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SHARON KRAMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

BRUCE KELMAN, GLOBALTOX, INC.,	)	Case No.: GIN 044539
)	
Plaintiffs,	)	DECLARATION OF SHARON KRAMER IN
	)	SUPPORT OF MOTION TO STRIKE
v.	)	PLAINTIFFS' COMPLAINT PURSUANT
	)	TO C.C.P. § 425.16
SHARON KRAMER, and DOES 1 through 20,)	
inclusive,	)	DATE: 9/30/05
	)	TIME: 1:30 p.m.
Defendants.	)	DEPT: 28
	)	Initial pleading: 5/16/05
	)	Trial date: Not set
)	

I, Sharon Kramer, hereby declare that I am a licensed member of the California Association of Realtors in good standing, and the Defendant in the above entitled action. As such, if called as witness, I could and would, of my own personal knowledge, testify to the following:

1. I have been sued for libel by toxicologist, Bruce Kelman (Kelman) and the environmental risk management corporation of which he is a principal, GlobalTox, Inc (hereinafter "GlobalTox"). The false accusation of libel stems from a press release that I

1 authored in March of 2005, regarding a lawsuit filed by the Haynes' family against their builder,
2 Adair Homes, Haynes vs. Adair Homes, Case No. CCV0211573, In the Court of the State of
3 Oregon.(Haynes). It is a construction defect/mold case. The press release was placed on PR Web,
4 a free internet press release site. I paid \$300 to have assistance with the formatting and to have
5 the press release expedited. To date, it has been read by no less than 1800 media journalists and
6 142,000 people from the PR Web site alone. Yahoo News is the most prevalent search engine
7 used. ArriveNet is a media website that picked up the story and decided to print it. I have no
8 way of determining how many times it has been read from this site. I am able to determine,
9 however, that those who read it and chose to rate it gave the article a 91.5% approval rating. The
10 mold issue is a charged issue, affecting many people's health, finances or both. It is an issue
11 which generates much public interest and concern. I believe the number of reads and the number
12 of pick ups of this press release is quite large for a free press release site. Attached hereto as
13 Exhibit 1 is a true and correct copy of the PR Web Press Release. Attached collectively as Exhibit
14 2 are true and correct copiers of the PR Web Statistics and the Arrive.Net Release/Ratings.

16 2. The on-going Haynes case is one of national significance from a number of aspects.
17 Media interest in the case still continues. As recent as Sunday, June 19, 2005, an article featured
18 in the Oregonian referenced the case. It has been widely publicized through televised media,
19 newspapers, press releases and on webcasts as noted in the attached email sent from Mrs. Renee
20 Haynes, plaintiff in the case, to the Editor of the Oregonian. All articles of which I am aware
21 have discussed the serious illnesses of the Haynes mother and children. Attached hereto as
22 Exhibits 3 is a true and correct copy of the Oregonian article. Attached as Exhibit 4 is a true and
23 correct copy of an email authored by Mrs. Haynes, dated 6/23/05.

1 3. The phrase that Kelman and GlobalTox allege is a libelous accusation of perjury on my
2 part is “altered his under oath testimony”. The phrase was used within the sentence, “Upon
3 viewing documents presented by the Haynes’ attorney of Kelman’s prior testimony from a case
4 in Arizona, Dr. Kelman altered his under oath testimony on the witness stand.” GlobalTox was
5 not even referenced in the allegedly libelous sentence. Kelman obviously did “alter his under
6 oath statements” as displayed in the attached Exhibit. Attached hereto as Exhibit 5 are pages 53
7 to 59 of the Haynes trial transcript.

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9 4. During Kelman’s testimony, questions turned to money that the Manhattan Institute, a
10 national political think-tank, had paid Kelman’s company, GlobalTox, for a broadly marketed
11 version (Manhattan Institute Version) of a paper he had coauthored, along with another principal
12 of GlobalTox, Bryan Hardin (Hardin). The original paper was written for the American College
13 of Occupational and Environment Medicine (ACOEM), a national medical policy-writing body.
14 The third coauthor, Andrew Saxon, also does expert witness testimony for the defense but is not
15 a principal of GlobalTox. The Manhattan Institute Version is an edit of this original paper that is
16 entitled “Adverse Human Health Effects from Mold in an Indoor Environment, Evidence Based
17 Statement”(ACOEM Statement). Attached hereto as Exhibits 6 is a true and correct copy of the
18 ACOEM Statement. Attached as Exhibit 7 is a true and correct copy of the Manhattan Institute
19 Version.

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21 5. During Kelman’s testimony in the Haynes case, when the payment from the Manhattan
22 Institute was brought into question, the interaction between Mr.Vance (Vance), the Haynes’
23 family attorney, and Kelman, took on a more confrontational tone. At one point, Kelman stated,
24 “Sir, that is a complete lie.” In response to the question, “...So you participated in writing the
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1 study, your company was paid very handsomely for it, and then you go out and you testify
2 around the country legitimizing the study that you wrote. Isn't that a conflict of interest, sir?"

3 6. Prior to the Manhattan Institute money question, the line of questioning was of revisions
4 made to the ACOEM Statement before it's publication. Kelman and Hardin both were involved
5 in the pre-publication edits of the ACOEM Statement. Vance switched from questioning about
6 the ACOEM Statement itself, to ask about the Manhattan Institute Version.

