

# Case Report

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Case Type:

Case Number:




## Case CIV465027 - MARCINE BLOUGH VS MENLO COLLEGE ET AL

### Case CIV465027 - Complaints/Parties

<b>Complaint Number:</b> 0001 — COM 3rd Amended COMPLAINT of MARCINE BLOUGH 07/01/2008				
<b>Original Filing Date:</b> 08/07/2007				
<b>Complaint Status:</b> DISMISSED 07/02/2009				
Party Number	Party Type	Party Name	Attorney	Party Status
1	PLAINTIFF	MARCINE BLOUGH	<a href="#">LEBOWITZ, NOAH D</a>	DISMISSED 07/02/2009
2	DEFENDANT	MENLO COLLEGE	<a href="#">VARTAIN, MICHAEL J.</a>	DISMISSED 07/02/2009
3	DEFENDANT	JAMES MISSETT M.D.PH.D.	<a href="#">MARSH, BARRY C</a>	DISMISSED WITH PREJUDICE 08/21/2008

### Case CIV465027 - Actions/Minutes

Viewed	Date	Action Text	Disposition	Image
	05/28/2014	EXONERATE JURY TRUST	-	
<b>Minutes</b>				
Receipt: 140528-0742      \$122.00				
	08/21/2009	REMITTITUR FILED FOR APPEAL A124343. APPEAL IS DISMISSED. PLACED IN FILE.	-	
	07/02/2009	PROOF OF SERVICE BY MAIL OF STIP & ORDER TO VACATE JUDGMENT & DISMISSAL SERVED ON MENLO COLLEGE FILED. DATE OF MAILING 06/23/09.	-	
	07/02/2009	REQUEST FOR DISMISSAL OF ENTIRE ACTION WITH PREJUDICE FILED AND ENTERED.	-	
	07/02/2009	STIPULATION AND ORDER TO VACATE JUDGMENT & ENTER DISMISSAL SIGNED BY BETH LABSON FREEMAN ON 07/02/09.	-	
	07/02/2009		-	

		STIP & ORDER TO VACATE JUDGMENT & ENTER OF DISMISSAL SENT TO DEPT. 3.		
	06/15/2009	CLERKS CERTIFICATE RE: APPELLANTS PAYMENT OF FEES FILED.	-	
	05/29/2009 1:30 PM DEPT. 3	HEARING RE: SETTLEMENT CONFERENCE.	COMPLETED	

**Minutes**  
HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT  
REPORTER: CHRIS PEREZ  
ATTORNEY(S): NOAH D. LEBOWITZ AND MARK C. PETERS APPEARING ON BEHALF OF PLAINTIFF MARCINE BLOUGH.  
ATTORNEY(S): MICHAEL J. VARTAIN APPEARING ON BEHALF OF DEFENDANT MENLO COLLEGE. BRYAN BOYLE OF THE HARTFORD PRESENT AS CLAIMS REPRESENTATIVE FOR DEFENDANT.  
PARTIES HAVE REACHED A SETTLEMENT IN THE CASE.  
DEFENSE COUNSEL STATES TERMS OF SETTLEMENT FOR THE RECORD.  
TERMS OF SETTLEMENT DEEMED CONFIDENTIAL. COURT ORDERS THAT TRANSCRIPT OF TERMS OF SETTLEMENT BE  
SEALED, NOT TO BE UNSEALED WITHOUT A FURTHER COURT ORDER. IF REQUEST IS MADE TO UNSEAL  
TRANSCRIPT, NOTICE SHALL BE GIVEN TO PARTIES WITH THE OPPORTUNITY TO HAVE A HEARING HELD TO  
DETERMINE WHETHER TRANSCRIPT SHOULD BE UNSEALED OR NOT. PARTIES MAY REQUEST COPY OF TRANSCRIPT  
FOR THEIR RECORDS WITHOUT FURTHER COURT ORDER, TO BE BOUND BY CONFIDENTIALITY AGREEMENT AS TO  
COPY OF TRANSCRIPT.  
TERMS OF SETTLEMENT TO BECOME WRITTEN SETTLEMENT.  
COURT RETAINS JURISDICTION RE: TERMS OF SETTLEMENT.  
IF SETTLEMENT SHOULD FAIL, PLAINTIFF SHALL INFORM THE COURT OF SUCH.  
IF SETTLEMENT IS SUCCESSFUL, PLAINTIFF SHALL MOVE TO VACATE JUDGMENT AND ENTER DISMISSAL.  
ENTERED BY SEAN KANE ON 05/29/09.  
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	05/13/2009	MOTION FEE PAID BY MARCINE BLOUGH.	-	
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**Minutes**  
Receipt: 090513-0048      \$20.00

	05/13/2009	ORDER /STIP TO EXTEND TIME TO FILE MOT FOR ATTY FEES &, SIGNED BY JDG FREEMAN ON 05/12/09, FILED.	-	
	05/12/2009	PROPOSED STIP/ORDER EXTEND - SENT TO DEPT.3.	-	
	04/24/2009 2:30 PM DEPT. 3	HEARING RE: SETTLEMENT CONFERENCE.	COMPLETED	

