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6 **FOURTH DISTRICT DIVISION ONE COURT OF APPEAL**

7 **SHARON KRAMER,**
8 **Defendant & Appellant**

9 **v**

10 **BRUCE J. KELMAN &**
11 **GLOBALTOX, INC.,**
12 **Plaintiffs & Respondents**

13 **CASE NO.D054496**

14 **MOTION TO RECALL & RESCIND REMITTITUR**

- 15 1.) Remittitur Issued By Error Of Court Ignoring
- 16 Respondent Fraud In Reply Brief,
- 17 2.) Clerical Error, Court Mailed Pro Per Kramer A
- 18 Document in 2009 Not In Court File, No
- 19 Judgment or Notice of Entry On Record To Be
- 20 Affirmed
- 21 3.) Administrative Appellate Presiding
- 22 Justice, Clerical Error. Local Rules of the Court;
- 23 Policies Against Bias 1.2.1, Forgot That Court
- 24 Must Respond To Complaints Under Ca Rules of
- 25 the Court 10.603 & 10.703,
- 26 4.) Errors of Opinion Causing Malicious
- 27 Prosecution To Gag Kramer From Writing of
- 28 Opinion Ignored Fraud In Respondent's Reply
- Brief; Court Case No.37-2010-00061530-
- CU-DF-NC Kelman v. Kramer, NC Superior Court
- Dept. 30, Honorable Thomas Nugent, Served
- November 28, 2010
- 5.) Opinion & Remittitur Placing A Superior Count
- Judge In Compromised Position Of Having To
- Roll Over On His Judicial Peers & Superiors Or
- Send A Whistle Blower To Jail

OPINION ISSUED SEPTEMBER 14, 2010
REMITTITUR ISSUED DECEMBER 20, 2010

24 **MOTION TO RECALL AND RESCIND REMITTITUR**

25 This Motion and accompanying Points and Authorities may be read online
26 at _____. It is filed in accordance with California Rules
27 of the Court 8.54(a).

28 January 19, 2011

Sharon Kramer, Pro Per

MOTION TO RECALL AND RESCIND REMITTITUR

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MEMORADUM OF POINTS & AUTHORITIES

- 1.) Remittitur Issued By Error Of Court Ignoring Respondent Fraud In Reply Brief,
- 2.) Clerical Error, Court Mailed Pro Per Kramer A Document in 2009 Not In Court File, No Judgment or Notice of Entry On Record To Be Affirmed
- 3.) Administrative Appellate Presiding Justice, Clerical Error. Local Rules of the Court; Policies Against Bias 1.2.1, Forgot That Court Must Respond To Complaints Under Ca Rules of the Court 10.603 & 10.703,
- 4.) Errors of Opinion Causing Malicious Prosecution To Gag Kramer From Writing of Opinion Ignored Fraud In Respondent's Reply Brief; Court Case No.37-2010-00061530- CU-DF-NC Kelman v. Kramer, NC Superior Court Dept. 30, Honorable Thomas Nugent, Served November 28, 2010
- 5.) Opinion & Remittitur Placing A Superior Court Judge In Compromised Position Of Having To Roll Over On His Judicial Peers & Superiors Or Send A Whistle Blower To Jail

OPINION ISSUED SEPTEMBER 14, 2010
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Memorandum of Points and Authorities

I.

BACKGROUND

Although never mentioned in any Opinion or ruling, in this litigation Sharon ("Kramer")s use of the phrase, *"altered his under oath statements on the witness stand"* which was deemed by this court to be a malicious lie, just happened to be in

1 the same writing that was the first to publicly expose how it became a fraud in US
2 public health policy that moldy buildings do not harm prior healthy people.

3
4 Never mentioned in any Opinion or ruling, as even being in evidence; Kramer
5 has evidenced since July of 2005, that she believes Bruce ("Kelman")'s statements
6 of *"lay translation"* to *"two different papers, two different activities"* and back to
7 *"translation"* were altered under oath testimony to hide the true connection of the
8 medical policy writing body, ACOEM, from that of the US Chamber of Commerce
9 when marketing the fraud into policy and to the courts.

10 As such, this court has deemed a whistle blower of fraud in US and California
11 health and workers comp policies to be a malicious liar while not being able to cite
12 to one piece of evidence of her ever being impeached as to the subjective belief in
13 the validity of the truthfulness of her words *"altered his under oath statements on the*
14 *witness stand"* ..because they never even mentioned she provided the
15 unimpeached evidence of her logic for her use of these words.

16
17 The fraud in policy that this court is aiding to cover up by deeming a never
18 impeached whistle blower to be a malicious liar, is that Kelman (and irrefutably
19 evidenced to be an undisclosed party to this litigation on the Certificates of
20 Interested Parties; CDC NIOSH Big Wig Bryan ("Hardin")) could apply math to a
21 single rodent study and prove no one is sick from the toxins found in water
22 damaged buildings. Thousands of lives have been devastated from the fraud.

23
24 Not mentioned in the Opinion, this court was clearly evidenced by Kramer that it
25 is a fraud in science to make such an outlandish claim used to deny causation of
26 illness in the courts, based on such limited data. Kramer also evidenced how it has
27
28

1 impacted policy and mold litigation for the past nine years. But that is not
2 mentioned in the Opinion, either.

3
4 Not mentioned in the Opinion, this court was evidenced that Kramer virtually
5 castrated the defense in mold litigation when she exposed it as a fraud in policy by
6 getting a Federal GAO audit into the current scientific understanding of the health
7 effects of mold.

