Civil Case No. GIN044569
Appellate Case No. D054496

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT – DIVISION ONE

SHARON KRAMER
Appellant

v.

BRUCE KELMAN
Respondent

Appeal after trial, the Honorable Lisa C. Schall, Presiding
San Diego Superior Court,
Department 31,

Case filed, May 6, 2005
Trial date, August 18, 2008

APPELLANT'S REPLY TO RESPONDENT'S OPPOSITION THAT THIS COURT TAKE NOTICE OF A FRAUDULENT DOCUMENT, AUTHORED BY RESPONDENT, AND SUBMITTED TO THE ARIZONA COURT OF APPEAL, DIVISION ONE (2009) & THE CERTIFIED TESTIMONY OF DR. ANDREW SAXON (2006)

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Respondent's Opposition states "The only issues are whether the record supports the jury's findings that Appellant's publication was false and defamatory, and that she published it with actual malice."

This is a grossly inaccurate statement of what is before this Reviewing Court. Since September of 2005, Respondent, Bruce Kelman, has been committing criminal perjury to establish a false theme of Sharon Kramer harboring malice for him personally as she speaks out of a scientific fraud meant to instill judicial perception bias that is adverse to the health and safety of the American public in US courts and (formerly) in US health policy. (Vol.1 Appellant Appendix Ex.7:149)

Bruce Kelman's sole claim of the case is that he was maliciously accused of being one who would commit criminal perjury. He then used criminal perjury in the case to establish malice to prove he was wrongfully accused of being a liar. Again, the following is criminal perjury submitted in declarations made under oath three times in this libel litigation by Bruce J. Kelman on September 2005, April 2006 and March 2008:

> I first learned of Defendant Sharon Kramer in mid-2003, when I was retained as an expert in a lawsuit between her, her homeowner's insurer and other parties regarding alleged mold contamination in her house. She apparently felt that the remediation work had been inadequately done, and that she and her daughter had suffered life-threatening diseases as a result. I testified that the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed. I never met Ms. Kramer. (Appellant Appendix Vol.IV Ex.28:1013)

Since September of 2005, Respondent's legal counsel, Keith Scheuer, has been willfully suborning Bruce Kelman's perjury to create a false reason for personal malice. (Vol.1.Appellant Appendix Ex.6:134) Since September of 2005 Appellant Sharon Kramer has informed all judges and justices overseeing this litigation, of which there have been seven, of Bruce Kelman's willful perjury and Keith Scheuer's suborning of perjury with uncontroverted supporting evidence. (Vol.1, Appellant Appendix Ex.10: 207, 208). (Vol.IV. Ex.28:988-1067)(Vol.3 RT.229)

Each judge and justice to oversee this now almost five year old case, ignored the evidence of the criminal perjury as they piled on to the errors of prior courts when making their own rulings in violation of too many California Codes, Statutes, Case Laws and Judicial Canons to cite in this reply. (Vol.9 RT.597-599)

The damages to Sharon Kramer from the errors of the San Diego courts repeatedly turning a blind eye to the uncontroverted evidence of Bruce Kelman's criminal perjury have been horrendous. The financial damages have been well into seven figures. And now, because of these San Diego court errors of not recognizing they were overseeing strategic litigation involving criminal perjury to silence a Whistleblower of a scientific fraud on the courts by the US Chamber of Commerce and other influential entities; the fraud continues to be perpetrated on other courts.

This is evidenced by the National Apartment Association political action committee ("Amicus") Curiae Brief. The Amicus was submitted in August 2009 into an Arizona litigation ("Abad Case") involving new born infant deaths; an apartment complex documented to harbor an atypical amount of mold; and the judicial bias instilling document of the US Chamber of Commerce Institute for Legal Reform, "A Scientific View Of The Health Effects Of Mold" aka "Manhattan

Institute Version" that was authored by the Respondent in this litigation. (Appellant Application, Ex.1. Bate Stamped Pages 9, 10)(Respondent Appendix Ex.2:34,35)

Bruce Kelman, the criminal perjury committing Respondent from this libel litigation and author of the judicial bias instilling US Chamber "Scientific Vew..." is serving as a professional witness in the Abad Case. (Appellant Appendix Vol.2 Ex.18:448) His testimony for the defense in the Abad Case is being falsely legitimized by the fraudulent paper he authored for the US Chamber of Commerce Institute For Legal Reform with payment for the fraud coming from the Manhattan Institute Center For Legal Policy. (Appellant's Appendix Vol.2. Ex.18:448) Bruce Kelman was paid for the scientific fraud by the think-tank because they specifically wanted something written for judges. (Vol.3 RT 149)

The fraudulent "Scientific View" of the US Chamber was the subject paper of the concluding paragraphs of Sharon Kramer's purportedly libelous writing in question of March 2005. In the writing, she named the names of the influential organizations and individuals involved in mass marketing the fraud, including a United States Congressman, Gary Miller (R-Ca). (Respondent's Appendix Ex.7 Pg.64,65)

The Amicus submitted in the Abad Case serves as evidence of the ill gotten fruits resultant from Respondent and his legal counsel, Keith Scheuer, strategically, criminally, and successfully litigating for nearly five years in the San Diego court system to silence and discredit a Whistleblower over the exact same deceit now used to instill judicial bias in the Arizona courts. According to Bruce Kelman himself, the US Chamber paper is a "non-scientific publication". (Vol 3. RT 207)

