

1.

Deposition of Bruce J.

Kelman, July 22, 2008, in  
which he states he cannot  
remember the testimony he  
gave in the Mercury case.

Pages 321 to 327

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1 summary motion in this case, it was a declaration  
2 filed around March of this year?

3 MR. SCHEUER: No, it's not.

4 MR. BANDLOW: Is that not that one?

12 :24:40 5 MR. SCHEUER: This is pages 1, 5 and 6 of  
6 the declaration.

7 MR. BANDLOW: I can go get the whole  
8 thing. I'll have to go get the whole thing. I  
9 thought that was the full copy.

12 :24:52 10 MS. KRAMER: Want to go to lunch and do  
11 that?

12 MR. BANDLOW: I'm going to get a full  
13 copy. What time is it now?

14 I'm going to back up, because there's  
12 :25:20 15 something in that declaration that I don't  
16 understand.

17 BY MR. BANDLOW:

18 Q You recall that you filed a declaration  
19 very early on in this case in which you stated that  
12 :25:46 20 you quote "testified that the type and amount of  
21 mold in the Kramer house could not have caused the  
22 life threatening illnesses that she claimed;" do  
23 you recall saying that in a declaration?

24 A This case has been going on for three  
12 :26:00 25 years, no. I'm not saying I didn't, but I need it

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1 in front of me.

2 Q Do you recall that that is what you  
3 testified to when you testified in the case  
4 involving Ms. Kramer's claim with her insurance  
12 :26:14 5 provider?

6 A I would have to see what was on the  
7 declaration, and at this point, now we're talking  
8 about a case that was a lot of years ago. I don't  
9 remember that specific case hardly at all.

12 :26:28 10 Q Well, don't you recall that I took your  
11 deposition in December of 2007, and in that  
12 deposition you said you couldn't remember what  
13 testimony you gave in Ms. Kramer's action against  
14 her insurance carrier; correct?

12 :26:44 15 MR. SCHEUER: That's exactly the same  
16 testimony he just gave, and you are now admittedly  
17 going over stuff you already asked the witness  
18 about.

19 BY MR. BANDLOW:

12 :26:52 20 Q Here's why I'm asking, because in  
21 December of 2007 I asked you these questions and  
22 you answered just like you did, you didn't remember  
23 anything about it because it was so long ago, and  
24 then in March of 2008 I get a signed declaration  
12 :27:04 25 from you in which you say quote "I testified that

1 the type and amount of mold in the Kramer house  
2 could not have caused the life-threatening  
3 illnesses that she claimed."

4 MR. SCHEUER: Why don't you show us that  
12 :27:18 5 declaration that you're talking about.

6 MR. BANDLOW: Well, it's there. If you  
7 want me to go get the signature page, that's one of  
8 the things he says there, that's the page that was  
9 copied. Starts out, "I first learned of Defendant  
12 :27:28 10 Sharon Kramer --

11 MR. SCHEUER: What paragraph?

12 MR. BANDLOW: I don't -- says, "I first  
13 learned of Defendant Sharon Kramer in mid  
14 December 2003."

12 :28:14 15 BY MR. BANDLOW:

16 Q So what I'm asking is: Was there  
17 something that caused you to remember your  
18 testimony in Ms. Kramer's action against her  
19 insurance carrier better between December and March  
12 :28:24 20 of 2008?

21 A At this point, it would have -- I don't  
22 remember specifically. I think we have produced --  
23 if we haven't, we should have -- what little case  
24 material we've got left from that situation. If we  
12 :28:58 25 haven't produced that, that was an oversight, but

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1 I'm quite certain that we did produce that.

2 Q As you sit here today, do you recall if  
3 you testified in Ms. Kramer's action against her  
4 insurance carrier that the type and amount of mold  
12 :29:32 5 in the Kramer house could not have caused the  
6 life-threatening illnesses that she claimed?

7 A I have to go back and look at the record  
8 that would -- that would certainly be consistent.  
9 Since I don't have the material in front of me, I  
12 :29:58 10 don't know how much I can say about it.

11 Q Weren't you made aware of documents -- at  
12 the time that the lawsuit with Ms. Kramer's  
13 insurance carrier was going on, weren't you shown  
14 documents that showed that, in fact, she did not  
12 :30:16 15 make that claim that the mold was causing  
16 life-threatening diseases?

17 MR. SCHEUER: Could I have that read back,  
18 please.

19 (Record read as follows:

12 :30:04 20 "QUESTION: Weren't you made aware  
21 of documents -- at the time that the lawsuit  
22 with Ms. Kramer's insurance carrier was going  
23 on, weren't you shown documents that showed  
24 that, in fact, she did not make that claim that  
12 :30:18 25 the mold was causing life-threatening

1 diseases?")

2 MR. SCHEUER: Object as having been asked  
3 and answered at the prior session of Dr. Kelman's  
4 deposition and goes beyond the scope of today's  
12 :31:02 5 deposition, but I'll permit the witness to answer.

6 BY MR. BANDLOW:

7 Q Weren't you provided with documents at the  
8 time you were acting as an expert in the case  
9 involving Ms. Kramer against her insurance carrier,  
12 :31:20 10 weren't you provided with documents that showed  
11 that she was not, in fact, claiming a  
12 life-threatening illness on the basis of mold in  
13 her house?

14 MR. SCHEUER: Same objection.

12 :31:28 15 You can answer.

16 THE WITNESS: That's absolutely not true.  
17 I might have been showed -- I think Ms. Kramer has  
18 revised the history of her suit. So I may have  
19 been shown documents to that effect, but there were  
12 :31:48 20 other documents claiming extensive injury.

21 BY MR. BANDLOW:

22 Q Don't you recall that Ms. Kramer's  
23 daughter had cystic fibrosis?

24 A Yes.

12 :32:04 25 Q And that the claim was that mold could

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1 exacerbate that particular condition?

2 MR. SCHEUER: Objection; irrelevant. That  
3 has nothing at all to do with this lawsuit, but if  
4 the witness has a recollection, he can testify.

2 :32:20 5 THE WITNESS: To the best of my  
6 recollection, the levels of mold spores indoors  
7 were equivalent to the levels outdoors, and what I  
8 said was that there was no elevated risk indoors  
9 compared to outdoors.

2 :32:44 10 BY MR. BANDLOW:

11 Q You said in your declaration "the  
12 life-threatening illnesses that she claimed" so  
13 wasn't it your statement that she was claiming life  
14 threatening illnesses because of her home?

12 :32:58 15 A Yes.

16 Q But weren't you shown documents at the  
17 time you were acting as an expert in that case  
18 that, in fact, she was not making such claims?

19 A There was a set of documents to that  
12 :33:10 20 effect and a set of documents with all sorts of  
21 strange claims that did relate to life-threatening  
22 illnesses.

23 Q But you remember seeing a document in  
24 which you believe it indicated that Ms. Kramer was  
12 :33:24 25 asserting the house could cause life-threatening

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2.

Plaintiff Counsel's Opposition To The Motion For Summary Judgment filed with the Court on March 26, 2008 Page 6 and attached Declaration of Bruce J. Kelman Page 6 stating, "She apparently felt that the remediation work had been inadequately done, and that she and her daughter had suffered life-threatening disease 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.

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1 scientific community. Dr. Kelman declined, because the amount  
2 of work that would be involved would be substantial and  
3 unjustified unless they were to be compensated. Subsequently,  
4 The Manhattan Institute offered to pay GlobalTox if it would  
5 prepare a lay manuscript that contained the same concepts as  
6 the ACOEM position statement. GlobalTox agreed, and the lay  
7 report - much less academic, and more accessible - was  
8 published by The Manhattan Institute in July, 2003. (Kelman  
9 declaration, Paragraph 8. A copy is included in Defendant's  
10 Exhibits as Exhibit F.)

11  
12 Dr. Kelman first learned of Defendant Sharon Kramer in  
13 mid-2003, when he was retained as an expert in a lawsuit  
14 between her, her homeowner's insurer and other parties  
15 regarding alleged mold contamination in her house. (Kelman  
16 declaration, Paragraph 11.)

17  
18 Kramer subsequently launched a campaign attacking  
19 GlobalTox and Dr. Kelman through various media, including the  
20 Internet.

21  
22 As is set forth below, her vicious animosity toward  
23 Plaintiffs is well-documented. She says that Dr. Kelman,  
24 Veritox and the thousands of scientists and physicians who  
25 concur with their research are killing innocent human beings.

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1 of the report we prepared for The Manhattan Institute may be  
2 found as a position statement on ACOEM's website.

3  
4 11. I first learned of Defendant Sharon Kramer in mid-  
5 2003, when I was retained as an expert in a lawsuit between  
6 her, her homeowner's insurer and other parties regarding  
7 alleged mold contamination in her house. She apparently felt  
8 that the remediation work had been inadequately done, and  
9 that she and her daughter had suffered life-threatening  
10 diseases as a result. I testified that the type and amount of  
11 mold in the Kramer house could not have caused the life-  
12 threatening illnesses that she claimed.

13  
14 12. Subsequently, I became aware that she had launched  
15 a campaign attacking GlobalTox and me through various media,  
16 including the Internet. As one example, she sent outraged  
17 emails to the American Industrial Hygiene Association  
18 ("AIHA") after they had invited GlobalTox to participate in a  
19 teleweb conference. In one such email, she wrote, "May your  
20 children rot in hell, along with all the other children you  
21 are hurting." (A copy of those emails is included in  
22 "Plaintiffs' Exhibits in Opposition to Summary Judgment"  
23 (hereafter "Plaintiffs' Exhibits") as Exhibit 201.)

24  
25 13. Furthermore, she blames me, my colleagues at  
26 Veritox and thousands of other doctors and physicians who  
27 concur with our research for killing innocent human beings;  
28

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4.