**Minutes**  
HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT  
REPORTER: NONE.  
MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ AND MARK C. PETERS.  
ATTORNEY MICHAEL J. VARTAIN APPEARING WITH/FOR DEFENDANT(S).  
ALSO PRESENT: BRYAN BOYLE, REPRESENTATIVE OF INSURANCE CARRIER FOR DEFENDANT MENLO COLLEGE.  
COURT HELD AN UNREPORTED SETTLEMENT CONFERENCE IN CHAMBERS WITH COUNSEL AND PARTIES.  
ENTERED BY SEAN KANE ON 04/24/09.  
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	04/14/2009	CLERKS CERTIFICATE RE: NOTICE FORM CLERK OF ESTIMATED COST OF PREPARING TRANSCRIPTS FILED.	-	
	04/06/2009	USE TRANSCRIPT TRUST	-	
<b>Minutes</b> Receipt: 090406-0025 \$100.00				
	03/27/2009	PROOF OF SERVICE OF APPELLANTS NOTICE DESIGNATING RECORD ON APPEAL FILED.	-	
	03/27/2009	APPELLANTS NOTICE DESIGNATING RECORD ON APPEAL FILED.	-	
	03/20/2009	STIPULATION AND ORDER TO EXTEND TIME FOR MOTION FOR ATTYS FEES FILED BY MENLO COLLEGE.	-	
<b>Minutes</b> Receipt: 090320-0037 \$20.00				
	03/18/2009	NOTICE OF FILING OF APPEAL FILED.	-	
	03/18/2009	TRANSCRIPT TRUST POSTED BY VARTAIN LAW GROUP ON BEHALF OF MENLO COLLEGE.	-	
<b>Minutes</b> Receipt: 090318-0252 \$100.00				
	03/18/2009	NOTICE OF APPEAL FILED BY MENLO COLLEGE.	-	
	03/18/2009	FORWARDED TO DEPT 3: STIP & PROPOSED ORDER TO EXTEND TIME FOR PLTF. TO FILE MOTION FOR ATTY FEES.	-	
	03/10/2009	NOTICE OF ENTRY OF ORDER AWARDING COSTS & AMENDING JMNT FILED BY MARCINE BLOUGH.	-	
	03/02/2009	ORDER AWARDING COSTS AND AMENDING JUDGMENT, SIGNED BY JUDGE FREEMAN ON 02/27/09, FILED.	-	
	02/26/2009	EXONERATE JURY TRUST	-	
<b>Minutes</b> Receipt: 090226-0133 \$1,181.74				
	02/20/2009	NOTICE OF ENTRY OF ORDERS, FILED.	-	
	02/20/2009	AFFIDAVIT OF MAILING OF NOTICE OF ENTRY OF ORDERS, FILED.	-	
	02/20/2009 1:30 PM DEPT. 3	HEARING: MOTION RE: FOR JUDGMENT NOTWITHSTANDING VERDICT FILED BY MENLO COLLEGE	CONTINUED NOT HEARD	
<b>Minutes</b> HEARING CONTINUED TO 02/20/09 AT 09:00 IN DEPARTMENT 3.				
	02/20/2009 1:30 PM DEPT. 3	HEARING RE: MOTION FOR NEW TRIAL FILED BY MENLO COLLEGE.	CONTINUED NOT HEARD	
<b>Minutes</b> HEARING CONTINUED TO 02/20/09 AT 09:00 IN DEPARTMENT 3.				
	02/20/2009 9:00 AM DEPT. 3	HEARING: MOTION RE: FOR JUDGMENT NOTWITHSTANDING VERDICT FILED BY MENLO COLLEGE	COMPLETED	

**Minutes**

HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: CHRIS PEREZ  
ATTORNEY NOAH D. LEBOWITZ APPEARING WITH/FOR PLAINTIFF(S).  
ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT(S).

MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.  
TENTATIVE RULING ADOPTED AND BECOMES THE ORDER:  
GRANTED IN PART AND DENIED IN PART DEFENDANT MENLO COLLEGES MOTION FOR JUDGMENT  
NOTWITHSTANDING THE VERDICT. GRANTED AS TO VERDICT FINDING LIABILITY FOR PUNITIVE DAMAGES  
AND DENIED AS TO THE VERDICTS FOR DISABILITY DISCRIMINATION DISCHARGE AND WRONGFUL  
TERMINATION IN VIOLATION OF PUBLIC POLICY.

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THE COURT HAS REVIEWED ALL OF THE EVIDENCE SUPPORTING THE VERDICTS AND CONSIDERED SUCH  
EVIDENCE TRUE. JNOV MAY BE GRANTED ONLY IF IT APPEARS FROM THE EVIDENCE, VIEWED IN THE LIGHT  
MOST FAVORABLE TO THE PARTY SECURING THE VERDICT, THAT THERE IS NO SUBSTANTIAL EVIDENCE  
TO SUPPORT THE VERDICT.  
IF THERE IS ANY SUBSTANTIAL EVIDENCE, OR REASONABLE INFERENCES TO BE DRAWN THEREFROM IN  
SUPPORT OF THE VERDICT, THE MOTION SHOULD BE DENIED. SEE HAUTER V. ZOGARTS (1975) 14 CAL.  
3RD 104, 110.

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AS TO THE VERDICTS FOR DISABILITY DISCRIMINATION AND WRONGFUL DISCHARGE, THE COURT IS SATISFIED  
THAT THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THESE VERDICTS. THE EVIDENCE, VIEWED MOST  
FAVORABLY TO PLAINTIFF SHOWS THAT MENLO COLLEGE, ACTING ON RUMOR AND INNUENDO REGARDING  
MS. BLOUGHS ABSENCES AND INABILITY TO PERFORM HER ASSIGNED TEACHING DUTIES, SENT MS. BLOUGH  
TO AN IME CONDUCTED BY DR. MISSETT FOR A DETERMINATION OF HER FITNESS FOR CONTINUED WORK  
AS A COLLEGE PROFESSOR.  
THE EVIDENCE FURTHER SHOWS THAT MENLO COLLEGE NEVER ADVISED DR. MISSETT OF ITS CRITERION FOR  
THE JOB NOR DID DR. MISSETT EXPLAIN WHY MS BOUGHS MEDICAL AND PSYCHOLOGICAL CONDITIONS  
IMPAIRED HER ABILITY TO WORK. THE EVIDENCE SHOWED THAT MENLO COLLEGE CONDUCTED NO  
INVESTIGATION OF THE TRUTH OF THE RUMORS; IDENTIFIED NO CRITERION FOR SATISFACTORY WORK;  
AND NEVER ENGAGED IN ANY DISCUSSION WITH MS. BLOUGH ABOUT HER ABILITY TO PERFORM THE  
ESSENTIAL FUNCTIONS OF HER JOB WITH OR WITHOUT REASONABLE ACCOMMODATION.  
THE LETTER PREPARED BY DR. MISSETT WHICH FORMED THE BASIS OF MENLO COLLEGES DECISION TO  
TERMINATE MS. BLOUGH CAN FAIRLY BE INTERPRETED AS RELATED SOLELY TO HER MEDICAL AND  
PSYCHOLOGICAL CONDITIONS AND NOT WHETHER SHE WAS ABLE TO PERFORM THE ESSENTIAL FUNCTIONS OF THE  
JOB. THUS, THERE IS SUBSTANTIAL EVIDENCE THAT MENLO COLLEGE BASED ITS DECISION ON MS. BLOUGHS