The evidence shows that Sharon Kramer has herself become a victim in the San Diego courts of the same judicial bias instilling "non-scientific" fraud of the US Chamber of Commerce et al. August 18, 2008, within an hour of Sharon Kramer first meeting the trial judge, Honorable Judge Lisa C. Schall, who took over the case days before trial:

> Trial Judge Honorable Lisa C. Schall: ...They didn't get to get an independent medical exam, and this how it's going to come down in terms of the way I see it, Counsel, is that she can't testify that she's used by the – that she is an expert for Congress.
>
> Appellant's Trial Attorney, Lincoln Bandlow: I'm sorry. I think you're confused about something. They never asked for an independent medical exam of her. We asked for one of him.
>
> Judge Schall: Are you serious? (Vol.1 RT.20)

As such, not only for Sharon Kramer but for the citizens of the United States, this Reviewing Court needs to understand how judicial perception bias gets marketed and instilled in courts by the US Chamber of Commerce et al, against the sick and the injured of mold and their proponents. And how this instilled judicial bias causes erroneous rulings that cause judicial bias in other courts so they too, will make erroneous rulings favorable to financial stakeholders of moldy buildings.

If the Reviewing Court does not grasp this, then they will not comprehend the vast ramifications as they make their rulings over the little word "altered"; when in reality, they are ruling over removing a deception in mold science from United States courts.

Ironically, this is the same deceit of which Sharon Kramer has blown the whistle and was writing of on March 9, 2005 with the San Diego courts and their Presiding Justice leader, the Chair of the California Commission on Judicial Performance, serving as prime examples of the seriousness, pervasiveness and insidiousness of the problem in the courts when decision making judges and justices do not understand the science of mold and do not understand the science of marketing. Yet make rulings favorable to the financial stakeholders of moldy buildings based on the perceptions that have been marketed to them. The Honorable Justice Judith McConnell, Chair of the California Commission on Judicial Performance, November 2006, when ruling on the anti-SLAPP motion:

> Further, in determining whether there was a prima facie showing of **malice**, the trial court also relied on the general tone of Kramer's declarations. These declarations reflect a person, who **motivated** by **personally** having suffered by mold problems, is **crusading** against toxic mold and against those individuals and organizations who, in **her opinion,** unjustifiably minimized the dangers of indoor mold. Although this case involves only the issue of whether the statement "Kelman altered his under oath statements on the witness stand" was false and made with malice, Kramer's declarations are full of language **deriding the positions of Kelman**, GlobalTox, ACOEM and the Manhattan Institute. [sic, the Appellate Court neglected to mention the US Chamber of Commerce] For example, Kramer states that people "were physically damaged by the ACOEM Statement itself" and that the ACOEM Statement is a document of scant scientific foundation; authored by expert defense witnesses; legitimized by the inner circle of an influential medical association, whose members often times evaluate mold victims o[n] behalf of insurers and employers; and promoted by stakeholder industries for the purpose of financial gain at the expense of the lives of others." (Appellant Appendix Vol.1 Ex.12:256, 257)

The Honorable Judge Lisa C. Schall, Trial judge, August 18, 2008:

> That's why I like reading their ruling because I know what I'd do. **I won't upset them if I follow their guidance** to start with. They did a pretty good job on pointing to the kinds of **evidence they considered in the anti-SLAPP**, **which is key** because it's the **same thing** that was adopted in the motion for summary judgment ruling that was made by **Judge Orfield.** (Vol.1 RT.4)

The Honorable Judge Lisa C. Schall, December 12, 2008, after being provided no less than 23 pieces of uncontroverable evidence of Bruce Kelman's perjury on the issue of malice: (Appellant Appendix Vol.IV Ex.28: 988-1067)

> I can't be drawn into that kind of petty behavior, demanding Mr. Scheuer to explain himself on things. (Vol.7 RT.568)

The Honorable Joel Pressman, Presiding North County Judge, January 9, 2009.

> The Court denies Defendant Kramer's Motion for Reconsideration... The Amended Judgment was entered in this case on December 18, 2008. (Appellant Appendix Vol.V Ex.33:1078)
>
> (The original judgment was never amended to accurately reflect Sharon Kramer prevailed over GlobalTox and is entitled to costs. There is no record in the North County file of any judgment entered on 12/18/08. Nor was any notice ever sent of this purported judgment entered on this purported date that caused the lower court to lose the ability to review)

The Honorable William S. Dato, April 3, 2009:

> Mrs. Kramer, just so you understand, I don't have any authority to go back and revisit issues that were decided by Judge Schall, okay.
> .....
> But to the extent that you're talking about things that this court previously did, and I realize it's the same court now, it was a different judge –(Vol.9 RT.597)
> .....

> But we have to stick to the issues that are before me today. And I understand, I read your papers on the prior motion. I understand you have concerns that what happened before. None of that is before me now. I can't do anything about that even if it were true. (Vol 9. RT 598)

Sharon Kramer was able to get a US Senator to request a Federal Government audit into the mold issue. She was able to get the Wall Street Journal to run a front page, above the fold, expose' of the marketing of deceit involving the US Chamber of Commerce and the American College of Occupational and Environmental Medicine ("ACOEM") and the Respondent in this litigation.

Yet not a single one of seven San Diego judges and justices to oversee this now nearly five year old litigation even remotely considered that Sharon Kramer, who holds a degree in the science of marketing, was telling them the truth about the significance of this strategic litigation on the mold issue as a whole. Not one single judge or justice even remotely considered she was telling the truth about a mass marketing of a deception in science to instill bias in the courts who oversee mold litigation and in juries. (Appellant Appendix Vol.2 Ex. 490-493)

Not a single one remotely considered she was telling the truth that Bruce Kelman, esteemed scientist in the San Diego courts' eyes, was altering and obfuscating before an Oregon jury on February 18, 2005 to hide the marketing trail of the deception that is adverse to the health and safety of the American public.