Declaration of Dr. Harriet Ammann,  
Senior Toxicologist, Washington  
State Department of Health (retired)  
dated October 21, 2008. Dr. Ammann  
was going to testify before the Court  
that Dr. Kelman could not have given  
any such testimony as claimed  
regarding the acquiring of life  
threatening illness since he is only a  
Toxicologist with a PhD who cannot  
testify about immunological illness  
from mold...only mold toxins. The  
Kramers never claimed acquired  
illness from mold toxins.

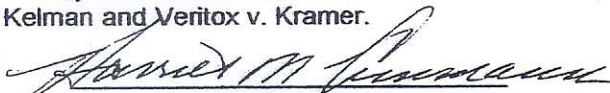
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STATE OF WASHINGTON}

COUNTY OF THURSTON} SS.:

Harriet M. Ammann, Ph.D., D.A.B.T., being duly sworn, declares and says:

1. My name is Harriet M. Ammann, Ph.D., D.A.B.T. I am certified in toxicology by the American Board of Toxicology and have worked a senior public health toxicologist for sixteen years for the State of Washington Departments of Health (12 years) and Ecology (4 years). I have also worked as the principal of Ammann Toxicology Consulting LLC, and have testified on toxic exposure and health in a number of legal cases. I have testified on issues of mold and dampness exposure and health effects as well. A copy of my Curriculum Vitae, which sets forth my education, training, qualifications and experience, publications, etc. in more detail, is annexed. As 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. Potential health effects as determined from animal and human studies can be used to predict risk and prevent exposures of communities, while health effects that occur in individuals or communities can be analyzed and related to measured environmental exposures to serve in treatment of illness, and prevention of future harmful exposures. I was a member of National Academy of Sciences, Institute of Medicine, Committee on Damp Indoor Spaces and Health, which produced the report "Damp Indoor Spaces and Health" (NAS 2004). I authored the chapter on Toxic Effects of Fungi and Bacteria, and contributed to the chapter Damp Buildings, and the chapter on Human Health Effects Associated with Damp Indoor Environments, as well as the consensus findings and conclusions of the Committee. I am a section editor for Section 1, Underlying Principles and Background for Evaluation and Control in the 2008 American Industrial Hygiene Association book Recognition, Evaluation and Control of Indoor Mold, and a contributing author to chapter 1, Indoor Mold: Basis for Health Concerns, and to Section 4, Remediation and Control.
2. I traveled to Vista California on August 19, 2008 (and returned to Washington on August 21, 2008) at the invitation of Sharon Noonan Kramer, specifically in order to testify, if called, in her trial (Kelman and Veritox v. Kramer, Case No. GIN044539), on issues related to scientific knowledge regarding exposure to dampness and mold and related 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 on testify since issues of science were not permitted to be discussed in the trial of Kelman and Veritox v. Kramer.

  
 Harriet M. Ammann

Sworn to before me this  
 21<sup>st</sup> day of October, 2008.

  
 Notary Public

Commission expires: 7-9-2012

BRENDA L. KUNKEL  
 NOTARY PUBLIC  
 STATE OF WASHINGTON  
 COMMISSION EXPIRES  
 JULY 9, 2012

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5.

Letter from Bruce J. Kelman  
dated June 22, 2002 in which  
he states a physician with  
detailed knowledge of the  
child must be consulted.

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Sampling Results:

Air sampling results (attached) show that the total levels and types of airborne mold in the occupied areas of the home were generally similar to that found outdoors. One culturable air sample, taken from the kitchen when the HVAC system was not turned on, shows that the level of total mold was similar to outside air but that the specific mold, *Penicillium*, was higher than outside air. Comparatively, when the HVAC system was later turned on, and air sampling repeated in the kitchen area, the results show that the kitchen had mold levels, including *Penicillium*, similar to the outside. The non-viable air sample results also indicate that the kitchen had similar mold types and levels to outside air. The non-viable air sample results collected near the book case between the living room and sitting area have similar proportions to the outside but show slightly higher levels. This increase is not significant, given the inherent variation in air sample results.

Conclusions:

The air sampling results suggest a potential low level source of *Penicillium* mold in the kitchen area. However, the sample that showed *Penicillium* levels higher than outside air was the first sample taken in the home (based on the numbering scheme) and, at the time of sampling, substantial dust and debris was observed, the walls and floors were not replaced, and the unit was unoccupied. Further, the second viable air sample and the two non-viable air samples that were collected in the kitchen show mold levels similar to outside and do not confirm that *Penicillium* was elevated in the kitchen. Therefore, the additional testing did not confirm elevated levels of *Penicillium*.

Mr. Cohen's measurements indicate that there does not appear to be a greatly increased level of risk over outside air for occupants of this building. A physician, with detailed knowledge of the clinical condition of the child involved, must be consulted for specific determination of the safety of this environment for this patient.

Sincerely,

GlobalTox, Inc.

Bruce Kalman, Ph.D., DAET  
Principal

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6.

Deposition of Bruce J. Kelman,  
October 1, 2003, Page 46 and 92 in  
which he states as a toxicologist, he is  
not qualified to testify about the  
safety of the home for one with  
ABPA and Cystic Fibrosis and that a  
physician with detailed knowledge  
must be consulted to determine the  
safety of the home.

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1 pulmonologist, but I need to go back to confirm that.  
2 MR. RICHARDS: I'm going to hand you what  
3 I'm going to mark as Exhibit A to the deposition.  
4 (Exhibit A marked)

5 BY MR. RICHARDS:

6 Q It's a July 15th letter. Would you take an  
7 opportunity to just review that.

8 A (Complies) Yes. That's the one I  
9 received -- the letter part is. I don't think I  
10 received the attached material.

11 Q Did you consider that letter when you formed  
12 your opinions with respect to this case?

13 A From the standpoint of the toxicology?

14 A Yes.

15 Q Yes.

16 A This doesn't address the toxicology.

17 Q Did this letter affect your opinions in any  
18 way in this case?

19 A Not with regards to the toxicology.

20 Q You were asked to form an opinion from the  
21 letter we looked at initially about whether or not the  
22 home was habitable for the Kramers and/or Erin Kramer  
23 is that accurate?

24 A The initial letter asked about the safety,  
25 if I remember correctly.

1 Q Did you consider that letter with respect to  
2 making any opinions about safety issues in this case?

3 A My opinions would have been with regard --  
4 in two areas: one is the potential for mycotoxicosis.  
5 The other would be relative exposure. In other words,  
6 was I looking at numbers which could introduce a risk  
7 that exceeded what would be found in a -- any other  
8 places that she was likely to be? But specifically  
9 with regard to ABPA, that would not be a consideration  
10 I would give as a toxicologist.

11 Q You wouldn't feel qualified to give that?

12 A That's correct.

13 Q Can I see this letter?

14 Were you aware that Dr. Hicks is a doctor  
15 who was retained to give expert opinion for the defense  
16 in this matter?

17 A Actually, I don't -- no. I was not. I  
18 didn't know what his purpose was.

19 Q He goes on to state that, "Even though the  
20 remediation seems to have -- may have lessened the  
21 fungi levels in her house, it is entirely  
22 possible/plausible that small amounts of fungi could  
23 have so affected her to cause an exacerbation of her  
24 underlying ABPA."

25 Did you read that?

1 A Um, I don't remember if it's in the letter.  
2 I did.

3 Q Did you ever form the opinion that Erin  
4 Kramer suffered an exacerbation of her ABPA after the  
5 October, 2001, water loss was discovered?

6 A I would not have addressed ABPA directly  
7 other than whether her exposure would have put her at  
8 more risk than other areas. So, again, that's an  
9 allergic reaction.

10 Q So in addressing the safety issues, you  
11 didn't consider or weren't qualified to consider her  
12 allergic response to ABPA?

13 A Not beyond what she would be exposed to in  
14 any other environment.

15 Q Is that house currently safe for Erin Kramer  
16 to go back into?

17 A From the standpoint of potential  
18 mycotoxicosis, yes.

19 Q What about from the standpoint of her  
20 allergy to the species and the genus aspergillus?

21 A I'm not an immunologist so -- again, other  
22 than saying that her relative exposure there compared  
23 to outdoors in that area, compared to other activities  
24 going on in the area, compared to what she might  
25 encounter in the school -- the numbers that I see

1 certainly are not very high, but that's as far as I can  
2 go as a toxicologist.

3 Q And you have no opinion about her  
4 immunological or allergic response to that particular  
5 house?

6 A Well, we have the allergy reports. And I  
7 can -- as an immuno -- with a background in  
8 immunotoxicology, I can read the allergy reports, but  
9 in terms of the mechanism and clinical sequelae of  
10 ABPA, that's not an area of my expertise.

11 Q You were asked to go to that residence and  
12 determine whether from a mycotoxin standpoint it was  
13 safe for the Kramer family to go back in the house.  
14 Would that be accurate?

15 A No.

16 Q All right.

17 What were you asked to do with respect to  
18 determining the safety of the house if not from a  
19 mycotoxin perspective?

20 A I was not asked to go to the house. I was  
21 asked to evaluate data that had been produced from  
22 measurements at the house.

23 Q You've never been at the house?

24 A That's correct.

25 Q You were asked to review data, to determine

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1 can look, but I don't remember.  
 2 Q Why don't you take a look for me in the  
 3 January 7th Pitt analysis versus the Cohen analysis and  
 4 tell me how they're different and how they're similar.

5 A The first most obvious thing is that the  
 6 Cohen sampling is much more extensive. It includes  
 7 both cultured samples and noncultured samples. The  
 8 information I had about how the samples were taken and  
 9 the conditions under which they were taken is much more  
 10 extensive.

11 The analyses in Cohen's case were done by an  
 12 accredited laboratory. And I do not believe that's  
 13 true for the Pitt laboratory samples. If we are to say  
 14 that somehow they're equivalent, in general, the Cohen  
 15 measurements tend to be significantly less.