DISABILITY AND NOT THE EFFECT THE DISABILITY HAD ON HER JOB PERFORMANCE.  
THE EVIDENCE ALSO SHOWS THAT MENLO COLLEGE IGNORED AND FAILED TO REVIEW OTHER  
EVIDENCE THAT

WOULD HAVE SHOWN THAT MS. BLOUGH WAS ABLE TO CONTINUE TEACHING WITH  
REASONABLE ACCOMMODATION  
SUCH AS LETTERS FROM HER PERSONAL PHYSICIANS AND STUDENT EVALUATIONS.

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THE COURT DOES NOT FIND PERSUASIVE MENLO COLLEGES RELIANCE ON THE HOLDING IN  
PESTERFIELD

V. TENN. VALLEY AUTH. 941 F.2D 437 (6TH CIR. 1991) REGARDING THE BROAD SCOPE OF AN  
EMPLOYERS

GOOD FAITH RELIANCE ON A MEDICAL EVALUATORS OPINION AS A COMPLETE DEFENSE TO  
DISCRIMINATION

CHARGES. SEE GELFO V. LOCKHEED MARTIN CORP. (2006) 140 CAL. APP. 4TH 34, 49 N. 11  
QUOTING

GILLEN V. FALLON AMBUL. SERVICE INC. 283 F.3D 11, 31 (1ST CIR. 2002) WHERE THE COURT OF  
APPEALS HELD THAT AN EMPLOYER CANNOT SLAVISHLY DEFER TO A PHYSICIANS

CONCLUSIONS.

THE COURT NOTES THAT THE PHYSICIAN LETTER AT THE CORE OF THE PESTERFIELD CASE  
WAS A COMPREHENSIVE

EVALUATION OF THE EMPLOYEES PARTICULAR MEDICAL CONDITIONS RELATED TO HIS  
SPECIFIC JOB DUTIES.

THE PHYSICIAN LETTER AT ISSUE IN THE GILLEN CASE WAS A CURSORY, EVEN PERFUNCTORY  
LETTER. SEE

ALSO, HOLIDAY V. CITY OF CHATTANOOGA 206 F. 3D 637 (6TH CIR. 2000), EXPRESSLY LIMITING  
THE

HOLDING IN THE PESTERFIELD CASE.

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AS TO THE VERDICT AWARDING PUNITIVE DAMAGES, THE COURT HAS CONSIDERED ALL OF  
THE EVIDENCE

FAVORABLE TO THAT PORTION OF THE VERDICT AND FINDS THAT THE RECORD DOES NOT  
CONTAIN

SUBSTANTIAL EVIDENCE TO SUPPORT THAT VERDICT. PLAINTIFF ACKNOWLEDGES THAT NO  
OFFENSIVE OR

HOSTILE COMMENTS WERE EVER MADE TO HER BY ANYONE AT MENLO COLLEGE AND NO  
FALSE STATEMENTS WERE

EVER MADE TO HER.

RELYING ON THE HOLDING IN CLOUD V. CASEY (1999) 76 CAL. APP. 4TH 895 PLAINTIFF ASSERTS  
THAT THE

SAME EVIDENCE THAT UNDERLIES THE FINDING OF LIABILITY FOR DISCRIMINATION IS  
SUFFICIENT,

WITHOUT MORE, FOR A FINDING BY CLEAR AND CONVINCING EVIDENCE OF LIABILITY FOR  
PUNITIVE

DAMAGES. THE COURT DOES NOT READ THE CLOUD HOLDING SO BROADLY. FIRST, IN CLOUD,  
THE

EVIDENCE SHOWED THAT SUPERVISORS TOLD MS. CLOUD THAT THE COMPANY WOULD NOT  
HIRE A WOMAN FOR THE

PROMOTION SHE SOUGHT.

FURTHER, AFTER A MAN WAS SELECTED, THE EVIDENCE SHOWED THAT THE EMPLOYER  
FABRICATED JOB SKILLS

AND EXPERIENCE THAT MS. CLOUD DID NOT POSSESS. IN ALLOWING PUNITIVE DAMAGES, THE  
CLOUD COURT

CONCLUDED THAT A JURY COULD DETERMINE THAT AFTER INTENTIONALLY DISCRIMINATING  
AGAINST HER BASED ON

GENDER, THE EMPLOYER ATTEMPTED TO HIDE THE ILLEGAL REASON WITH A FALSE  
EXPLANATION. NO

SUCH FACTS EXIST HERE.