Not one even remotely considered she was telling the truth with corroborating and unrefuted evidence that Bruce Kelman, author of a policy paper for the United States Chamber of Commerce and author of a policy paper for an influential medical association, ACOEM, was lying under oath in his declarations submitted to the

courts under penalty of perjury about Sharon Kramer having malice for him because she was "motivated by personally having suffered by mold problems" and was out to get a great scientific expert from her personal mold litigation of long ago. (Appellant Appendix Vol.1 Ex.13: 276, 277)

And as a result, not one single judge or justice did anything to stop the continued and continuing damage resultant from a California licensed attorney repeatedly and willfully suborning his client's perjury while strategically litigating in the San Diego court system. California Code of Judicial Ethics, Canon 3.D. states, Disciplinary Responsibilities

"*(2) Whenever a judge has personal knowledge that a lawyer has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action."*

"I can't be drawn into that kind of petty behavior, demanding Mr. Scheuer to explain himself on things." The Honorable Judge Lisa C. Schall, December 12, 2008

Similar to how children who are victims of abuse themselves become abusers, the bias and groupthink[1] instilled in San Diego judges and justices by the US Chamber of Commerce et al - that anyone who says mold can harm is automatically to be considered a mentally deranged liar - has caused these same San Diego judges and justices to now assist the US Chamber of Commerce et al, to be able to instill the same bias in the Arizona courts through a Amicus of a political action committee

[1] Groupthink, a term coined by social psychologist Irving Janis (1972). Groupthink occurs when groups are highly cohesive and when they are under considerable pressure to make a quality decision. When pressures for unanimity seem overwhelming, members are less motivated to realistically appraise the alternative courses of action available to them. These group pressures lead to carelessness and irrational thinking since groups experiencing groupthink fail to consider all alternatives and seek to maintain unanimity. Decisions shaped by groupthink have low probability of achieving successful outcomes.

that cites to a fraudulent paper authored by the Respondent in this strategic litigation as a definitive source of the science of mold.

The situation has caused bias in the courts against a class of people, those environmentally injured by contaminants found within indoor environments. It has caused bias in the seven San Diego judges and justices that have overseen this libel litigation against an individual, a successful advocate for those injured by indoor contaminants found in water damaged buildings. These biases within the courts are adverse to the health and safety of the American public.

This Reviewing Court has the ability break the cycle of abuse of judges and justices perpetrated by the US Chamber of Commerce et al. It is a scientific fraud on the courts promoted by the US Chamber of Commerce and other interested parties that science holds all claims of illness from the poisons of mold are a result of "trial lawyers", "media" and "Junk Science". The fraud was bought and paid for by a think-tank to specifically to be used to "educate" judges overseeing mold litigation. *"Something that judges could understand."* (Vol 3. RT.149)

To break the cycle of abuse of judges and justices, this Reviewing Court simply needs to acknowledge the uncontroverted evidence of this strategic litigation that has not and cannot be refuted: Bruce Kelman, author of the deceptive US Chamber paper, has been committing criminal perjury within his declaration made under oath three times in this litigation to establish a false theme of malice; Keith Scheuer has been willfully suborning it. (Appellant Appendix Vol.IV Ex.27:995-997 – the third submission of the perjury)(Respondent Brief, September 2009, Page 20)

They knowingly have been benefiting from the resultant improvidently entered orders of the abused and now abuser San Diego courts, causing extreme financial hardship for Sharon Kramer.(Vol.IV.Ex.27: 1029-1034) As a result of the Sound of a Whistle falling on deaf and biased judicial ears in San Diego, the abuse of other judges is now occurring in Arizona and permitting further benefit from the improvidently entered orders of the San Diego courts.

The libel aspect of this litigation itself is simple. The answer is "No, the record does not support the jury verdict." This is because one cannot use perjury to prove they were falsely accused of perjury. After almost five years of litigation, Respondent cannot even state what he was supposedly accused of perjuring himself of by the phrase "altered his under oath statements". Nor can he direct this Court to one piece of evidence of the Appellant uttering a harsh personal word of Bruce Kelman before she wrote the purportedly libelous writing in 2005. There has been no evidence Appellant was even remotely unhappy with Respondent's involvement in her personal mold litigation of 2003, that was the falsely claimed reason for her personal malice. (The current theme for Sharon Kramer's malice for Bruce Kelman is an unquenchable desire to be known as "Queen of the Chatboards". Apparently, this also motivated the late Senator Edward Kennedy to request a Federal audit into the mold issue.)

But Appellant can cite to the exact words of Respondent in black and white that were spoken on February 18, 2005 that Appellant considers altered under oath statements. The primary ones are, "lay translation" to "two different activities" and flipping back to "translation". "That is one of the most ridiculous statements I have

ever heard" and Bruce Kelman's denial of a conflict of interest are also considered by Appellant to be disingenuous.