8
9 Excerpts of a new book published in December 2010, by Dr. Ritchie Shoemaker
10 and regarding Kramer's role in reshaping policy:

11 The arguments about health effects caused by exposure to the interior
12 environment of water-damaged buildings were brought to the U.S.
13 Senate Health Education Labor and Pension Committee (HELP) in
14 January 2006, largely through the tireless efforts of Sharon Kramer.
15 She'd provided Senator Ted Kennedy's office with an overwhelming
16 amount of data to show that the current U.S. government approach to
17 mold illness was not only shortsighted and biased, it was plain wrong.
18 Senator Kennedy of HELP and Senator Jeffords of the Senate Public
19 Works Committee called for a legislative staff briefing, with invitations
20 provided to all Senate members. The meeting was held in the Dirksen
21 Building in January 2006. Thank goodness that it wasn't held in the
22 Rayburn Building; (see Chapter 21, Tourists' Guide to Moldy Buildings in
23 DC). Panelists were Vincent Marinkovich, MD; Chin Yang, PhD; David
24 Sherris, MD; and Ritchie Shoemaker, MD, with Mrs. Kramer organizing
25 and moderating the briefing. The EPA, CDC and HHS were supposed to
26 send speakers as well so that an informed dialog could take place for
27 the benefit of the Senate legislative staffers, and therefore the U.S.
28 citizens. The agencies cancelled their appearance at the last minute...

29 Understanding that (a) most elected officials aren't comfortable with
30 potential threats to vested financial interests (in the case of water-
31 damaged buildings, those interests involve building ownership and the
32 property and liability insurance industries); and (b) discussion of human
33 health effects due to exposure to water-damaged buildings exposes
34 such threats to those interests, it was curious that such a conference
35 could be held at all. No videos or minutes of the meeting were
36 permitted to be taken so the Senate staffers could feel comfortable to

1 ask questions. I expected that there would be some sort of maneuver
2 surrounding this scientific and political event, so it was no surprise that
3 government agencies, including the EPA, pulled their representatives at
the last minute, though no explanation was given...

4 That area of enquiry subsequently led to a request from Senator
5 Kennedy's office in October 2006 to the General Accountability Office
6 for a review of the Federal effort. Again, Sharon Kramer's incredible
7 effort was..... instrumental in the GAO request that led in turn to the
8 2008 US GAO report that completely destroyed the defense or
9 government Nay-sayers' credibility in mold illness issues. Thanks to
10 Sharon and Senator Kennedy's staff, the longstanding idiotic
11 arguments about mycotoxins alone being the problem from WDB have
now been put to rest, with the exception of some really primitive
defense attorneys who don't know that the old ACOEM-quoting
defense and the old AAAAI quoting defense are a prescription for a loss
in court.

12 Additionally, never mentioned in any ruling or Opinion, Kramer has provided the
13 courts with uncontroverted evidence since September of 2005 that Kelman
14 committed perjury and his attorney, Keith ("Scheuer") repeatedly and willfully
15 suborned it, to establish false extenuating circumstances for Kramer's purported
16 malice. This includes in his Reply Brief of September 2009 submitted to This Court.

17
18 Kramer evidenced this, but it was not mentioned in the Opinion that this court
19 willfully accepted suborning of perjury in a legal brief by a California licensed
20 attorney over a matter adversely impacting public health and involving billions of
21 dollars.

22
23 There is now a new malicious litigation filed November 4, 2010, in which Kelman
24 and Scheuer are seeking an injunctive relief that Kramer be gagged from ever
25 writing of this libel litigation. This means Kramer would be gagged from writing of
26 this court's aiding with interstate insurance fraud by not following the laws that
27 govern proof of libel with actual malice and repeatedly ignoring what courts are
28

1 must to do by law, when provided irrefutable evidence that a litigant and their
2 attorney are committing perjury to strategically litigate.

3
4 With this newest attempt to gag Kramer, this now makes Kelman and Scheuer
5 agents of this court in a new malicious litigation to cover up what this court was
6 willing to do to aid the continuance of fraud in health policies on behalf of affiliates
7 of the US Chamber of Commerce, primarily the insurance industry.

8
9 This newest attempt to gag Kramer, also places a San Diego North County
10 Superior Court Judge, the Honorable Thomas Nugent, in the compromised
11 position that he will have either have to roll over on this court (and the Chair of the
12 California Commission on Judicial Performance who did the same thing when
13 denying Kramer's anti-SLAPP motion in 2006) for aiding with a malicious litigation
14 to silence a Whistle Blower with this court being the true beneficiaries if Kramer
15 were to be gagged;

16 or Judge Nugent will have to put the never once impeached Kramer behind bars
17 when she refuses to be silenced of the fraud in US policy and the fraud of the
18 Fourth District Division One Appellate Court aiding in the continuance of the
19 insurance fraud adverse to public health, the public's best interest and in egregious
20 dereliction of duty as Justices of the State of California.

21
22 Email sent yesterday to the San Diego District Attorney's Office:

23 Dear. Mr. Koerber and Mr. Hawkins,

24 I hope you are doing well. Please share this email with District Attorney
25 Dumanis.

26 I need to meet with you again and file a new complaint about what the
27 Fourth District Division One Appellate Court has done. Kelman sued
28

me again seeking an Injunctive Relief

[<http://freepdfhosting.com/bfaeafa6ea.pdf>] that I not repeat my phrase "*altered his under oath statements*" and many others for which I was not even sued, on the Internet or anywhere else.

I have never reposted or even discussed my purportedly libelous writing since the day he sued me in May 2005 without disclosing it was the subject of a libel suit [<http://freepdfhosting.com/2ea637d61d.pdf>], which is my right to do. Even people on death row are permitted to profess and evidence their innocence.