16 It's clear that there's some minor  
 17 differences in percentages, but they aren't enormous in  
 18 terms of looking at the percentage for each of the  
 19 major genuses that are present.

20 Q You stated that the Cohen records tend to be  
 21 significantly less than what it appears to be in the  
 22 Pitt report of January 7th, 2002; is that accurate?

23 MR. SCHAFFER: Results, not records.

24 BY MR. RICHARDS:

25 Q Results.

1 So it's a little bit of a -- I can't tell if  
 2 they used equivalent techniques. They certainly didn't  
 3 use the same laboratories to do the analyses. The use  
 4 of an accredited laboratory is very important because,  
 5 one, you get documented consistency. And the other is  
 6 you don't have a potential conflict between the person  
 7 taking the measurements and the person reading the  
 8 measurements.

9 Q Do you feel, then, an explanation is the  
 10 Pitt Labs are just inaccurate?

11 A I can't tell. It's either that the Pitt  
 12 Labs used a different technique -- it could be that the  
 13 people doing the analyses count differently since the  
 14 Pitt lab is not accredited, I'm not sure who's looking  
 15 at it and how they arrive at their conclusion.

16 And it's entirely possible that the spore  
 17 counts were significantly lower -- it's a different  
 18 time of year, different level of moisture, indoors and  
 19 outdoors. I don't -- in August -- this August, I  
 20 believe it was dry. In January, 2002, I don't remember  
 21 whether it was wet or not.

22 All of those things would -- could influence  
 23 the indoor measurements.

24 Q You go on to state in your report that  
 25 Mr. Cohen's measurements indicate that, "There does not

1 A Yeah. They tend to be.

2 Q Do you know what work, if any, was done  
 3 between the time of January 7th, 2002, and the June  
 4 Cohen testing to reduce airborne spore counts in the  
 5 Kramer residence?

6 A I don't remember at the moment.

7 Q I'll represent to you for the purposes of  
 8 the question that no work had been done between January  
 9 and the time of the Cohen testing.

10 And given that, can you explain to me how  
 11 the spore count in the Kramer residence could be  
 12 significantly lower than it was in January?

13 A Um, sure.

14 First of all, we've got only two samples.  
 15 So there's no way of determining the amount of  
 16 variation that was going on as a result of the sampling  
 17 itself. Also, I have no idea how Pitt took the  
 18 samples. So he may have introduced some energy into  
 19 the house just by the number of people that were  
 20 present or how they walked through the house that was  
 21 different than the measurements taken by the Cohen  
 22 Group.

23 The other thing is that if the water sources  
 24 had -- were no longer as active and the mold growth had  
 25 gone down, you'd expect to see lower measurements.

1 appear to be a greatly increased level of risk over  
 2 outside air for the occupants of this building."

3 Do you remember writing that?

4 A I don't remember writing it, but if it's in  
 5 the report, I wrote it.

6 Q What do you mean "does not appear to be  
 7 greatly increased level of risk"? Are you stating that  
 8 there's potential for some risk?

9 A Well, there's always a potential for some  
 10 risk whether you're indoors or outdoors. The  
 11 comparison here is that you don't have significantly  
 12 increased levels in the house compared to outdoors.

13 Q A physician with detailed knowledge of the  
 14 clinical condition of the child must be consulted for a  
 15 specific determination of the safety of this  
 16 environment.

17 Do you still agree with that?

18 A Yes.

19 Q Have you ever seen any report from any  
 20 physician in this case regarding health risks  
 21 associated with Erin Kramer and exposure in that house?

22 A I saw a report eventually from  
 23 Dr. Marinkovich. And I recently -- a few -- yesterday  
 24 or the day before -- got a deposition from Dr. Conrad.

25 Q In fact, in that volume you're looking at

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7.

Defense order neurospsych exam of  
Kramer, report issued on  
September 25, 2003. Pages 2 and 6 in  
which Kramer is discussing that she  
and her daughter were not claiming to  
have acquire life threatening disease  
from the home. Therefore, Kelman  
could have never given the testimony  
he repeatedly claimed in this case  
while under penalty of perjury.

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Ms. Kramer stated that all of these symptoms which she explained as being "fairly resolved" or "now back to normal" have the qualification that they could become worse again when she is exposed to excessive mold levels. So, any of these symptoms, even though she is not experiencing them under normal conditions, may recur when she is exposed to higher than normal levels of mold. This happens in her life frequently because she is a real estate agent and is going into new houses routinely.

Dr. Marinkowich, Her physician, told her that it may be 2-5 years before she is completely back to normal.

#### MEDICAL HISTORY:

Ms. Kramer stated that she has no history of significant medical illness or disease, no major surgeries, and no other significant injury, trauma, or medical insult in her life. When she was a child in kindergarten she tended to be somewhat sickly and missed a lot of school. However, she was okay after her year of kindergarten. She feels that was probably due to the fact that she did not go to preschool and then had to encounter all of the typical childhood illnesses when she was in kindergarten. She states that in 8<sup>th</sup> grade she was found to be anemic and received vitamin B12 shots for about a year. That condition seemed to resolve, and ever since then, she has been in good health.

Ms. Kramer has never needed to use prescription medications on an ongoing basis prior to her exposure to mold. Since the exposure to mold, she is now using prescription medications regularly. Her medications currently include the following:

1. Itraconazole, generic for Sporanox, an antifungal, 400 mg daily.
2. Nizoral nasal spray, 2-4 times daily.
3. Creon, a pancreatic enzyme, 1-2 with meals.
4. Atarax, an antihistamine, when she feels that her symptoms are acting up.

She also uses also Benadryl tablets, which is an over-the-counter medication. She has no history of using substances such as marijuana, amphetamines, cocaine, heroin, hallucinogens, etc. She has used alcohol socially during her adult life and estimates that she consumes probably about 12 ounces of alcohol per month.

She began smoking cigarettes at age 15 and has continued to the present time. She states that she quit during her pregnancies and also quit for a couple of years during her late 30s or early 40s. Typically she smokes about a half-pack of cigarettes daily, but sometimes, especially when she is under stress, she smokes up to a pack per day.

She states that she has no history of treatment or consultation with mental health professionals or no history of psychological or emotional conflicts, with one exception. In 1988, she had one meeting with a psychiatrist when her daughter Erin was diagnosed with cystic fibrosis. She

### CONFIDENTIAL PATIENT INFORMATION

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**BACKGROUND INFORMATION:**

Ms. Kramer reported that in October, 2001, a leak was discovered behind the refrigerator in her home. Mold was found to be at the site of her leak, and she hired a company to remove the mold and fix the leak. She stated that it was not fixed according to proper procedures, and the mold became aerosolized or spread throughout the breathing environment of everyone in the home. She stated that later she learned that when mold is not removed properly that it can actually make the problem worse rather than solving it.

Ms. Kramer stated that she began having symptoms such as coughing, feeling disoriented, and anxious. Her daughter, Erin, who has cystic fibrosis, began also experiencing exacerbation of her condition. She developed ABPA, which is an acronym for allergic bronchopulmonary aspergillosis, and she stated that aspergillus was found in the mold. (Ms. Kramer clarified that her daughter already had ABPA before the mold developed in October 2001.) Her 17-year-old daughter Megan developed sinus infections and had never previously had sinus infections. She stated her husband had irritable sinus symptoms. Additionally, they have 2 cats, and one of the cats developed a lump on its neck which is now resolved. They also have 2 dogs, and one dog had tremors around the time they moved out of the house.

Ms. Kramer and her family decided to move out of the house during the time that the remediation company was fixing the mold problem, which was the early part of December, 2001. The company did not fix the problem in a timely way, and consequently, the family had to move back into the house even before the problem was fully repaired. They moved back into the house during the latter part of December. She stated it was a pretty horrible situation because the mold was still present in the air and they were still being all exposed to it. Finally, they moved permanently out of the house on or around January 06, 2002. After they had moved back into the house in late December, their daughter with cystic fibrosis did not move back into the home; rather she stayed in the motor home outside the house. When they moved back into the home in later December, she and her family were not aware that they were still being exposed to the mold because there was plastic protection, which they believed was protecting them from mold exposure.

Ms. Kramer stated that she feels very regretful she ever called this remediation company to remove the mold. She said the bottom line is that they used many procedures which were not technically and professionally correct; and that resulted in her and her family's being exposed to mold at much greater levels than would have ever happened if she had never called the company in the first place. She stated that she is not regretful that she wanted to do something about the mold, but remains regretful that she was told that this company was the one to call.

**CONFIDENTIAL PATIENT INFORMATION**

Received Oct-06-2003 05:05pm  
Page 2

From-Thomas Weisman, Ph.D.  
EXH 0073

To-Gordon & Ross LLP Date 000

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8.

Declaration of John Richards,  
October 28, 2008, the attorney who took  
Kelman's deposition in 2003, stating that  
Kramer never claimed to have acquired  
life-threatening illness and that he is not  
aware she has ever "launched into an  
obsessive campaign to destroy the  
reputation" of any of the other seven  
defense experts in the case as was  
claimed she did to Kelman by Plaintiff  
Counsel's briefs while repeating false  
testimony of Kelman under penalty of  
perjury.

00001008

**SHARON NOONAN KRAMER, PRO PER**

2031 Arborwood Place  
Escondido, CA 92029  
(760) 746-8026  
(760) 746-7540 Fax

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO, NORTH DISTRICT**

**BRUCE J. KELMAN,**

**Plaintiff**

v.

**SHARON KRAMER,**

**Defendant.**

**CASE NO. GIN044539**

**Declaration Of John Richards In  
Support of Defendant**

**Assigned for All Purposes To Hon.  
Lisa C. Schall, Department 31**

**Motion Hearing Date: December  
12, 2008**

1. My name is John T Richards. I am an attorney licensed to practice law in the State of California.

2. In 2003, I represented the Kramer family as co-counsel in the case of Mercury vs. Kramer, GIN)24147, San Diego Superior Court, North County Division, Honorable Judge Michael P. Orfield presiding.

