"Where there are exceptional circumstances, a court which is looking to a just determination of the rights of the parties to the litigation and not merely to rules of practice, may and should decide the case without regard to what has gone before.' (England v. Hospital of the Good Samaritan (1939) 14 Cal.2d 791, 795.)"(Typed Opn, pp. 11)

As such, Defendant and Appellant, Sharon Kramer, petitions this court for rehearing to reverse its Appellate Opinions under California Rules of Court, rule 8.532(c)(2) to adhere to the relevant evidence in record in 2010 and according to the constitution, the law, and legal precedent that govern proof of libel with actual malice; and what the courts are obligated to do when provided irrefutable evidence of criminal perjury & attempted coercion used to strategically litigate while harming the accused and the American public; and to set aside an erroneous judgment on appeal obtained by improper means (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 733, pp. 762-763.); additionally, to modify its erred findings of judgments not currently in the record. Kramer petitions for rehearing under California Rules of Court, rule 8.536 based the following five points:

1. **A). Upon independent examination of evidence, this court would find that there is no evidence of Kramer ever being impeached as to her subjective belief that Kelman's words of "*lay translation*" to *"two different papers, two different activities"* and flipping back to *"translation"* were obfuscating and altering under oath statements to attempt to hide how it became US policy that mold does not harm. No refuting evidence in: (Respondent's.Reply.Brief)[http://freepdfhosting.com/f0207f8a45.pdf] The Opinion ignores the evidence that Kramer has stated and evidenced why this is what she meant by *"altered his under oath statements"* since July of 2005. (App.Rply.To.CourtQuery,pp.10,11)**

B.) Falsely stated in the Opinion, upon independent examination, this court would find that there is no evidence of Kramer making *"hostile statements"* of Kelman before March 2005 when she wrote of his February 2005 testimony in *Haynes v. Adair Homes, Inc.*, (No. CCV0211573) (*Haynes*) in the state of Oregon. (App.Opn.Brf.Erta,pp.48) (Resp.Reply.Brf)

C.) This Opinion ignores the evidence that Plaintiff Special Jury Instructions Proof Of Actual Malice, instructed the jury that it was determined Kramer had failed to investigate; and had hostility and personal malice for Kelman when she wrote *"altered his under oath statements"* in March 2005.(App.Opn.Brf.Erta,pp.31)

D.) This Opinion ignores the evidence that the trial judge, when denying Kramer's JNOV Motion, while finding libel with actual malice had been proven by clear and convincing evidence, based this conclusion on a source who submitted affidavits stating Kramer's writing was correct. (App.Opn.Brf.Erta,pp. 27)(App.Rply.Brf,pp.13)

E.) Upon independent examination this court would find libel with actual malice was never proven.

A. No Evidence Of Nonbelief Of Truth

Page 8 and 2 of the Opinion states, "The court [2006 Opinion] stated there was admissible evidence to show Kramer's statement was false; that Kelman was clarifying his testimony under oath, rather than altering it; and to show Kramer acted with actual malice.″(Typd. Opn,pp.8) "In our prior opinion, we found sufficient evidence Kramer's Internet post was false and defamatory as well as sufficient evidence the post was published with constitutional malice."(Typd.Opn,pp.2)

Not mentioned in this Opinion, nor the 2006 Opinion when determining Kramer's writing was false and malicious is that since July of 2005, Kramer has been stating and evidencing for all courts repeatedly in declarations and briefs that she finds Kelman's statements made on February 18, 2005, of "*lay translation*" going to "*two different papers, two different activities*" and flipping back again to "*translation*" to be obfuscating and *"altered [his] under oath statements"* because of her sincere views on the science; and of the deception in science and marketing that Kelman was trying to hide from the *Haynes* jury.(App.Opn.Brf.Erta,pp.29,30) There is no evidence Kramer has ever been impeached as to her *"subjective belief as the truthfulness of these alleged false statements"*. (Res.Rply.Brf) This fact alone – never impeached by Kelman as to Kramer's belief of the truthfulness of her words, negates the Opinion of proof of writing a known falsehood or having reckless disregard for the truth, published with actual malice. Kramer's "Response To This Court's Query", Jaunary 28, 2010 described what she has told and evidenced for the courts since July 2005 of why she wrote "altered":

