Civil Case No. GIN044569
Appellate Case No. D054496
Appellate anti-SLAPP Case No. DO47758

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,
Trial Date, August 18, 2008
Case Filed, May 6, 2005
Appellate anti-SLAPP Ruling Affirming Denial, November 16, 2006
The Honorable Michael P. Orfield Presiding, MSJ Denial June 22, 2008

APPELLANT'S RESPONSE TO COURT'S QUERY: 1.) WAS KRAMER'S DESCRIPTION OF KELMAN'S TESTIMONY PRIVILEGED & 2.) DOES ANYTHING IN OUR PRIOR UNPUBLISHED OPINION IN THIS MATTER, KELMAN V. KRAMER (2006) DO47758, NOVEMBER 16, 2006, PREVENT US FROM REACHING THE QUESTION OF WHETHER APPELLANT'S STATEMENTS WERE PRIVILEGED?

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To the Honorable Appellate Reviewing Panel,

Please accept the following letter brief in answer to your much appreciated questions pertaining to privilege, the MJS ruling (2008) and the anti-SLAPP rulings (2005, 2006) in this now five year old strategic litigation. Appellant, Sharon ("Kramer"), is a direct communicator with a degree in the science of marketing. She is not an attorney. As such, no breach of respect due this Reviewing Court or any of the seven judges and justices to have overseen this litigation is meant with this plain language reply.

It is *very* difficult to tactfully answer this Court's much appreciated queries while truthfully stating and necessarily evidencing errors by the San Diego courts that have had broad adverse impact to the health and safety of the American public by assisting to demean and discredit a Whistleblower of a scientific fraud perpetrated on US courts by the US Chamber of Commerce and other influential enterprises.

While privilege is an important issue in this litigation of which there were numerous judicial errors that wrongfully deemed Kramer's writing was not privileged and was a malicious lie; the real issue that has wrongfully impacted all rulings in this litigation, including the anti-SLAPP, is not privilege. It is fraud by Respondent Bruce ("Kelman") and his legal counsel, Keith ("Scheuer") to establish a fictional theme of Kramer harboring malice for Kelman, personally. The fraud was used in false evidence that the second prong of libel with actual malice had been achieved by legal means - as Kramer wrote of a deception in US public health policy and before US courts, of which Kelman is only one of many entities involved.

It is fraud to file a lawsuit claiming the words *"altered his under oath statements"* were a false accusation of perjury. And then spend five years strategically litigating without even being able to state how the purportedly libelous phrase translates to an accusation of perjury - in furtherance of Kelman's and his company, GlobalTox's ("VeriTox") interstate enterprise.

I.
INTRODUCTION

Ironically, while the San Diego courts have been ruling over a litigation of how bias is intentionally instilled in the courts by the US Chamber of Commerce et al, to encourage that the courts automatically deem anyone who says mold can do serious harm to human health is a malicious liar; the San Diego courts have also been serving as evidence of the seriousness, insidiousness and pervasiveness of the problem when judiciaries and other decision makers are victims of the instilled bias.

The following statements best evidences the judicial view point bias that caused the prejudicial conduct that has pervaded this case since its inception. The statements are an indication of judicially instilled bias against a class of people – those environmentally injured by microbial contaminants found in water damaged buildings; and judicially instilled bias against an individual – one of the environmentally injureds' most staunch and effective advocates. Kramer was deemed by the courts to be the malicious liar of this litigation since virtually its inception, no matter what the evidence that was provided proved to the contrary.

Without verifying the validity or lack there of, of the words in Kramer's declarations giving the reason why Kelman and the company of which Kelman is president, VeriTox, were strategically litigating to silence Kramer and what was at stake for the American public with this litigation; on November 16, 2006, the C.C.P. 425.16 anti-SLAPP unpublished Opinion was issued and written by the current Chair of the California Commission on Judicial Performance & Presiding Justice of the Fourth District Division One Appellate Court, the Honorable Justice Judith ("McConnell"), with the Honorable Justices Cynthia ("Aaron") and Alex ("McDonald") concurring and containing the following:

"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 and US Congressman Gary Miller (R-Ca)] *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)

Both the Honorable Judge Michael P. ("Orfield") (retired) and the Appellate Court violated Kramer's constitutional rights of freedom of speech right out of the gate by deeming her a liar for her truthful words written in her defense within her declarations that are to be protected in a legal proceeding under review by a judicial body. C.C.P 425.16(e)(2) states, *"As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law".* Are litigants who are trying to blow a whistle not permitted to state their defense without fear of retribution?

II
QUERY: 1.) WAS KRAMER'S DESCRIPTION OF KELMAN'S TESTIMONY PRIVILEGED

Yes. Perhaps this Reviewing Court is not understanding that both Judge Orfield, when denying the C.C.P. 426.16 anti-SLAPP in 2005 and the MSJ in 2008, and the Appellate Panel when affirming the denial of the anti-SLAPP in 2006; deemed Kramer's writing of March 2005 to be a malicious lie without even reading the writing. They ruled that Kramer had maliciously accused Kelman of lying about accepting money from the Manhattan Institute think-tank to make edits within a medical association paper, American College of Occupational and Environmental Medicine. ("ACOEM").

As taken from the Appellate anti-SLAPP opinion (November 2006): *"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. The fact that Kelman did not clarify that he received payment from the Manhattan Institute until after being confronted with the Kilian deposition [sic, bench trial]testimony could be viewed by a reasonable jury as resulting from the poor phrasing of the question rather than from an attempt to deny payment. In sum, Kelman and GlobalTox presented sufficient evidence to satisfy a prima facie showing the statement in the press release was false."* (Appellant Appendix, Vol. 1 Ex.12, 253)

However, Kramer's writing is a 100% fair and true reporting that the money from the Manhattan Institute was **not** to make edits in the ACOEM paper. The money from the Manhattan Institute was for a paper written for the US Chamber of Commerce. Kramer did not even mention ACOEM until the last sentence of the nine paragraph writing. (Respondent's Appendix 64-65)

As taken from Kramer's March 2005 writing, *"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..... "In 2003, with the involvement of the US Chamber of Commerce and ex-developer, U.S. Congressman Gary Miller (R-CA), the GlobalTox paper was disseminated to the real estate, mortgage and building industries' association* ***. 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."*** (Respondent's Appendix 64-65)

Kelman's Appellate Reply Brief submitted on September 10, 2009, is attempting to steer this Reviewing Court make the same error as Judge Orfield and the anti-SLAPP Appellate Panel by attempting to steer this court's eyes to only two sentences in Kramer's writing, melding them together like they were one thought and then falsely inferring that the words spoken on February 18, 2005 by Calvin "Kelly" ('Vance"), the plaintiff attorney in *Haynes,* were the published word of Kramer on March 9, 2005.

Respondent's Appellate Reply Brief, p.6-8 *"In her press release, Appellant stated: 'Upon viewing documents presented by the Hayne's [sic] attorney of Kelman's prior testimony from a case in Arizona, Dr. Kelman altered his under oath statements on the witness stand. 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."*

.....

During the Haynes trial, the Haynes's counsel, Calvin "Kelly" Vance, insinuated that Dr. Kelman had accepted money from the Manhattan Institute and in return had skewed the content of the ACOEM scientific study.

.....

Despite Mr. Vance's best efforts to muddy the waters, the evidence irrefutably showed that Dr. Kelman's testimony in the Kilian lawsuit in Arizona and the Haynes lawsuit in Oregon was consistent, and that he did not "alter his testimony" or waver while testifying in the Haynes trial.

.....

Appellant's statement that Dr. Kelman had altered his sworn testimony was libelous per se. It falsely accused him of criminal conduct."

.....

As taken from Kramer's Declaration (July 2005), *"My degree is in marketing. I have been professionally and corporately trained in marketing and sales. I have 25 years of experience in marketing and sales. As such and if called to witness, I am qualified to state, that in my opinion, "The ACOEM Statement and the Manhattan Institute Version, both authored by Kelman/GlobalTox, are nothing more than the core and the vehicle of an elaborate and injurious marketing campaign designed to deceive the American public."*(Appellant Appendix Vol.1 Ex.8, 177)

.....