3. On October 3, 2003, I took the deposition of Bruce J. Kelman of GlobalTox, Inc. Dr. Kelman is a toxicology who holds a PhD but not a medical degree. He had been retained as an expert witness for Mercury Insurance. This was the only time Dr. Kelman was deposed in the case.

1.


Declaration of John T. Richards, Esq., In Support of Defendant

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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.

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.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this Declaration was executed by me on this 20<sup>th</sup> day of October, 2008 in San Diego, California

  
\_\_\_\_\_  
John T. Richards, Esq

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Plaintiff Counsel's Opposition to the anti-SLAPP motion, September 16, 2005 and attached Declaration of Bruce J. Kelman, September 13, 2005. Page 5, Plaintiff Counsel writes, "Dr. Kelman testified in a deposition that the types 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 dearms of a remodeled house, Kramer launched into an obsessive campaign to destroy the reputation of Dr. Kelman and GlobalTox."

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1 water line to an icemaker in Kramer's home sprung a small  
2 leak. Her homeowner's insurer paid to fix the leak and  
3 remediate the localized mold contamination. Kramer contended  
4 that the remediation had been incompetently performed, that  
5 she and her daughter had contracted life-threatening diseases  
6 as a result, and that her insurance company consequently  
7 should pay to rebuild her home. Mercury Insurance v. Kramer,  
8 etc., et al., San Diego Superior Court case no. GIN024147.  
9

10 Dr. Kelman testified in a deposition that the type and  
11 amount of mold in the Kramer house could not have caused the  
12 life-threatening illnesses that Kramer claimed.  
13

14 Apparently furious that the science conflicted with her  
15 dreams of a remodeled house, Kramer launched an obsessive  
16 campaign to destroy the reputation of Dr. Kelman and  
17 GlobalTox.

18 The internet provided an ideal outlet for her obsession.  
19 She has posted numerous invectives, diatribes and pseudo-  
20 scientific harangues in which she attacked Dr. Kelman and  
21 GlobalTox by name, as well as many other respected  
22 physicians, researchers, government leaders and scientific  
23 organizations that dare to disagree with her. Matters came to  
24 a head in March, 2005, when she posted press releases on  
25 ToxLaw.com and ArriveNet.com (and perhaps other message  
26 boards and websites) to the effect that Dr. Kelman was  
27  
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1 to those of the ACOEM study, but it was presented in a much  
2 less academic, more accessible manner.

3 8. I first learned of Defendant Sharon Kramer in mid-  
4 2003, when I was retained as an expert in a lawsuit between  
5 her, her homeowner's insurer and other parties regarding  
6 alleged mold contamination in her house. She apparently felt  
7 that the remediation work had been inadequately done, and  
8 that she and her daughter had suffered life-threatening  
9 diseases as a result. I testified that the type and amount of  
10 mold in the Kramer house could not have caused the life-  
11 threatening illnesses that she claimed. I never met Ms.  
12 Kramer.  
13

14 9. Subsequently, I became aware that she had launched  
15 a campaign attacking GlobalTox and me through the internet.  
16 As one example, she sent outraged emails to the American  
17 Industrial Hygiene Association ("AIHA") after they had  
18 invited GlobalTox to participate in a teleweb conference. In  
19 one such email, she wrote, "May your children rot in hell,  
20 along with all the other children you are hurting." A copy of  
21 those emails is attached hereto as Exhibit 4.  
22

23 10. In or about March, 2005, I learned that she had  
24 posted false press releases on ToxLaw.com and ArriveNet.com  
25 that stated that I had "altered [my] under oath statements"  
26 while I testified as a witness in an Oregon lawsuit; i.e.,  
27  
28

DECLARATION OF BRUCE J. KELMAN IN OPPOSITION TO DEFENDANT'S  
MOTION TO STRIKE

HP LASERJET FAX Apr 12 2006 7:26AM

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14. My professional and personal reputation, as well as  
the business of GlobalTox, were built with many years of hard  
work. They will be substantially harmed unless Kramer is held  
accountable for her false and malicious accusations.

6  
7  
I declare under penalty of perjury under the laws of the  
State of California that the foregoing is true and correct.

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Executed on September 12, 2005 at McAllen, Texas.

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Bruce J. Kelman

DECLARATION OF BRUCE J. KELMAN IN OPPOSITION TO DEFENDANT'S  
MOTION TO STRIKE

Sep 14 2005 10:46AM VERITOX AND GI ENGINEERIN 425556555

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## Declaration of Kramer,

September 21, 2005 Page 8, "Although very sick, I never claimed I had a life threatening illness. My daughter has always had the life threatening illness of CF. We ultimately received a fairly sizable settlement from all three defendants in the case." Page 9, "He had sent a letter in 2002, before litigation even began, stating that he could not say whether our house was safe or not for our daughter and we should consult our physician. Kelman is a toxicologist.

He is self described as not an expert in immunology. We never made a claim of toxicity. What Kelman's involvement was in our personal case, was minimal." "For Shurer to maliciously and falsely portray me as being one obsessed to get revenge as my motivation for bringing to light the deceptive manner in which the mold issue is being handled, is a ludicrous claim. Particularly when he does not even have the facts straight that support this fairy tale."

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

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

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

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

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

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

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

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11.

The Court's Tentative Ruling,  
October 4, 2005, ignoring (or not  
understanding or not caring) that false  
testimony was being given by  
Plaintiff and Plaintiff Counsel as a  
reason for malice and the future  
impact it would have on the case.

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The following is a TENTATIVE ruling for 10/5/2005,  
Department 28, the Honorable Michael B. Orfield presiding.

Case Number GIN044539

The Motion of Defendant SHARON KRAMER to Strike the Complaint of Plaintiffs BRUCE KELMAN and GLOBALTOX, INC. under CCP 425.16 (anti-SLAPP legislation), is denied. The court finds:

1. This libel action is generally one to which the SLAPP legislation applies;
2. Defendant has sustained her burden of proof to show that this cause of action arises out of constitutionally protected speech within the meaning of CCP 425.16(e)(2), (e)(3), and (e)(4). Evidence: Declaration of Kramer, authenticating Exhibits 1 and 5; Opposition Declaration of Kelman, authenticating Exhibits 5, 6, and 7).
3. However, Plaintiffs have sustained their burden of proof to establish a "probability" that they will prevail on their sole cause of action for Libel (per Se), as follows:
  1. There is admissible evidence that Kramer made a statement to persons other than Kelman in a press release on 2 internet sites (Declaration of Kelman, Exhs. 5 and 6);
  2. There is admissible evidence that those reading the internet press releases reasonably understood that the statement was about Kelman as he is mentioned by name (Id.);
  3. There is admissible evidence that those reading the internet press releases reasonably understood the statement to mean that Kelman had committed perjury or lied about a subject to which he was testifying as an expert. (Decl. of Kelman, Exhs, 5, and 6 as compared to Exhibit 7). The court finds that the gist of the statement was that Kelman either committed perjury in his 2/18/05 testimony in the case of Haynes v. Adair; that he was lying about a subject related to his profession; or that he accepted a bribe from a political organization to falsify a peer-reviewed scientific research position



statement;

- 4. There is admissible evidence that the statement was false. (Declaration of Kelman, ¶s 4-7, and Exhibit 7). The court finds that there is sufficient evidence for a jury to determine that Kelman was clarifying his testimony under oath, not altering it;
- 5. There is admissible evidence from which a jury could find that Defendant Kramer was acting out of malice:
  - a. The transcript (Exhibit 7 to the opposition) as compared to the press release (Id, Exh. 5 & 6);
  - b. The use of the phrase "altered his under oath testimony" (Exhibits 5 and 6), an arguably suspect turn of phrase;
  - c. The dates of the papers involved and Kramer's admitted knowledge of same (Exhibits 5, 6 and the Declaration of Kramer in Reply, ¶19);
  - d. Kelman's explanation of the series of events in his 2/18/05 testimony;
  - e. The statements in Exhibit 4 of the opposition, in which Kramer states "...May your children rot in hell..." directed at an organization whom she accused of "affiliating" with "the ilks [sic] of GlobalTox;
  - f. The general tone of Kramer's declarations in support and reply as related to Kelman and GlobalTox;

The above could constitute sufficient circumstantial evidence to lead a jury to a determination of malice.

Based on the foregoing, the court denies the Defendant's Motion to Strike pursuant to CCP 425.16.

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As to the Evidentiary Objections the court rules as follows:

- o The Plaintiff's Evidentiary Objections to the Declaration of Sharon Kramer are sustained on each of the grounds stated except "relevancy" as to Objections 2-6 and 8-12.
- o The Plaintiff's Evidentiary Objection No. 1 to the Declaration of Sharon Kramer is overruled.
- o The Plaintiff's Evidentiary Objection No. 7 to the Declaration of Sharon Kramer is sustained with the exception of the testimony at p. 12:1 – 13:2, and at p.14:10-14.

Defendant's request for attorney's fees and costs is denied at this time.

Defendant shall answer the complaint within 20 days of the date of this ruling.

#### Oral Argument Policy

If there is no appearance by any party at the scheduled motion hearing on Wednesday, the tentative ruling will become the final ruling. If parties wish to appear and argue against all or any portion of the tentative ruling, no pre-hearing notice is required to opposing parties or to the court. However, if the tentative ruling is against you, but you have decided not to appear at the Friday hearing, the court would appreciate your informing all other parties and the court, so as to eliminate needless appearances. At the Wednesday hearing, if you are arguing against any portion of the tentative ruling, please fill out the check-in sheet informing the court of the issues you wish to argue and your time estimate.