> *"Declaration of Kramer submitted to the courts, July 2005: 'Within the prior sentences, Kelman testified 'We were not paid for that...', not clarifying which version he was discussing. There was no question asked of him at that time. He went on to say GlobalTox was paid for the 'lay translation' of the ACOEM Statement. He then altered to say 'They're two different papers, two different activities.' He then flipped back again by saying, 'We would have never been contacted to do a translation of a document that had already been prepared, if it hadn't already been prepared.' By this statement he verified they were not two different papers, merely two versions of the same paper. And that is what this lawsuit is really all about.*
>
> *The rambling attempted explanation of the two papers' relationship coupled with the filing of this lawsuit intended to silence me, have merely spotlighted Kelman's strong desire to have the ACOEM Statement and the Manhattan Institute Version portrayed as two separate works by esteemed scientists.*
>
> *In reality, they are authored by Kelman and Hardin, the principals of a corporation called GlobalTox, Inc. – a corporation that generates much income denouncing the illnesses of families, office workers, teachers and children with the*

purpose of limiting the financial liability of others. One paper is an edit of the other and both are used together to propagate biased thought based on a scant scientific foundation.

Together, these papers are the core of an elaborate sham that has been perpetrated on our courts, our medical community and the American public. Together, they are the vehicle used to give financial interests of some indecent precedence over the lives of others.'(Appelant Appendix Vol.1 Ex.8:157-158) (Response to Court's Query, pp.10-11)"

Pages 4 -6 of the Opinion cite Kelman's testimony in Haynes. There are fourteen lines of the transcript omitted from the middle. (Typd.Opn.pp4)(App.Opn.Brf.Erta,pp.26) These were also omitted from the 2006 Opinion. They corroborate Kramer's contention that the line of questioning of the US Chamber/Manhattan Institute's relationship to ACOEM over the mold issue would have been stopped if the plaintiff attorney Calvin ("Vance") had not had the Arizona *Kilian v. Equity Residential Trust* (U.S.Dist.Ct., D.Ariz., No. CIV 02-1272-PHX-FJM, (*Kilian*) transcript in its entirety.

These omitted 14 lines illustrate the defense attempting to invoke the rule of completeness, after Kelman shouted "*..ridiculous..*" when asked of paid edits, the ACOEM paper and the Manhattan Institute. (Typd Opn, pp.4) Below italicized words as in the Opinion falsely infer Kramer accused Kelman of lying about being paid by the Manhattan Institute to author the ACOEM Mold Statement:

MR. VANCE: And, you participated in those revisions?
BRUCE J. KELMAN: Well, of course, as one of the authors.
MR. VANCE: *All right. And, isn't it true that the Manhattan Institute paid GlobalTox $40,000 to make revisions in that statement?"*
KELMAN: *That is one of the most ridiculous statements I have ever heard.*
MR. VANCE: *Well, you admitted it in the Killian [sic] deposition, sir.*
BRUCE J. KELMAN: *No. I did not.* (Typd.Opn.pp.4)

(Omitted From Opinion):

MR. VANCE: Your Honor, may I approach. Would you read into the record, please, the highlighted parts of pages 905 and 906 of the trial transcript in that case.
MR. KECLE: Your Honor, I would ask that Dr. Kelman be provided the rest of the transcript under the rule of completeness. He's only been given two pages.
JUDGE VANDYKE: Do you have a copy of the transcript?
MR. KECLE: I do not.
MR. VANCE: Your Honor, I learned about Dr. Kelman just a –
JUDGE VANDYKE: How many pages do you have?
MR. VANCE: I have the entire transcript from pages –
JUDGE VANDYKE: All right. Hand him the transcript.
MR. VANCE: I'd be happy to give it to him, Your Honor.
JUDGE VANDYKE: All right. (App.Opn.Brf.Erta,pp.26)

(Back In The Opinion)

MR. VANCE: Would you read into the record the highlighted portions of that transcript, sir?
MR. KELMAN: "And, that new version that you did for the Manhattan Institute, your company, GlobalTox got paid $40,000. Correct. Yes, the company was paid $40,000 for it."...