" There is an ending paragraph in the press release which I authored that states "In 2003, with the involvement of the US Chamber of Commerce and ex-developer, U.S. Congressman Gary Miller (R-CA), the GlobalTox paper was disseminated to the real estate, mortgage and building industries' association. ***A version of the Manhattan Institute*** commissioned piece ***may also be found*** *as a position statement on the website of the United States medical policy-writing body, the* ***American College of Occupational and Environmental Medicine.***

It is this ending paragraph that the principals of GlobalTox would prefer not be highly publicized. This, along with the fact that the ACOEM Statement is based on a premise current scientific evidence does not

support; and the acceptance of the ACOEM Statement was forced through by an improperly biased and bypassed peer review process." (Appellant Appendix Vol.1 Ex.8, 176)

In five years time, Kelman has never been able to state how Kramer's phrase "altered his under oath statements" translates into a false accusation of perjury – the sole claim of the case. Civil Code section 47, subdivision 4, provides that *"a privileged publication is one made by a "fair and true report" of various official proceedings"*.

The San Diego courts have repeatedly violated Kramer's rights by not even reading the writing they deemed was a malicious lie as Kramer truthfully and accurately reported of Kelman's testimony on February 18, 2005 in a legal proceed in Oregon, *Haynes*. C.C.P.425.16(a)(2) states, *"In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based."*

This was Kramer's first published writing of the conflicts of interest of White Collars teaming with White Coats to perpetrate a scientific fraud (scientifically proven the poisons of mold do not poison) to stave off financial liability for illnesses caused by moldy buildings while she used the *Haynes* case as an example. The case was a first to break through the deceit and end with a plaintiff verdict finding the toxins of mold had injured the *Haynes* family. Had a defense verdict come in, Kelman's testimony would have had no news worthy significance. The writing was published by PRWeb – a public announcement website. Kramer has since been published in medical journals over the subject, given interviews and has had her research into the conflicts of interest used extensively as a source and/or a reference by publishings of others. As example: (Appellant Appendix Vol. II Ex.16, 336-337)

"Although California courts have never directly addressed this concept of literary license, there is an appropriate analogy in the "fair report" privilege. Civil Code section 47, subdivision 4, provides that a

privileged publication is one made by a "fair and true report" of various official proceedings. Several cases have been decided under this statute, and all permit a certain degree of flexibility/literary license in defining "fair report." " 'It is well settled that a defendant is not required in an action of libel to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting of the libelous charge be justified....' " (Hayward v. Watsonville Register-Pajaronian and Sun (1968) 265 Cal.App.2d 255, 262, 71 Cal.Rptr. 295, citing Kurata v. Los Angeles News Pub. Co. (1935) 4 Cal.App.2d 224.) Reader's Digest v. Superior Court (1984) 37 Cal 3d.244, [13]

"Truth is a complete defense to liability for defamation. (Philidelphia Newspaper, Inc. v. Hepps (1986) 475 U.S. 767, 768-769; Gantry Constru. Co v. Americna Pipe & Constu. Co. (1975) 49.CalApp.3d 186, 191-192). The truth defense requires only a showing that the substance, gist or sting of the communication or statement is true. (Gantry Constu.Co v American Pipe & Constr. Co., at p. 194) Unpublished anti-SLAPP Opinion, (2006) D047758 Bruce J. Kelman & GlobalTox v. Sharon Kramer, Cal.App 4th.

Given the gravity of the subject matter with Kramer's truthful writing being adverse to the business interests of the US Chamber of Commerce et al; and explained in detail in Kramer's declarations; it is difficult to comprehend that the courts could even entertain thought that this litigation, in which Kelman cannot even state how Kramer's phrase in question "altered his under oath statements" translates into an accusation of perjury – the sole claim of the case - was instigated over the mere word "altered". "*When this evidence is considered in the important context of an author's right to choose appropriate words and phrases, Synanon's quibbling over the use of the word "spectacular" in no way constitutes a legitimate showing of defamation."* Readers Digest v. Superior Ct. (1984)37Cal.3d 244,263-264

III.

HOW DID KELMAN "ALTER HIS UNDER OATH STATEMENTS"?

The anti-SLAPP Appellate Panel deemed there was evidence to show Kramer's statement of "altered his under oath statements" was false; but simply chose to ignore the evidence from Kramer's declarations explaining in great detail why her words were true, what she meant by the phrase, and why Kelman had good reason to want the words in her March 2005 writing chilled. Kramer explained that as she understood it (and still does), Kelman was not attempting clarifying anything with his testimony in question of Febraury 18, 2005 in the *Haynes* case in Oregon. Quite the contrary. He was hoping for non-clarity of a marketing trail of a scientific fraud on the courts.(Appellant Appendix Vol.1 Ex.8:152-179)

From speaking to Vance and Paul ("Haynes"), who were both in the courtroom, Kramer was able to ascertain that Kelman was trying to say the ACOEM paper and the US Chamber of Commerce paper were not connected, but at the same time had to admit they were. While Vance deemed it an out and out lie, Haynes did not think it was perjury. "Altered" seemed the perfect word. And it still does. And it still is. (Vol.4 RT.377-378)(Vol.5 RT.485)

When Kramer received the transcript of Kelman's testimony (after he sued her) the altered under oath statements of trying to say the papers (medical interest paper and money interest paper) were not connected but had to admit they were, was right there in black and white: *"lay translation"* to *"two different papers, two different activities"* and back to *"translation";*with shouting *"That is one of the most ridiculous statements I have ever heard."* being disingenuous to stop a line of questioning. (Respondent's Appendix Ex.5:59,60)

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)

Without verifying the validity or lack there of, of what Kramer was trying to tell them, the Appellate Panel arbitrarily determined Kramer was a malicious liar for her words exposing a deceit in science adverse to the health and safety of the American public and a liar because they

thought the word *"altered"* meant something different than the author, Kramer – without even reading Kramer's writing in its entirety, encouraged by Scheuer's steering.

They apparently did not read Kramers briefs and declarations thoroughly to see that Kramer was evidencing for them that Kelman and Scheuer were lying as to why Kramer would have malice for Kelman, personally stemming from Kelman's testimony with *Mercury* of long ago. (Appellant Appendix Vol.II Ex.18:444-449, 501-502) (Vol.I.Ex.10:208).

From the unpublished Appellate anti-SLAPP opinion, November 16, 2006: *"The court 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.3*

3. 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:12:249,250)

.....

The trial court drew an inference that Kramer was intending to imply that the payment for the revisions was a bribe to obtain certain revisions favorable to the defense position in toxic mold litigation. However, the statement in her press release at issue here was limited to stating Kelman had altered his under oath testimony and did not refer to any particular testimony. As published, it was an allegation of perjury not bribery."(Appellant Appendix Vol.I. Ex:12:259)

[Kramer has never understood this. At one point in the Opinion they found she accused Kelman of lying about being paid to edit the ACOEM paper. But above they stated she did not refer to any particular testimony.]

Appellant anti-SLAPP Response Brief, 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)* (Appellant Appendix Vol.I Ex.10:208)

If ever there was a case that proved the importance of protecting freedom of speech with *"breathing space"* for the public good as established by New York Times v. Sullivan and Gerts; and what happens when courts determine what a writing over a public issue means to them based on their viewpoint biases; while arbitrarily discounting the evidence and declarations of what the writing means to the defendant and author of the words - and why a plaintiff would want the defendant silenced; it is the case of Bruce J. Kelman and GlobalTox, Inc, v. Sharon Kramer D047758.

The true interested parties to this litigation are Financial Interest By Hook Or By Crook Of US Chamber of Commerce et al v. The Health and Safety of the American Public.

"Even assuming that Sharon's statement could be construed as being false, however, this does not establish that she acted with actual malice. The actual malice standard of New York Times Co. v. Sullivan is based on a recognition that 'erroneous statement is inevitable in free debate' and 'must be protected' to give freedom of expression the 'breathing space' it needs to survive. (New York Times Co. v. Sullivan, supra, 376 U.S. at pp. 271-272.) Accordingly, the Supreme Court has chosen to 'protect some falsehood in order to protect speech that matters.' (Gertz,

supra, 418 U.S. at p. 341.)" Annette F. v. Sharon S. 119 Cal.App 4th, 1168.

No truer words have been spoken as an accurate summary of this litigation than the words of the Honorable Judge Lisa C. ("Schall") on August 18, 2008, as she framed the scope of the trial in violation of C.C.P. 425.16(b)(3) and described how the Judge Orfield had done the same when denying Kramer's MSJ on June 22, 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)

Both lower court judges, Orfield and Schall, made their rulings based on the Big Lie of the Case established in the anti-SLAPP order - that Kramer is a vindictive ninny litigant who wrote the lying word *"altered"* because she had personal malice for Kelman stemming from Kramer's personal mold litigation of long ago (*"Mercury"*) in which Kelman was a purportedly great scientific expert - who had testified Kramer and her daughter could not have acquired the life threatening illnesses they claimed from their moldy house.