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10/4/2005  
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Appellate Brief, Plaintiff Counsel  
dated May 8, 2006 in which he writes  
on Page 4,

“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. (Appendix, page  
358.) Apparently furious that science  
conflicted with her dreams of a  
remodeled house, Kramer launched an  
obsessive campaign to destroy the  
reputation of Dr. Kelman and  
GlobalTox.”

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a report that presented the same conclusions as the ACOEM study but in less academic, more accessible language. (Among many other changes, it omitted most of the 83 footnotes of the ACOEM study). That lay report was published by The Manhattan Institute in July, 2003. (Appendix, pages 357-358, 385 - 411.)

Dr. Kelman first learned of Kramer when he was retained as an expert in a lawsuit between Kramer, her homeowner's insurance company and other parties that had provided services to Kramer. To summarize briefly, in 2001 a water line to an icemaker in Kramer's home sprung a small leak. Her homeowner's insurer paid to fix the leak and remediate the localized mold contamination. Kramer contended that the remediation had been incompetently performed, that she and her daughter had contracted life-threatening diseases as a result, and that her insurance company consequently should pay to rebuild her home. Mercury Insurance v. Kramer, etc., et al., San Diego Superior Court case no. GIN024147.

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. (Appendix, page 358.)

Apparently furious that science conflicted with her dreams of a remodeled house, Kramer launched an obsessive campaign to destroy the reputation of Dr. Kelman and GlobalTox.

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13.

William J. Brown's application for the Appellate Court to take judicial notice that false testimony was being presented to them on the issue of malice, dated June 29, 2006.

"The deposition testimony of Bruce Kelman in the Mercury v. Kramer case reveals that he could not testify about health effects of mold exposure regarding Erin Kramer, Defendant's daughter. The settlement documents in the same case show that there was a substantial settlement which occurred on October 0f 2003, thus impeaching Plaintiffs' thesis of a bitter sour-grapes litigant, and impeaching Bruce Kelman's declaration in opposition to the 425.16 motion."

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**DECLARATION OF WILLIAM J. BROWN III**

I, William J. Brown III, hereby declare that I am the attorney of record for the Defendant/  
Appellant in the within action. As such, if called as a witness, I could and would of my own  
personal knowledge testify to the following:

1. The deposition testimony of Bruce Kelman in the Mercury v. Kramer case reveals that he could not testify about health effects of mold exposure regarding Erin Kramer, Defendant's daughter.

2. The settlement documents in the same case show that there was a substantial settlement which occurred on October 0f 2003, thus impeaching Plaintiffs' thesis of a bitter sour-grapes litigant, and impeaching Bruce Kelman's declaration in opposition to the 425.16 motion.

3. The testimony of Hardin in the O'Hara case shows that he is a principal and a shareholder in GlobalTox/ Veritox.

4. The deposition of Bruce Kelman in the ABAD case shows that there are six principals in Veritox.

5. The motion under Kelly-Frye in the Harold case shows that Coreen Robbins is yet another principal in GlobalTox/ Veritox and that relying on one rat study to extrapolate a conclusion regarding health risks in humans is not scientifically supportable.

6. The Court's ruling on the Kelly-Frye hearing regarding Coreen Robbins professed testimony in the Harold matter concludes that:

THE COURT: I can. With regard to Dr. Robbins relying upon her literature review and then jumping to animal studies and then jumping to modeling conclusions, my ruling there is she will not be allowed to present that. There is not a generally accepted view of that particular approach in the scientific community and so therefore

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William J. Brown III (Bar No. 86002)  
P.O. Box 231216  
San Jose, California 92023-1216  
(408) 334-3800  
(408) 334-3815 Fax

Attorneys for Defendant/ Appellant  
ARON KRAMER

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT- DIVISION ONE

BRUCE KELMAN, GLOBALTOX, INC.,  
Plaintiffs and Respondents,  
v.  
ARON KRAMER,  
Defendant and Appellant.

) Appellate Case No.: D047758  
) Superior Court Case No.: GIN044539  
)  
) APPLICATION AND REQUEST FOR AN  
) ORDER THAT THE COURT OF APPEAL  
) TAKE JUDICIAL NOTICE;  
) DECLARATION OF WILLIAM J. BROWN  
) III; MEMORANDUM OF POINTS AND  
) AUTHORITIES; PROPOSED ORDER  
)  
)  
)  
)

COMES NOW APPELLANT, through her attorney of record, who requests that the  
Court take judicial notice pursuant to Evidence Code section 452(d), 455, and 459 of the  
following documents:

1. The deposition transcript of Bruce Kelman from the Mercury v Kramer action,  
case number GIN024147 at pages 45:20-25, 46: 8-12, 102, 103 and 107.
2. Settlement documents from the Court file of the Mercury v Kramer action dated  
October, 2003 and indicating court recorded \$450,000 settlement to the Kramers.  
Honorable Judge Michael P. Orfield presiding.

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14.

The Appellate Court refused to take judicial notice of the false testimony being presented before them on the issue of malice. Appellate Court ruling dated November 16, 2006 stating on Page 7, "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."

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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.<sup>3</sup>

## DISCUSSION

### I

#### *Anti-Slapp Law*

"Section 425.16, known as the anti-SLAPP statute, permits a court to dismiss certain types of nonmeritorious claims early in the litigation." (*Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.)

In determining whether a motion to strike should be granted under the anti-SLAPP statute, "[f]irst, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (§ 425.16, subd. (b)(1).) 'A defendant meets this burden by demonstrating that the act underlying plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (b)(1)'" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) Among the categories spelled out in section 425.16, subdivision (e) are: "any written or oral statement or writing made in a public place open to the public or a public forum in connection with an issue of public interest" and an "act in furtherance of a person's right of petition or free

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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 court.

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15.

The Deposition of Kelman,

December 20, 2007, Page

108 “Do you recall if Miss

Kramer made a claim of

toxicity?” “At this point I

don't remember.”

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1 opinions that -- that relate more to a general  
2 population versus someone with an underlying condition  
3 like cystic fibrosis; correct?

4 A No.

5 Q Okay. Do you -- do you recall if Miss Kramer  
6 made an allegation of toxicity in her lawsuit?

7 A At this point I don't remember.

8 Q Did you evaluate a neuropsychological report  
9 done on Miss Kramer prior to your deposition testimony?

10 A At this point I don't remember.

11 Q And you don't recall that in -- seeing in a  
12 neurological report that Miss Kramer was, in fact,  
13 claiming that any health symptoms or conditions were  
14 back to normal and resolved?

15 A I don't remember.

16 Q Prior to the press release, had you seen other  
17 writings regarding the mold issue that had been done by  
18 Sharon Kramer?

19 A I don't remember specifically. I really wasn't  
20 paying attention to it.

21 Q Do you recall Sharon Kramer speaking at  
22 mold-related conferences which you also spoke at prior  
23 to the press release?

24 A No.

25 Q Okay. In the Haynes case, is it correct that

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16.

Deposition of Kramer, January 3, 2008 in which she and

Plaintiff Counsel were discussing the impact the false testimony repeatedly ratified by Plaintiff Counsel's briefs was having on the case. Page 92 to 94. "...just to the best of your recollection, why you wrote: 'If I have to be back to the lower court, Orfield, I will never get a fair trial.'"

"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....you furthered that lie and you parroted it in a brief ....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 relevance, it was a perjurious lie, but once that concept is set in a judge's mind it's difficult to change that."

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92 1 and gave him the wrong perception that I would  
2 have malice based on the fact that Dr. Kelman had  
3 testified as some great expert in my underlying  
4 case with Mercury.

5       Actually, I have a -- let me quote  
6 verbatim for you why I felt that way.

7       Q No. I want your testimony.

8       A Then I'm sorry, I can't -- it's  
9 difficult for me to answer your question to the  
10 best of my ability without being able to give you  
11 exact quotes, which I'm perfectly willing to do  
12 if you will allow me to.

13       Q No. As we sit here I want your best  
14 recollection, without notes, without prompting,  
15 just your best recollection, why you wrote:

16       "If I have to be back to the lower  
17 court, Orfield, I will never get a  
18 fair trial."

19       A Because in Dr. Kelman's declaration as  
20 to why I would have malice against him he lied  
21 under penalty of perjury, he led the lower court  
22 and the appellate court, I guess, to believe that  
23 he had testified my daughter and I could not have  
24 experienced the life-threatening illnesses we  
25 claimed.

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1 We never claimed that, so he never  
2 testified to that.

3 We actually have documentation of  
4 where he said a physician with detailed knowledge  
5 of the child should be consulted, and I also have  
6 from his deposition in the Mercury Vs. Kramer  
7 case where he -- the plaintiff attorney asked him  
8 so with regard to ABPA -- that stands for  
9 allergic bronchopulmonary aspergillosis, which is  
10 what my daughter has -- you would not be  
11 qualified to give that testimony, and Dr. Kelman  
12 answered yes, that's correct.

13 So the information that he provided to  
14 Orfield was -- it was a lie, it was perjurious as  
15 to why I would have malice.

16 And then you in your -- what is it  
17 called -- the brief -- I guess they call them --  
18 you furthered that lie and you parroted it in a  
19 brief and you also wrote in there that I was a  
20 sour grapes litigant who only wanted to get my  
21 house remodeled, which couldn't be any further  
22 from the truth, we received a sizeable settlement  
23 and we were not concerned about getting our house  
24 remodeled, but the concept --

25 I'm a marketing person, I understand

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1 concepts, the concept set in Judge Orfield's mind  
2 was that I was a sour grapes, vindictive, little  
3 mold woman who did not get my house fixed because  
4 Kelman was a great expert who testified, when in  
5 fact he didn't testify in our case of anything of  
6 any relevance, it was a perjurious lie, but once  
7 that concept is set in a judge's mind it's  
8 difficult to change that.