THE COURT READS THE CLOUD CASE AS SHOWING SUBSTANTIAL EVIDENCE OF EGREGIOUS  
CONDUCT THAT

IS GREATER THAN THAT NECESSARY TO SHOW DISCRIMINATION. SEE BRANDON V. RITE AID CORP 408 F. SUPP 2D 964, 981 (E.D. CAL. 2006) CITING NGO V. RENO HILTON RESORT CORP 140 F. 3RD 1299, 1304 (9TH CIR. 1998) HOLDING THAT THUS, TO BE ENTITLED TO AN AWARD OF PUNITIVE DAMAGES, THE PLAINTIFF MUST DEMONSTRATE THAT THE DEFENDANT ALMOST CERTAINLY KNEW THAT WHAT HE WAS DOING WAS WRONGFUL AND SUBJECT TO PUNISHMENT (SEE ALSO NGO V. RENO HILTON RESORT CORP 156 F. 3RD 988 (9TH CIR. 1998) ORDER MODIFYING OPINION TO ADD "IN ADOPTING THIS STANDARD WE JOIN FIVE OTHER CIRCUITS THAT ALSO REQUIRE PLAINTIFFS SEEKING PUNITIVE DAMAGES UNDER TITLE VII TO MAKE A SHOWING BEYOND THE LEVEL OF INTENTIONAL DISCRIMINATION REQUIRED FOR COMPENSATORY DAMAGES". BASED UPON THIS STANDARD, THE COURT FINDS THAT THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT A VERDICT OF LIABILITY FOR PUNITIVE DAMAGES.  
 ENTERED BY SEAN KANE ON 02/20/09.  
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	02/20/2009 9:00 AM DEPT. 3	HEARING RE: MOTION FOR NEW TRIAL FILED BY MENLO COLLEGE.	COMPLETED	
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**Minutes**

HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: CHRIS PEREZ  
 ATTORNEY NOAH D. LEBOWITZ APPEARING WITH/FOR PLAINTIFF(S).  
 ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT(S).  
  
 MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.  
 TENTATIVE RULING ADOPTED AND BECOMES THE ORDER:  
 DENIED DEFENDANT MENLO COLLEGES MOTION FOR NEW TRIAL. IN CONSIDERING THE MOTION THE COURT HAS EXAMINED AND WEIGHED ALL OF THE EVIDENCE ADMITTED AT TRIAL AS REQUIRED BY C.C.P. SEC. 657. SEE CASELLA V. SOUTHWEST DEALER SERVICES, INC. (2007) 157 CAL. APP. 4TH 1127, 1159-60  
 --  
 AS TO THE CLAIM THAT THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE JURY VERDICT THAT PLAINTIFF WAS DISCHARGED FROM EMPLOYMENT AND THAT THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE JURY VERDICT THAT DEFENDANT HAD THE REQUISITE UNLAWFUL MOTIVATION (C.C.P. SEC. 657(6)).  
 AS TO THE ISSUE OF DISCHARGE, THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE JURY VERDICT.  
 MS. BLOUGH TESTIFIED THAT SHE HAS NOT RECEIVED A PAYCHECK SINCE AUGUST 2006 WHEN PRESIDENT LOPEZ SENT THE INITIAL TERMINATION LETTER AND MENLO COLLEGE SENT HER AT LEAST TWO LETTERS THAT EXPRESSLY STATED THAT SHE WAS TERMINATED. IT WAS REASONABLE FOR THE JURY TO DISREGARD THE TESTIMONY OF STEPHANIE SUPRAI THAT THE COBRA LETTER THAT SPECIFIED TERMINATION FROM EMPLOYMENT WAS A MISTAKE.  
 FURTHER, IT WAS NOT UNTIL MARCH 2007 THAT MENLO COLLEGE ADVISED MS. BLOUGH THAT

SHE COULD RETURN

TO WORK ONE-HALF TIME AND MENLO COLLEGE DELAYED IN OFFERING HER ANY WORK UNTIL AUGUST 2007 AT

WHICH TIME IT OFFERED HER A ONE-HALF TIME JOB FOR ONE YEAR.

EVIDENCE THAT MENLO COLLEGE PUBLISHED MS. BLOUGHS STATUS AS LEAVE OF ABSENCE AND THAT IT

MAINTAINED HER OFFICE IS NOT ENOUGH FOR THE COURT TO FIND THAT THE JURY CLEARLY SHOULD HAVE

REACHED A DIFFERENT VERDICT. (SEE EXH. 14, 24, 25, 47, 48) DEFENDANTS RELIANCE ON ROMANO V.

ROCKWELL INTERNATIONAL, INC. (1996) 14 CAL. 4TH 479, 493 IS NOT PERSUASIVE. THAT CASE PERTAINS

SOLELY TO THE COMMENCEMENT OF THE LIMITATIONS PERIOD.

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AS TO THE ISSUE OF INSUFFICIENT EVIDENCE TO SUPPORT UNLAWFUL MOTIVATION, THERE IS SUFFICIENT

EVIDENCE TO SUPPORT THE JURY VERDICT. ALL OF MENLO COLLEGES WITNESSES TESTIFIED THAT THE

INITIAL DECISION TO TERMINATE MS. BLOUGH WAS BASED UPON DR. MISSETTS LETTER. NOT A SINGLE

MENLO COLLEGE WITNESS TESTIFIED THAT HE OR SHE CONFIRMED ANY IRREGULARITIES IN MS. BLOUGHS

TEACHING QUALITY OR EVEN CONFIRM AND QUANTIFIED THE ACTUAL DAYS OF ABSENCE OR THE REASONS

THEREFORE.

PRESIDENT LOPEZ EXPRESSLY TESTIFIED THAT HE NEVER REVIEWED PLAINTIFFS STUDENT EVALUATIONS AND

NEVER PROVIDED DR. MISSETT WITH A DESCRIPTION OF MS. BLOUGHS ESSENTIAL JOB DUTIES. MICHAEL

SCHULTZ, PROVOST, TESTIFIED THAT HE MADE NO INDEPENDENT DETERMINATION WHETHER MS. BLOUGH

COULD PERFORM HER TEACHING DUTIES.