And that Kramer's research, medical journal publishings and effective lobbying efforts to remove a scientific fraud from the mold issue in health policy (that it had been scientifically proven the poisons of mold do not poison) along with her declarations to the San Diego courts were frivolous statements made by a heretic and just more evidence of Kramer's malice for Kelman, personally.

This is the theme of the case that was cemented in the psyche of judges by fraud first interjected into this case within Kelman's declaration in September of 2005. Kramer could never overcome this

judicial perception bias, no matter how many judges and justices were informed with uncontroverted evidenced it was fraud and criminal perjury to establish a fictional theme for personal malice. (Appellant Appendix Vol. 4 App.988-1062).

As has been proven to the courts with Scheuer being properly noticed many times over by uncontroverted and irrefutable evidence; the following is criminal perjury by Bruce J. Kelman submitted to the courts in September 2005 and May 2006 when defeating the anti-SLAPP motion; and again in March 2008 when defeating the MSJ.

"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 [Mercury Casualty] 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)

And again the following is suborning of criminal perjury by Scheuer, as submitted to the courts on September 17, 2005 (Vol.I App.34) and May 7, 2006 (Vol.I App.238) when defeating the anti-SLAPP motion:

"Dr. Kelman testified in a deposition that the type and amount of mold in the Kramer house could not have caused the life threatening illnesses that Kramer claimed. Apparently furious that the science conflicted with her dreams of a remodeled house, Kramer launched an obsessive campaign to destroy the reputation of Dr. Kelman and GlobalTox."

The following is very sneaky willful suborning of criminal perjury, clearly indicating intent of perpetrating a fraud on the courts in Scheuer's MSJ Opposition Brief of March 2008, as the perjury and the impact it had on the anti-SLAPP was discussed in deposition, three

months early in January of 2008 with Scheuer asking the questions and Kelman present. See 23 exhibits irrefutably proving Kelman and Scheuer are well aware they defeated the anti-SLAPP and MSJ by willful criminal perjury on the issue of malice (Appellant Appendix Vol. 4 App.988-1062)

From Scheuer's MSJ Opposition Brief of March 27, 2008 encouraging that Judge Orfield rely on the anti-SLAPP that was defeated by fraud on the issue of malice, while presenting the fraud once again in his MSJ Opposition:

"I. Summary of the Argument A. This Motion is Barred by the Law of the Case Doctrine. Defendant raised the same arguments in her anti-SLAPP motion to strike the Complaint in this action. The Court of Appeal sustained this Court's rejection of that baseless motion. Accordingly, the law of the case doctrine bars this summary judgment motion. Bergman v. Drum (2005) 129 Cal.App.4th.11"

.....

"Dr. Kelman first learned of Defendant Sharon Kramer in mid-2003, when he was retained as an expert in a lawsuit between her, her homeowner's insurer and other parties regarding alleged mold contamination in her house. (Kelman declaration, Paragraph 11.) Kramer subsequently launched a campaign attacking GlobalTox and Dr. Kelman through various media, including the internet."(See Supplemental Appellant Appendix Vol.VI. Ex.2)

Paragraph 11 of Kelman's declaration submitted when defeating Kramer's MSJ in 2008 again states the false witness/criminal perjury "*...I testified the types and amounts of mold in the Kramer house could not have caused the life threatening illnesses she claimed"* (Appellant Appendix Vol.II App.287)

Judge Orfield based his MSJ denial on the anti-SLAPP denial that was defeated by fraud, criminal perjury on the issue of malice that, as noted above was willfully submitted again. From the MSJ ruling, June 18, 2008: *"Defendant's motion for summary judgment is denied. The Court notes at the outset that its ruling on this motion is governed by the "law of the case" established by the Court of Appeal in its decision affirming this Court's denial of Defendant's anti-SLAPP motion... Defendant also argues that she did not publish the article with actual malice. Again, however, the Court of Appeal already found that Plaintiffs made a prima facie showing of malice."* (Appellant's Appendix Vol.II Ex.18:257-258)

Scheuer to Judge Schall on August 18, 2008, as the judge framed the scope of the trial and was encouraged by Scheuer that she rely on prior improvidently entered orders of prior courts that were defeated by Kelman's and Scheuer's fraud/criminal perjury on the issue of malice:

"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 straightforward 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)

As the courts have been provided and evidenced; and Scheuer has been properly noticed, the following is the declaration of John Richards, Esq, who took the only deposition given by Bruce Kelman in *Mercury*, again uncontrovertibly proving the perjury:

"4. The evidence in this case was that Sharon Kramer suffered from hypersensitivity pneumonitis. Mrs. Kramer claimed that this caused her significant medical problems. However, Mrs. Kramer did not contend

that this condition was terminal or life threatening to her. Nor did she ever claim that she had acquired toxicological illness from the mold in her home. Nor did her daughter make such a claim. Toxicological illness was not at issue in the case.

5. There were approximately seven other expert witnesses for the defense in the case of Mercury vs. Kramer. I am not aware that any of these other experts have ever claimed Mrs. Kramer has exhibited personal malice for them or has ever "launched into an obsessive campaign to destroy their reputations" because of their testimony as experts for the defense in the case of Mercury vs. Kramer." (Vol.III App.751-752)

As the courts and Scheuer have been provided as direct evidence, the following is the **direct evidence of the Big Lie of the Case.** It is the entire transcript of the deposition of Bruce J. Kelman, in *Mercury,* October 2003, showing the purported malice causing testimony of this libel litigation was never even given by Kelman in *Mercury*. (Appellant's Appendix Vol. I Ex.1: 1-114)

Judges were encouraged to violate the 425.16(b)(3) anti-SLAPP statute by Kelman and Scheuer, who the evidence shows knew full well that they had defeated both the anti-SLAPP motion and the MSJ through the use of fraud on the courts, perjury and suborning of perjury when establishing the Big Lie, false theme for Kramer's malice of Kelman.

January 3, 2008, the Deposition of Kramer as taken by Scheuer with Kelman present: (Vol.IV App.1032-1034)

Scheuer: *No. As we sit here I want your best recollection, without notes, without prompting, just your best recollection, why you wrote: "If I have to be back to the lower court, Orfield, I will never get a fair trial."*

Kramer: *Because in Dr. Kelman's declaration as to why I would have malice against him he lied under penalty of perjury, he led the*

lower court and the appellate court, I guess, to believe that he had testified my daughter and I could not have experienced the life-threatening illnesses we claimed. We never claimed that, so he never testified to that. We actually have documentation of where he said a physician with detailed knowledge of the child should be consulted, and I also have from his deposition in the Mercury Vs. Kramer case where he -- the plaintiff attorney asked him so with regard to ABPA -- that stands for allergic bronchopulmonary aspergillosis, which is what my daughter has – you would not be qualified to give that testimony, and Dr. Kelman answered yes, that's correct. So the information that he provided to Orfield was -- it was a lie, it was perjurious as to why I would have malice. And then you in your -- what is it called -- the brief -- I guess they call them --you furthered that lie and you parroted it in a brief and you also wrote in there that I was a sour grapes litigant who only wanted to get my house remodeled, which couldn't be any further from the truth, we received a sizeable settlement and we were not concerned about getting our house remodeled, but the concept --I'm a marketing person, I understand concepts, the concept set in Judge Orfield's mind was that I was a sour grapes, vindictive, little mold woman who did not get my house fixed because Kelman was a great expert who testified, when in fact he didn't testify in our case of anything of any relevance, it was a perjurious lie, but once that concept is set in a judge's mind it's difficult to change that. Does that answer your question?"

The MSJ relied upon the unpublished Appellate C.C.P 425.16 anti-SLAPP Opinion of November 16, 2006 which made the following finding based on not a shred of evidence to support the hypothetical reason for Kramer's personal malice for Kelman. .

"Kelman gave an expert opinion in Kramer's lawsuit against her insurance company [Mercury Casualty] 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)

There has never been one shred of evidence in this litigation of Kramer even speaking a harsh word personally of Kelman as she spoke out of the flawed "positions" of many and before she wrote the purportedly libelous "altered" in March of 2005.

The anti-SLAPP motion was defeated by the use of fraud on the courts and the MSJ motion simply followed suit, with the trial judge then doing the same. The post-trial motions just continued further down the wrong path from there with two additional judges, the Honorable Joel ("Pressman"), Presiding Judge of the San Diego North County Courts and the Honorable Judge William S. ("Dato") then overseeing the case upon Judge Schall's departure to Family Court in December of 2008.