9 Does that answer your question?

10 Q So that's why you think you will never  
11 get a fair trial?

12 A With Orfield. At that point I didn't  
13 believe I would, I am feeling more confident now  
14 that I actually have Mr. Bandlow here, a libel  
15 attorney, to assist me.

16 Q So now you think you may get a fair  
17 trial?

18 A I hope.

19 Q And then in the top part of Exhibit  
20 102 there is a response from Orlawman1, is it  
21 your understanding that that's Kelly Vance?

22 A Yes.

23 Q You ever seen this e-mail before?

24 A I'm sure that I have.

25 Q Near the bottom of it he says:

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17.

Declaration of Kramer in support of the motion for summary judgment, dated January 24, 2008. Page 13, "Earlier in the present case, when Kelman opposed the Anti-SLAPP motion that my former counsel filed, Kelman asserted that I held personal malice for him by falsely stating in his declaration that: .....I testified that the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed.....

However, as noted above, Kelman gave no such testimony in my family's case against Mercury Casualty, nor were we sour grapes litigants as portrayed to this court by Kelman's attorney.....

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1 See letter dated July 23, 2002, from Kelman to David Schaffer, a true and correct copy of which  
2 is filed herewith as Ex. "P" (emphasis added).

3 21. Earlier in the present case, when Kelman opposed the Anti-SLAPP motion that my  
4 former counsel filed, Kelman asserted that I held personal malice for him by falsely stating in his  
5 declaration that:

6  
7 I first learned of Defendant Sharon Kramer in mid-2003, when I was  
8 retained as an expert in a lawsuit between her, her homeowner's insurer  
9 and other parties regarding alleged mold contamination in her house. She  
10 apparently felt that the remediation work had been inadequately done,  
11 and that she and her daughter had suffered life-threatening diseases as a  
12 result. I testified that the type and amount of mold in the Kramer house  
13 could not have caused the life-threatening illnesses that she claimed.

14 See Declaration of Bruce J. Kelman filed herein on 9/16/05, ¶ 8 (emphasis added). However, as  
15 noted above, Kelman gave no such testimony in my family's case against Mercury Casualty, nor  
16 (having won a very substantial settlement) were we sour grapes litigants as portrayed to this Court  
17 by Kelman's attorney, who argued:

18 Dr. Kelman testified in a deposition that the type and amount of  
19 mold in the Kramer house could not have cause the life-threatening  
20 illnesses that Kramer claimed.

21 Apparently furious that the science conflicted with her dreams of a  
22 remodeled house, Kramer launched an obsessive campaign to destroy the  
23 reputation of Dr. Kelman and GlobalTox.

24 See Plaintiff's Opposition to Motion to Strike filed herein on 9/16/05 at 5 (emphasis added). This  
25 argument is both incorrect and unsupported, and may well reflect Kelman's outlandish assertion  
26 that "attorneys are under no obligation to tell the truth." See Kelman Depo. (Ex. "M") at 136:1-  
27 12. In fact, I do not harbor any personal animosity or other thoughts about Kelman. More to the  
28 point, I certainly in no way harbor "malice" as a legal matter, as my Press Release was not  
LLP knowingly or recklessly false; to the contrary, as is described above, the Press Release is true and

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18. (repeat of 2.)

Plaintiff Counsel's Opposition To the Motion for Summary Judgment filed with the Court on March 26, 2008 Page 6 and attached Declaration of Bruce J. Kelman Page 6 stating, "She apparently felt that the remediation work had be inadequately done, and that she and her daughter had suffered life-threatening diseas as a result. I testified that the types and amount of mold in the Kramer house could not have cause the life-threatening illnesses she claimed."

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1 of the report we prepared for The Manhattan Institute may be  
2 found as a position statement on ACOEM's website.

3 11. I first learned of Defendant Sharon Kramer in mid-  
4 2003, when I was retained as an expert in a lawsuit between  
5 her, her homeowner's insurer and other parties regarding  
6 alleged mold contamination in her house. She apparently felt  
7 that the remediation work had been inadequately done, and  
8 that she and her daughter had suffered life-threatening  
9 diseases as a result. I testified that the type and amount of  
10 mold in the Kramer house could not have caused the life-  
11 threatening illnesses that she claimed.  
12

13 12. Subsequently, I became aware that she had launched  
14 a campaign attacking GlobalTox and me through various media,  
15 including the Internet. As one example, she sent outraged  
16 emails to the American Industrial Hygiene Association  
17 ("AIHA") after they had invited GlobalTox to participate in a  
18 teleweb conference. In one such email, she wrote, "May your  
19 children rot in hell, along with all the other children you  
20 are hurting." (A copy of those emails is included in  
21 "Plaintiffs' Exhibits in Opposition to Summary Judgment"  
22 (hereafter "Plaintiffs' Exhibits") as Exhibit 201.)  
23

24 13. Furthermore, she blames me, my colleagues at  
25 Veritox and thousands of other doctors and physicians who  
26 concur with our research for killing innocent human beings;  
27  
28

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1 scientific community. Dr. Kelman declined, because the amount  
2 of work that would be involved would be substantial and  
3 unjustified unless they were to be compensated. Subsequently,  
4 The Manhattan Institute offered to pay GlobalTox if it would  
5 prepare a lay manuscript that contained the same concepts as  
6 the ACOEM position statement. GlobalTox agreed, and the lay  
7 report - much less academic, and more accessible - was  
8 published by The Manhattan Institute in July, 2003. (Kelman  
9 declaration, Paragraph 8. A copy is included in Defendant's  
10 Exhibits as Exhibit F.)

11  
12 Dr. Kelman first learned of Defendant Sharon Kramer in  
13 mid-2003, when he was retained as an expert in a lawsuit  
14 between her, her homeowner's insurer and other parties  
15 regarding alleged mold contamination in her house. (Kelman  
16 declaration, Paragraph 11.)

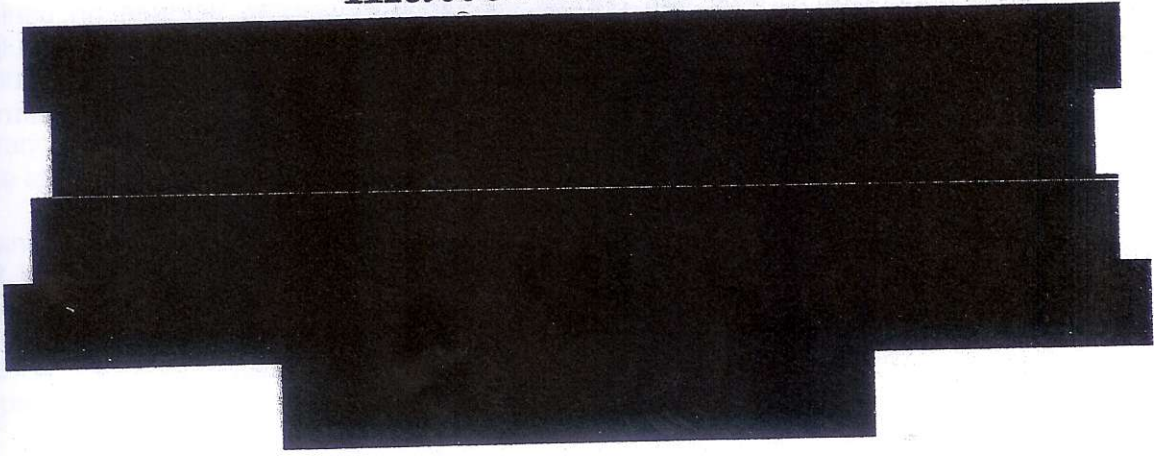
17  
18 Kramer subsequently launched a campaign attacking  
19 GlobalTox and Dr. Kelman through various media, including the  
20 Internet.

21  
22 As is set forth below, her vicious animosity toward  
23 Plaintiffs is well-documented. She says that Dr. Kelman,  
24 Veritox and the thousands of scientists and physicians who  
25 concur with their research are killing innocent human beings.

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19.

Tentative Ruling Denying The Motion For Summary Judgment, published on the morning of Oral Arguments, June 20, 2008. Page 2 “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. The evidence and argument now offered by Defendant does not conclusively negate that showing as a matter of law.”



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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. The evidence and argument now offered by Defendant does not conclusively negate that showing as a matter of law.

Defendant argues that the press release was not defamatory, because no implication of perjury can be drawn from the statement in the press release that Plaintiff had "altered his under oath statements on the witness stand." She argues that the word "altered" carries "neither an implication nor a denotation of fraud or wrongdoing." However, in this Court's order denying Defendant's anti-SLAPP motion, the Court found:

The gist of the statement was that Kelman either committed perjury in his 2/18/05 testimony in the case of Bynes v. Adair [or] that he was lying about a subject related to his profession . . . .

2005 Order at p. 2. Defendant offers no sound basis for reconsidering this conclusion. Neither can the Court agree with Defendant's contention that the use of the word "alter" is a non-actionable statement of fact that is incapable of being proved true or false.

Defendant argues that no reasonable person could believe that the press release implied that Plaintiff committed perjury. Again, however, this determination cannot be made as a matter of law. It is for the trier of fact to determine if the statement reasonably implied that Plaintiff perjured himself.

Defendant argues that Plaintiff cannot prove the statement was false, because Defendant indeed produced his responses at trial. She argues that the Press Release is a fair and true report and is thus admissible. The Court of Appeal rejected these arguments. Defendant offers no new evidence which conclusively negates these determinations by the Court of Appeal as a matter of law.

Defendant argues that the statement in the press release that Plaintiff altered his under oath testimony was not directed at Plaintiff's company, Veritox. She argues that no allegedly defamatory statement in the press release is "of and concerning" Veritox. Once again, the Court of Appeal already addressed this issue. See Opinion at p. 9, n.4. Defendant offers no suggestion that she has new evidence that conclusively negates this determination as a matter of law.