The trial judge applied the wrong standard of review when denying Appellant's Motion for Judgment Notwithstanding the Verdict as she deemed that the jury rightfully found a source for the March 2005 writing -who had stated he was of the opinion that the writing was correct - was the Smoking Gun, clear and convincing evidence required that the writing was incorrect. Law and logic dictate that someone who says a writing is correct is in no way, shape or form, clear and convincing evidence that a writing is incorrect. When this error in law and logic was brought to the trial judge's attention she replied, *"You know what, Mrs. Kramer? Now you are just arguing with me."*

The bigger questions looming for this Reviewing Court with broad implication over this case and mold litigation nationwide are: a.) How is it possible that such an obviously simple litigation over the word "altered" could be in the San Diego court system for five years; be overseen by seven judges and justices who have been staring uncontroverted evidence of perjury on the issue of malice in the face; and end up with the wrong party deemed the malicious liar for the mere word "altered" with a lien on her home for costs incurred by a party she prevailed over in trial, VeriTox?" And b.) What must this Reviewing Court do to correct the past and future damage caused by the egregious errors implicating judicial perception bias over the mold issue within the San Diego courts so that no other courts experience the same?

The anti-SLAPP motion was defeated through the use of criminal perjury on the issue of malice and the criminal and strategic litigation continued to roll on through

from there. The November 16, 2006 affirmation of the lower court's denial of Sharon Kramer's C.C.P. 426.16 motion by the Appellate Court was made by relying on a fraud. By law and for the good of the US public, this litigation must be recognized as the strategic litigation it is so that a fraud cannot be perpetrated on other courts. By law, the fraud impacted anti-SLAPP ruling must be reversed.

"When the remittitur issues, the jurisdiction of the appellate court ceases, and that of the trial court attaches. Except where the issuance was a result of mistake, inadvertence or fraud ..., it cannot be recalled for the purpose of modifying the judgment. If the remittitur issues by inadvertence or mistake, or as a result of fraud or imposition practiced on the appellate court, the court has inherent power to recall it and thereby reassert its jurisdiction over the case. This remedy, though described in procedural terms, is actually an exercise of an extraordinary substantive power. ...its significant function is to permit the court to set aside an erroneous judgment on appeal obtained by improper means. In practical effect, therefore, the motion or petition to recall the remittitur may operate as a belated petition for rehearing on special grounds, without any time limitations." (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 733, pp. 762-763.)

Sharon Kramer has suffered tremendous financial, emotional and reputation damage caused by the San Diego courts' collective failures to stop strategic litigation. Her reputation and ability to make a living as a real estate agent have been greatly damaged by the San Diego courts' deep seeded perception biases and groupthink as to the knowledge, integrity, mental stability and motivations of the parties to this litigation. The judicial perception bias has resulted in the wrong party being deemed the "malicious liar" of this litigation.

Bruce Kelman's Opposition does not even attempt to refute the irrefutable fact of criminal perjury in this libel litigation and how it relates to the Application for Judicial Notice. It does not attempt to deny that Bruce Kelman has been committing criminal perjury to establish a false theme for Sharon Krame harboring personal malice in a libel litigation over the writing that was the first to publicly expose the deception on the courts of the US Chamber of Commerce, et al. that is now being fraudulently presented as legitimate science to the Arizona Appellate Court.

Respondent's Opposition does not deny that Bruce Kelman is one of *only two* authors of "A Scientific View of the Health Effects of Mold" (2003) United States Chamber of Commerce Institute For Legal Reform. The other author of the scientific fraud for the US Chamber of Commerce is VeriTox owner, Bryan Hardin. Both men and others from VeriTox, generate income as experts for the defense before the courts in mold litigation.

As previously noted, the US Chamber's "Scientific View.." was the subject of the concluding paragraphs of Sharon Kramer's purportedly libelous writing of March 2005. It cites false authorship, was specifically written for judges, was paid for by a think-tank, and is garbage science marketed to the courts to instill perception bias in judges, justices and juries against the sick and injured.

It falsely professes to have *four* authors as its "a panel of scientists", who have been able to prove the absurd concept that it is scientifically proven the poisons of mold do not poison. No one else besides the panel of *two*, Bruce Kelman and Bryan Hardin, have ever professed to scientific prove such nonsense. It is an unscientific non-sequitor fraudulently marketed to the courts at the expense of the American public.

Although not a "party" to the Abad Case in which the National Apartment Association Amicus has been submitted, the San Diego Appellate court and Keith Scheuer have been informed since June of 2006 of Bruce Kelman's involvement and interest as an expert in the Abad Case. The reason the San Diego Appellate Court and Keith Scheuer were informed of Bruce Kelman's involvement in the Abad Case was because of a prior request of this Court to take judicial notice, on June 30, 2006 when addressing the anti-SLAPP motion. The request was to take notice of Bruce Kelman's deposition testimony given in the Abad Case on April 14, 2006.

This was because in April 2006 in Arizona, Bruce Kelman was disclosing that there are six owners of Veritox. Yet, six weeks earlier in March 2006 in California, the Certificate of Interested Parties submitted to the San Diego Appellate Court by Keith Scheuer on March 3, 2006, states only five owners. Bryan Hardin, co-author of A Scientific Fraud On the Courts By The US Chamber Of Commerce was not disclosed to this Court to be an owner of Veritox with determining the anti-SLAPP ruling. (Appellant Appendix Vol.2 Ex.18:448 & Vol.2 Ex.18:446)

The Appellate Court declined to take judicial notice of Bruce Kelman's Abad Case deposition being inconsistent with the Kelman/VeriTox Certificate of Interested Parties. They oddly stated the reason for denial of notice being because the information was not provided to the lower court – who had lost jurisdiction long before the Abad Case deposition of April 14, 2006 even occurred, and before a Certificate of Interested Parties would even be presented to an Appellate Court.