The Appellate Panel erred in 2006 when determining that the standard of possibly, maybe, probably was sufficient to meet the required burden of proof of reason for personal malice when affirming the lower court, Judge Orfield's, 2005 denial of Kramer's anti-SLAPP motion, without a shred of evidence to meet the required second prong establishing reason for malice in the Appellate anti-SLAPP opinion of November 2006.

The Appellate Panel simply chose to ignore the evidence that showed Kelman was lying about his involvement in *Mercury* with his never once corroborated declaration statements. They did not even mention Kelman's purported *"I testified..life threatening.."* in the unpublished opinion. Nor did they mention that they were told and evidenced by Kramer that statements in Kelman's declarations were false within the opinion (Vol.IV Ex.28:988-1061)

IV.

CRIMINAL PERJURY COMMITTING RESPONDANT IS AUTHOR OF US MOLD LEGAL AND MEDICAL POLICY PAPERS

In the late 1970's we changed construction standard in the United States to promote energy efficiency by making our building more airtight. At the same time, we began using manmade materials such as particle board and dry wall that easily wick when moisture is added. As leaks and floods have occurred over the past 30 years, our buildings, when water damaged, have acted as gigantic Petri dishes creating a perfect cozy environment for microbes such as molds to thrive and grow with a food source provided. People have become ill from the enclosed exposure to these living microbes at a rate never seen before in the history of man.

In the early 2000's, financial stakeholders of the moldy buildings took orchestrated deceptive measures to limit the financial liability for their occupant and worker illnesses. They professed to scientifically prove what no one else has, that the poisons of mold do not poison. They then mass marketed the pseudoscience to the courts to stave off their financial liability for causation of the environmentally induced illnesses.

Criminal perjury committing Kelman and undisclosed party to this litigation, VeriTox owner Bryan ("Hardin") are the "panel" of *two* "scientists" to author the mold legal policy paper *"A Scientific View Of The Health Effects of Mold"* on behalf of the US Chamber of Commerce Institute for Legal Reform & Manhattan Institute Center for Legal Policy. (2003) (Respondent's Appendix Ex.2:34-35)

As the anti-SLAPP Appellate Panel was informed and evidenced in June of 2006, undisclosed on the Certificate of Interested Parties as being an owner of Veritox and an interested party to this strategic litigation; Hardin, is also a retired US Assistant Surgeon General/Deputy Director of the National Institute of Occupational and Environmental Health ("NIOSH").(Appellate Appendix Vol.II Ex.18:445, 446)

The Appellate Panel declined to take judicial notice of the evidence that an author of a US Chamber of Commerce legal policy paper/retired high level Federal employee was improperly missing from the Certificate of Interested Parties in this strategic litigation case. Unless there is some exparte communication of which Kramer is not aware, this matter was never addressed by the anti-SLAPP Appellate Panel when issuing their anti-SLAPP affirmation of the lower court's denial.

"3. 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)

Criminal perjury committing Kelman and undisclosed party to this litigation, Hardin, are also the authors of medical mold policy paper, *"Adverse Human Health Effects Of Mold In The Indoor Environment"* American College of Occupational and Environmental Medicine ("ACOEM") (2002) (Respondent's Appendix Ex.1:7)

Hardin and Kelman professed to scientifically prove that all claims of illness from the toxins of mold are only being made because of "*trial lawyers, media, and Junk Science*". This is a scientific fraud on US courts for the purpose of unduly influencing judicial rulings. No such thing has ever been scientifically proven by anyone. Never. Not ever. Never. Neither man holds a medical degree. Neither man had any research background in mold. (Respondent's Appendix Ex.2:33)

The two men were paid to write the fraudulent statement for the US Chamber of Commerce, *"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."* by the Manhattan Institute think-tank. They were directed to specifically write something for judges.

Kramer was the first person to publicly write of the fraud of the US Chamber of Commerce et al, with the writing being published by PRWeb, a public announcement internet site, on March 9, 2005. This is the same writing that contains the word *"altered".* Beside containing the word *"altered",* Kramer named the names of the influential organizations and individuals involved in marketing the scientific fraud as she describe how it is used in litigation to influence judges and juries. From Kramer's March 2005 writing:

> "Oregon City, OR - verdict is significant because it holds construction companies responsible when they negligently build sick buildings...Two separate medical evaluations substantiated that both Renee Haynes and her son, Michael, had mold antibodies in their blood, indicative of dangerous exposure levels to mold. Numerous experts, including a fungal immunologist, an occupational therapist and a neuropsychologist testified concerning the Haynes children's developmental and sensory integration disorders that began shortly after moving into the Adair built home... Dr. Bruce Kelman of GlobalTox,Inc, a Washington based environmental risk management company, testified as an expert witness for the defense, as he does in mold cases throughout the country.. Dr. Kelman altered his under oath statements on the witness stand....Manhattan Institute, a national political think-tank, paid GlobalTox $40,000 to write a position paper ...much medical research finds otherwise...the controversial piece claims that it is not plausible the types of illnesses experienced by the Haynes family and reported by thousands from across the US, could be caused by "toxic mold" exposure in homes, schools or office buildings.... In 2003, with the involvement of the US Chamber of Commerce and ex-developer, US Congressman Gary Miller (R-CA), the GlobalTox paper was disseminated to the real estate, mortgage and building industries' associations. 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."

Kramer's first attorney, William J. ("Brown") III. Esq. missed the deadline to request the Appellate Panel reconsider their opinion. He attempted to correct his error and did request they do; but Justice

McConnell declined. An appeal was then made to the California Supreme Court, who declined to hear the case as is typical if an Appellate Motion for Reconsideration is not properly filed or heard.

Beginning shortly after the remittitur issued back to the lower court from the Appellate Court in 2007; the following is what Kelman, VeriTox and Scheuer were requiring Kramer sign and publicly state in apology for the mere words "altered his under oath statements" (that the courts were misled to believe had nothing to do with a fraud mass marketed to US courts by the US Chamber of Commerce et al):

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

The following is from the unpublished Appellate C.C.P 425.16 anti-SLAPP Opinion, November 16, 2006:

"Initially, we note this lawsuit is not about a conspiracy. This lawsuit was filed by Kelman and GlobalTox [sic VeriTox] alleging one statement in a press release was libelous. Thus, conspiracy issues are not relevant." (Appellant Appendix Vol.I Ex.12:262)

V.

SHOULDN'T THE COURT BE ASKING THE FOLLOWING THREE QUESTIONS?

While the issue of privilege is certainly important as it relates to review of the MSJ and anti-SLAPP rulings, it seems the Reviewing Court should also be asking *these* three questions about the issue of fraud as it relates to their review of the MSJ and anti-SLAPP rulings:

1. Why would an esteemed man of science who had been selected to write legal and medical policy papers over the mold issue along with his business partner, resort to criminal perjury to establish a false reason for malice when defeating a Strategic Litigation Against Public Participation Motion and a Motion for Summary Judgment in a libel action where they have sued the first person to write of the questionable science behind the legal and medical policy papers they authored for the word "altered"; and also write of how these two papers are connected and used in litigation?

2. If this litigation has nothing to do with conspiracy/ scientific fraud and is only about if the word "altered" is synonymous with the word "perjury"; then why would the criminal perjury committing plaintiff and the company of which he is president require that the defendant publicly endorse their science as an apology for the word "altered" before they would cease with the litigation over the little word "altered"; after they defeated the anti-SLAPP motion through the use of criminal perjury?

3. Isn't perjury, suborning of perjury, attempted coercion into silence, and misleading the courts while strategically litigating for the purpose of perpetrating an interstate fraud on US courts by the US Chamber of Commerce and other interested enterprises; criminal activity evidenced within the case this court is reviewing?