LOWELL PRATT TESTIFIED THAT HE NEVER GAVE DR. MISSETT A LIST OF ESSENTIAL JOB DUTIES AND HE

RECOMMENDED MS. BLOUGH FOR A SIX YEAR CONTRACT RENEWAL. THE RECORD ALSO SHOWS THAT NO RUDE OR

OFFENSIVE COMMENTS WERE EVER MADE TO MS. BLOUGH ABOUT HER DISABILITY.

CONSIDERING ALL OF THE

EVIDENCE AND REASONABLE INFERENCES, THE COURT FINDS THAT THERE IS SUFFICIENT EVIDENCE TO

SUPPORT THE JURY VERDICT.

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AS TO THE ISSUE OF INSUFFICIENT EVIDENCE TO SUPPORT AN AWARD OF PUNITIVE DAMAGES, THE COURT

HAS GRANTED DEFENDANTS JNOV MOTION AND THUS, NO RULING IS REQUIRED ON THIS ISSUE IN THIS MOTION.

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NEXT, DEFENDANT CLAIMS THAT THERE WAS AN ERROR IN LAW RELATED TO THE JURY INSTRUCTION CACI 2540.

DEFENDANT OFFERED A SPECIAL INSTRUCTION THAT PURPORTED TO INSTRUCT THE JURY OF THE

AFFIRMATIVE DEFENSE OF A SAFE HARBOR FOR RELIANCE ON AN OUTSIDE MEDICAL EVALUATION.

THE COURT HAS AGAIN CONSIDERED THE SPECIAL INSTRUCTION NO. 2 AND DETERMINES AGAIN THAT THE

INSTRUCTION IS INCONSISTENT WITH THE LAW. SEE GELFO V. LOCKHEED MARTIN CORP. (2006) 140 CAL.

APP. 4TH 34, 49 N.11; GILLEN V. FALLON AMBUL SERV. INC. 283 F. 3RD 11, 31 (1ST CIR. 2002).

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DEFENDANT NEXT ARGUES THAT IT WAS AN ERROR OF LAW TO ALLOW THE JURY TO CONSIDER AN AWARD OF DAMAGES

FOR FRONT PAY. DEFENDANT ARGUES THAT SUCH A MATTER WAS PROPERLY CONSIDERED BY THE COURT IN

CONJUNCTION WITH OTHER EQUITABLE REMEDIES SUCH AS REINSTATEMENT.

THE COURT DISAGREES, HAVING THOROUGHLY CONSIDERED THE LEGAL ISSUE IN THE PRE TRIAL MOTIONS, AND

HAVING REVIEWED DEFENDANTS ARGUMENTS IN THE PRESENT MOTION, THE COURT FINDS THAT DAMAGES FOR

FRONT PAY UNDER FEHA WERE PROPERLY PRESENTED TO THE JURY. NO CALIFORNIA CASE HOLDS THAT A

PLAINTIFF IN A FEHA ACTION IS DENIED THE RIGHT TO A TRIAL BY JURY ON FRONT PAY CLAIMS.

THIS COURT READS THE LEGISLATIVE INTENT OF FEHA AND CASES DECIDED UNDER IT TO ALLOW ALL LEGAL

REMEDIES FOR WRONGED PLAINTIFFS AVAILABLE IN CIVIL ACTIONS.

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FINALLY, DEFENDANT RAISES SEVERAL ISSUES OF JURY MISCONDUCT. THE COURT FINDS THAT THERE WAS NO

JUROR MISCONDUCT SUFFICIENT TO SUPPORT A NEW TRIAL. IN DECIDING A MOTION FOR NEW TRIAL BASED

ON JURY MISCONDUCT, THE COURT MUST UNDERTAKE A THREE-STEP INQUIRY. FIRST, THE COURT MUST

DECIDE WHETHER THE AFFIDAVITS ARE ADMISSIBLE.

SECOND, THE COURT MUST DETERMINE WHETHER THE FACTS ESTABLISH MISCONDUCT.

THIRD, THE COURT

MUST DECIDE WHETHER THE MISCONDUCT WAS PREJUDICIAL. SEE, WHITLOCK V. FOSTER WHEELER,

LLC (2008) 160 CAL. APP. 4TH 149, 160.

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AS TO THE EVIDENTIARY OBJECTION SUBMITTED BY PLAINTIFF: SUSTAINED PLAINTIFFS EVIDENTIARY

OBJECTIONS TO PORTIONS OF THE VARIOUS JUROR AFFIDAVITS, OBJECTIONS 1-18. SEE EVIDENCE CODE

SEC. 1150(A). THE IDENTIFIED STATEMENTS RELATE TO THE JURORS SUBJECTIVE REASONING PROCESS AND

AT MOST POINT TO DELIBERATIVE ERROR AND THUS ARE NOT ADMISSIBLE.

SEE, EVIDENCE CODE SEC. 1150(A); ENYART V. CITY OF LOS ANGELES (1999) 76 CAL. APP. 4TH 499, 506;

MESECHER V. COUNTY OF SAN DIEGO (1992) 9 CAL. APP. 4TH 1677, 1683. THE COURT NOTES THAT THE

CASE RELIED UPON BY DEFENDANTS, ANDREWS V. COUNTY OF ORANGE (1982) 130 CAL. APP. 3RD 944,

953 INVOLVED ADMISSION OF EVIDENCE THAT A JUROR PREJUDGED THE CASE, CONSIDERED INFORMATION

OBTAINED OUTSIDE THE TRIAL, AND REFUSAL TO DELIBERATE.

EVEN IF ADMISSIBLE, THE PORTIONS OF THE JUROR DECLARATIONS EXCLUDED BY THIS RULING DO NOT SHOW

EVIDENCE OF THE CATEGORIES OF MISCONDUCT ASSERTED IN THE MOTION.

