with me, was
22 asked by American College of Occupational and Environmental Medicine to draft a position
23 statement for consideration by the college. He contacted Dr. Andrew Saxton, who is the head of
24 immunology at UC—clinical immunology at UCLA and myself, because he felt he couldn’t do

1 that by himself. The position statement was published on the web in October of 2002. In April
2 of 2003 I was contacted by the Manhattan Institute and asked to write a lay version of what we
3 had said in the ACOEM paper—I'm sorry, the American College of Occupational and
4 Environmental Medicine position statement. When I was initially contacted I said, 'No. For the
5 amount of effort it takes to write a paper I can do another scientific publication'. They then came
6 back a few weeks later and said, 'If we compensate you for your time, will you write the paper?'
7 And, at that point, I said, 'Yes, as group.' The published version, not the web version of the
8 ACOEM paper came out in the Journal of Environmental and Occupational Medicine in May.
9 And then sometime after that, I think it was in July, this lay translation came out. They're two
10 different papers, two different activities. The—we would have never been contacted to do a
11 translation of a document that had already been prepared, if it hadn't already been prepared".
12 Vance: "Well, your testimony just a second ago that you read into the records, you stated in that
13 other case, you said, 'Yes, GlobalTox was paid \$40,000 by the Manhattan Institute to write a
14 new version of the ACOEM paper.' Isn't that true, sir?" Kelman "I just said, we were asked to
15 do a lay translation, cuz the ACOEM paper is meant for physicians, and it was not accessible to
16 the general public." See Exhibit 2, P.56:9 through P.57:13

17 18. Within the prior sentences, Kelman testified "We were not paid for that...", not clarifying
18 which version he was discussing. There was no question asked of him at that time. He went on
19 to say GlobalTox was paid for the "lay translation" of the ACOEM Statement. He then altered to
20 say "They're two different papers, two different activities." He then flipped back again by
21 saying, "We would have never been contacted to do a translation of a document that had already
22 been prepared, if it hadn't already been prepared." By this statement he verified they were not
23 two different papers, merely two versions of the same paper. This is another example of
24 alterations in Kelman's testimony.

1 19. As I stated in the press release, “Upon being presented documents by the Haynes’
2 attorney of Kelman’s prior testimony from a case in Arizona, Dr. Kelman altered his under oath
3 statements on the witness stand.” Contrary to what Shurer attempts to project about my thought
4 process, I have not once “entertained serious doubts as to the truth of my publication”. I firmly
5 stand by all the statements authored by me. Kelman altered his under oath statements. Whether
6 these alterations of statements constitute perjury is not my determination to make. Nor did I. I
7 stated the sequence of events as I understood them at the time and still understand them to be.

8 20. Kelman attached the code of ethics of the AIHA to his document. Under number three it
9 states “Industrial Hygienists should release confidential personal or business information only
10 with the information owners’ express authorization, except when there is a duty to disclose
11 information as required by law or regulation.” There is no law or regulation that requires an
12 industrial hygienist to disclose to an occupant of a severe health threat from an indoor
13 environment. Despite all the warm fuzzy aspects of the AIHA’s code of ethics, this is the one
14 that takes precedence. The AIHA teaches that an industrial hygienist’s ethical loyalty is to the
15 one that writes the checks. I do not find this guideline ethical whatsoever. Couple this with the
16 AIHA teaching how to use the ACOEM Statement to deny legitimate illness and the likelihood
17 becomes practically nil that tenants, school teachers, or school children will be told of the
18 potential dangers of mold. I did send that e-mail one evening after I had heard of one more
19 teacher being devastatingly sick, not able to work and then denied worker’s comp benefits. There
20 are many like this. They are not able to obtain the information of how much mold was in their
21 schools in order to support that their illness is environmentally induced and, according to the
22 ACOEM, they cannot possibly be that sick from mold exposure. The e-mail I sent was not
23 directed at an individual. It was sent to the website. Still it was rude and I should apologize. It is
24 tragic what is happening to people from the deception of this issue. It is chilling to me how many

1 children in schools and apartments are knowingly being left in unhealthy amounts of moldy
2 environments because a code of ethics says the hygienists can not tell and the ACOEM says
3 people cannot be that sick from mold exposure.

4 21. Mr Shurer has attempted to paint me as a vengeful woman who has an obsession to get
5 back at Kelman for testimony he gave in our case in December, 2003. Shurer states that my
6 daughter and I claimed we acquired life threatening illnesses as a result of mold when what I
7 really wanted was for my insurance company to pay for my house to be remodeled. He also
8 states I was furious when Kelman testified that the science did not support what I wanted.

9 22. I am surprised at Mr Shurer's lack of verification of facts before making these false and
10 malicious statements, which are oddly not backed up with any support documentation attached.
11 We were not even in litigation in December of 2003. But given the obvious lack of fact
12 checking, I am not surprised at this answer. This would be a boilerplate scenario for Kelman to
13 step into. Many people have life threatening illnesses after excessive exposure to mold and
14 mycotoxins. It is a complaint that is quite common. In regard to these illnesses, it would be also
15 be a boilerplate response for Kelman to say the science does not support this, based on the
16 ACOEM Statement.

17 23. However, the boilerplate family Shurer and Kelman describe is not our family. I do not
18 know how Kelman could have testified in our case in December of 2003. We settled in October
19 of 2003. Although very sick, I never claimed I had a life threatening illness. My daughter has
20 always had the life threatening illness of CF. We ultimately received a fairly sizable settlement
21 from all three defendants in the case. If we had chosen to correct the cross contamination that
22 occurred during the remediation process, we received enough money to do so. Attached hereto
23 collectively as Exhibit 5 are true and correct copies of the mutual release of Case #GIN024147;
24 documentation of Erin Kramer's condition of Cystic Fibrosis.