VI.
MR. SCHEUER'S REPLY TO THE COURT'S QUERY

Reminiscent of the tale of the husband who attempted to sneak in the back door of his home early one morning wearing his crumpled suit from the day before, and who replied to his wife's questioning of where he had been, with, *"I got home at 1a.m. and did not want to wake you, so I slept out back in the hammock"*. When informed by his wife that she had taken the hammock down three months earlier, the husband then replied, *"Well that's my story and I'm sticking to it"*. The following is Scheuer's Appellate Reply Brief, directly lying to *this* Appellate Court

and suborning Kelman's criminal perjury yet again on September 10, 2009:

> *"Appellant's theory apparently is that Dr. Kelman bamboozled several trial court judges and this Court about the substance of his testimony in her Mercury Casualty case and that this bamboozlement irretrievably tainted this entire lawsuit – creating what Appellant calls "unsurmountable judicial perception bias in the case." (Appellant's Errata Opening Brief, page 33.) ..."...the judicial perception bias went from court to court, ruling to ruling causing a manifest destiny verdict that the press release was wrong and Appellant had maliciously lied with the word altered". There are many, many problems with Appellant's theory. First, it has no factual basis".* (Respondent's Appellate Reply Brief P.20)
>
> .....
>
> *...she ignores the actual forest and obsesses on the imaginary tree; i.e., even if her factual assertions about the Mercury Casualty case were true (which, empathically, they are not), she closes her eyes to the clear and convincing evidence of her actual malice, and her lack of credibility.* (Respondent's Appellate Reply Brief P.21)

Unless Scheuer's reply to this Reviewing Court's queries of privilege, the MSJ and the anti-SLAPP motion includes a Mea Culpa for willfully suborning criminal perjury and perpetrating a fraud on the San Diego courts while strategically litigating for five years to vex, harass, coerce, discredit, demean, denigrate, financially cripple and silence a Whistleblower; then this Reviewing Court should consider Scheuer's answer to be one more attempt at bamboozlement of judges and justices, one more attempt to benefit from prior improvidently entered orders and one more violation of Business and Professions Code 6068 of "sticking to his story" while causing Sharon Kramer, this Reviewing Court and all courts much additional time, money and unnecessary work while aiding and abetting the US Chamber of Commerce et al, to perpetrate an

interstate fraud on US courts adverse to public safety. By law, *"..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

Business and Professions Code section 6068(d) provides, in relevant part: *"It is the duty of an attorney to do all of the following: To employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." "Honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a serious offense."* Paine v. State Bar 14 Cal.2d 150, 154 (1939)

VII.
HOW THE SUCCESSFUL HAYNES VERDICT CAME TO BE

Of course Kramer March 2005 writing is a fair and accurate reporting and thus privileged. She is largely responsible for the *Haynes* attorney, Calvin "Kelly" ("Vance") having the *Kilian* transcript before he even questioned Kelman. Of course she knew the payment was for the Manhattan Institute/US Chamber version.

Although she did not have the transcript from *Haynes* when she wrote, she was able to gather from speaking to Vance and Paul Haynes that Kelman was trying to say the US Chamber Mold Statement and the ACOEM Mold Statement were not connected. But with the admittance of *Kilian* into the *Haynes* trial, he had to admit they were, thus *"Upon viewing documents presented by the Hayne's attorney of Kelman's prior testimony from a case in Arizona, Dr. Kelman altered his under oath statements on the witness stand."*

While some have found Kelman's testimony in *Haynes* to be actual perjury, (like Vance and Kramer's first attorney, Brown, who stated so in his anti-SLAPP Briefs). Kramer was able to ascertain from speaking to Haynes that it was more of not so slick obfuscating and oscillating when put in a sticky situation, but not quite perjury.

Much to the chagrin of Kelman and many other mold defense professional witnesses; Kramer holding a degree in marketing and being fully aware of the illumination of conflicts of interest in mass marketing of a scientific fraud from reading *Kilian*, had gotten the *Kilian* transcript out to many advocates around the country in early 2005, who then in turn had given it to mold plaintiff attorneys such as the *Haynes* attorney, Vance.

From watching sick families not be able to get help and being called liars for saying mold makes them sick, Kramer started to question why this is. Where was the bottleneck? All trails led back to the ACOEM Mold Statement as a purported legitimate source that said these poor families were just liars. (Appellant Appendix Vol.I Ex.160-162)

As the courts have been informed since July of 2005, Kramer is an advocate with a degree in the science of marketing who easily recognized a fraud in marketing adverse to public interest over the mold issue. The *Haynes* trial just happened to be the first one where the illumination of conflicts of interest from *Killian* coupled with Kramer's background of understanding the science of marketing and her research into the misapplication of marketing over the mold issue, impacted a mold trial in the US favorably to mold injured plaintiffs. Like *Kilian,* Kelman's testimony in *Haynes* would not have even been news worthy if a defense verdict had come in. It would have just been another day where the fraud on the courts was effective.

Kramer makes no apologies what so ever for her role of *"taking the bull by the horns"* along with <u>many</u> other people in helping to stop a fraud in US health policy that is adverse to the American public by

helping to expose questionable testimony by questionable experts based on questionable science by questionable means for questionable purpose.

It could have been any one of the cabal of professional mold defense witnesses who came to the mold issue from Big Tobacco circa 2000; and who were holding the ACOEM Mold Statement out as the Gospel of Mold Science as they professionally witnessed to deny their clients' liabilities (prior to WSJ article) getting caught on a witness stand somewhere in the US in front of a jury having to discuss how their Gospel was tainted by its connection to the US Chamber of Commerce and think-tank money. (Appellant Appendix Vol.1 Ex.8:165-166)

Kelman just happened to be the unlucky mold defense witness de jour in February 2005, who was forced to try and explain away the conflicts of interest of the US Chamber et al, in front of a jury. And he obfuscated miserably while trying unsuccessfully to do so - having to admit the connection of White Collars teaming with White Coats but trying to distance their cozy connection. He just happened to be the first one where exposure of the conflicts helped to cause a plaintiff verdict. *A fair reading of all the material which was available to Reader's Digest and author MacDonald at the time the article was written clearly suggests that the description of Synanon's success claims as "spectacular" and "never proved" falls within an acceptable range of literary license.* Readers Digest v. Superior Ct. (1984)37Cal.3d 244, 264

Once Kelman sued Kramer trying to shut her up, he put the spotlight on himself and Kramer, which helped Kramer to be able to cause the WSJ article of 2007 that helped to cause the GAO Report of 2008 that helped to remove ACOEM's science from US public health policy by 2009; while the San Diego courts sat obliviously by thinking this lawsuit was about if the word "altered" written by a ninny was synonymous with the word "perjury". *"As our Supreme Court held in the Synanon case, journalists are within their constitutionally protected rights to write an article describing the perspective of only one side of a controversy.*

(Reader's Digest, supra, 37 Cal.3d at p. 262." Paterno vs. Superior Court (2008)163 Cal.App 4th,1342, 1356

People are allowed to publicly speak and write the truth in the United States of America, supposedly without fear of retribution, no matter whose ox is getting properly gored for the sake of proper US public health policy, including the US Chamber of Commerce, ACOEM, a US Congressman and Bruce J. Kelman. C.C.P. 425.16. (a) states, *"The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process."*

As is evidenced by Kelman's Appellate Reply Brief of September 10, 2009, Kramer has never once been impeached as to her belief in her logic and validity for using the phrase *"altered his under oath statements"*. Scheuer could not cite to a single instance of impeaching Kramer. It is not evidence of malice personally for Kelman to write a truth that needed to come to public light for the public good. *Upon examining the record before us, we find no triable issue as to actual malice. There is no direct evidence that MacDonald or other Reader's Digest personnel believed the questioned passages in the article were false, or even entertained serious doubts respecting their truth.* Reader's Digest Assn v. Superior Court (1984) 37 Cal.244, 258

Although Scheuer has repeatedly misled the courts and falsely portrayed that Vance was the Smoking Gun clear and convincing proof that Kramer published with actual malice because she was out to get Kelman; the reality in evidence is that Scheuer knows Kramer had never spoken to Vance before she interviewed him for the article until after the successful *Haynes* plaintiff jury verdict came in. The writing was published on March 9, 2005. Kramer was aware of Kelman's testimony

by February 23, 2005. In no way did she rush to publish because she was out to get Kelman. His testimony in *Haynes* would have been irrelevant to the issue had the jury not returned a plaintiff verdict finding the toxins of mold harmed the family.

Vance knew nothing of Kramer in March of 2005 or her motivation to write; or her indepth understanding of the conflicts of interest in science over the mold issue, or why she had gotten the *Kilian* transcript out to advocates around the country. The walking oxymoron of an advocate for change, Vance, put it in writing in an email of December 31, 2006 *"I absolutely agree Kelman lied on the stand. How can you get from 'that's ridiculous' to reading that testimony without thinking he was lying". Everybody in the room thought so."* (Appellant Appendix Vol.II Ex.17:370)

A source who says a writing is correct cannot legally or logically meet the standard of clear and convincing proof that the writing was incorrect and published with actual malice.