7 7. When originally asked the question by Vance, "All right. And, isn't it true that the
8 Manhattan Institute paid GlobalTox \$40,000 to make revisions in that statement?" Kelman
9 replied "That is one of the most ridiculous statements I have ever heard." Vance then referenced
10 the case from Arizona, Kilian vs Equity Residential Trust, et al., Case No. CIV 02-1272-PHX-
11 FJM, United States District Court for the District of Arizona (Kilian), and said, "Well you
12 admitted to it in the Killian deposition, sir." Kelman replied, "No I did not."

13 8. Thereafter, the Kilian trial transcript was admitted into the record allowing the line of
14 questioning to continue. Kelman was then asked by Vance, "Would you read into the record the
15 highlighted portions of that transcript, sir?" Kelman read from the Kilian transcript, "And that
16 new version that you did for the Manhattan Institute, your company, GlobalTox got paid
17 \$40,000, Correct?" "Yes the company was paid \$40,000 for it." Attached hereto as Exhibit 8 are
18 true and correct copies of pages 905 and 906 (P.905:24 – P.906:1) of the trial transcript from
19 Kilian.

20 9. In the above referenced exchange, the direct question was asked of Kelman if the
21 Manhattan Institute had paid GlobalTox for revisions to the ACOEM Statement. Kelman replied
22 with an indignant and false denial. If Kelman was confused as to whether Vance was asking
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1 about the ACOEM Statement or the Manhattan Institute Version, yet was intending to be
2 forthright in his testimony, a more appropriate answer may have been “Yes, GlobalTox was paid
3 \$40,000 for a revision of the ACOEM Statement, but that was much later.”

4 10. Kelman chose not to clarify the payment from the Manhattan Institute at that time in his
5 testimony. Only after the Kilian transcript was permitted into the court record, which allowed the
6 line of questioning to continue, did he attempt to explain the relationship between the ACOEM
7 Statement and the Manhattan Institute Version.

8 11. In his attempted explanation, Kelman altered back and forth in describing the
9 relationship of the two papers. Vance made the statement, “Well, your vouching for your own
10 self (inaudible). You write a study and you say, ‘And, it’s an accurate study’.” Kelman
11 responded, “We were not paid for that. In fact the sequence was in February of 2002, Dr. Brian
12 Harden, and (inaudible) surgeon general that works with me, was asked by American College of
13 Occupational and Environmental Medicine to draft a position statement for consideration by the
14 college. He contacted Dr. Andrew Saxton, who is the head of immunology at UC—clinical
15 immunology at UCLA and myself, because he felt he couldn’t do that by himself. The position
16 statement was published on the web in October of 2002. In April of 2003 I was contacted by the
17 Manhattan Institute and asked to write a lay version of what we had said in the ACOEM paper—
18 I’m sorry, the American College of Occupational and Environmental Medicine position
19 statement. When I was initially contacted I said, ‘No. For the amount of effort it takes to write a
20 paper I can do another scientific publication’. They then came back a few weeks later and said,
21 ‘If we compensate you for your time, will you write the paper?’ And, at that point, I said, ‘Yes,
22 as group.’ The published version, not the web version of the ACOEM paper came out in the
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1 Journal of Environmental and Occupational Medicine in May. And then sometime after that, I
2 think it was in July, this lay translation came out. They're two different papers, two different
3 activities. The—we would have never been contacted to do a translation of a document that had
4 already been prepared, if it hadn't already been prepared". Vance: "Well, your testimony just a
5 second ago that you read into the records, you stated in that other case, you said, 'Yes,
6 GlobalTox was paid \$40,000 by the Manhattan Institute to write a new version of the ACOEM
7 paper.' Isn't that true, sir?" Kelman "I just said, we were asked to do a lay translation, cuz the
8 ACOEM paper is meant for physicians, and it was not accessible to the general public."

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10 12. Within the prior sentences, Kelman testified "We were not paid for that...", not
11 clarifying which version he was discussing. There was no question asked of him at that time. He
12 went on to say GlobalTox was paid for the "lay translation" of the ACOEM Statement. He then
13 altered to say "They're two different papers, two different activities." He then flipped back
14 again by saying, "We would have never been contacted to do a translation of a document that
15 had already been prepared, if it hadn't already been prepared." By this statement he verified they
16 were not two different papers, merely two versions of the same paper. And that is what this
17 lawsuit is really all about.

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19 13. The rambling attempted explanation of the two papers' relationship coupled with the
20 filing of this lawsuit intended to silence me, have merely spotlighted Kelman's strong desire to
21 have the ACOEM Statement and the Manhattan Institute Version portrayed as two separate
22 works by esteemed scientists.

23 14. In reality, they are authored by Kelman and Hardin, the principals of a corporation
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1 called GlobalTox, Inc. – a corporation that generates much income denouncing the illnesses of
2 families, office workers, teachers and children with the purpose of limiting the financial liability
3 of others. One paper is an edit of the other and both are used together to propagate biased
4 thought based on a scant scientific foundation.

5 15. Together, these papers are the core of an elaborate sham that has been perpetrated on
6 our courts, our medical community and the American public. Together, they are the vehicle used
7 to give financial interests of some indecent precedence over the lives of others.

8 16. I, along with many concerned citizens and ethical professionals, have been quite vocal
9 in getting the word out of what is happening in this country to families suffering from mold
10 exposure. We have also been tenacious at finding the root of what is driving the skepticism and
11 ignorance of legitimate and serious mycotic diseases. What we have found is that most who deny
12 the existence of mold illnesses base this denial on the ACOEM Statement.

13 17. The ACOEM Statement has been cleverly worded to imply to those without in-depth
14 knowledge of the matter, including physicians, that there is no evidence of prior healthy people
15 becoming ill from mold exposure. The catch phrase conclusion sentence that is used over and
16 over again, states, “Current scientific evidence does not support the proposition that human
17 health has been adversely affected by inhaled mycotoxins in homes, schools and office
18 environments.”