Plaintiffs' request for judicial notice is granted.

Plaintiffs' Objection Nos. 1, 2, 3, 4, 12, 13, and 17 are sustained on relevance grounds. Objection No. 5 is sustained on hearsay grounds and on the ground that Plaintiff has not established that she has personal knowledge of the information on which she is testifying. Objection Nos. 6, 7, 8, 9, 10, 11, and 14 are sustained on the ground that Defendant has not established that she has personal knowledge of the information on which she is testifying. Objection No. 15 is overruled. Objection No. 16 is sustained on relevance ground as to all but the last sentence identified in that objection. The objections to the last sentence identified in Objection No. 16 are overruled.

Defendant's Objection Nos. 1, 2, and 35 are sustained on relevance grounds; these statements are not relevant to the issues raised by this motion. Objection Nos. 3, 6, 7, 8, 9, and 10 are sustained on hearsay grounds. Objection Nos. 4, 18, 19, 20, 21, 22, 23, 26, and 29 are overruled on the grounds that they are immaterial. Objection Nos. 5, 11, 12, 13, 14, 15, 16, and 17 are sustained on foundation grounds. Objection No. 24 is overruled as to the first portion of the sentence identified and sustained on hearsay and personal-knowledge grounds as to the second portion of the sentence. Objection No. 25 is

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20. (repeat of 1)

Deposition of Bruce J. Kelman,  
July 22, 2008, in which he states he  
cannot remember the testimony he  
gave in the Mercury case, even  
though just months prior in  
March 2008, he wrote under penalty  
of perjury that "I testified the types  
and amount of mold in the Kramer  
house could not have caused the life-  
threatening illnesses she claimed."

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1 summary motion in this case, it was a declaration  
2 filed around March of this year?

3 MR. SCHEUER: No, it's not.

4 MR. BANDLOW: Is that not that one?

:24:40 5 MR. SCHEUER: This is pages 1, 5 and 6 of  
6 the declaration.

7 MR. BANDLOW: I can go get the whole  
8 thing. I'll have to go get the whole thing. I  
9 thought that was the full copy.

:24:52 10 MS. KRAMER: Want to go to lunch and do  
11 that?

12 MR. BANDLOW: I'm going to get a full  
13 copy. What time is it now?

14 I'm going to back up, because there's  
:25:20 15 something in that declaration that I don't  
16 understand.

17 BY MR. BANDLOW:

18 Q You recall that you filed a declaration  
19 very early on in this case in which you stated that  
20 you quote "testified that the type and amount of  
21 mold in the Kramer house could not have caused the  
22 life threatening illnesses that she claimed;" do  
23 you recall saying that in a declaration?

24 A This case has been going on for three  
:26:00 25 years, no. I'm not saying I didn't, but I need it

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1 in front of me.

2 Q Do you recall that that is what you  
3 testified to when you testified in the case  
4 involving Ms. Kramer's claim with her insurance  
5 provider?

12 :26:14 6 A I would have to see what was on the  
7 declaration, and at this point, now we're talking  
8 about a case that was a lot of years ago. I don't  
9 remember that specific case hardly at all.

12 :26:28 10 Q Well, don't you recall that I took your  
11 deposition in December of 2007, and in that  
12 deposition you said you couldn't remember what  
13 testimony you gave in Ms. Kramer's action against  
14 her insurance carrier; correct?

12 :26:44 15 MR. SCHEUER: That's exactly the same  
16 testimony he just gave, and you are now admittedly  
17 going over stuff you already asked the witness  
18 about.

19 BY MR. BANDLOW:

12 :26:52 20 Q Here's why I'm asking, because in  
21 December of 2007 I asked you these questions and  
22 you answered just like you did, you didn't remember  
23 anything about it because it was so long ago, and  
24 then in March of 2008 I get a signed declaration  
12 :27:04 25 from you in which you say quote "I testified that

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1 the type and amount of mold in the Kramer house  
2 could not have caused the life-threatening  
3 illnesses that she claimed."

4 MR. SCHEUER: Why don't you show us that  
5 declaration that you're talking about.

6 MR. BANDLOW: Well, it's there. If you  
7 want me to go get the signature page, that's one of  
8 the things he says there, that's the page that was  
9 copied. Starts out, "I first learned of Defendant  
10 Sharon Kramer --

11 MR. SCHEUER: What paragraph?

12 MR. BANDLOW: I don't -- says, "I first  
13 learned of Defendant Sharon Kramer in mid  
14 December 2003."

15 BY MR. BANDLOW:

16 Q So what I'm asking is: Was there  
17 something that caused you to remember your  
18 testimony in Ms. Kramer's action against her  
19 insurance carrier better between December and March  
20 of 2008?

21 A At this point, it would have -- I don't  
22 remember specifically. I think we have produced --  
23 if we haven't, we should have -- what little case  
24 material we've got left from that situation. If we  
25 haven't produced that, that was an oversight, but

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1 I'm quite certain that we did produce that.

2 Q As you sit here today, do you recall if  
3 you testified in Ms. Kramer's action against her  
4 insurance carrier that the type and amount of mold  
12 :29:32 5 in the Kramer house could not have caused the  
6 life-threatening illnesses that she claimed?

7 A I have to go back and look at the record  
8 that would -- that would certainly be consistent.  
9 Since I don't have the material in front of me, I  
12 :29:58 10 don't know how much I can say about it.

11 Q Weren't you made aware of documents -- at  
12 the time that the lawsuit with Ms. Kramer's  
13 insurance carrier was going on, weren't you shown  
14 documents that showed that, in fact, she did not  
12 :30:16 15 make that claim that the mold was causing  
16 life-threatening diseases?

17 MR. SCHEUER: Could I have that read back,  
18 please.

19 (Record read as follows:

12 :30:04 20 "QUESTION: Weren't you made aware  
21 of documents -- at the time that the lawsuit  
22 with Ms. Kramer's insurance carrier was going  
23 on, weren't you shown documents that showed  
24 that, in fact, she did not make that claim that  
12 :30:18 25 the mold was causing life-threatening

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1 diseases?")

2 MR. SCHEUER: Object as having been asked  
3 and answered at the prior session of Dr. Kelman's  
4 deposition and goes beyond the scope of today's  
5 deposition, but I'll permit the witness to answer.

6 BY MR. BANDLOW:

7 Q Weren't you provided with documents at the  
8 time you were acting as an expert in the case  
9 involving Ms. Kramer against her insurance carrier,  
10 weren't you provided with documents that showed  
11 that she was not, in fact, claiming a  
12 life-threatening illness on the basis of mold in  
13 her house?

14 MR. SCHEUER: Same objection.

15 You can answer.

16 THE WITNESS: That's absolutely not true.  
17 I might have been showed -- I think Ms. Kramer has  
18 revised the history of her suit. So I may have  
19 been shown documents to that effect, but there were  
20 other documents claiming extensive injury.

21 BY MR. BANDLOW:

22 Q Don't you recall that Ms. Kramer's  
23 daughter had cystic fibrosis?

24 A Yes.

12 :32:04 25 Q And that the claim was that mold could

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1 exacerbate that particular condition?

2 MR. SCHEUER: Objection; irrelevant. That  
3 has nothing at all to do with this lawsuit, but if  
4 the witness has a recollection, he can testify.

12 :32:20 5 THE WITNESS: To the best of my  
6 recollection, the levels of mold spores indoors  
7 were equivalent to the levels outdoors, and what I  
8 said was that there was no elevated risk indoors  
9 compared to outdoors.

12 :32:44 10 BY MR. BANDLOW:

11 Q You said in your declaration "the  
12 life-threatening illnesses that she claimed" so  
13 wasn't it your statement that she was claiming life  
14 threatening illnesses because of her home?

12 :32:58 15 A Yes.

16 Q But weren't you shown documents at the  
17 time you were acting as an expert in that case  
18 that, in fact, she was not making such claims?

19 A There was a set of documents to that  
12 :33:10 20 effect and a set of documents with all sorts of  
21 strange claims that did relate to life-threatening  
22 illnesses.

23 Q But you remember seeing a document in  
24 which you believe it indicated that Ms. Kramer was  
12 :33:24 25 asserting the house could cause life-threatening

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21.

The Court framing the scope of the trial, August 18, 2008, Page 4, 5 “I think the Fourth did a great job. That’s why I like reading their rulings because I know what I’d do. They did a pretty good job of the evidence they considered...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.....The spoke to the kinds of things that could give rise to a finding of actual animosity...to start with, is Dr. Kelman was an expert in her own lawsuit...a reasonable jury could infer that Kramer harbored some animosity toward Kelman. Seemed to me the facts surrounding that lawsuit...

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4 1 PROVIDING FALSE TESTIMONY."

2 OKAY. AS AN EXPERT, EVEN IF I WERE TO SAY  
3 DR. AMMAN CAN COME UP AND PROVE -- POSTULATE SOME OF THOSE  
4 THINGS, YOU CAN'T TESTIFY SOMEONE GAVE FALSE TESTIMONY.

5 MR. BANDLOW: NO, AND THAT WOULDN'T BE HER TESTIMONY.

6 THE COURT: THANK YOU.

7 MR. BANDLOW: THAT'S -- THAT'S MISSPOKEN. I APOLOGIZE  
8 FOR THAT.

9 THE COURT: BECAUSE NO ONE CAN GET UP AND SAY SOMEONE  
10 LIED. THE JURORS DECIDE WHETHER PEOPLE LIED DURING  
11 TESTIMONY. AND IN THIS CASE, THEY'RE GOING TO DECIDE  
12 WHETHER THE TERM OF ART ALTERED IN THIS CASE CONSTITUTES OR  
13 DOES NOT CONSTITUTE PENALTY OF PERJURY -- OR NOT PENALTY OF  
14 PERJURY -- DEFAMATION. THAT'S IT IN A NUTSHELL.