If I can never mention the phrase or my writing connecting ACOEM to the US Chamber and litigation; what this means is that a successful whistle blower [<http://freepdfhosting.com/40ef44be08.pdf>] of a fraud in US health and CA workers comp policy also would not be able to discuss how the San Diego courts turned a blind eye for six years to the undisputed facts that:

1. There was no evidence presented that I did not believe my words - because they never even acknowledged that I explained [<http://freepdfhosting.com/21f71b9b4e.pdf> (pdf pg 12 -18)] why I used my words in any of their rulings or Opinions.

2. They ignored the uncontroverted evidence that Kelman committed perjury [<http://freepdfhosting.com/21f71b9b4e.pdf> (pdf pg 25 to pg 29)] to establish false extenuating circumstances for my purported malicious motivation to publicly write of how it became false US health policy that mold does not harm prior healthy people. Never even mentioned there was evidence of the perjury to establish libel law needed reason for malice - not once.

3. Never mentioned, Bryan Hardin, retired Deputy Director of CDC NIOSH was irrefutably evidenced [<http://freepdfhosting.com/dc748c7054.pdf>] to be improperly undisclosed to be a party [<http://freepdfhosting.com/57726d547a.pdf>] to this litigation as the sixth owner of VeriTox, Inc. (and author of fraudulent environmental policy for the US Chamber and ACOEM). Never saw them mention his name in any opinion or ruling, once.

Now, with this newest litigation meant to gag me of what really occurred in my libel litigation at the hands of the Fourth District Division One [<http://freepdfhosting.com/9aa603f298.pdf>] - presided over by the

1 Chair of the California Commission on Judicial Performance;
2 [http://freepdfhosting.com/de56fb0895.pdf] Kelman and his attorney Scheuer,
3 have become agents of the court to cover up their six years of
4 involvement in aiding [http://katysexposure.wordpress.com/2010/10/27/presiding-
5 justice-candidate%C2%A0judith-mcconnell-nine-subordinate-san-diego-
6 judicuariesassisting-with-strategic-litigation-by-criminal-means-by-an-author-of/] this
7 insurer fraud cost shifting scheme
8 [http://www.youtube.com/watch?v=elGIZT6g50Q&feature=mfu_in_order&list=UL] to
9 continue [http://freepdfhosting.com/21f71b9b4e.pdf(pdf pg 6 & 7)] to be promoted
10 in policy by private sector medical associations adverse to the public
11 interest and not based on science (as you know from the Toyota of
12 Poway case), and while the Regents of the UC profit from it
13 [http://freepdfhosting.com/1d6ae0b8a2.pdf]

14 This newest litigation is placing a San Diego Superior Court judge,
15 Judge Thomas Nugent, in a compromised position. He will either have
16 to:

17 1. acknowledge the evidence that this is new strategic litigation in the
18 interest of the Fourth District Division One and Justice McConnell to
19 see me gagged that they ignored a well connected plaintiff's perjury on
20 the issue of malice while strategically litigating; and ignored there was
21 no evidence impeaching the whistle blowing defendant -but deemed
22 her a "malicious liar" anyway to the advantage of the insurance industry
23 and US Chamber of Commerce by discrediting her; or

24 2. put a US citizen who has done more than her part for her fellow man
25 behind bars when she refuses to be silenced of the fraud in health
26 policy and those who have aided it to continue.

27 I have to have a reply brief to the court by January 27th. I am not even
28 hopeful the court will take seriously a Pro Per's amateur writing by one
who has been deemed a "malicious liar" describing his 10 judge and
justice peers ignoring irrefutable evidence of perjury over a matter of
public health and billions of dollars.

This has got to stop somewhere. The State Bar turned a blind eye. The
CA Supreme Court turned a blind eye. The Commission on Judicial
Performance turned a blind eye. The Regents turned a blind eye. And
so did Governor Arnold Schwarzenegger who had endorsed the fraud
into CA workers comp policy

[http://www.cdph.ca.gov/programs/IAQ/Documents/moldInMyWorkPlace.pdf]

1 I think it stops with you and Bonnie Dumanis of the San Diego District
2 Attorney's office.

3 At least that is what the CA Ins. Fraud Assessment Commission says.
4 [http://www.youtube.com/watch?v=az7laEuLCtA] I am aware that the LA County
5 DA's office investigates local judiciaries and elected officials of the court
6 and county as part of their purview.

7 PLEASE HELP, Mr. Koeber, Mr. Hawkins and District Attorney Dumanis.
8 Or if you ever want to come visit me, it will be in the San Diego County
9 Jail when I refuse to be silenced of the insurer fraud written into policy
10 and the Fourth District Division One Appellate Court's aiding it,
11 including Presiding Justice Judith McConnell, Chair of the CJP.

12 I don't deserve this for delving deeply into a problem that is harming
13 thousands, daring to write the truth of a matter and working diligently
14 to change it.

15 When would be a good time to meet? And thank you in advance for
16 stopping this tragic situation of the San Diego courts being unduly
17 influenced in a manner not in the public's best interest or in fulfilling
18 their duties as officers of the courts - while working to punish,
19 discredit and silence a whistle blower of the fraud, ME..

20 Sincerely,
21 Sharon Kramer
22 760-746-8026

23 Forwarded Message To the San Diego DA's Office in same email:

24 Oversight Needed Of Federal Funds Used To Educate US Pediatricians
25 Of The Dangers Of Water Damaged Buildings

26 Dear CDC, Agency For Toxic Substance & Disease Registry and EPA, Are
27 We Federally Funding Insurer Cost Shifting Environmental "Science"
28 When Educating US Doctors on Behalf
of the Affiliates of the US Chamber of
Commerce?