19 18. The calculated marketing spins of this one little sentence have had tremendous negative
20 impacts on our society. The sentence has been used to deny legitimate illness, misguide mold
21 remediation efforts, stifle medical understanding and win court cases based on irrelevant, yet
22 accepted information. It has been parlayed as a mantra by the Manhattan Institute, the US
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1 Chamber of Commerce and their affiliate stakeholder industries for the purpose of limiting
2 financial liability.

3 19. By using the word “mycotoxins” instead of the word “mold”, and strategically placing it
4 as the final sentence, Final Word, it accomplished the insidious goal of the intended implication:
5 mold does not make one sick.

6 20. By differentiating homes, schools, and offices from all other environments, under the
7 guise of conclusive dose response rat studies, it eliminated all significance of vast medical
8 research that was known about fungal diseases. It established that all prior research of illnesses
9 caused by fungi would only apply to everywhere else on the entire planet except homes, schools,
10 and offices.

11 21. An example of how this differentiation in environments is misused would be: A farmer
12 and a teacher could both exhibit the exact same serious neurological and cognitive dysfunctions
13 indicative of Type III hypersensitivity or toxicosis after an abnormal exposure to mold and/or
14 toxins. The farmer would be treated with antifungal and/or toxin eliminating measures. The
15 teacher would be labeled unstable and would be mistreated with antidepressants. Attached hereto
16 as Exhibits 9 is a true and correct copy of a national defense law firm, Gordon and Rees’
17 interpretation of how to use the ACOEM Statement in court to defeat legitimate mold injuries.
18 Attached as Exhibit 10 is a true and correct copy of a definition from the Encyclopedia
19 Britannica of Type III hypersensitivity (farmer’s lung).

20 22. The above are well documented statements that I and many others have brought to light
21 numerous times. The paper attached hereto as Exhibit 11, authored by Jonathan Lee Wright and
22 edited by myself, tracks the intertwined paths of the two edits of the GlobalTox authored defense
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1 argument. Our research information has been widely distributed. It has been effectively used to
2 change public opinion. It has been used in courts to discredit unscientific science on behalf of
3 those who are legitimately ill after an excessive exposure to mold in an indoor environment.

4 23. At least a portion of Exhibit 11 was used as a source of information in the Haynes case
5 as is evident from the questioning of Kelman regarding Dr. Johanning, Director of the Fungal
6 Research Group Foundation and ACOEM member. Attached hereto collectively as Exhibit 12
7 are true and correct copies of Kelman's testimony from the Haynes case, discussing Dr. Echert
8 Johanning, (P.45: 12 – P.52: 6), Dr. Johanning's CV and transcript of a speech given by
9 Johanning in Boston.

10 24. To start from the beginning, the way I came to understand just how serious and
11 pervasive this situation is, began with a simple leak in an ice-maker line. It turned into a bad faith
12 claim against our insurance company, the contractor and the industrial hygienist. As a result of
13 exposure to airborne mold spores, I became quite ill. Our daughter, who has Cystic Fibrosis (CF)
14 and allergic bronchio-pulmonary aspergillosis (ABPA) was hospitalized numerous times
15 following the incident. Litigation followed. A settlement agreement was reached. Prior to this
16 incident, I had never been involved in a lawsuit.

17 25. Trying to educate myself and better understand the various aspects of the mold issue, I
18 began to do research. What I found were families, teachers, and office workers from all over the
19 U.S., whose lives we were being devastated. Yet, they were not able to find any regulatory or
20 medical assistance. No one seemed to understand how to properly handle the mold itself. The
21 government agencies were not addressing the issue. The physicians were not trained in treating
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1 the illnesses. Most did not even acknowledge mold exposure from an indoor environment could
2 cause serious illness.

3 26. As a result, people who were very sick and forced from their homes, schools or offices,
4 were not able to find viable medical treatment. Instead, they were having their sanity and
5 integrity questioned for stating they were sick from mold. This, while their lives were being
6 turned upside down and they feared for their future and that of their children. Attached hereto as
7 Exhibit 13 is a true and correct copy of an article referring to Joel Seagel, a US Congressional
8 Legislative Assistant, discussing the tragedies of mold victims.

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10 27. In the summer of 2003, there was a meeting at my real estate office. Based on
11 information provided by the Association of Realtors, the company manager said there was a new
12 study out that found mold in homes does not cause illness. The source of this information was a
13 paper called "Moldy Claims: The Junk Science of 'Toxic Mold'". It was also authored by
14 Kelman and Hardin and ended with the phrase. "Thus the notion that 'toxic mold' is an insidious
15 secret 'killer', as so many media reports and trial lawyers would claim, is 'junk science'
16 unsupported by actual scientific study"

17 28. "Moldy Claims: The Junk Science of 'Toxic Mold'", was a result of the Manhattan
18 Institute's payment of \$40,000 to GlobalTox. Kelman refers to the document as a "translation" or
19 "layman's version" of the ACOEM Statement. Attached collectively hereto as Exhibit 14 are true
20 and correct copies of documents from the US Chamber of Commerce and building industry
21 websites. They, along with the National Association of Realtors (NAR) website are
22 demonstrative, that in the summer of 2003, the Manhattan Institute Version was disseminated to
23 Realtors and other stakeholder industries.
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1 29. The effort to mass disseminate the GlobalTox defense position was done with the
2 assistance of the US Chamber of Commerce and the Manhattan Institute. The well organized and
3 well funded effort to distribute the Manhattan Institute Version was endorsed by ex-developer,
4 US Congressman Gary Miller, (R-Ca) who at that time, also sat on the US Congressional
5 Science Committee. There is a three hour telecast of the July 17, 2003 event on the website of
6 the US Chamber of Commerce which goes into much greater detail of the stakeholder industries'
7 involvement.