Bryan Hardin retired as a Deputy Director of the United States National Institute of Occupational Safety and Health and Assistant Surgeon General in 2001, shortly

before joining Veritox and beginning a second career as an expert defense witness in mold litigation. (Respondent's Appendix Ex.2:34)

The 2006 Appellate Panel, with Appellate Court Presiding Justice Judith McConnell writing the opinion, also declined to take judicial notice of the evidence that Bruce Kelman was committing criminal perjury on the issue of malice. In addition, they declined to take judicial notice that a Sacramento court had deemed VeriTox's "science" to be the garbage that it is on April 14, 2006, calling it "a huge leap" to be able to determine no one is made ill from the poisons of mold. (Appellant Appendix Vol.2 Ex.18:448, 449)

As the San Diego Appellate Court was informed, the Sacramento court cited to the Institute of Medicine (IOM), Damp Indoor Spaces and Health as the authoritative source that states (paraphrased) it flies in the face of the basic tenets of toxicology to apply math to data borrowed from someone else's rodent study and profess to scientifically prove all claims of human illness from the toxins of mold could not be, aka, "huge leap".

Dr. Harriet Amman, Sharon Kramer's expert who was not permitted to testify in trial, is the author on the chapter on mycotoxins within the IOM Damp Indoor Spaces and Health report. Her writings for the IOM were cited for the Sacramento court to be able to understand the garbage science of VeriTox. (Note: The National Apartment Association Amicus is also misleading the Arizona Appellate Court that the findings of the IOM are consistent with the science of the US Chamber, Bate stamped as Page 8 of Appellant's Application)

Dr. Amman was to testify in the August 2008 trial that as a toxicologist, there was no way that Bruce Kelman could have given the purported malice causing

testimony that he claimed he had in a litigation of 2003 and as was submitted in this libel litigation via his declarations three times. (Appellant Appendix Vol.4 Ex.27:880) The well respected scientist, Dr. Harriet Amman, sat in a Vista motel room for two days in August of 2008, hoping to be able to testify to help get the truth out to the courts.

When Sharon Kramer attempted to discuss Bruce Kelman's perjury on the issue of malice herself in trial and that his testimony actually assisted her in obtaining a good settlement because he acknowledged there was an increased risk in the Kramer home after a botched remediation, the trial judge stopped the testimony.

Opinion written by the Honorable Justice Judith McConnell, Presiding Justice of the Fourth District Court of Appeal, Division One & Chair of the California Commission on Judicial Performance, November 16, 2006:

> Kelman gave an expert opinion in Kramer's lawsuit against her insurance company seeking damages caused by the presence of mold in her home. Kelman stated there did not appear to be a greatly increased level of risk of mold inside the home compared to the levels in the air outside the home. While the Kramer family eventually settled and recovered damages from the insurance company, a reasonable jury could infer that Kramer harbored some animosity toward Kelman for providing expert services to the insurance company and not supporting her position. (Appellant Appendix Vol I, Ex:12:255)
>
> .....
>
> Kramer asked us to take judicial notice of additional documents, including the complaint and an excerpt from Kelman's deposition in her lawsuit against her insurance company. We decline to do so as it does not appear these items were presented to the trial court. (Appellant Appendix Vol I, Ex:12:250)
>
> .....

Section 425.16, subdivision (b)(1) states, that an anti-SLAPP motion should not be granted if "the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Italics added.) Encompassed within this standard in the context of this case is that there was a probability Kelman would prevail in establishing by clear and convincing evidence Kramer acted with malice. (Appellant Appendix Vol I, Ex:12:257)

.....

Kramer contends the court erred in finding Kelman made a prima facie showing sufficient to support a finding by clear and convincing evidence that she acted with malice. (Appellant Appendix Vol I, Ex:12:254)

As Kelman concedes, he was a limited public figure and therefore it was **necessary for him to show** not only that the statement was false but also to show by clear and convincing evidence that Kramer acted with malice. (Appellant Appendix Vol I, Ex:12:254)

.....

"Further, in determining whether there was a prima facie showing of malice, the trial court also relied on the general tone of Kramer's declarations. These declarations **reflect a person, who,** motivated by personally having suffered from mold problems, **is crusading** against toxic mold and **against those individuals and organizations who, in her opinion, unjustifiably minimize the danger of toxic mold."** (Appellant Appendix Vol I, Ex:12:258)

(**NO!** Not evidence of personal malice. Not "crusading". Not "in her opinion". As evidenced and supported by true scientists - a scientific fraud mass marketed to the courts to limit liability for financial stakeholders of moldy buildings that is now in an amicus before the Arizona Appellate court.)

Appellant anti-SLAPP Opening Brief, William J. Brown III, April 7, 2006

Kelman states in his declaration at page 5, paragraph 8, line 7-10 (Appendix 358) that Mrs. Kramer and her daughter were claiming life threatening illness from exposure to mold in the underlying litigation,

when in fact, in Mrs. Kramer's declaration in reply, she showed that she never claimed a life threatening illness in that suit.....Kelman stated at page 5, paragraph 8, line 10 (Appendix 358) that, in the litigation he testified it couldn't cause a life threatening illness when a.) Sharon Kramer never claimed a life threatening illness and b.) as to her daughter, Erin, he admitted he was not competent to make such a medical opinion. (Exhibit 6 to Defendant's reply declaration, Appendix 494) (Vol.1. Ex.10:207, 208)

Trial judge, the Honorable Lisa C. Schall, August 18, 2008

Judge Schall: So that kind of the way I look at this case. I think the Fourth District has done a very clean job of focusing, and I think they're right. So I am concerned about as to what extent you plan to bring in Dr. Amman. (Vol.1 RT.7)

.....