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FIRST, DEFENDANT CLAIMS THAT THE JURY VIOLATED THE COURTS INSTRUCTION TO START DELIBERATIONS

ANEW WHEN ALTERNATE JUROR SAMUEL MERRITT WAS SWORN AS A JUROR DURING DELIBERATIONS. ALL OF

THE EVIDENCE SUBMITTED ON THIS CLAIM IS ADMISSIBLE.

BASED UPON THE DECLARATION OF THE PRESIDING JUROR PATRICIA MERRISS (DECLARATION NO. 1 AT PAR 6),

THE NEW JUROR SAMUEL MERRITTS DECLARATION WHICH DOES NOT STATE THAT THERE WAS A FAILURE TO



INCLUDE HIM IN THE FULL DELIBERATIONS, AND THE FACT THAT THE VERDICT FORM SHOWS THAT QUESTIONS 5-12 ARE IDENTICAL TO QUESTIONS 17-24 ON WHICH MR. MERRITT WAS FULLY INCLUDED IN DELIBERATIONS (QUESTIONS 1-4 PERTAINED TO A CAUSE OF ACTION ON WHICH DEFENDANT PREVAILED), THE COURT IS SATISFIED THAT DEFENDANT HAS FAILED TO SUBMIT FACTS WHICH ESTABLISH MISCONDUCT. OR, THAT ANY MISCONDUCT WAS NOT PREJUDICIAL BECAUSE MR. MERRITT WAS INCLUDED IN THE FULL DELIBERATION OF ALL SUBSTANTIVE ISSUES DUE TO THE REPETITION OF THE VERDICT QUESTIONS. SEE, PEOPLE V. LEONARD (2007) 40 CAL. 4TH 1370, 1412. (THE COURT NOTES THAT ALL OF THE CASES RELIED UPON BY DEFENDANT PERTAIN TO INSTRUCTIONAL ERROR.)

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SECOND, DEFENDANT CLAIMS MISCONDUCT BY ASSERTING THAT JUROR MERRITT BROUGHT EXTRANEOUS INFORMATION INTO THE JURY DELIBERATIONS. ON THIS ISSUE THE COURT FINDS THAT THERE IS NO ADMISSIBLE EVIDENCE TO SUPPORT THIS CLAIM. NOTHING IN MR. MERRITTS DECLARATION INDICATES THAT HE CONSULTED WITH ANYONE OUTSIDE OF THE TRIAL OR RELIED ON PERSONAL EXPERIENCE OR TRAINING. THE MOST THAT CAN BE SAID FOR THE INFORMATION IN HIS DECLARATION IS THAT HE MISUNDERSTOOD THE COURTS INSTRUCTIONS AND APPLIED THE FACTS AS HE SAW THEM TO THAT MISUNDERSTANDING. AS SUCH, THE DECLARATION PROVIDES TO THE COURT NOTHING MORE THAN DELIBERATIVE ERROR AND THE SUBJECTIVE IMPRESSIONS OF A SINGLE JUROR. AS SUCH THERE IS NO EVIDENCE OF MISCONDUCT.

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THIRD, DEFENDANT ASSERTS THAT THE JURY ENGAGED IN MISCONDUCT WHEN IT REFUSED TO SEND OUT A QUESTION THAT JUROR KADOURA REQUESTED. ALL EVIDENCE ON THIS ISSUE IS ADMISSIBLE. NONE OF THE EVIDENCE SUBMITTED SUPPORTS THE CLAIM OF MISCONDUCT. MR. KADOURA STATES THAT HE RAISED THE ISSUE OF SENDING A QUESTION TO THE COURT AND THAT THREE JURORS DID NOT THINK IT WAS NECESSARY. HE STATES THAT NO QUESTION WAS SENT TO THE JUDGE. (KADOURA DECL. NO. 2, PAR. 11.) HE DOES NOT STATE THAT HE WAS PROHIBITED BY THE PRESIDING JUROR OR ANYONE ELSE FROM SENDING HIS OWN NOTE. THE PRESIDING JUROR DOES NOT COMMENT ON THIS ISSUE. FURTHER, THE COURT DID INSTRUCT THE JURY THAT THE PRESIDING JUROR OR ANY JUROR MAY SEND OUT A QUESTION TO THE COURT. BASED UPON THIS EVIDENCE, THE COURT FINDS THAT THE FACTS DO NOT ESTABLISH MISCONDUCT.

ENTERED BY SEAN KANE ON 02/20/09.

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	02/13/2009	PROOF OF SERVICE (BY MAIL) OF DEFS REPLY MEMO IN SUPPORT OF NOTICE OF INTENTION TO MOVE FOR NEW TRIAL SERVED ON NOAH D LEBOWITZ WITH A SERVICE DATE OF 02/13/09 FILED.		
	02/13/2009	PROOF OF SERVICE (BY MAIL) OF DEFS REPLY MEMO IN SUPPORT OF MOTION FOR JUDGMENT SERVED ON NOAH D LEBOWITZ, ESQ. WITH A SERVICE DATE OF 02/13/09 FILED.		