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9 30. Not only were people being physically damaged by the ACOEM Statement itself, but
10 my fellow Realtors were being left open for possible liability from the misrepresentation of mold
11 related illnesses as it was stated in the Manhattan Institute Version. This meant the families they
12 represented were being left open to harm.

13 31. The stifling of medical understanding of mold related illnesses for the purpose of
14 winning court cases and limiting liability was actually causing the mass ignorance and
15 skepticism that were responsible for the lawsuits in the first place. In the Kilian case, Kelman
16 stated that the meaning of the ACOEM Statement and the Manhattan Institute Version are the
17 same. Attached as Exhibit 15 is a true and correct copy of page 905 (P.905: 4-7) from the Kilian
18 case transcript verifying this. **“Moldy claims, trial lawyers, media and junk science” is quite**
19 **a different scenario than a simple lay translation of a scientific paper that Kelman testifies**
20 **to under oath.**

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22 32. There were people much worse off than our family - people who had limited education,
23 limited communication skills and no financial means to pay for alternative shelter or to travel to
24 proper medical treatment by only the handful of our national physicians trained in fungal

1 illnesses. I have a degree in marketing along with twenty five years sales experience and have
2 volunteered extensively within the community, schools and charitable organizations. As a result
3 of my past experiences, my ability to articulate, and enough income to weather the storm of the
4 toxic mold issue; as sick as I was, I felt an obligation to raise the awareness of the plight of mold
5 victims who were not as fortunate and had no strong voice to represent them or articulate their
6 despair and damage. I became an advocate for mold victims.

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8 33. I have spoken out publicly on the matter numerous times, by being written about in
9 Redbook Magazine, filmed by Granada Media from London, and addressing the Board of
10 Realtors. I have been quoted in industry journals and on nonprofit websites. And have been
11 quoted in press releases regarding the National Mold Awareness Week and the US Surgeon
12 General's Workshop on Indoor Air, which was attended with a US Congressional staff
13 representative. As an example of my speaking out publicly, attached collectively as Exhibit 16
14 are true and correct copies of an industry news article, an invitation to come speak in Boston and
15 a press release where I have been quoted.

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17 34. In an effort to raise awareness, I worked with approximately twenty mold/building
18 advocacy groups in the summer of 2004. Through these groups, we put out requests for mold
19 victims to share their experiences with the intent of then sharing this information with our
20 nation's decision makers. All information was channeled to my website, Mycotic Disease
21 Awareness (MDAwareness.com), a true and correct copy of which is attached hereto as Exhibit
22 17. In September of 2004, through the volunteer work of many, we held a Mold Awareness
23 Week in Washington D.C. Attached hereto as Exhibit 18 is a true and correct copy of the Packets
24 of information we hand-delivered to virtually every Congressional office. True and correct
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1 copies of news articles featuring Bianca Jaggar and Nancy Davis, fellow advocates, are attached
2 collectively hereto as Exhibit 19.

3 35. It became blatantly obvious that there was resistance to having physicians trained and
4 the public informed about the health risks of indoor mold exposure. The logic being, if the
5 physicians and the public were not informed, then the financial liability of those who had
6 negligently managed to expose others to an environmental risk would be greatly reduced. If one
7 could not prove they were ill from mold exposure, then they also could not collect for the health
8 damages they had suffered as a result of a negligent exposure.
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10 36. The contention in our courtrooms and fear of financial liability over the mold issue was
11 stifling the medical understanding of the matter. People who had never even seen the inside of a
12 courtroom were affected and not able to find proper medical help because of the contention. The
13 next logical step in understanding how and why, was to take a close look at some of the mold
14 litigation cases and environmental risk assessments from around the country.

15 37. It was found that the ACOEM Statement was being used by the principals of
16 GlobalTox, to direct remediation efforts around the country. Attached as Exhibit 20 is a true and
17 correct copy of a promo for a Webcast of GlobalTox principals, Hardin and Coreen Robbins,
18 CIH,(Robbins) providing education through the American Industrial Hygiene Association. The
19 gist of this presentation is to teach industrial hygienists how to use the ACOEM Statement while
20 performing environmental risk assessments, with the goal of limiting financial liability for
21 builders, suppliers, landlords, real estate agents, mortgagors, financiers, insurers and those who
22 control the maintenance of privately and publicly owned buildings. (stakeholder industries)
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1 There is also a legal section in this presentation, demonstrating a concern for future litigation and
2 notably addressing financial aspects over people's health and safety.