Judge Schall: Okay. See, I'm not really sure either side is entitled to attack the legitimacy of those papers or transcripts.

Scheuer: I agree with you, your Honor.(Vol.1 RT 8)

.....

Scheuer: Thank you. Rhymes with lawyer, by the way for ease. Your honor, umm, without just being grossly brown-nosing here, I've been in this case for three and a half years. You've been in it for about two hours, and I think you have grasped what this case is about. I think this is a really simply, really straight forward case. I think we can do this in about two days of testimony. It needs to be limited, I think, just as you suggested. We don't have any intention of –first, of going into the science that lies behind the ACOEM Statement or any of these other statements. It is unnecessary. (Vol. 1 RT. 34-35)

.....

December 12, 2008

> Judge Schall: ...The whole reason why the science was never allowed in was because the plaintiff here focused on one very narrow issue.
>
> Ms. Kramer: That's exactly right. (Vol. 7 RT: 554, 555)
>
> .....

Respondent's Opposition offers no counter augment that the National Apartment Association Amicus and the Certified deposition of Dr. Andrew Saxon are relevant to this litigation because they serve as evidence of *why* Bruce Kelman was so desperate to silence Sharon Kramer about the mass marketing of a deception in science for the purpose of instilling judicial bias in the courts and that his expert witnessing enterprise relies upon; that he was willing to commit criminal perjury to establish a false reason for the courts' eyes of Sharon Kramer to harbor malice for him.

When that did not work to silence her, he and Keith Scheuer attempted to force and coerce Sharon Kramer into silence by requiring she sign and make public the following statement after they defeated the anti-SLAPP motion through the use of perjury with the courts turning a blind eye:

> *"To my knowledge their testimony are based on their expertise and objective understanding of the underlying scientific data. I sincerely regret any harm of damage that my statements may have caused."* (Vol.IV App.942)

And when that did not work to silence her, they misled a vulnerable judge who, it is common knowledge, was in the dog house with her superiors in late 2008. Judge Schall, *"I won't upset them if I follow their guidance to begin with."* She was days new to the case before trial. She was inexperienced to libel law and was overseeing her first and last libel litigation.

Respondent's Opposition holds not water with its arguments that the National Apartment Association Amicus in the Abad Case (2009) citing to "A Scientific View Of The Health Effects of Mold, coupled with Dr. Andrew Saxon's Certified deposition (2006) stating that he is fraudulently listed as authoring the paper is not of relevance in this litigation. Together, they are the evidence illustrating the true purpose of this aggressive and deceptive strategic litigation before the San Diego courts so that judicial bias may flourish in other courts.

The Opposition makes statements without providing logic or relevant documentation to support the statements. As an example, on Page 2 of the Opposition, Keith Scheuer writes,

> "Section 459(a) permits an appellate court to take judicial notice of any matter specified in 452. But none of the documents submitted by Appellant falls within the discretionary ambit of 452. There is no legal authority that permits this Court to take judicial notice of Appellant's submission."

He fails to state any legal reason *why* the submitted documents do not fall within the legal authority of this Court. His cryptic argument appears to be that in the name of justice, this Reviewing Court should ignore any relevant evidence that corroborates the reason he and Bruce Kelman have been abusing the judicial process by strategically and **criminally litigating** for nearly five years to silence and discredit a Whistleblower over a deception perpetrated on US courts and in (former) US health policy....just like the seven judges and justices before them have ignored and discounted this relevant information.

452(d)(2);(g) state, *"452. Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:.. (d)(2) any court of*

record of the United States or of any state of the United States. (g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute." The unsigned deposition of Andrew Saxon is lodged on disc within the territorial jurisdiction of this Appellate Court as Trial Exhibit 64. Dr. Saxon's Certificate of Deponent legally verifies he does not retract his statement that he is fraudulently listed as an author of "A Scientific View..." for the US Chamber of Commerce Institute For Legal Reform with the Respondent in this litigation.

The points and arguments made in the Opposition are not supported by the Codes and Case Law they cite. It attempts to argue that Dr. Saxon deposition and its accompanying Certificate are not legally relevant to be considered because the deposition occurred in 2006 before the trial in this libel action of August 2008. The Opposition cites to Evidence Code 450 to support this purported timeline requirement.

However, Evidence Code 450 simply states *"Judicial notice may not be taken of any matter unless authorized or required by law.*" Code 450 makes no determination of when a document from another legal proceeding must have occurred before it is to be considered of relevance. Nor does the Oppositon's case law he quoted support the fictional time frame requirement, *"[O]nly relevant material is a proper subject of judicial notice.'* Greene v. Marin County Flood Control and Water Conservation District (2009) 171 Cal.App.4th 1458, 1487, fn. 7." Opposition Page 1, 2. The quote says nothing about time.

Within his Opposition, Keith Scheuer writes that Bruce Kelman is not a "party" to the Abad litigation and this should be a legal reason to deny Appellant's

Application. However the Evidence Codes that govern judicial notice state nowhere that a party to this litigation must be a party to the litigation of which the request for notice is taken. Evidence Code 450, 451(f)(g), 452(d)(2), 453(b), 454(a)(1) and 459 do not state Keith Scheuer's fictional party to the litigation requirement.