On January 17, 2011, Seventy Five
Physicians, Scientists & Citizens sent a
letter to CDC ATSDR & EPA requesting

1 transparency and oversight of what America's pediatricians and other
2 US physicians are being taught of children's illnesses caused by
3 exposure to Water Damaged Buildings (WDB) through the
4 collaboration of private medical associations and Federal funds. The
5 gist of the concerns raised is "Certainly, the directors can understand
6 the concern when tax dollars are used to potentially harm the public
7 when some of the US policy writers involved in influencing America's
8 pediatricians and occupational physicians of the causes and effects of
9 WDB exposures also generate income aiding insurers to deny any
causation or effect even exists. This in turn, may aid insurers to shift the
cost of WDB-illness onto us, the US taxpayer."* View the letter sent to
our nation's leaders in entirety at KatysExposure.Wordpress.Com
"Exposing Environmental Health Threats And Those Responsible" -
Katy's Exposure Blog

10 [[http://katysexposure.wordpress.com/2011/01/18/request-for-](http://katysexposure.wordpress.com/2011/01/18/request-for-transparency-oversight-of-federal-funds-used-to-educate-us-pediatricians-of-children%E2%80%99s-illnesses-caused-by-water-damaged-buildings-%E2%80%9Cwdb%E2%80%9D/)
11 [transparency-oversight-of-federal-funds-used-to-educate-us-pediatricians-](http://katysexposure.wordpress.com/2011/01/18/request-for-transparency-oversight-of-federal-funds-used-to-educate-us-pediatricians-of-children%E2%80%99s-illnesses-caused-by-water-damaged-buildings-%E2%80%9Cwdb%E2%80%9D/)
12 [of-children%E2%80%99s-illnesses-caused-by-water-damaged-buildings-](http://katysexposure.wordpress.com/2011/01/18/request-for-transparency-oversight-of-federal-funds-used-to-educate-us-pediatricians-of-children%E2%80%99s-illnesses-caused-by-water-damaged-buildings-%E2%80%9Cwdb%E2%80%9D/)
13 [%E2%80%9Cwdb%E2%80%9D/](http://katysexposure.wordpress.com/2011/01/18/request-for-transparency-oversight-of-federal-funds-used-to-educate-us-pediatricians-of-children%E2%80%99s-illnesses-caused-by-water-damaged-buildings-%E2%80%9Cwdb%E2%80%9D/)] "

14 A video of Kramer before the California Fraud Assessment Commission,
15 November 16, 2010, discussing how Governor Schwarzenegger endorsed the fraud
16 of Kelman, Hardin, ACOEM and the US Chamber into California Workers Comp
17 Policy, that this court is aiding to continue may be viewed at:

18 http://www.youtube.com/watch?v=eIGlZT6g50Q&feature=mfu_in_order&list=UL

19 In summary, please rescind the remittitur and step down as Justices of the State
20 of California. Your Opinion and the actions of the newly re-elected Administrative
21 Presiding Justice, who is also Chair of the California Commission on Judicial
22 Performance, are clearly evidenced to have lost sight of your duties to uphold the
23 law on behalf of the citizens of California, the citizens of United States and in
24 protection of the First Amendment of the Constitution. You are willfully aiding in
25 discrediting truthful speech for the public good and chilling speech of others for
26 fear of retribution by judiciaries such as yourselves.

1 As such, you have become the epitome of exactly what the First Amendment is
2 meant to protect against from occurring for the sake of public good. And you are
3 now willing participants and beneficiaries of a new malicious litigation to attempt
4 to gag a Whistleblower of fraud in policy and your involvement in aiding the fraud
5 by your blatant refusal to acknowledge irrefutable evidence of criminal perjury in a
6 strategic litigation. by authors of a deception in US policy for ACOEM and the US
7 Chamber of Commerce. Please rescind the remittitur and step down as Justices of
8 the State of California. You no longer deserve the right to be in such a position of
9 authority while adversely impacting the lives of thousands of citizens by your
10 actions.

11 II.

12 RESCIND THE REMITTITUR, OPINION ISSUED BY IGNORING EVIDENCE OF
13 KELMAN'S & SCHEUER'S FRAUD ON THE APPELLATE COURT

14 1. On September 9, 2009, Kelman filed a reply brief. Within the brief the
15 following statement is made on page 16:

16 "She never asked Vance why he wanted her to wait for the
17 transcript. (Reporter's Transcript, 335:2-4.) And she flailed at trial
18 when she tried to justify her willful refusal to heed Vance's
19 warning. (Reporter's Transcript, 334:5-19.)"

20 2. As evidenced for this court in Kramer's Reply Brief of October 5, 2009, page
21 31, Scheuer made the above statement to mislead this court that Kramer had
22 been impeached as to the subjective belief in the validity of her words in trial.
23 He then cited to a "Reporter's Transcript, 334:5-19", that does not support the
24 fallacy that Kramer was ever impeached as to the subjective belief of her words
25 or maliciously rushed to publish.
26
27
28

1 3. From Kramer's Reply Brief of October 2009, while citing the fraud in
2 Kelman's Brief of September 2009, of which this court must have overlooked
3 that they were evidenced there is simply no evidence of Kramer ever being
4 impeached as to the subjective belief in the truthfulness of her words "*altered*
5 *his under oath statements on the witness stand*" in trial or any other time, or that
6 her Press Release was maliciously motivated:

7 "(Respondent's Brief, Page 16) proves that Respondent knows he
8 did not impeach Appellant as to the belief in her words. For
9 Counsel to resort to the statement, "*And she flailed at trial when she*
10 *tried to justify her willful refusal to heed Vance's warning. (Reporter's*
11 *Transcript, 334:5-19)*" in which Appellant had mixed the word
12 "*what*" with "*that*", is an acknowledgement that Respondent and
13 Counsel know they have never impeached Appellant as to the
14 belief in her words." (Kramer's Reply Brief, pg 31)

15 4. Reporter Transcript, 334:5-19 of the trial states:

16 Mr. Scheuer: Why didn't you want to wait?

17 Mrs. Kramer: Because this – old news is no news, and this was a
18 case of national significance. It was one the first in the northwest
19 where a jury had found that children had suffered neurocognitive
20 damage from the exposure to mold, and it was important to get it
21 out.