Scheuer knows full well that his fictional theme of Kramer's reckless disregard for the truth because of malice for Kelman is false and that he cannot provide any evidence to this court that he even once impeached Kramer as to the belief in the validity of her words. It is a fairy tale. Just like the one that Kramer had malice for Kelman stemming from *Mercury.* (Appellant's Appendix Vol.II Ex.18:503)

"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

VIII.

FIRST AMENDMENT RIGHT TO EXPOSE A DECEIT IN SCIENCE AND HAVE THE COURTS TAKE ACTION

*"Fair and objective reporting may be a worthy ideal, but there is also room, within the protection of the First Amendment, for writing which seeks to expose wrongdoing and arouse righteous anger; clearly such writing is typically less than objective in its presentation." (Reader's Digest, supra, 31 Cal.3d at p. 259.)*Paterno v. Superior Court (2008) 163 Cal.Ap4th,1342,1353

From Kramer's Declaration of July 2005: *In the Killian case, it is shown that the widely distributed, ACOEM dose response theory of people not becoming ill from indoor mold exposure, is based on the GlobalTox principals' mathematical extrapolations of one single, high dose, acute exposure, study in rats. Kelman stated that the rat study by Dr.Rao, was "the one that we modeled for the single-dose study."*

.....

In light of this information, the following statement would then be a more accurate summary of the IOM Report Committee's conclusions, "Current scientific evidence does not support the use of acute, high exposure rat studies to conclusively establish the absence of adverse human health from inhaled mycotoxins in homes, schools or office environments." This is quite a different scenario than the consistency with the IOM Report that Kelman testifies to under oath.

As taken from declaration of Kramer's expert witness who was not permitted to testify in Kramer's defense at the August 2008 trial, Dr. Harriet Ammann, October 21, 2008:

"My name is Harriet M. Ammann, Ph.D., D.A.B.T. [diplomat American Board of Toxicology]. I am certified in toxicology by the American Board of Toxicology and have worked as a senior public

health toxicologist for sixteen years for the State of Washington Department of Health...As a senior toxicologist for two agencies of the State of Washington, I have been required to act to protect the health of Washington citizens through analyses of environmental exposures and real and potential health effects associated with such exposures.....I was a member of ***National Academy of Sciences, Institute of Medicine,*** *Damp Indoor Spaces and Health, which produced the report "Damp Indoor Spaces and Health"* ***[("IOM Report")]. I authored the chapter on Toxic Effects of Fungi and Bacteria*** *and contributed to the chaper Damp Buildings,and the chapter on Human Health Effects Associated with Damp Indoor Environments. I am a section editor for Section 1, Underlying Principles and Background for Evaluation and Control in the 2008 American Industrial Hygiene Association [("AIHA")] Book, Recognition, Evaluation and Control of Indoor Mold, and a contributing author to chapter 1. Indoor Mold Basis For Health Concerns...*

I traveled to Vista, California on August 19, 2008.. specifically in order to testify...on issues related to health effects.... *I was prepared to testify regarding issues of mold and health that had been raised in* ***testimony by Dr. Kelman in this case as it related to his prior testimony in October of 2003, in the case of Mercury Insurance vs. Kramer, which was, in part, used to establish grounds for the finding of personal malice in the trial of Kelman and Veritox v. Kramer.*** *I was not called to testify since issues of science were not permitted to be discussed in the trial..."*(Appellant Appendix Vol.IV Ex.27:880)

IX.
THE SIX KEY FACTS OF THIS STRATEGIC LITIGATION

Much like a Santa Ana wind blowing into the San Diego Appellate court. When the static, immovable airs and visibility blocking smut are purged from this strategic litigation; six facts remain in evidence, clear as day, for this Reviewing Court's opened eyes.

After five years of litigation:

A. Kelman cannot even state how Kramer's phrase "altered his under oath statements" translates into a false accusation of perjury – the sole claim of the case.

B. Kelman cannot direct any court's eyes to one piece of evidence of Kramer ever being impeached as to her belief of her validity and logic of her use of her March 2005 phrase "altered his under oath statements" when describing Kelman's testimony given in a legal proceeding in Oregon, February, 2005.

C. Kelman cannot direct this court's eyes to a single piece of evidence of Kramer even uttering a harsh word of him, personally, before she wrote in March of 2005. To speak out of the "positions" of many entities involved in mass marketing a scientific fraud to US courts (scientifically proven the toxins of mold are not toxic) is not evidence of personal malice for one of the many entities and individuals involved. It is a First Amendment right guaranteed to all US citizens to freely speak truthful words that are for the public good.

D. This Court has been provided with uncontroverted and irrefutable evidence that since September of 2005, Kramer has provided all judges and justices to oversee this litigation with uncontroverted and irrefutable evidence that Kelman has committed criminal perjury in this libel action to establish a fictional theme of Kramer having malice for him, personally. She has provided all courts with uncontroverted and irrefutable evidence that Scheuer has willfully suborned Kelman's perjury. *"Uncontradicted and unimpeached evidence is generally accepted as true."* Garza v. Workmen's Comp. App. Bd. (1970) 3 Cal.3rd 312 317-318

E. Kelman cannot state a reason for this Reviewing Court that Kramer would harbor malice for him, personally. Now that the

"Foaming At The Mouth, Vindictive Ninny of a Litigant Out To Get an Esteemed Scientific Expert Witness From Her Personal Mold Litigation of Long Ago" theme for Kramer's malice is gone with the Santa Ana winds by the exposing of the criminal perjury and suborning of criminal perjury (Perjury by Kelman: *"I testified that the types and amounts of mold in the Kramer house could not have caused the life threatening illnesses she claimed*" & Suborning Perjury by Scheuer: *"Apparently furious that the science conflicted with her dreams of a remodeled home, Kramer launched into an obsessive campaign to destroy the reputations of Dr. Kelman and GlobalTox"*); the replacement absurd and character assassinating theme for Kramer's purported malice is "An Unquenchable Desire To Be Known as 'Queen of the Chatboards". *"A state of mind, like malice, "can seldom be proved by direct evidence. It must be inferred from objective or external circumstantial evidence."* (Drum v. Bleau, Fox & Associates (2003) 107 Cal.App.4 1009, 1021.

However, this would indicate that the late Honorable Senator Edward Kennedy was only motivated to request a Federal Government Accountability Office audit into the health effects of mold at Kramer's urging because he too, held the same unquenchable desire. And it would indicate that the reporters and editors of the Wall Street Journal published at Kramer's urging and with Kramer's research input, *"Amid Suits Over Mold, Experts Wear Two Hats Authors of Science Paper Often Cited by Defense Also Help in Litigation"* with Kelman and Hardin being the subject author/experts with ACOEM's and the US Chamber of Commerce's oxes getting rightfully gored; because the respected newspaper professionals also were motivated to be known as "Queens of the Chatboards."

F. Kelman and undisclosed party to this litigation, VeriTox owner Hardin, are the authors of the US mold policy paper "*Adverse Human Health Effects Of Molds In An Indoor Environment*", ACOEM (2002). They are also the authors of the legal mold policy paper, *"A Scientific View Of The Health Effects Of Mold"* US Chamber of Commerce

Institute For Legal Reform & Manhattan Institute Center For Legal Policy (2003).

This means an author of influential US medical and legal mold policy papers has been proven by uncontroverted and irrefutable evidence to have been committing criminal perjury before the San Diego courts, in a libel action against the first person to publicly write of how these two "questionable" policy papers were closely connected and how they are used in litigation; while the other author did not disclose he was a party to the strategic litigation.

The anti-SLAPP Appellate Panel ignored the evidence of both of these facts when ruling over a strategic litigation impacting US public health policy as they deemed Kramer had falsely accused Kelman of perjury about taking money to make edits in a medical association paper without apparently reading Kramer's writing to see it is 100% correct about who paid whom for what.

In other words, the anti-SLAPP Appellate Panel ignored the evidence one party was committing a fraud on the courts, while ingoring other evidence that the other party was telling the truth about the other party lying. *"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.)

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: "This inherent power includes 'fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation."*

X.

Query # 2.) DOES ANYTHING IN OUR PRIOR UNPUBLISHED OPINION IN THIS MATTER, KELMAN V. KRAMER (2006) DO47758, NOVEMBER 16, 2006, PREVENT US FROM REACHING THE QUESTION OF WHETHER APPELLANT'S STATEMENTS WERE PRIVILEGED?