3 38. The manner in which GlobalTox endorses environmental risk assessment based on
4 financial liability risk as opposed to health risk has served to fuel the national fear, contention,
5 confusion and damage over the issue. Attached collectively as Exhibit 21 are true and correct
6 copies of a news article, a letter to parents and a parental ToxLaw posting concerning Nathan
7 Hale High School in Seattle, Washington. This school is indicative of much of the controversy
8 over proper environmental risk assessments and remediation efforts. Schools are facing this
9 challenge all over the country. Attached as Exhibit 22 is a true and correct copy of a commentary
10 I authored and is displayed on the School Mold Help website. It compares two schools: one
11 assessed with the children being given the highest priority and one assessed by GlobalTox,
12 which was designed to falsely placate health fears while destroying evidence of causation for
13 those who had been made ill from the environment.
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15 39. I began to research the connection between the ACOEM Statement, the Manhattan
16 Institute Version and the courtroom. Kelman, who is an author of both papers, serves as an
17 expert witness for the defense in numerous mold cases across the United States, as he did in our
18 case. Research showed that a Seminar was given in May of 2002, a full five months prior to the
19 ACOEM Board of Directors' acceptance of the ACOEM Statement that established the medical
20 policy-writing body's position on illnesses caused by mold in an indoor environment. Attached
21 as Exhibit 23 is a documentation of that seminar.
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23 40. This Atlantic Legal Foundation paper documents some of those who are nationally known
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1 mold expert defense witnesses, presenting at the seminar on the subject together. The Seminar
2 was sponsored by ICTM, International Center for Toxicology and Medicine. Dr. Ron Gots
3 (Gots) is the principal in ICTM. It was a small group of presenters, some of whom were Dr.
4 Bardana, (Bardana); Dr. Lees- Haley (Lees-Haley); Gots and GlobalTox principals, Kelman and
5 Robbins.

6 41. As background information regarding some of Kelman's co-presenters, attached hereto
7 as Exhibit 24 is evidence of Gots being investigated by Dateline NBC for insurance injury claim
8 denials. Attached as Exhibit 25 is a true and correct copy of a newspaper article from a case in
9 Oregon regarding denial of mold related worker's comp claims of teachers and centering on the
10 involvement of Bardana. Attached as Exhibit 26 is a true and correct copy of a published, peer
11 reviewed abstract denouncing Lee-Haley's system of diagnosing malingerers as unscientifically
12 skewed toward a finding of malingering. Also attached as Exhibit 27 is a true and correct copy
13 of an email from ACOEM member, Gots, strongly praising the ACOEM Statement.
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15 42. I received the trial transcript from the Kilian case in Arizona. I also received copies
16 of approximately 100 email correspondences from among various members of the ACOEM in
17 regard to the drafting of the ACOEM Statement. Combined together, the emails tell a story of
18 contention, politics and deceptive, biased peer review over the acceptance of the ACOEM
19 Statement.
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21 43. Attached as Exhibit 28 is a true and correct copy of an email authored by Dr. Borak
22 (Borak), Chair of the Council of Scientific Affairs of the ACOEM and dated June 26, 2002. This
23 email is demonstrative of much of the contention and politics that went into the acceptance of
24 this paper. Borak quoted one doctor in this email as saying "Strongly agree with the need to
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1 change tone and would start at the first paragraph, which reads like a defense report for
2 litigation.”

3 44. Members of the ACOEM voiced objections to the scenario, questioned conflicts of
4 interest and called the review process undemocratic; as noted in the above referenced Exhibit of
5 a speech given in Boston by Dr Johanning, Those who raised objections were ultimately
6 overruled by the Board Members of the ACOEM.

7 45. Within the ACOEM Statement’s background information is another email authored by
8 Borak, a true and correct copy of which is attached hereto as Exhibit 29. The email was sent
9 September 6, 2002. The recipients were Dean Grove, Past President of the ACOEM, Barry
10 Eisenberg, Executive Director, ACOEM; Tim Key, Current President of the ACOEM and
11 Edward Bernacki, Past President of the ACOEM. Marianne Dreger is the Communications
12 Director of the ACOEM.

13 46. In the above referenced email, Borak stated, “I have received several sets of comments
14 that find the current version, much revised, to still be a defense argument. On the other hand,
15 Bryan Hardin and his colleagues are not willing to further dilute the paper.” He goes on to say “I
16 do not want this to go to the BOD and then be rejected. That would be an important violation of
17 Bryan –I have assured him that if we do not use it he can freely make whatever other use he
18 might want to make.” Borak wrote, “If we ‘officially’ reject it, then we turn his efforts into
19 garbage.”

20 47. This email demonstrates that it was understood by those in the inner circle of decision
21 makers of the ACOEM that the conclusion to “not officially reject” an admittedly biased defense
22 paper would have future value to the principals of GlobalTox by providing legitimacy to their
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1 defense argument. Borak's above referenced sentences illustrates this future value for the
2 principals of GlobalTox was given consideration in the purported "unbiased" decision to accept
3 the document as the ACOEM Statement.

4 48. By referencing the ACOEM Statement as a "defense argument", with biased
5 consideration being given to it's known expert defense witness authors, indicates that the inner
6 circle of ACOEM was well aware that the future value of the legitimizing this work would be it's
7 use in the Court to win lawsuits against families, office workers, teachers and children who have
8 been made sick after an excessive exposure to mold.