22 "And the other reason I didn't want to wait is because I didn't want
23 to see this spun by industry into, 'Some stupid jury found toxic
24 mold did blah, blah, blah'. I have a degree in marketing, and I
25 understand what time is important –"

26 Mr. Bandlow: "That timing"

27 Mr. Scheuer: I'm sorry.

28 Q. (by Mr. Scheuer) – "That timing is important when you are
putting information out".

5. As shown above this court was informed and evidenced, "Reporter
Transcript, 334:5-19", does not support the statement in Kelman & Scheuer's

1 brief of *"And she flailed at trial when she tried to justify her willful refusal to heed*
2 *Vance's warning. (Reporter's Transcript, 334:5-19.)"* Its fraud in a brief to falsely
3 portray impeachment and malice and this court was evidenced it was fraud.

4 6. In Kelman's reply brief of September 9, 2009, on page 20 the following
5 statements are made:

6 "Appellant virtually ignores this mountain of evidence of actual
7 malice, and fixates instead on purported deposition testimony
8 from her old lawsuit against Mercury Casualty (which settled long
9 before the instant action commenced).

10 Appellant's theory apparently is that Dr. Kelman bamboozled
11 several trial court judges and this Court about the substance of his
12 testimony in her Mercury Casualty case, and that this
13 bamboozlement irretrievably tainted this entire lawsuit – creating
14 what Appellat calls "insurmountable judicial perception bias of the
15 case." (Appellant's Errata Opening Brief, page 33.)

16 She claims that this bias "stopped Appellant from being able to
17 discuss what she needed to in order to defend herself."
18 (Appellant's Errata Opening Brief, page 35.)

19 "The judicial perception bias went from court to court, ruling to
20 ruling causing a manifest destiny verdict that the press release
21 was wrong and Appellant had maliciously lied with the use of the
22 word 'altere.' (Appellant's Errata Opening Brief, page 45.)

23 There are many, many problems with Appellant's theory.
24 First, it has no factual basis."

25 7. This court must have missed the numerous times and numerous amounts
26 of uncontroverted evidence Kramer provided that Kelman committed perjury
27 in this litigation to establish false extenuating circumstances based on a
28 testimony he is irrefutably evidenced to have never even given in Kramer's
Mercury case of long ago - because the Opinion does not even mention any of
the evidence of the fraud. Some of the bate stamped evidence from Kramer's

1 appendix, Vol. 4, 988 -1055) may be viewed online at
2 <http://freepdfhosting.com/c35afb9c81.pdf> (huge pdf, takes a minute to open)

3
4 8. The court must have missed the irrefutable evidence that Scheuer willfully
5 suborned Kelman's perjury including in his reply brief, to inflame all courts to
6 make Kramer's writing appear to be maliciously motivated from a lawsuit in
7 which she received approximately one half of one million dollars in settlement.

8
9 9. Kramer evidenced this to this court in her reply brief of October 5, 2009,
10 but "*insurmountable judicial perception bias*" must have caused this court to not
11 be able to understand that one cannot use perjury to make up a reason why
12 someone would want to accuse them of perjury. This rule of law holds true,
13 even if the Regents of the UC profit from the perjury in this strategic litigation
14 and even if it benefits an insurer fraud that Governor Schwarzenegger signed
15 into workers comp policy, while aiding to shift cost onto taxpayers.

16 10. From Kramer's Reply Brief of October 2009, page 8:

17 Beginning in September of 2005, Respondent and Counsel started
18 submitting declarations to the courts providing a purported
19 reason for Appellant's malice stemmed from a purported expert
20 testimony Respondent claimed to have given in Appellant's
21 personal mold litigation with Mercury Casualty, 2003. (Opening
22 Brief. App.6-12)

23 In reality, Respondent never even gave the purported malice
24 causing testimony that supposedly, in the words of Counsel,
25 caused Appellant to be "*furious that the science conflicted with her*
26 "*dreams of a remodeled home*". So she "*launched into an obsessive*
27 "*campaign to destroy the reputations of Dr. Kelman and GlobalTox*".
28 (Opening Brief App.8) Appellant's evidence, uncontroverted by
Respondent's Brief, proves Respondent's declarations submitted
to the courts under penalty of perjury established a false theme
for Appellant's malice. It also proves Counsel has been willing to

1 suborn his client's perjury right up through September, 10, 2009
2 by "emphatically" denying the perjury, with no corroborating
3 evidence to support the emphatic (and false) denial. (Resp. Brief
P.20,21)

4 Their bamboozlement caused a wrongful anti-SLAPP ruling by this
5 Court in 2006; and a wrongful denial of Appellant's Motion for
6 Summary Judgment in 2008. (Appellant's Brief, P.6-12) In addition
7 Respondent's perjury on the issue of malice impacted the framing
8 of the scope of the trial in conjunction with the Honorable Lisa C.
9 Schall's (trial judge) violating C.C.P 425.16.(b)(3) by erroneously
10 relying on this Court's anti-SLAPP ruling for her understanding of
11 the litigation. (Opening Brief, P. 12-16)

12 11. As repeatedly evidenced for this court, the perjury by Kelman that set the
13 false theme of Kramer's purported malice is:

14 "I first learned of Defendant Sharon Kramer in mid-2003, when
15 I was retained as an expert in a lawsuit between her, her
16 homeowner's insure and other parties regarding alleged mold
17 contamination in her house. She apparently felt that the
18 remediation work had been inadequately done, and that she and
19 her daughter had suffered life-threatening diseases as a result. I
20 testified that the type and amount of mold in the Kramer house
21 could not have caused the life-threatening illnesses that she
22 claimed."