Again, he cites to case law that does not support his fictional party to the litigation requirement. Page 2, he cites to four cases in the middle of the page; Health First v. March Joint Powers Authority (2009) 174 Cal.App4th 1135, 1147, fn.1: Unlimited Adjusting Group, Inc. v. Wells Fargo Band (2009) 174 Cal.App 4th 883, 889, fn. 4: World Financial Group, Inc. V. HBW Insurance and Financial (2009) 172 Cal.App.4th 1561, 1575, fn. 7; Riverwatch v. Olievenhain Municiple Water District (2000) 170 Cal.App.4th 1186, 1218.

None of these four cases cited in the Opposition state a requirement that a party in this litigation must be a party in a litigation of which the request for notice is being made. None of these cases address an anti-SLAPP motion, or any other motion for that matter, that was defeated through the use of fraud on the courts, with the trial then being framed by a libel law inexperienced Superior Court trial judge, based on improvidently obtained rulings.

Clearly, Keith Scheuer is fully aware that Bruce Kelman is a party who has tremendous interest in the Abad Case and has been aware of this since June 30, 2006. Bruce Kelman has tremendous interest in the National Apartment Association Amicus being in the Arizona legal proceeding in validation of his testimony as a self professed expert on the science of mold.

That is *exactly* why he was willing to commit criminal perjury in this libel litigation to keep the profitable gig going. It has been a good one caused by changes

in construction standards in the late 70's in the US causing mold to grow, and financial stakeholders not wanting to pay for the resultant mold induced illnesses.

Thus, Bruce Kelman has tremendous interest in the National Apartment Association Amicus *not* being permitted to into this case to be analyzed as the fraud it is, in support of the evidence of why he was willing to commit criminal perjury on the issue of malice and his attorney willing to suborn it, when practicing Strategic Litigation Against Public Participation.

The relevance of the National Apartment Association Amicus to this litigation is that it has occurred *after* the trial and post trial motions and serves as evidence of a fraud that continues on the courts assisted by the San Diego courts failures to recognized this litigation is strategic litigation against a Whistleblower for the purpose of allowing the continuance of the exact same fraud that is now being perpetrated on the Arizona Appellate Court.

Both, the Certified Deposition of Andrew Saxon and the National Apartment Association Amicus are properly submitted as evidence to this reviewing court. Both are extremely relevant for this Reviewing Court to understand why two people have spent hundreds of thousands of dollars in a libel litigation purportedly over the little word "altered"; and understand the situation has been caused in large part by by errors of judicial perception bias and groupthink in the San Diego courts.

A. The National Apartment Association Amicus submitted to the Arizona Appellate Court, August 2009: (Application Ex.1:9)

"In a report entitled, 'A Scientific View of the Health Effects of Mold', a panel of scientists, including toxicologists and industrial hygienists stated that years of intense study have failed to produce any causal connection between exposure to indoor mold and adverse health effects. U.S. Chamber of Commerce, A Scientific View of the Health Effects of Mold (2003)"

B. Deposition of Andrew Saxon, November 2006: (Application Ex:2)

Q. When the lay version of the ACOEM paper was printed by the Institute For Legal Reform, the ACOEM again did not have any conflict-of-interest waiver on your part, did it?

A. I have no idea. I've never seen that version. I'll call it the nonscientific piece that has my name on it.

Q. From your view, did you make any efforts, despite anyone calling you or anything else, to make sure that a conflict-of-interest waiver was included with the lay version put out by the Institute For Legal Reform?

A. No, because I didn't even know my name was on it.

C. The listing of false authorship of the US Chamber of Commerce scientific Fraud on the Arizona courts: (Respondent Appendix Ex.2:34, 35)

Bruce Kelman PhD - owner of Veritox; Bryan Hardin PhD - owner of Veritox; Coreen Robbins CIH - owner of VeriTox; and Andrew Saxon, MD, NOT owner of VeriTox and only physician listed author

D. The scientifically void, fraudulent conclusion of "A Scientific View of the Health Effects of Mold" US Chamber of Commerce Institute For Legal Reform, (2003), submitted as legitimate science to the Arizona Appellate Court: (Respondent Appendix Ex.2:33)

"Thus the notion that 'toxic mold' is an insidious secret 'killer' as so many media reports and trial lawyers would claim is 'Junk Science' unsupported by actual scientific study."

E. Federal Government Accountability Office verifying the above is federally deemed a scientific fraud (2008) (Appellant Appendix Vol.4, Ex.27:974)

> The Institute of Medicine reported in 2004 that (1) exposure to mycotoxins can occur via inhalation, contact with skin, and ingestion of contaminated foods and (2) research on Stachybotrys chartarum (sic a species of indoor mold that can produce mycotoxins) suggests that effects in humans may be biologically plausible....
>
> Furthermore, several different components or products of mold, such as mycotoxins, may function as disease-causing agents indoors.