The answer to this question appears to be both "Yes" and "No".

A. No, there is no reason this Reviewing Court should not reach the question of privilege in the Appellate anti-SLAPP ruling. This is because the Appellate anti-SLAPP opinion is where the errors of the case are best spelled out with all subordinate courts "following their guidance" in violation of C.C.P. 425.16(b)(3).

The Appellate Panel ruled incorrectly on the issues of privilege by wrongfully determining malice was rightfully established while ignoring uncontroverted evidence that the malice was established by fraud. They also ignored Kramer's detailed explanation of why she truthfully chose the word "altered" and decided that they felt Kelman's testimony was clarifying, not altering, without reading Kramer's writing in its entirety.

Thus Kramer was deemed a malicious liar for a writing the courts did not read; her detailed declaration explanation of a fraud on US courts adverse to the health and safety of the American public was found to be evidence of malice; and Kramer's evidencing Kelman's committing perjury to establish a reason why Kramer would accuse him of committing perjury was ignored. Clearly there has been judicial perception bias in this case that has not bode well for the First Amendment of the Constitution and the privilege to speak the truth in America.

"Opinions that present only an individual's personal conclusions and do not imply a provably false assertion of fact are nonactionable; indeed, such opinions are the lifeblood of public discussion promoted by the First Amendment, under which speakers remain free to offer competing opinions based upon their independent evaluations of the facts. (Nygdrd, supra, 159 Cal.App.4th at pp. 1048-1049, discussing Milkovich v. Lorain Journal Co. (1990) 497 U.S. 1, 19 [111 L.Ed.2d 11, 10 S.Ct. 2695] (Milkovich).) Paterno vs. Superior Court (2008) 163 Cal.Ap4th, 1342, 1356

The Appellate Panel misquoted Reader's Digest v. Superior Ct as it pertains to the issue of privilege, fair and accurate reporting, and Civil Code Section 47. As one example from the anti-SLAPP Appellate Ruling:. *(A) Civil Code Section 47, Subdivision (c)*

Kramer contends her statement was privileged under Civil Code section 47, subdivision 9c), which states: "A privileged publication or broadcast is one made

.....

"(c) In a communication, without malice, to a person interested therein, (1) by a person who is also interested in, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supporting the motive for the communication to be innocent, ..."

The above seems to be a correct argument on the issue of privilege made by Kramer's first attorney, Brown. Kramer's writing was *never proven not to* be a truthful communication made without malice, which is the first thing that has to be established to prove libel. It *was* made by a person with interest in the matter whose communication was innocent of malice or falsity as she wrote of a fraud on US courts that needed to come to greater public light.

Privilege was also properly argued again by Kramer's second attorneys, Lincoln ("Bandlow"), Esq. and David ("Aronoff"), Esq, within the MSJ Points and Authorities. But since Judge Orfield (retired)

simply relied on the anti-SLAPP ruling with Scheuer's deceptive encouragement that Orfield rely on his prior fraud; Bandlow's and Aronoff's beautifully written and properly argued MSJ was simply ignored. (See Appellant Supplemental Appendix As Volume VI.)

Although the anti-SLAPP Appellate Panel of Justices McConnell, Aaron, and McDonald did cite to Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d.244 in their unpublished opinion; it seems they missed the true gist and relevance of the case law as it pertains to this libel litigation. *"Paterno's truthful statements enjoy First Amendment protection and, in publishing them, she is entitled to a "reasonable degree of flexibility in [the] choice of language . . . ." (Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, 262 [208 Cal.Rptr. 137, 690 P.2d 610] (Reader's Digest).).... "We recognize a potential chilling effect from protracted litigation as well as a public interest in resolving defamation cases promptly." (Reader's Digest, supra, 37 Cal.3d at p. 252.)*

"Although California courts have never directly addressed this concept of literary license, there is an appropriate analogy in the "fair report" privilege. Civil Code section 47, subdivision 4, provides that a privileged publication is one made by a "fair and true report" of various official proceedings. Several cases have been decided under this statute, and all permit a certain degree of flexibility/literary license in defining "fair report." " 'It is well settled that a defendant is not required in an action of libel to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting of the libelous charge be justified....' " (Hayward v. Watsonville Register-Pajaronian and Sun (1968) 265 Cal.App.2d 255, 262, 71 Cal.Rptr. 295, citing Kurata v. Los Angeles News Pub. Co. (1935) 4 Cal.App.2d 224.) Reader's Digest v. Superior Court (1984) 37 Cal 3d.244, [13]

And again, Kramer who researches and publishes of the matter, is of the opinion that the courts came into this case as victims themselves of intentionally instilled perception bias by the US Chamber of Commerce

et al; as the courts are the primary target market for the concept that anyone who says mold can seriously harm, should automatically be considered a malicious liar. Kramer reads summaries of rulings involving the mold issue all the time where judges have been duped by this false concept that then illogically colors their rulings.

B. "Yes", this Reviewing Court has reason not revisit the question of privilege in the anti-SLAPP opinion. This is because there is no need to revisit the issue of privilege when determining judicial "*appropriate corrective action*" in this five years worth of unbridled strategic litigation.

The issue of uncontrovertable and irrefutably proven fraud by Kelman, VeriTox and Scheuer, not the issue of privilege, triggers appropriate legal reversal of all motions. (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 733, pp. 762-763.) Fraud by Scheuer, not privilege, triggers undoing his deceptive deeds by California Code of Judicial Ethics, Canon 3.D.(2) which states, Disciplinary Responsibilities *'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."*

Once the anti-SLAPP Opinion of 2006 is reversed because it was defeated by fraud on the courts with all ruling on subsequent motions following suit in violation of C.C.P. 425.16(b)(3); then Kramer becomes the prevailing party in the proper legal anti-SLAPP opinion which entitles her to all her costs and attorney fees caused by this five years worth of strategic litigation and fraud on the courts. As stated in C.C.P. 425.16(c)(2)(b) *"a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs."*

XI.

THE ILKS OF GLOBALTOX

As last point on the issue of malice and the rulings of this case. Kramer has clearly evidenced for this Reviewing Court that personal malice for Kelman and VeriTox was established by fraudulent means. She has evidenced for this court that the Appellate court erred in twisting Kramer's speech for the public good of explaining why VeriTox wanted her silenced to be evidence of personal malice for Kelman.

The last piece of purported evidence of Kramer's malice for GlobalTox/Veritox/Kelman is an angry email Kramer sent to a contact us button of a website of the American Industrial Hygiene Association ("AIHA") in which she was very mad that this esteemed organization was going to permit the science of ACOEM to be presented as training for industrial hygienists, adverse to the health and safety of the public. Within the email to a contact button that was never published anywhere until this litigation; Kramer referred to the "Ilks of GlobalTox" and Kelman was not even mentioned. While Scheuer attempts to steer this court's eyes to the angry words within the email, a thorough reading show Kramer was complaining of the pseudoscience being used to train industrial hygienists. (Respondent Appendix Ex.4:42-44)

Things have changed within AIHA for the better. Kramer's expert who was not permitted to testify in trial, Dr. Harriet Ammann, wrote the Chapter on mycotoxins for the AIHA's mold guidance book for industrial hygienists in 2008. From Dr. Harriet Ammann's declaration: "*I am a section editor for Section 1, Underlying Principles and Background for Evaluation and Control in the 2008 American Industrial Hygiene Association [("AIHA")] Book, Recognition, Evaluation and Control of Indoor Mold, and a contributing author to chapter 1. Indoor Mold Basis For Health Concerns..."*(Appellant Appendix VolIV Ex.27:880)

XII

LAWEEKLY EDITOR JILL STEWART, DANIEL HEIMPEL, AIDING AND ABETTING THE US CHAMBER OF COMMERCE ET AL, TO PERPETRATE FRAUD VIA THIS LITIGATION.

Was Kramer's speech privileged? Yes, without a doubt. And it was a truth that many influential entities did not want to come to light. Kramer respectfully requests that this Reviewing Court read an article that ran in LAWeekly about this litigation, three weeks before trial on July 23, 2008. LAWeekly is a free Southern California rag with a circulation of 150,000 people, aka, potential jurors. This will help this reviewing court to understand just how truthful Kramer's speech is and what lengths they will go to try and silence it. (Appellant Appendix Vol.III Ex.23:676-695

The article was written by Daniel Heimpel, who is a blogger for the Huffington Post and was edited by Jill Stewart, Editor of LAWeekly. It was titled, *"The Toxic Mold Rush: California Mom Helps Fuel an Obsession"*. It starts off with:

> *"The old trailer where she[Kramer] forced her daughter to sleep in the bad days takes up most of the driveway. Her home sits at the end of the cul-de-sac of upper-middle-class homes in San Diego's North County. Odors from two overweight dogs have permeated the house, sinking into the dark-brown rug, and rising from tracks of dirt along the floor."*

It goes down hill from there. Kramer could not keep a trailer in her driveway if she wanted to. Her C.C.& R's would never allow it. Nor would she ever force her daughter with Cystic Fibrosis to sleep in a dirty trailer. Kramer's house is not filthy. Nor does it stink.