23 12. As repeatedly evidenced for this court, the suborning of perjury by
24 Scheuer that set the false them of malice is:

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

13. As evidenced above, Scheuer's brief submitted to THIS court and when
rendering THIS opinion practiced a fraud on THIS court on September 9,

1 2009. It is a fraud in Kelman and Scheuer's Reply Brief to state, "There are
2 many, many problems with Appellant's theory. First, it has no factual basis."

3
4 14. "If the remittitur issues by inadvertence or mistake or as a result of fraud or
5 imposition practiced on the appellate court, the court has inherent power to recall
6 it and thereby reassert its jurisdiction over the case. This remedy, though described
7 in procedural terms, is actually an exercise of an extraordinary substantive power.
8 ...its significant function is to permit the court to set aside an erroneous judgment
9 on appeal obtained by improper means. In practical effect, therefore, the motion or
10 petition to recall the remittitur may operate as a belated petition for rehearing on
11 special grounds, without any time limitations." (9 Witkin, Cal. Procedure (4th ed.
12 1997) Appeal, § 733, pp. 762-763.)

13 III.

14 KRAMER PRO PER WAS MAILED A FALSE DOCUMENT FROM THE COURTS NOT
15 IN COURT RECORD OF A JUDGMENT NEVER ENTERED, RECALL REMITTITUT TO
16 CLARIFY "JUDGMENT AFFIRMED" and "RESPONDENTS" OF OPINION &
REMITTITUR

17 1. California Rule of the Court 8.278(b)(2) states "If the clerk fails to enter
18 judgment for costs, the court may recall the remittitur for correction on its own
19 motion, or on a party's motion made not later than 30 days after the remittitur
20 issues." California Rule of the Court 8278(a)(3) states, "If the Court of Appeal
21 reverses the judgment in part or modifies it..., the opinion must specify the award or
22 denial of costs."

23
24 2. Not mentioned in the Opinion, this court was evidenced that there was no
25 judgment entered after amended rulings awarding costs to both Kelman and
26 Kramer of December 16, 2008; and that. Kramer, Pro Per, was sent a fraudulent
27 document from the clerk of the court, Department 31 in January 2009 falsely
28

1 indicating there *was* judgment entered after rulings. What Kramer was sent was
2 a false document awarding only Kelman costs.

3
4 3. On December 16, 2008 after oral argument of December 12th (which was
5 Judge Schall's last day to preside over Department 31), an amended ruling after
6 trial that differed from the judgment entered on October 16 (that had
7 originally awarded only Kelman costs and not Kramer's as prevailing over
8 GlobalTox) was issue. In the 12/16/08 ruling, Kelman was awarded costs and it
9 was determined Kramer could motion for her costs. Kramer was later awarded
10 costs in a ruling of April 3, 2009. There was no amended judgment entered or
11 notice of entry after either of these two rulings.

12 4. On December 22, Kramer filed a motion for reconsideration to the presiding
13 judge of the North County court, Judge Joel ("Pressman") in Schall's absence.
14

15 5. On January 7th, 2009, Kramer was mailed a denial for reconsideration based
16 on the statement in the denial that the court had lost jurisdiction because a
17 judgment was entered on December 18, 2008. (Appellate Appendix Vol.5,
18 1078)
19

20 6. Kramer had received no Notice of Entry of any judgment. On January 9,
21 2009, she physically went to the court house and checked the court record file.
22 There was no evidence of any judgment entered on December 18, 2008. (And
23 there still is not.)
24

25 7. Kramer went upstairs to Department 31. She was directed to go to Judge
26 Thomas Nugent's Department 30 where Judge Schall's clerk, Michael
27 ("Garland"), would come out to speak with her.
28

1 8. In front of two of Judge Nugent's court personnel, Kramer asked Garland why
2 she was mailed a denial for reconsideration based on a judgment being
3 entered, but there was no record in the court file of any judgment entered after
4 amended rulings and she had received no notice of such.

5 9. Garland, in front of the Department 30 personal replied *"We are all sick of*
6 *you."* Kramer being a new Pro Per because she could no longer afford legal
7 counsel to help defend the truth of her words for the public good, thought she
8 had done something wrong, and questioned Garland no further.

9
10 10. On January 9, 2009, the new clerk of the court for Department 31 mailed Pro
11 Per Kramer a false document indicating that a judgment was entered on
12 December 18, 2008, awarding only Kelman costs contrary to the recent ruling
13 mailed on 12/16/08. Next to the dollar amount it had a hand written *"Michael*
14 *Garland 12/18/08"*. This document with its *"12/18/08"* and mailed to Kramer
15 from the court, is not in the court record. Kramer is the only one who appears
16 to have any such document, as evidenced in her (Appendix, Vol. 5, 1081-1083)

17
18 11. As "Notice of Entry", the document mailed to Pro Per Kramer was attached
19 to a yellow Post it that stated:

20 "Ms. Kramer – 9-24-2008 judgment reflects costs of \$7252.65 entered as
21 of 12-18-2008. See page 3 of highlighted [illegible]. This is the
22 information you are seeking. Lynn D31". (Appellant's Appendix Vol.5,
1081)

23 12. *"For example, courts have held that the 'document entitled 'Notice of Entry' "*
24 *mentioned in the rule must bear precisely that title, and the 'file stamped copy of*
25 *the judgment' [citation] must truly be file stamped."* (Id. At p. 903, quoting rule
26
27
28

1 8.104(a)(1).)"Citizen for Civic Accountability v. Town of Danville (2008) 167
2 Cal.App.4th 1162.