15 SO ALTHOUGH I THINK THERE IS, REALISTICALLY, THE  
16 NEED TO PLAY FOR THE BENEFIT OF THE JURY HOW IT IS, AND I  
17 THINK THE FOURTH DID A GREAT JOB. THAT'S WHY I LIKE READING  
18 THEIR RULINGS BECAUSE I KNOW WHAT I'D DO. I WON'T UPSET  
19 THEM IF I FOLLOW THEIR GUIDANCE TO START WITH.

20 THEY DID A PRETTY GOOD JOB ON POINTING TO THE KIND  
21 OF EVIDENCE THEY CONSIDERED IN THE ANTI-SLAPP, WHICH IS KEY  
22 BECAUSE IT'S THE SAME THING THAT WAS ADOPTED IN THE MOTION  
23 FOR SUMMARY JUDGMENT RULING THAT WAS MADE BY JUDGE ORFIELD.  
24 AND THEY CALLED -- THERE'S LIKE THREE KEY AREAS THAT THEY  
25 TALK ABOUT THAT THEY DID NOT SEEM TO BE UPSET WITH JUDGE  
26 ORFIELD CONSIDERING IN DENYING THE ANTI-SLAPP. AND THEY  
27 TALK ABOUT THOSE THREE AREAS -- JUST GIVING THIS AS AN  
28 OVERVIEW SO YOU CAN SEE WHERE I'M COMING FROM. I ALWAYS

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5 1 LIKED IT WHEN JUDGES GAVE YOU A SENSE OF WHERE THEY'RE  
2 COMING FROM. MAKES YOUR JOB A LOT EASIER.  
3 THEY TALKED ABOUT THIS. YOU PROBABLY DON'T HAVE  
4 THAT REMITTITUR IN FRONT OF YOU. I AM GOING TO MAKE COPIES  
5 FOR ME BECAUSE I'M RETURNING THIS TO APPEALS, AND I'LL MAKE  
6 COPIES FOR YOU TOO. THAT WAY, EVERYONE WILL HAVE THE SAME  
7 THING.

8 OKAY. THEY SPOKE TO THE KINDS OF THINGS THAT  
9 COULD GIVE RISE TO A FINDING OF ACTUAL ANIMOSITY, AND THEY  
10 SPOKE TO A COUPLE OF HISTORICAL EVENTS THAT OCCURRED BETWEEN  
11 THE PARTIES. I'M LOOKING AT PAGE 12 OF THE REMITTITUR.  
12 THIS, OF COURSE, IS NOT ON PLEADING PAPERS, SO I CAN ONLY  
13 REFERENCE IT BY NOTING IT'S THE SECOND FULL PARAGRAPH, AND  
14 IT REFERENCES THAT ONE, TO START WITH, IS DR. KELMAN WAS AN  
15 EXPERT IN HER OWN LAWSUIT. THEY REFERENCE THAT SHE WAS  
16 SEEKING DAMAGES FOR THE PRESENCE OF MOLD IN THE HOME.  
17 DR. KELMAN GAVE AN OPINION OF A -- SPEAKING TO -- TO THE  
18 EFFECT THAT DID NOT APPEAR TO HAVE GREATLY INCREASED A LEVEL  
19 OF RISK OF MOLD INSIDE THE HOME. CASE WAS SETTLED AND,  
20 QUOTE, A REASONABLE JURY COULD INFER THAT KRAMER HARBORED  
21 SOME ANIMOSITY TOWARD KELMAN. SEEMED TO ME THE FACTS  
22 SURROUNDING THAT LAWSUIT THAT WOULD SUPPORT OR CONTRADICT A  
23 CLAIM OF ANY REASONABLE ANIMOSITY WOULD BE SOMETHING  
24 RELEVANT FOR THIS JURY.

25 NUMBER TWO, CONTINUING ON THAT SAME PAGE, THE JURY  
26 CAN ALSO INFER ANIMOSITY THAT OF CONDUCT TWO MONTHS PRIOR TO  
27 THE PRESS RELEASE BEING ISSUED, THAT IN JANUARY OF '05,  
28 AFTER LEARNING OF THE AMERICAN INDUSTRIAL HYGIENE

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A letter sent to Plaintiff Counsel, Keith Scheuer, dated September 18, 2008, requesting that he fulfill his duty as an officer of the Court and inform all judges of the false testimony on the issue of malice that has repeatedly presented before them. A copy of this letter was also given to the Clerk of the Court, Department 31, Mr. Michael Garland. As of today's date, December 1, 2008, I have received no response on the matter from Mr. Scheuer.

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September 18, 2008

Mrs. Sharon Noonan Kramer  
2031 Arborwood Place  
Escondido, CA 92029

Mr. Keith Scheuer, Esq. Cal. Bar. No 82797  
4640 Admiralty Way, Suite 402  
Marina Del Rey, California 90292

Dear Mr. Scheuer,

Thank you for your email confirmation that you are in receipt of the supplemental objection to proposal of costs/judgment I submitted to the courts on September 15, 2008, with regard to the case of Bruce J. Kelman and GlobalTox, Inc. vs. Sharon Kramer. Case No. GIN044539 North San Diego County Superior Court.

As you are aware, there was false testimony given in this case on the part of your client that was an untrue reason presented to the courts, several times over, as to why I would harbor personal malice for your clients, Bruce Kelman and GlobalTox, Inc. You client, Bruce Kelman, wrote, "*I testified that the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed*" within his declarations. As you are aware, no such testimony was ever given by your client in the case of Mercury vs. Kramer. Yet, the misrepresentation to the courts of this prior testimony in the Mercury case, has had significant impact on several rulings with this case.

This false testimony was offered by you in your brief to the trial court in September of 2005 when defeating the anti-SLAPP motion as to the only reason that I would be, as you wrote in your brief, "*Apparently furious that the science conflicted with her dreams of a remodeled house, Kramer launched into an obsessive campaign to destroy the reputation of Dr. Kelman and GlobalTox.*" The misrepresentation played a key role in defeating the anti-SLAPP motion, as the trial court wrongfully surmised from this that I would have reason to harbor personal malice for your clients. You wrote the above statement again in May of 2006, in your appellate court brief as to the only reason provided I would harbor personal malice for your clients. You were made aware, knew, or should have known, that this was false testimony and false reason for malice being provided to the courts, no later than June 29, 2006. Yet, you made no effort to correct the error, even when the appellate court determined, six months later in November of 2006, your clients had met their prima facie burden of proof of malice, based largely on the misperception instilled by this false testimony that was ratified within your briefs. The appellate court proceeded to affirm the trial court's denial of the anti-SLAPP motion

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while you remained silent regarding the false premise on which they founded their affirmation.

In March of 2008, when defeating the summary judgment motion, you again submitted a declaration on behalf of your client that stated, "*I testified that the type and amount of mold in the Kramer house could not have caused the life-threatening illnesses that she claimed.*" This is after you had been made aware this was false testimony to present to the courts no less than three times, complete with documentation of your client's actual testimony in the Mercury case, proving to you the above was false testimony to present to the courts on the issue of malice. The trial court again determined *I could* have malice for your clients stemming from the Mercury case, based on no evidence whatsoever provided as such. No evidence was ever presented that I had malice for any of the other seven expert witnesses for the defense in the Mercury case. I had no reason to harbor malice for your client stemming from the Mercury case, as your client's involvement actually helped me to prove the claim of cross-contamination and bad faith claims handling practices. Only your client's false declarations that were repeatedly ratified by your briefs caused the courts to believe a prima facie showing of malice had been achieved, when you were defeating all motions.

In August of 2008, when the trial judge framed the scope of the trial and what evidence I would and would not be permitted to present in my defense and logic of writing the phrase "altered his under oath statements"; and when providing evidence of reasons your clients have been impacted by other key sentences within my public participation press release that they sought to chill; you sat in silence, saying not a word as the trial judge determined the case should be framed on her misperception there was a bad "history between Plaintiff and Defendant" stemming from the case of Mercury vs. Kramer. And this purported bad history was a reason for malice. This, even after this matter was discussed in detail in your client's deposition on July 22, 2008 less than a month prior to the commencement of trial - at which you were present and witnessed.

As a licensed attorney in the state of California, you have an affirmative duty to the courts to present the truth and to not attempt to benefit from improvidently entered orders based on misrepresentations to the courts. You also have an affirmative duty to inform the courts if you have presented misrepresentations, whether initially intentional or not, and to request that the courts set aside any and all orders founded on misrepresentations you have presented.

This situation, caused by you and your clients' repeated misrepresentations to the courts on the issue of malice, has now cost me approximately \$400,000.00 in legal defense costs and fees; not to mention much distress and financial hardship over the past three and a half years. As such, I would like for you to fulfill your obligations to the courts as a licensed attorney in the State of California and to inform Superior Court Judges Michael P. Orfield and Lisa Schall; Appellate Court Judges, Justice Cynthia Aaron and Justice J. McDonald and Appellate Court Administrative Presiding Justice, Judith McConnell, that your client gave false testimony before their courts on the issue of malice; that you ratified this false testimony in your briefs to the benefit of your clients,

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several times over when defeating motions and helping to frame the scope of the trial; and that you would now like for the courts to re-examine all rulings based on the significant and repeated misrepresentations on the part of you and your clients, Bruce Kelman and GlobalTox, Inc., on the issue of malice. You are welcome to use the exhibit documentation that was attached to the supplement you received from me yesterday when explaining the matter to all courts.

Please let me know as soon as possible, if and when you intend to inform all courts of the above. Time is of the essence. Thank you for your prompt attention to this important matter.

Sincerely,

Mrs. Sharon Kramer

Copy to: Michael Garland, Clerk of the Court, Dept 31  
Enclosed: Email, Mr. Scheuer 9.17.08

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