9 49. In the Kilian case, Kelman defines critical review by saying "A critical review looks at
10 the experimental design, whether the conclusions are supported by the data, whether the data has
11 been collected in the way that allows extrapolation of people, because we're primarily interested
12 in people." Attached collectively hereto as Exhibit 30 are true and correct copies of Kelman's
13 transcript from the Kilian case, P.859: 1-4; P.879: 1-22. He describes the peer review process of
14 the ACOEM Statement by saying "For the American College of Occupational and
15 Environmental Medicine, I've been told that more than 100 physicians looked at this, and most
16 of them critically reviewed it. Then at that point it goes back to the Council on Scientific Affairs,
17 and I believe the process then is that the council recommends to college council that – or the
18 directors of the college of medicine that the statement be accepted. So at that point it's been
19 extensively reviewed and although it has been written by someone, it's then the position of the
20 College of Medicine." "...In fact, this is probably the most extensive reviewed peer review
21 publication I've ever done." (Exhibit 30, P.879: 19-20)
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1 50. In the Haynes case, when questioned about the ACOEM peer review process by the
2 attorney for Adair Homes and prior to Vance's questioning, Kelman described the ACOEM peer
3 review process by stating, "We..., the American College of Occupational and Environmental
4 Medicine has divided effects into three areas, and this is in their positions statement. And, I think
5 it's important to understand the physician statement, although I said I was one of the authors I
6 only began the process. So, I and two other authors were asked to put the report, the statement,
7 together, but then went to a committee of scientific affairs. This committee on scientific affairs
8 has twenty some physicians in it, they reviewed it, they sent it out to many more physicians,
9 went to the board of directors, they reviewed it. I was told by the head of that committee that
10 somewhere in the order of one hundred very critical physicians reviewed that paper. So, by the
11 time it gets to the end of the process, the college adopts it as their position statement...."
12 Attached as Exhibit 31 are true and correct copies of Kelman's transcript in the Haynes case,
13 P.16:23 through P.17:14.

15 51. In the Haynes case, Kelman described a peer review process as , "... Peer review means
16 that the person who reviewed the article has no relationship to the person who wrote it. The
17 person who wrote it doesn't know who's doing the reviewing. That's really important, because
18 otherwise the reviewers don't feel free to severely criticize the article. I mean, I'm not gonna
19 criticize my friend's article, particularly if I know that he knows that I reviewed it...." Attached
20 as Exhibit 32 is a true and correct copy of Kelman's transcript in the Haynes case, P.22: 3-11.

22 52. In the Haynes case, when asked the questioned by Vance, "And, you participated in
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1 those revisions?" Kelman replied, "Well, of course, as one of the authors". (Attached hereto as
2 Exhibit 33, a true and correct copy of the Kelman transcript in the Haynes case, P.53:17 –
3 P.54:10.)

4 53. The paper was sent out to 101 of the 6000 ACOEM members for review. This number
5 is less than 2% of the total membership of an association of which many of it's physician
6 members perform medical examinations of injured workers and/or mold victims on behalf of
7 insurers and employers. As demonstrated in an August 9, 2002 email authored by Dr. Harbut
8 (Harbut), many of those who were not selected to participate in the peer review process of the
9 ACOEM Statement, raised serious, grave concerns of the reason, logic and conflicts within the
10 Statement. Two of the authors of the Statement were not even licensed to treat people suffering
11 from mold illnesses. Attached collectively as Exhibit 34 are true and correct copies of
12 documentation of the number of peer reviewers, documentation of the function of the ACOEM
13 and their physicians, and an email authored by Harbut, August 9, 2002.

15 54. As noted in the prior exhibit, some members of the ACOEM perform medical
16 examinations of mold victims on behalf of insurers. E-mails demonstrate that many were
17 anxious for the release of the ACOEM Statement. Attached as Exhibit 35 is a true and correct
18 copy of an email authored by Douglas Swift (Swift) and sent on October 4, 2002. Swift asked the
19 question of Borak, "I'm giving a talk to a group of insurance related clients. Is it quotable and if
20 so, how should I reference it?"

22 55. The ACOEM Statement was leaked to the medical community on approximately
23 October 27, 2002. This date is the same date the paper was accepted by the ACOEM Board of
24 Directors to be the position statement of the esteemed ACOEM. This leak went out through the

1 Duke University, occ-env- med-L, which is the environmental medical community's internet
2 chatboard. It was only on the chatboard for a minute period of time before the host of the board
3 was asked by Dreger of the ACOEM to retract the post. Even with just minute posting time, it
4 still caused quite a stir and scurrying on the part of the inner circle of the ACOEM. The reason
5 being, the ACOEM Statement was still in Rough Draft form on October 27, 2002, the date of
6 it's acceptance by the Board Members of the ACOEM. Attached collectively as Exhibit 36 are
7 true and correct copies of the following emails, demonstrative of the scurrying and confusion the
8 situation caused,: Email, Dr. Sudakin, dated November 8, 2002: Sudakin is apologizing for
9 posting the rough draft of the Duke chatboard. Email, Hardin, November 7, 2002: Hardin is
10 apologizing to Dreger for being "a nag along the way, but was getting nervous that the ACOEM
11 Board might get cold feet and back away. I'm much relieved to find it posted. Thank you again."
12 Email, Dr. Hodgson, dated November 5, 2002: Dr. Hodgson is questioning whether the authors
13 paper was based on "not just what we believe..." Email, Dr. Harbut, dated November 4, 2002:
14 Harbut is asking "Do you know if the authors have any potential conflict of interest, such as
15 having been retained as expert witnesses by an attorneys?" Email, Hardin, dated November 5,
16 2002, stating "My reaction to this request is to say that he who demands to see a colfict of
17 interest statement should offer his first." Email, Bernacki, President of the ACOEM at that time
18 and dated November 8, 2002, stating "Because of that interest, this evidence-based paper
19 underwent strenuous and extensive peer-review, and a "Conflict of Interest" statement was
20 obtained from the authors of the paper.