3
4 13. Based on a false date of entry of 12/18/08 of a purported judgment not
5 found in the court records and not consistent with the amended rulings mailed
6 December 16th; the lower court claimed they lost jurisdiction over the case.

7
8 14. On November 28, 2010, Kramer was served papers for an Injunctive Relief that
9 she not be permitted to discuss the words "*altered his under oath statements*" and
10 many others for which she was not even sued, which means she would gagged
11 from this writing of this court ignoring her evidence of Kelman's perjury while
12 strategically litigating and ignored Kramer was mailed a false document from the
13 case of a judgment never entered in the court record after amended rulings. It is
14 Case No.37-2010-00061530-CU-DF-NC Kelman v. Kramer, NC Superior Court Dept.
15 30, Honorable Thomas Nugent.

16 15. What is relevant on this point is that Kelman is now seeking an injunctive relief
17 in a new case that Kramer be gagged of writing of this court's involvement in
18 aiding insurer fraud, based on a fictional judgment that was never even entered in
19 this case after amended rulings of December 16, 2008 and April 3, 2009.

20
21 16. On January 13, 2011, Scheuer submitted costs on appeal of \$762.30

22
23 17. Page 16 of the Opinion states, "*Judgment affirmed. Respondents to recover*
24 *their costs of appeal*". "*Respondents*" is restated in the Remittitur.

25
26 18. Not mentioned in the Opinion, this court was evidenced, Bryan ("Hardin") is
27 the sixth owner of GlobalTox. He is also a retired Deputy Director of CDC
28

1 NIOSH. As this court was evidenced he was an improperly undisclosed party to
2 this litigation on the Certificate of Interested Parties in 2006 when denying
3 Kramer's anti-SLAPP motion. When this court uses the plural term "*respondents*
4 *to recover costs*" in the Opinion and Remittitur, is this court referring to
5 undisclosed party, Hardin, as an additional party to recover costs and one who
6 Kramer prevailed over in trial as one of the owners of GlobalTox? Because on
7 the Certificate of Interested parties submitted to this court in 2009, there is only
8 one disclosed respondent, Bruce Kelman.

9 19 . As such, this court needs to recall the remittitur to clarify what they mean
10 by the term "*judgment affirmed*" and "*respondents*" (plural) of what costs are
11 being awarded to whom; based on what date a judgment properly noticed as
12 entered becomes the valid judgment; and whom they are referring to with the
13 plural "*respondents*" being awarded costs on appeal.

14
15 20. California Rule of the Court 8278(a)(3) states, "*If the Court of Appeal reverses*
16 *the judgment in part or modifies it..., the opinion must specify the award or denial*
17 *of costs.*"

18
19 21. "*A remittitur can be recalled to permit the court to 'clarify and make certain' any*
20 *matters that are implicit in the court's opinion and judgment. (Ruth v. Lytton Sav.*
21 *& Loan Ass'n (1969) 272 Ca 2d 24, 25, 76 CR 926, 927"* Witkins Rule of Law 14;41

22
23 22. "*A recall may also be ordered on the ground of the court's inadvertence or*
24 *misapprehension as to the true facts, or if the judgment was improvidently*
25 *rendered without due consideration of the facts"* McGee (1951) 37 C2d 6,9, 229
26 P2d, 780, 782" Witkins 14:38
27
28

IV.

RECALL REMITTITUR ADMINISTRATIVE PRESIDING JUSTICE "CLERICAL ERROR"

1. The Opinion was rendered on September 14, 2010 deeming Kramer a malicious liar for the word "altered"; in which the Opinion by inadvertence, neglect or error, did not mention Kramer's evidence within her Appellate Reply Brief of fraud on this court, ie, Scheuer again suborning Kelman's perjury on the issue of malice in his reply brief of September 2009; and the Opinion did not mention being evidenced of Scheuer's citing to trial transcript that did not support statements in the brief to falsely portray Kramer had been impeached in trial and was falsey portray she evidenced to have written with malice.

2. On September 17, 2010, Kramer filed a complaint with the Administrative Presiding Justice under Local Rules of the Court, Policy Against Bias 1.2.1. This policy states, "*It is the policy of the court to provide an environment free of all types of bias, prejudice, any kind of discrimination, or unfair practice. All judges, commissioners, referees, court officers, and court attachés must perform their duties in a manner calculated to prevent any such conduct, either by court personnel or by those appearing in court in any capacity....Any violation of this policy by any judge, commissioner, referee, court officer, or court attaché should be reported directly to the presiding judge or executive officer, or assistant executive officer of the division in which the alleged violation occurred.*"

3. In error and in violation of California Rules of the Court; no acknowledgement of even receiving the date stamped complaint Kramer had submitted was sent to Kramer from the Administrative PJ

4.. Under California Rules of the Court 10.603(f)(3). "*The presiding judge must give written notice of receipt of the complaint to the complainant.*"

1 5. California Rules of the Court 10.603(g)(4) states, *"The court must maintain a*
2 *file on every complaint received, containing the following:(A) The complaint;(B) The*
3 *response of the subordinate judicial officer, if any;(C) All evidence and reports*
4 *produced by the investigation of the complaint, if any; and(D) The final action*
5 *taken on the complaint."*