F. The Bible:

> Leviticus 14:45 A house desecrated by mildew, mold, or fungus would be a defiled place to live in, so drastic measures had to be taken.
>
> Leviticus 13:47-50 If any clothing is contaminated with mildew---any woolen or linen clothing, any woven or knitted material of linen or wool, any leather or anything made of leather---if the contamination in the clothing or leather, or woven or knitted material, or any leather article, is greenish or reddish, it is a spreading mildew and must be shown to the priest. The priest is to examine the mildew and isolate the affected article for seven days…

G. The National Apartment Association Amicus and the Certified deposition of Andrew Saxon are relevant to assist this Reviewing Court to understand:

i.) the importance of this Court being the first San Diego court not to ignore the uncontroverted evidence of Bruce Kelman committing

criminal perjury on the issue of malice while strategically litigating for nearly five years in the San Diego court system; and

ii.) the tremendous damage done to Sharon Kramer by seven San Diego judges and justices ignoring the uncontroverted evidence of Bruce Kelman's criminal perjury while he and Keith Scheuer have been strategically litigating; and

iii.) the adverse ramifications on other US courts aided by the errors of seven San Diego judges and justices ignoring the uncontroverted evidence of the criminal perjury within a strategic litigation; and

iv.) the adverse impact on the health and safety of US public aided by the errors of seven San Diego judges and justices ignoring the evidence of Bruce Kelman's criminal perjury used to silence and discredit a Whistleblower of a deception perpetrated on the courts by the US Chamber of Commerce, et al., and

v.) the serious implications of the criminality of this strategic litigation by Bruce Kelman and Keith Scheuer for the express intent to perpetrate a fraud on US courts, including the Arizona Appellate Court, that is adverse to the health and safety of the American public.

By law in the State of California, *"..once the attorney realizes that he or she has misled the court, even innocently, he or she has an affirmative duty to immediately inform the court and to request that it set aside any orders based upon such*

misrepresentation; also, counsel should not attempt to benefit from such improvidently entered orders." Datig v. Dove Books, Inc. (1999) 73 Cal.App.4th 964, 981.

California Code of Judicial Ethics, Canon 3.D. states, *Disciplinary Responsibilities "(2) Whenever a judge has personal knowledge that a lawyer has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action."*

Sharon Kramer is now financially devastated caused in large part by the bias and groupthink of the San Diego courts and their collective failure to reign in a rogue attorney, even when provided with uncontroverted evidence of his willful suborning of perjury over a matter adverse to the health and safety of the American public.

Whether or not Sharon Kramer can properly file a legal brief sans legal counsel or tpye wlel, and in proper court tone not typical for this Whistleblower to use as she repeatedly watches horrors play out for US families while the courts remain oblivious; this Court has the ability to fashion orders with origin in Article VI, section 1 of the California Constitution which gives this Court broad inherent power *"not confined by or dependent on statute."* Slesinger, Inc. v. The Walt Disney Company (2007) 155 Cal App 4th 736, 758: *"This inherent power includes 'fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation."*

US citizens should not be made to suffer a wrath of unchecked retribution, attempted coercion into silence, financial hardship when they refuse to be coerced,

emotional distress, loss of the ability to make a living and personal degradation of being falsely deemed a malicious liar for exposing deceptions that are adverse to the health and safety of the American public. This Reviewing Court has to ability and the legal, ethical and moral duty to correct the egregious errors of prior San Diego courts, including the Appellate Court's anti-SLAPP ruling error of 2006. Rulings made as far back as 2005 that have permitted this to horrendous situation to happen to Appellant, Sharon Kramer, in egregious violations of the First Amendment of the Constitution of the United States.

The National Apartment Association Amicus and Dr. Saxon's deposition illustrate the importance for US citizens of why this Court must correct the errors caused by bias and groupthink over the mold issue in San Diego court system to stop the bias and groupthink from wrongfully continuing to be instilled in other courts by the US Chamber of Commerce, et al. in the future.

If this Reviewing Court proves to be the first San Diego court not to ignore the uncontroverted evidence that Bruce Kelman and Keith Scheuer used criminal perjury since virtually the inception of this case to establish a false theme for personal malice – in a litigation where the sole claim is that Bruce Kelman was falsely accused of being one who would commit criminal perjury - then face of mold litigation will change throughout the United States. It will come inline with current accepted science of the health effects of mold as established by the Federal Government Accountability Office in September of 2008.

To the best of Appellant's knowledge, the Applications are legally submitted in accordance with the California Evidence Codes. And even if this Reviewing Court finds for some reason they are not; this Court still has a legal duty to correct the past

and future damage caused by the left unchecked criminal perjury and suborning of perjury that has occurred for nearly five years in the San Diego court system in a Strategic Litigation Against Public Participation.

For the foregoing reasons, Appellant prays this reviewing Court grants her Application for Judicial Notice of the National Apartment Association Amicus (2009) and the Certified deposition of Dr. Andrew Saxon (2006).

Dated: December 22, 2009

Respectfully submitted,

_____

Sharon Kramer, Appellant Pro Per

PROOF OF SERVICE
1013(a) CCP Revised 7/17/07
State of California, Court of Appeals
Fourth District, Division One
Case No. D054496
Superior Court Case No. GIN044539

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action; my business address is 2031 Arborwood Place, Escondido, CA 92029 and my mailing address is the same.

On December 22, 2009, I served the following document (s) described as APPELLANT'S REPLY TO RESPONDENT'S OPPOSITION THAT THIS COURT TAKE NOTICE OF A FRAUDULENT DOCUMENT, AUTHORED BY THE RESPONDENT, AND SUBMITTED TO THE ARIZONA COUR OF APPEAL, DIVISION ONE (2009) & THE CERTIFIED TESTIMONY OF DR. ANDREW SAXON STATING HE DID NOT AUTHOR THE FRAUD (2006) by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Keith Scheuer
Scheuer & Gillett
4640 Admiralty Way #402
Marina Del Rey, CA 90292

San Diego North County Superior Court
Clerk of the Court, Appellate Division
325 S. Melrose Avenue
Vista, CA 92083

I deposited such envelopes in the mail in Escondido, California in accordance with the established custom and practice wherein the correspondence is deposited with the US Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing affidavit.

Executed on December 22, 2009, at Escondido, California

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____
Meghan Kramer