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23 56. Attached collectively as Exhibit 37 are true and correct copies of three emails from
24 Hardin, Saxon and Kelman respectively and dated November 5, 2002. This was one full week
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1 after the Board's acceptance of the Rough Draft ACOEM Statement, and well after the
2 completion of the supposedly unbiased and extensive peer review process. What these emails
3 indicate is that, not the ACOEM Board or Directors , not one-hundred-one critical peer
4 reviewers, but the known defense expert authors of the original paper themselves; Hardin,
5 Kelman and Saxon, were the ones who had final edit over ACOEM Statement. In Hardin's
6 November 5th email he stated "I've proofed the draft on the web page and have the following
7 edits." This statement was then followed by twelve edits made by Hardin on November 5, 2002.
8 Saxon's November 5th email stated, "I have proofed the paper and I have one alteration."
9 Kelman's November 5th, 2002 email stated, "I have no further edits beyond those of my co-
10 authors. In light of current developments, I urge you to post the corrected version tomorrow
11 (Wed.) if you possibly can. The level of noise and misquotation is reaching a deafening level out
12 here on the West Coast!"

14 57. An email was sent from GlobalTox principal, Hardin to Borak, dated April 22, 2003, (a
15 true and correct copy is attached hereto as Exhibit 38) six months after the ACOEM Statement
16 was officially placed on the ACOEM website. Kelman's coauthor and coworker asked Borak,
17 Chair of the Committee on Scientific Affairs for the ACOEM, "Can you give an idea how many
18 people were involved in the various stages of reviews?" Borak's response to Hardin was "I do
19 not know how many because I do not know how many reviewed the MS" (mold statement) "and
20 agreed, but did not respond. Also, I have not maintained any of the files or emails. It was
21 certainly more than a dozen: there are more than that on the Board alone." **This is a quite**
22 **different scenario than the unbiased, critical review by one-hundred that Kelman testifies**
23 **to under oath.**

1 58. In the Killian case, it is shown that the widely distributed, ACOEM dose response
2 theory of people not becoming ill from indoor mold exposure, is based on the GlobalTox
3 principals' mathematical extrapolations of one single, high dose, acute exposure, study in rats.
4 Kelman stated that rats study by Dr.Rao, was "the one that we modeled for the single-dose
5 study." The Rao study was based on rats being blasted with a massive amount of mold for a
6 minute amount of time as is shown in a document entitled "The Time Course of Responses to
7 Intratracheally Instilled Toxic Stachybotrys Chartarum Spores in Rats", a true and correct copy of
8 which is attached hereto collectively as Exhibit 39, with true and correct copies of the Kilian
9 transcript, Pages 906 through 916.

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11 59. Attached as Exhibit 40 is a true and correct copy of an email dated June 17, 2002 and
12 authored by ACOEM peer reviewer, Dr. Dorsett Smith (Smith). On page 6 of his critique of the
13 paper, Smith asks the question, "In this paragraph there should be more emphasis on 'THE
14 DOSE MAKES THE POISON.' Toxicity is a term that is frequently used by the authors but
15 needs to be defined further; toxic to who!!-mouse or man??"

16 60. In the Kilian case, Kelman indicated in his testimony that the ACOEM Statement was
17 supported by the Institute of Medicine, Damp Indoor Spaces Report (IOM Report), published in
18 May, 2004. Attached as Exhibit 41 is a true and correct copy of, the Kilian transcript, P.880: 19-
19 25. Regarding the IOM Report, Kelman was asked "And are there conclusions drawn by the
20 authors and the researchers of Exhibit 90, the National Academy of Science Institute of Medicine
21 publication, that are consistent with the positions that –and the position paper that_ you published
22 with Dr. Saxon for the American College of Occupational and Environmental Medicine?"
23 Kelman answered, "They're certainly consistent. I think this is broader."
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1 61. The ACOEM Statement discusses human mycotoxicosis resultant from indoor toxic
2 exposure and implies they have been able to make a direct correlation that human illness is not
3 possible. This is based on a study of rats.

4 62. Kelman certainly supports this opinion in the courtroom and even takes it a step
5 beyond to concretely state illness from mycotoxin exposure in an indoor environment is not
6 possible. This is based upon what he knows from studies he has done, literature that he has
7 discussed and his experience and training. As shown above, this caveat would then include the
8 IOM Report.

9 63. From the Haynes case, the following is Kelman's under oath testimony, a true and
10 correct copy of which is attached as Exhibit 42, P.29: 12 through P.30:3. When asked the
11 question by the defense counsel for Adair Homes, "Based on the studies that you have done, the
12 literature that you have discussed, and your experience and training, have you formed an opinion
13 based on reasonable scientific probability or certainty as to whether or not there was enough
14 mycotoxin in the home to have caused any illness to Mrs. Haynes, Michael Haynes, or Liam
15 Haynes?" Kelman's answer was "Yes." The attorney went on: "And, what is that opinion,
16 doctor?" Kelman answered, "There could not be. I mean, the differences between the maximum
17 dose that we could come up with and the level at which we see effects for a broad range of
18 mycotoxins is just too great."

19 64. The ACOEM Statements ends with the catch phrase, "Current scientific evidence does
20 not support...." This phrase could be equally applied by the Institute of Medicine regarding the
21 ACOEM Statement. The attached as Exhibit 43 is a true and correct copy of the summary page
22 of Chapter 4 of the IOM Report which states "Except for a few studies on cancer, toxicologic
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1 studies of mycotoxins are acute or short-term studies that use high exposure concentrations to
2 reveal immediate effects in small populations of animals. Chronic studies that use lower
3 exposure concentrations and approximate human exposure more closely have not been done
4 except for a small number of cancer studies.”

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

11 66. The American Council on Science and Health (ACSH) has also weighed in on rodent
12 studies being used to conclusively determine whether dose does or does not make the poison in
13 humans. In a paper entitled “Ratty Test Rationale” and authored by Margaret Whelan, founder
14 of the ACSH, Dr. Whelan vehemently denounces the scientific standpoint of using rat studies to
15 conclusively determine human illness. She is quoted as saying “Let’s end rodent terrorism
16 before it further devastates our economy and way of life.” A true and correct copy of “Ratty Test
17 Rationale” is attached as Exhibit 44.

