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7 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SAN DIEGO, NORTH DISTRICT  
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12 BRUCE J. KELMAN,

13 Plaintiff

14 v.  
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16 SHARON KRAMER,  
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18 Defendant.  
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CASE NO. GIN044539

Declaration of Lincoln D. Bandlow

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

Hearing Date: December 12, 2008

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Declaration of Lincoln D. Bandlow

I, Lincoln D. Bandlow, hereby declare as follows:

1. I am a partner in the law firm Spillane Shaeffer Aronoff Bandlow LLP and I am licensed to practice law in the State of California. I have personal knowledge of the facts set forth herein and if sworn as a witness I could and would testify competently thereto.

2. In August of 2007, I was retained by Defendant Sharon Kramer to represent her in this action. I represented her from that period until on or about September 12, 2008, when Mrs. Kramer substituted into the case to act on her own behalf. I represented Mrs. Kramer at the trial of this matter which took place from August 18, 2008 through August 26, 2008.

3. On numerous occasions throughout the trial of this matter, I attempted to present evidence of Mrs. Kramer's state of mind when she wrote the press release that was the subject of the litigation. In particular, Mrs. Kramer's understanding of (1) the science that formed the basis of plaintiff Bruce Kelman's frequent testimony and writings on the issue of the dangers of mold exposure and (2) the relationship between the ACOEM Paper and the Manhattan Institute Report and the effect of that relationship on the testimony of Bruce Kelman in not only the Haynes case, but any future testimony that Kelman might provide. Her understanding of these two crucial points directly and materially effected her state of mind when she wrote the press release and why she wrote the words "altered his under oath statements" that were the entire basis for plaintiffs' claims in this action. The Court, however, over my strenuous objections, consistently prevented me and Mrs. Kramer from presenting this crucial evidence to the jury.

4. I am now aware that two documents were submitted to the jury in this matter that were never introduced, authenticated or discussed in any manner during the trial and which were highly prejudicial. During the trial, I introduced Exhibit 53 and had it authenticated by Kelman. My understanding of Exhibit 53 as I presented it at trial was that it was a one page letter from Globaltox to the Manhattan Institute followed by five pages of invoices that evidenced work performed by Globaltox for the Manhattan Institute in connection with the preparation of the Manhattan Institute Report (collectively the "Institute Information"). I introduced the Institute

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1 Information during the cross examination of Kelman, who authenticated it and I then moved to  
2 have the Institute Information admitted into evidence. There was no objection and the Institute  
3 Information was admitted. I later questioned Coreen Robbins about the Institute Information  
4 during my cross examination of her.

5 \* 5. What I did not learn until after the trial was over when I was speaking with juror  
6 Shelby Stuntz was that three additional documents were attached to this exhibit (unbeknownst to  
7 me) and submitted to the jury, two of which had never been authenticated or discussed. The first  
8 attached document was a one page email from Michael Holland to Bruce Kelman (the "Holland  
9 Email"). The Holland Email, however, was in fact introduced and admitted into evidence as  
10 Exhibit 59 just prior to closing arguments (Kelman's attorney stipulated to its admission without  
11 the need for testimony to authenticate it). The fact that I introduced this document after Exhibit  
12 53 had been entered into evidence underscores how I was not aware that this document was part  
13 of Exhibit 53 because, obviously, if I was aware that this document was part of an exhibit  
14 already admitted, there would have been no need to separately admit it as Exhibit 59.

15 6. The second document that went to the jury as part of Exhibit 53 was an email  
16 from Daniel Sudakin to Bruce Kelman, which forwarded another email from Daniel Sudakin to  
17 Bruce Kelman about "Sharon Kramer and Renata Zilch" (the "Sudakin Email"). The Sudakin  
18 Email was never introduced, authenticated, discussed or referenced in any way during the trial,  
19 nor was any information about an article written under the name "Renata Zilch" ever remotely  
20 discussed in the case. Not only is the Sudakin Email inadmissible hearsay, but it includes highly  
21 prejudicial (and false) statements that Mrs. Kramer was engaging in "harassment and  
22 cyberstalking" and disseminating "misinformation" and "attacks."

23 7. The third document was a letter from James Schaller to Sudakin (which Sudakin  
24 had attached to the Sudakin Email) (the "Schaller Letter"). The Schaller Letter was never  
25 introduced, authenticated, discussed or referenced in any way during the trial, nor was any  
26 information about Schaller or the matters discussed in his letter ever remotely discussed in the  
27 case. The Schaller Letter is inadmissible hearsay and prejudicial.  
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1 8. I never intended for the Sudakin Email or the Schaller Letter to be allowed into  
2 evidence in this case or go to the jury (in fact, I would have objected to them being introduced in  
3 the case on the grounds that they are hearsay, irrelevant and prejudicial). I am not sure how the  
4 Sudakin Email and Schaller Letter became part of Exhibit 53, although I am aware that that these  
5 documents were at one time all marked together with the Institute Information as a separate  
6 deposition exhibit for Kelman's deposition. When it came to trial exhibits, however, my copy of  
7 the trial exhibits that I used during the trial did not have the Holland Email as part of Exhibit 53  
8 (as mentioned, it was separately marked as Exhibit 59), the Sudakin Email (which was also  
9 separately included in the Exhibit binders as Exhibit 60 but never introduced or admitted at trial)  
10 or the Schaller letter (which I do not believe was included as a separate exhibit). Rather, my  
11 copy of the exhibits simply showed Exhibit 53 being the Institute Information, which I spent  
12 considerable time on during the trial. Thus, when Exhibit 53 was admitted into evidence, I  
13 believed that it only included the Institute Information.

14 \* 9. After the trial was over, I spoke to a juror on the case, Shelby Stuntz. She  
15 informed me that numerous jurors were unsure if plaintiffs had met their burden to demonstrate  
16 actual malice in the case but that a number of them had then relied on the Sudakin Email and  
17 Schaller Letter, particularly the language in the Sudakin Email about "harassment and  
18 cyberstalking" to reach the conclusion that actual malice had been shown. Thus, it appears that  
19 the Sudakin Email and the Schaller Letter played a substantial, if not determinative, role in the  
20 verdict that was rendered against Mrs. Kramer. Moreover, it also demonstrates that the jury  
21 misunderstood the concept of actual malice, mistaking it for simple "personal malice" which  
22 they improperly concluded existed due to the Sudakin Email.

23 I declare under penalty of perjury of the laws of the State of California that the  
24 foregoing is true and correct and that this Declaration was executed by me on this 30th day  
25 of October, 2008, in Los Angeles, California.

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28 LINCOLN BANDLOW

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