Kramer never accused Kelman of lying about being paid by the Manhattan Institute to author the ACOEM paper. Kramer did not even mention ACOEM's until the last sentence. She was writing of the Manhattan Institute paper. The irrefutable evidence is, Kramer's writing accurately states there were two papers and payment was for the Manhattan Institute version itself, not ACOEM's. Her March 2005 writing states, *"He admitted the Manhattan Institute, a national political think-tank, paid GlobalTox $40,000 to write a position paper regarding the potential health risks of toxic mold exposure.....A version of the Manhattan Institute commissioned piece may also be found as a position statement on the website of a United States medical policy-writing body, the American College of Occupational and Environmental Medicine."* (App.Opn.Brf.Erta,pp 32)

The 2006 Opinion this Opinion is relying upon when deeming Kramer's writing false with reckless disregard for the truth, wrote the same thing Kramer did in its 2006 Opinion. This court found while determining Kramer's writing false: *"This testimony supports a conclusion Kelman did not deny he had been paid by the Manhattan Institute to write a paper, but only denied being paid by the Manhattan Institute to make revisions in the paper issued by ACOEM. He admitted being paid by the Manhattan Institute to write a lay translation."* (App.Opn.Brf.Erta,pp.32)

Given that this Opinion falsely infers Kramer accused Kelman of lying about being paid to author a paper that Kramer was not even writing of just like the 2006 Opinion; this Opinion is greatly flawed in its finding of a false accusation of perjury with actual malice. And given that Kramer has a degree in marketing and is published in peer reviewed medical journals regarding the conflicts of interest in health marketing by ACOEM et al, over the mold issue; and in light of the fact that there is no impeaching evidence otherwise; it is not unreasonable to conclude that Kramer's subjective belief is that Kelman's altering under oath statements of *"lay translation"* to *"two different papers, two different activities"* and back to *"translation"* could reasonably be deemed *"altered his under oath statements"* to obfuscate, after having to admit there was a second paper that was paid for by a think-tank and then having to discuss the two papers together by his *Kilian* testimony coming into the *Haynes* trial over objections and a shouting of *"ridiculous";* that could well have stopped the line of questioning if Vance had not had the *Kilian* transcript in its entirety.

Given that Kramer understands the adverse impact on health policy because of these two papers being closely connected to mass market misinformation; it is not unreasonable that she would consider Kelman shouting *"ridiculous"* instead of taking the opportunity to clarify there were two papers when asked about paid edits; could reasonably be perceived

as Kelman attempting to obfuscate to shut down the line of questioning so as not to let the jury know the purportedly unbiased ACOEM paper was closely connected to a paid for hire think-tank version on behalf of the US Chamber of Commerce.

The evidence is, Kramer is responsible for Vance having the *Kilian* transcript via a mutual acquaintance that forced Kelman to have to discuss the two papers together in front of the *Haynes* jury.(App.Opn.Brf.Erta,pp.19,20)**.** The evidence is**,** Kramer was told by a source who was in the courtroom that Kelman was attempting to say the two papers were not connected, but had to admit they were (after the *Kilian* transcript was permitted into the *Haynes* because Vance had *Kilian* it in entirety). (App.Opn.Brf.Erta,pp.23) One of Kramer's four sources submitted affidavits after the 2006 Opinion, corroborating altered was an accurate description of Kelman's testimony after *Kilian* entered *Haynes*. (App.Opn.Brf.Erta,pp.25,26)**.**

"This conclusion is supported by a variety of other evidence in the record, and Synanon again appears to be merely quibbling with the author's choice of words. Given the importance of permitting a reasonable degree of literary license, the statement in question seems easily supportable and by no means an act in reckless disregard of the truth." *Reader's Digest Assn v. Superior Court* (1984) 37 Cal.244, 264-265

B. No Evidence Of Hostile Statements Before Kramer Wrote

On page 9, the Opinion states, *"We found that in light of the public record of Kelman's testimony in the Haynes trial, Kelman's role as a defense expert in Kramer's own lawsuit, and hostile statements Kramer made thereafter about Kelman, a jury could conclude Kramer had acted with constitutional malice in publishing the post."*

There is no evidence in the court record of Kramer ever uttering a word of displeasure regarding Kelman's minor involvement in her own lawsuit. The evidence is that Kramer