1 24. Kelman was hired for the insurance company in our case as an environmental risk
2 consultant long before litigation began. He had sent a letter in 2002, before litigation even
3 began, stating that he could not say whether our house was safe or not for our daughter and we
4 should consult our physician. Kelman is a toxicologist. He is self described as not an expert in
5 immunology. We never made a claim of toxicity. What Kelman's involvement was in our
6 personal case, was minimal. We did not go to trial. But had we, I am not even certain Kelman
7 would have been allowed to testify since his specialty of toxicity was not an aspect of our case.
8 Attached hereto as Exhibit 6 is the July 23, 2002 letter from GlobalTox to Stone & Hiles, LLP.

9 25. For Shurer to maliciously and falsely portray me as being one obsessed to get revenge as
10 my motivation for bringing to light the deceptive manner in which the mold issue is being
11 handled, is a ludicrous claim. Particularly when he does not even have the facts straight that
12 support this fairy tale. It further substantiates how much they do not want the documents that are
13 in my declaration to come to light.

14 26. Shurer stated that I "attack respected physicians and researchers." I, along with many
15 others, have warned mold victims that some of the most prolific defense expert witnesses have
16 been investigated by Dateline for insurance claim denials, been the center of a SAIF worker's
17 comp investigation and had their neuropsych exams determined as unscientifically skewed
18 toward a finding of malingers by their peers. Telling the public the documented truth about some
19 who serve as experts for the defense is not an attack on "reputable physicians." It is however, an
20 issue that needs to be addressed regarding some of those who work within this field. Attached
21 hereto collectively as Exhibit 7 are true and correct copies of the article entitled "Mold Medicine
22 & Mold Science" by the Atlantic Legal Foundation; the article "Dealing With SAIF- Sick and
23 feeling like a criminal" dealing with Dr. Bardana; Dr. Lees-Haley's Fake Bad Scale. See also
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1 the Dateline investigation of Dr. Ronald Gots, attached as Exhibit 24 to the Declaration of
2 Sharon Kramer in support of the Motion to Strike Complaint.

3 27. Many who volunteer to help mold victims communicate via chatboards and websites on
4 the internet. Although it was initially embarrassing to put on the internet that I had been accused
5 of libel, I had to do so. Because Kelman's complaint also threateningly named Does 1-20, I had
6 to warn others that I had been sued and they may be, too. Because of the scare tactic manner in
7 which the complaint was written, I had no choice but to let it be known via the internet that this
8 libel suit had been filed.

9 28. Once it was out on the internet that I had been accused of libel, I had no choice but to
10 explain what had happened by showing the court documents. I have clients within the real estate
11 community. I advocate with many respected scientists, physicians, attorneys, teachers, nurses,
12 etc. I cannot effectively work if my reputation is discredited as one who may make libelous
13 statements. I had to clarify the situation. Kelman and GlobalTox's complaint, my declaration and
14 the motion to strike are all a matter of public record. I did nothing malicious or illegal by placing
15 this information on the internet.

16 29. Because the complaint itself forced the necessity for high visibility in order to protect
17 others, and because of the underlying issues that are the true basis for this lawsuit, it has become
18 one of great interest to many. It has been written about in the Indoor Environment Connections,
19 which is the trade journal for those who work within the mold industry. It has been referenced in
20 Harris Martin Publishing's Mold Magazine, which is the toxic tort attorney's magazine. It has
21 been discussed on many internet chatboards and websites. Attached as Exhibit 8 is a true and
22 correct copy of an article from the Indoor Environment Connections dated August 2005 entitled
23 "Health Advocate Responds to Allegations of Libel."
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1 30. The reason I was sued by Kelman and his corporation, GlobalTox, was to intimidate
2 myself and others from speaking out about what we know of how the ACOEM Mold Statement
3 came to be and what it really is. The threatening scare tactics intended to silence, have had the
4 exact opposite effect. I have received more documentation and requests for documentation
5 regarding Kelman and GlobalTox and the brand new corporation of Veritox than I have even had
6 time to read.

7 31. I am going to Washington DC next week. I will be facilitating a meeting with Senator
8 Barbara Boxer's General Council and other staff members. The purpose of this meeting is to
9 discuss what is wrong with the mold issue, (also known as the underlying cause of this SLAPP
10 suit), and what it will take to move legitimate science forward. Several physicians and
11 researchers from around the country will be participating via teleconference.

12 32. In Kelman's response to my declaration, he reiterates the credentials he has come to rest
13 on and bank on, while attempting to demean my character and thereby discount my words. What
14 is glaringly missing from Kelman's response is any denial on his part that the "five pounds" of
15 documentation I provided is true. He is trying to take the issue as far off point from those
16 documents as possible. With his response he has once again played the best defense is good
17 offense. The reason: Because he is well aware what is in my declaration is the sole purpose of
18 this lawsuit intended to stifle and intimidate. Dr. Kelman may not want others to know what is
19 really going on over the "Toxic Mold" issue, but that does not give him the right to shoot the
20 messenger.

21 I declare under the penalty of perjury that the foregoing is true and correct and that this
22 declaration was executed on September 21, 2005 at Encinitas, California.

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Sharon Kramer

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EXHIBIT 1

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EXHIBIT 4

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EXHIBIT 5

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EXHIBIT 6

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EXHIBIT 7

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EXHIBIT 8