	02/13/2009	MEMORANDUM OF REPLY IN SUPPORT OF MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT FILED BY MENLO COLLEGE	-	
	02/13/2009	MEMORANDUM OF REPLY IN SUPPORT OF NOTICE OF INTENT TO MOVE FOR NEW TRIAL FILED BY MENLO COLLEGE	-	
	02/11/2009	STIPULATION AND ORDER RE: BRIEFING ON POST TRIAL MOTIONS SIGNED BY JUDGE STEPHEN HALL ON 02/11/09, FILED.	-	
	02/09/2009	PROOF OF SERVICE (BY MAIL) OF PLTF MEMO P&A IN OPP TO DEFT MENLO MOT FOR JMT & SUPPORT DOCS SERVED ON (PERSONAL) MICHAEL J VARTAIN WITH A SERVICE DATE OF 02/09/09 FILED.	-	
	02/09/2009	OBJECTION TO EVIDENCE IN OPP TO MENLO MOT FOR JDGMT NOTWITHSTANDING VERDICT FILED BY MARCINE BLOUGH	-	
	02/09/2009	APPENDIX OF NON-CALIF AUTHOR IN OPP TO MENLO MOT FOR JMT NOTWITHSTAND VERDICT, FILED BY PLTF.	-	
	02/09/2009	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MARCINE BLOUGH IN OPP TO DEFT MENLO MOT FOR JDGMT NOTWITHSTANDING VERDICT	-	
	02/09/2009	DECLARATION OF NOAH D LEBOWITZ IN SUPPORT OF OPP TO DEFT MENLO MOT FOR JDGMT NOTWITHSTANDING VERDICT FILED BY MARCINE BLOUGH	-	
	02/02/2009	PROOF OF SERVICE (PERSONAL) OF PLAS OPP TO MOT FOR NEW TRIAL, ETC SERVED ON SEE LIST (NON-PARTY) WITH SERVICE DATE OF 02/02/09 FILED.	-	
	02/02/2009	PLAS APPENDIX OF NON-CA AUTHORITY CITED IN SUPPORT OF OPP TO DEFS MOT FOR NEW TRIAL, FILED.	-	
	02/02/2009	OBJECTION TO EVIDENCE IN SUPPORT OF OPPOSITION TO DEFS MOTION FOR NEW TRIAL FILED BY MARCINE BLOUGH	-	
	02/02/2009	OPPOSITION TO DEFS MOTION FOR NEW TRIAL FILED BY MARCINE BLOUGH	-	
	02/02/2009	DECLARATION OF NOAH D LEBOWITZ IN SUPPORT OF OPP TO DEFS MOTION FOR NEW TRIAL FILED BY MARCINE BLOUGH	-	
	01/28/2009	COURT REPORTER FEES OF \$2,196.00 PAID BY MENLO COLLEGE.	-	
<b>Minutes</b>				
Receipt: 090128-0129          \$2,196.00				
	01/23/2009	EXHIBIT A TO DEC. KADDOURA,CHIN,MERRITT,MERRISS & EXHIBIT B TO DEC. MERRITT RE: MOVE NEW TRIAL, FILED.	-	
	01/22/2009	AFFIDAVIT OF MAILING OF ORDER SETTING TIME FOR ORAL ARGUMENT, ETC., FILED.	-	
	01/22/2009		-	

		ORDER SETTING TIME FOR ORAL ARGUMENT ON DEFTS MOTION FOR NEW TRIAL/JNOV, SIGNED BY JUDGE FREEMAN ON 01/22/09 FILED.		
	01/22/2009	PROOF OF SERVICE OF DEF. MENLO COLLEGES DOCS IN SUPPORT OF MOTION SERVED ON SEE DETAIL BY PERSONAL SERVICE WITH A SERVICE DATE OF 01/21/09.	-	
	01/22/2009	MENLO APPENDIX B: SUMMARY OF EVIDENCE FOR MOT FOR NEW TRIAL, BY DEFT, FILED.	-	
	01/22/2009	DECLARATION OF SAMUEL MERRITT FILED BY MENLO COLLEGE	-	
	01/22/2009	DECLARATION OF FAWZI FADDOURA #2 FILED BY MENLO COLLEGE	-	
	01/22/2009	DECLARATION OF PATRICIA MERRISS #1 FILED BY MENLO COLLEGE	-	
	01/22/2009	DECLARATION OF PATRICIA MERRISS #2 FILED BY MENLO COLLEGE	-	
	01/22/2009	DECLARATION OF JADEY CHIN #1 FILED BY MENLO COLLEGE	-	
	01/22/2009	DECLARATION OF JADEY CHIN #2 FILED BY MENLO COLLEGE	-	
	01/22/2009	DECLARATION OF FAWZI KADDOURA #1 FILED BY MENLO COLLEGE	-	
	01/22/2009	DECLARATION OF LINDA K ADLER IN SUPPORT OF MENLO NOTICE INTENT TO MOVE FOR NEW TRIAL FILED BY MENLO COLLEGE	-	
	01/22/2009	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MENLO COLLEGE IN SUPPORT OF NOTICE OF INTENT TO MOVE FOR NEW TRIAL	-	
	01/14/2009	PROOF OF SERVICE OF DEFENDANT MENLO COLLEGES NOTICE OF INTENTION TO MOVE FOR NEW TRIAL SERVED ON MARCINE BLOUGH BY PERSONAL SERVICE WITH A SERVICE DATE OF 01/13/09.	-	
	01/14/2009	PROOF OF SERVICE OF DEFENDANT MENLO COLLEGES NOTICE OF MOTION FOR JUDGMENT, ETC SERVED ON MARCINE BLOUGH BY PERSONAL SERVICE WITH A SERVICE DATE OF 01/13/09.	-	
	01/13/2009	MEMO FOR COSTS IN THE AMOUNT OF \$16,219.53 FILED BY MARCINE BLOUGH	-	
	01/13/2009	MEMO FOR COSTS IN THE AMOUNT OF \$16,219.53 FILED BY MARCINE BLOUGH	-	
	01/13/2009	APPENDIX OF NON-CALIF AUTHOR IN MENLO P&A IN SUPPORT OF MOT FOR JMT NOTWITHSTANDING VERDICT BY, FILED.	-	
	01/13/2009	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MENLO COLLEGE IN SUPPORT OF MOT FOR JDGMT NOTWITHSTANDING VERDICT	-	
	01/13/2009	DEFT MENLO APPENDIX A:SUM EVIDENCE FOR MOT FOR JDGMT NOTWITHSTANDING VERDICT BY DEFT, FILED.	-	
	01/13/2009		-	