18 67. There are 83 references listed on the ACOEM Statement reference pages. In Kilian,
19 when questioned specifically about some of those references Kelman said “Well, just because we
20 use the references doesn’t mean that we’re referring to them as legitimate, useful references.”
21 Attached as Exhibit 45 is a true and correct copy of page 940 (P.940:16 -22) of the Kilian
22 transcript.
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1 68. Kelman was also asked in the Kilian case about some of the studies addressing
2 causation of illness by mold/toxins, but not used as a reference in the ACOEM Statement. His
3 commentary of the various studies are shown in the Kilian deposition transcript attached hereto
4 as Exhibit 46, pages 931 through 939 (P.931:16 through P.939:24)

5 69. Within another portion of his Kilian testimony, Kelman stated, “We’re limited in the
6 fact-based statement to a – I don’t remember what the page limitation is, but it’s supposed to be a
7 concise document. It’s not meant to be an encyclopedic examination. So we attempted to use
8 our—the professional judgment between the three of us to pick out those studies which were
9 most representative of the statement.” Attached hereto as Exhibit 47 is a true and correct copy of
10 page 887 from the Kilian deposition (P.887:5-11) **This is quite a different scenario than an**
11 **extensively researched, scientific paper with 83 legitimate references.**

12 70. There is an ending paragraph in the press release which I authored that states “In
13 2003, with the involvement of the US Chamber of Commerce and ex-developer, U.S.
14 Congressman Gary Miller (R-CA), the GlobalTox paper was disseminated to the real estate,
15 mortgage and building industries’ association. A version of the Manhattan Institute
16 commissioned piece may also be found as a position statement on the website of the United
17 States medical policy-writing body, the American College of Occupational and Environmental
18 Medicine.”

19 71. It is this ending paragraph that the principals of GlobalTox would prefer not be highly
20 publicized. This, along with the fact that the ACOEM Statement is based on a premise current
21 scientific evidence does not support; and the acceptance of the ACOEM Statement was forced
22 through by an improperly biased and bypassed peer review process.
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1 72. The American College of Occupational and Environmental Medicine, Adverse
2 Human Health Effects from Mold in an Indoor Environment, Evidence Based Statement is a
3 document of scant scientific foundation; authored by expert defense witnesses; legitimized by the
4 inner circle of an influential medical association, whose members often times evaluate mold
5 victims of behalf of insurers and employers; and promoted by stakeholder industries for the
6 purpose of financial gain at the expense of the lives of others.

7
8 73. Attached collectively hereto as Exhibit 48 are true and correct copies of Kelman's
9 analyses of the illnesses of Kari Kilian, Renee Haynes and the Haynes' two small sons, Michael
10 and Liam. It is these types of analyses, that if accepted as legitimate, can add devastating insult
11 to already tragic injury for mold victims and their families. These analyses are based on a
12 foundation the National Academy of Sciences, Institute of Medicine has deemed inconclusive to
13 form an opinion of the existence or absence of human illness.

14 74. My degree is in marketing. I have been professionally and corporately trained in
15 marketing and sales. I have 25 years of experience in marketing and sales. As such and if called
16 to witness, I am qualified to state, that in my opinion, "The ACOEM Statement and the
17 Manhattan Institute Version, both authored by Kelman/GlobalTox, are nothing more than the
18 core and the vehicle of an elaborate and injurious marketing campaign designed to deceive the
19 American public."

20
21 75. The purposes for filing this lawsuit against me are as follows:

- 22 • To intimidate me and others from speaking out. Others are threateningly
23 referenced to in this case as defendants, John Doe 1 – 20.

- To hide from the public the true relationship between the courtroom, GlobalTox, the US. Chamber of Commerce stakeholder affiliates, Congressman Gary Miller, the ACOEM Statement and the Manhattan Institute Version.
- To continue to deceive the Courts by masquerading a widely marketed defense argument as a scientific position – unbiased, extensively peer reviewed and fully endorsed by a nationally respected learned body of 6,000 physicians.
- To financially punish me for speaking out by forcing me to defend myself
- To occupy my time fighting a lawsuit so I have no time to assist mold victims.
- To discount my words and demean my reputation as one who would make libelous statements
- To stifle my voice by discouraging those who may be easily intimidated from associating with me.
- To allow GlobalTox and their associates to continue their work on behalf of commercial stakeholders with minimal scrutiny
- To keep the public and clinicians unaware of the serious mold illnesses people are experiencing for the purpose of limiting the financial liabilities of others.

76. Kelman did in fact, “alter his under oath testimony”. Whether an altered under oath testimony constitutes perjury would be a matter our courts would need to examine and legally decide. I am not qualified to make such a determination. Nor did I in the press release I authored.

77. Regarding the on-going case of Haynes vs. Adair Homes, I truthfully stated the sequence of events of Kelman’s testimony as I understood them at the time, and still

1 understand them to be. I stand by all sentences written in the press release authored by me
2 including, "Upon viewing documents presented by the Haynes' attorney of Kelman's prior
3 testimony from a case in Arizona, Dr. Kelman altered his under oath testimony on the witness
4 stand."

5
6 I declare under the penalty of perjury that the foregoing is true and correct and that this
7 declaration was executed on July 7, 2005 at Encinitas, California.
8

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10 _____
11 Sharon Kramer
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