Kramer would like this Reviewing Court to read this article because Kramer would like this court to understand that she and her family have been stood up at the Gates of Hades; and Kramer has been called every name in the book for daring to speak the truth of a deception in science on the courts by the US Chamber of Commerce and other influential

interstate enterprises; that is adverse to the health and safety of the public.

In the article, Kramer's husband was falsely deemed a criminal; her daughter was falsely, maliciously and viciously deemed Kramer's "starring victim" of the mold issue –even though Kramer rarely mentions hew own family as she writes; and her other daughter was falsely quoted as being ashamed of Kramer.

Kramer got hang up calls in the middle of the night for a month after this article ran and while preparing for trial, because it promotes that Kramer is single handedly responsible for causing all mold litigation throughout the US. Hang up calls at 2am, when one has two daughters in their 20's, sent fear in Kramer's heart every time the phone rang in the middle of the night.

The article ran nationally in LAWeekly affiliate papers. Several people supposedly quoted said they were not even interviewed. This court will be able to recognize many other fallacies in the article about this litigation. Kramer can count 51 known false and false light statements by Heimpel and Stewart.

The point of the article and the point of this strategic litigation is spelled out clearly in a follow up to the trial by Jill Stewart on August 27, 2008. The verdict that has wrongfully labeled Kramer the malicious liar for the word "altered"; is being used via disreputable journalists to market the false concept; that because Kramer has been deemed a malicious liar it is scientifically proven molds in water damaged buildings does not harm and anyone who says it does is to be considered a deranged liar.

No matter how much evidence Kramer has provided the San Diego Courts that proved otherwise; for five years the San Diego courts have operated under the oblivious misperception that this litigation had nothing to do with the science of mold, nothing to do with fraudulent expert witnessing enterprises; and nothing to do with the science of

marketing a fraud to US courts by the US Chamber of Commerce et al, to stave off financial liability for stakeholders of moldy buildings. This litigation was only about the little word *"altered"* as written by a vindictive ninny of a mold litigant, Sharon Kramer.

From Jill Stewart's LAWeekly writing of the outcome of the August 2008 trial: *"Scientist Kelman wins libel suit against Mold Queen Kramer By Jill Stewart in Trials*

News just came in that toxicologist Bruce Kelman, targeted by people who have an almost religious, misguided fear of common household mold, has prevailed in a key case against Mold Queen Sharon Kramer...

Kelman emails the Weekly: "Kramer was found guilty of libeling me."

..Moms aren't always right."...Like Kelman, Heimpel merely reported the truth, that scientists have repeatedly shown that household ***mold is not toxic to healthy people and does not make them sick."***

XIII.

SUMMARY OF FIVE YEARS WORTH OF STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION IN 560 WORDS.

Contrary to rulings of the San Diego courts, plaintiffs cannot legally file a libel suit accusing they were falsely and maliciously accused of committing perjury by the defendant's words "altered his under oath statements"; not be able to even state how the phrase translates to an accusation of perjury; not disclose who the true parties to the litigation are; and then commit perjury to falsely establish the reason for the defendant's malice. To do so, only proves the plaintiffs *do* commit perjury. And their accusation of feigning malicious harm from the word "altered" could not be established by legal means. They used criminal means and judicial bamboozlement that the courts bought hook, line and

sinker no matter how much contradictory evidence the courts were provided.

Kramer is legally entitled to a reversal of all of her motions that were defeated by Kelman's, VeriTox's and Scheuer's fraud on the courts, (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 733, pp. 762-763.); which makes Kramer the properly recognized prevailing party of the C.C.P. 425.16 anti-SLAPP motion. As the prevailing party in an anti-SLAPP motion, Kramer is legally entitled to her costs and fees incurred from errors of improper courts rulings while ignoring her evidence since September of 2005 of Kelman's criminal perjury to establish false reason for Kramer's malice when strategically litigating through the efforts of Scheuer.

"*Paterno asks for her attorney fees in preparing this writ petition. Under subdivision (c) of the anti-SLAPP statute, successful litigants who prevail on a special motion to strike are entitled to attorney fees as a matter of right "to compensate . . . for the expense of responding to a SLAPP suit." (Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi (2006) 141 Cal.App.4th 15, 22 [45 Cal.Rptr.3d 633].) The trial court should consider Paterno's request for attorney fees in connection with Paterno's special motion to strike....Paterno is awarded her costs in this proceeding.* Paterno v. Superior Court (2008) 163 Cal.App.4th 1342, 1357-1358.

When this Reviewing Court acknowledges what legally cannot be denied: Kramer's overwhelming, uncontroverted and irrefutable evidence that seven judges and justices ignored Kramer's overwhelming, uncontroverted and irrefutable evidence of Kelman's perjury on the issue of malice and ignored Kramer's vast evidence of Scheuer's willful suborning of Kelman's criminal perjury; **then seven** years worth of scientific fraud perpetrated on US Courts over the mold issue by the US Chamber of Commerce et al, will immediately cease by the acknowledgment that their author of their scientific fraud has no qualms about lying under oath to the courts and strategically litigating; and

while their other author does not disclose he is a party to the strategic litigation.

The entire point of using criminal perjury in this strategic litigation was so the fraud of the US Chamber et al, could continue by the discrediting of the truthful words of a Whistleblower by deeming her to be a malicious liar for the mere word "altered". Thus far, errors of the San Diego courts have inadvertently aided and abetted the US Chamber of Commerce et al,'s scientific fraud to continue on its merry way in US courts by deeming the wrong party in this strategic litigation to be the "malicious liar"; and causing this wronged party to be unable to make a living as a reputable, real estate agent.

As this Reviewing Court has been informed and evidenced; on August 31, 2009, an Amicus Curiae Brief by the National Apartment Association political action committee ("NAA Amicus") was submitted into a legal proceeding in Arizona ("*Abad"*) involving two new born infant deaths, an apartment building documented to have an atypical amount of mold, and Bruce Kelman serving as an expert witness for the defense; with the NAA Amicus submitted in fraudulent validation of Kelman's self professed expert mold opinion. (Kelman comes to the mold issue from Big Tobacco, circa 2000) NAA Amicus pg. 9:

"In a report entitled, 'A Scientific View of the Health Effects of Mold', a pane of l[sic, two] 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)"

California Code of Judicial Ethics, Canon 3.D.(2) states, Disciplinary Responsibilities *'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."* Two mothers of

deceased newborns in Arizona are waiting on this Reviewing Court to *"take appropriate corrective action"* to undo the harm of this unbridled strategic litigation so they are not also victimized by the fraud in *their* litigation used to falsely deem *them* to be malicious liars. (Word Count: 560 plus case law and Judicial Ethics Canon citing)

XIV.
CONCLUSION

Sharon Kramer, July 7, 2005: "*I truthfully stated the sequence of events of Kelman's testimony as I understood them at the time, and still understand them to be. I stand by all sentences written in the press release authored by me including, "Upon viewing documents presented by the Haynes' attorney of Kelman's prior testimony from a case in Arizona, Dr. Kelman altered his under oath testimony [sic, statements] on the witness stand."*

I truthfully stated the sequence of events of Kelman's testimony as I understood them at the time, and still understand them to be. I stand by all sentences written in the press release authored by me including, "Upon viewing documents presented by the Haynes' attorney of Kelman's prior testimony from a case in Arizona, Dr. Kelman altered his under oath statements on the witness stand." And in five years of unbridled Strategic Litigation Against Public Participation that has cost my family well into seven figures to defend the truth of my words for the sake of public health; Bruce J. Kelman, Veritox, Inc., and their "legal" counsel, Keith Scheuer, have never even come close to legally proving I do not believe in truth, validity and importance of my words for the public good, that are unfortunately adverse to the interest of the US Chamber of Commerce, VeriTox and other interested enterprise.

Dated: January 28, 2010

_____

Sharon Kramer, Pro Per