6 6. California Rules of the Court 10.603(i)(5) states, *"If the presiding judge*
7 *terminates the investigation and closes action on the complaint, the presiding*
8 *judge must:(A) Notify the complainant in writing of the decision to close the*
9 *investigation on the complaint. The notice must include the information required*
10 *under (l)" which states: "When the court has completed its action on a complaint,*
11 *the presiding judge must promptly notify the complainant and the subordinate*
12 *judicial officer of the final court action.(2) The notice to the complainant of the final*
13 *court action must:(A) Provide a general description of the action taken by the court*
14 *consistent with any law limiting the disclosure of confidential employee*
15 *information; and (B) Include the following statement: If you are dissatisfied with the*
16 *court's action on your complaint, you have the right to request the Commission on*
17 *Judicial Performance to review this matter under its discretionary jurisdiction to*
18 *oversee the discipline of subordinate judicial officers. No further action will be taken*
19 *on your complaint unless the commission receives your written request within 30*
20 *days after the date this notice was mailed. The commission's address is:*
21 *Commission on Judicial Performance 455 Golden Gate Avenue, Suite 14400 San*
22 *Francisco, California 94102"*

23 7. As the Opinion failed to mention the fraud in Kelman's Reply brief that was
24 evidenced by Kramer to falsely portray to this court that Kramer had been
25 impeached in trial and falsely portray that Kelman had *not* committed perjury,
26 when in fact he had; review for bias in the court is essential and the remittitur
27 should be recalled and stayed for the Administrative PJ to perform her duty,
28

1 required actions and adhere to the policies against bias, as dictated under
2 Local and California Rules of the Court.

3
4 8. *"A recall may also be ordered on the ground of the court's inadvertence or*
5 *misapprehension as to the true facts, or if the judgment was 'improvidently*
6 *rendered without due consideration of the facts"* McGee *"A stay may be ordered*
7 *only for 'good cause'. 'Good cause' for this purpose requires a showing of some*
8 *extraordinary reason for retaining appellate court jurisdiction and further delaying*
9 *lower court proceedings on the judgment (e.g., likely irreparable damage from*
10 *immediate enforcement of the judgment)* Reynolds v. E. Clemens Horst Co. *supra,*
11 36 CA at 530, 172 P at 624] Witkins 14:30

12 9. Clerical error of the Administrative Presiding Justice not acknowledging her
13 subordinates bias that deemed a Whistle Blower of a fraud in policy to be a
14 *"malicious liar"* ; while ignoring the fraud in policy author's fraud in his Reply
15 Brief; or not acknowledging she even received a complaint is "Good Cause" for
16 this remittitur to be recalled and the Opinion re-evaluated. Irreparable
17 damaged is being done to Kramer by having to answer to a new malicious
18 litigation filed by Kelman and Scheuer seeking Kramer be gagged from
19 discussing this case and the bias in the Opinion.

20 IV
21 NEW MALICIOUS LAWSUIT TO GAG KRAMER FROM WRITING OF FRAUD IN
22 OPINION
23 Kelman & Scheuer Now Agents Of This Court

24 1. In a litigation where the sole claim of the case has been over the phrase
25 *"altered his under oath statements on the witness stand"*, Kelman is seeking
26 injunctive relief that Kramer be:

27 "restrained from stating, repeating, publishing or paraphrasing, by any
28 means whatsoever, any statement that was determined to be libelous

1 in an action titled Kelman [sic & GlobalTox] v. Kramer San Diego
2 Superior Court case no. GIN044539. The libelous passage of the press
3 release states:

4 'Dr. Bruce Kelman of GlobalTox, Inc., a Washington based
5 environmental risk management company, testified as an
6 expert witness for the defense, as he does in mold cases
7 through the country. Upon viewing documents presented
8 by the Hayne's [sic] attorney of Kelman's prior testimony
9 from a case in Arizona, Dr. Kelman altered his under oath
10 statements on the witness stand. He admitted the Manhattan
11 Institute, a national political think-tank, paid GlobalTox
12 \$40,000 to write a position paper regarding the potential
13 health risks of toxic mold exposure.'

14 IT IS FURTHER ORDERED that, before this order may take effect,
15 Plaintiff [sic Kelman] must file a written undertaking in the sum of
16 \$_____, as required by C.C.P. 529, for the purpose of
17 indemnifying Defendants for the damaged they may sustain by
18 reason of the issuance of this preliminary injunction if the Court
19 finally decides that Plaintiff is not entitled to it. The preliminary
20 injunction shall issue on Plaintiff's filing of such written
21 undertaking."

22 Pacific Legal Foundation v. California Costal Comm'n, *"The court can recall the*
23 *remittitur if the appellate judgment resulted from a fraud or 'imposition' perpetrated*
24 *upon the court. "* Although this case says nothing of fraud or imposition
25 perpetrated by the court, with an Administrative Presiding Justice ignoring she was
26 evidenced of such and evidenced of her own involvement when denying an anti-
27 SLAPP in 2006; and with the Fourth District Division One Appellate Court being the
28 beneficiary of a new malicious litigation to gag Kramer; a recall of the remittitur in
this case would appear to be legally required to stop the court from covering up
that they have been aiding insurer fraud in health policy by aiding with a strategic
litigation carried out by criminal means to silence a Whistle Blower. It is also

1 required so as not to put the Honorable Judge Thomas Nugent in a compromised
2 position when Kramer files a new anti-SLAPP motion in the new case while
3 detailing the fraud in the Opinion as the primary reason for strategic litigation
4 against public participation.

5 January 19, 2011
6

7
8 _____
9 Sharon Kramer , Pro Per
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