		NOTICE OF MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT FILED BY MENLO COLLEGE		
<b>Minutes</b> Receipt: 090113-0155      \$40.00				
	01/13/2009	(S) NOTICE OF INTENTION TO MOVE FOR NEW TRIAL FILED BY MENLO COLLEGE		
<b>Minutes</b> Receipt: 090113-0154      \$40.00				
	01/13/2009	VOID JURY TRUST	-	
<b>Minutes</b> 090113-0078 VOIDED 090113-0056 ( 811.74)				
	01/13/2009	JURY TRUST POSTED BY 811.74 ON BEHALF OF MARCINE BLOUGH.	-	
<b>Minutes</b> Receipt: 090113-0056      \$811.74 RECEIPT# 090113-0056 VOIDED BY THTWE FROM THTWE				
	12/31/2008	COURT REPORTER FEES OF \$244.00 PAID BY MARCINE BLOUGH.	-	
<b>Minutes</b> Receipt: 081231-0016      \$244.00				
	12/31/2008	JURY TRUST POSTED BY DUCKWORTH, PETERS, LEBOWITZ LLP ON BEHALF OF MARCINE BLOUGH.	-	
<b>Minutes</b> Receipt: 081231-0015      \$933.74				
	12/30/2008	EXONERATE JURY TRUST	-	
<b>Minutes</b> Receipt: 081230-0060      \$958.56				
	12/30/2008	EXONERATE JURY TRUST	-	
<b>Minutes</b> Receipt: 081230-0057      \$392.14				
	12/30/2008	EXONERATE JURY TRUST	-	
<b>Minutes</b> Receipt: 081230-0055      \$1,364.98				
	12/29/2008	NOTICE OF ENTRY OF JUDGMENT FILED. DATE OF MAILING TO ALL PARTIES 12/29/08.		
	12/29/2008	JUDGMENT ON VERDICT FILED	-	
<b>Minutes</b> PRINCIPAL IS \$586,866.00. COSTS ARE \$16,219.53. DAMAGES ARE \$100,000.00. TOTAL JUDGMENT \$703,085.53				
	12/19/2008	DELIBERATION NOTES FROM THE JURY, FILED.	-	
	12/19/2008	JURY INSTRUCTIONS - JUDGES WORKING COPY, FILED.	-	

	12/19/2008	JURY INSTRUCTIONS SENT INTO DELIBERATIONS, FILED.	-	
	12/19/2008	JURY INSTRUCTIONS READ TO JURY, FILED.	-	
	12/19/2008	JUROR INFORMATION (INCLUDING HARDSHIP DECLARATIONS), FILED.	-	
	12/19/2008	VERDICT FORM - PUNITIVE DAMAGES - ENTITY DEFENDANT, FILED.	-	
	12/19/2008 9:15 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	VERDICT RENDERED	

**Minutes**

HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: CHRIS PEREZ

TRIAL DAY 14

NOTICE TO PAY \$228.58 JURY FEES AND \$122.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/19/08.

NOTICE TO PAY \$0.00 JURY FEES AND \$122.00 COURT REPORTER FEES PROVIDED TO MENLO COLLEGE ON 12/19/08.

ATTORNEY NOAH D. LEBOWITZ APPEARING WITH/FOR PLAINTIFF(S).

ATTORNEY MICHAEL J. VARTAIN APPEARING WITH/FOR DEFENDANT(S).

AT 08:40, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS.

AT 08:55, THE UNREPORTED CONFERENCE CONCLUDED.

AT 09:29, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS.

AT 09:43, THE UNREPORTED CONFERENCE CONCLUDED.

AT 09:47, COURT CONVENES.

MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ.

ATTORNEY MICHAEL J. VARTAIN APPEARING WITH/FOR DEFENDANT(S).

JURORS PRESENT.

AT 9:47, COURT ORIENTS JURY AS TO SECOND PHASE OF TRIAL ON PUNITIVE DAMAGES.

AT 09:48, WITNESS GARY HAIGHT IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.

(WITNESS IS CALLED PURSUANT TO EVIDENCE CODE SECTION 776.)

AT 09:55, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF DEFENDANT:

EXHIBIT "VV" - 6-PAGE DOCUMENT, MENLO COLLEGE WEBSITE PRINTOUTS/ARTICLES RE: MENLO COLLEGE

ANNUAL FUND AND BEQUESTS.

AT 10:14, THE WITNESS IS EXCUSED FROM THE STAND.

AT 10:15, BOTH PLAINTIFF AND DEFENDANT REST ON SECOND PHASE OF TRIAL AS TO PUNATIVE DAMAGES.

AT 10:15, COURT READS JURY INSTRUCTION AS TO PUNITIVE DAMAGES.

AT 10:17, CLOSING ARGUMENT MADE BY NOAH D. LEBOWITZ ON BEHALF OF PLAINTIFF.

AT 10:25, ATTORNEY LINDA K. ADLER NOW PRESENT APPEARING ON BEHALF OF DEFENDANT.

AT 10:27, CLOSING ARGUMENT MADE BY MICHAEL J. VARTAIN ON BEHALF OF DEFENDANT.

AT 10:32, SIDEBAR CONFERENCE HELD.

AT 10:33, SIDEBAR CONFERENCE CONCLUDED.

AT 10:33, FINAL ARGUMENT MADE BY NOAH D. LEBOWITZ ON BEHALF OF PLAINTIFF.

AT 10:34, COURT ORIENTS JURY AS TO DELIBERATION PROCESS ON PUNATIVE DAMAGES PHASE OF TRIAL.

AT 10:36, THE JURORS RETIRE TO COMMENCE DELIBERATIONS ON SECOND PHASE OF TRIAL AS TO

PUNITIVE DAMAGES.

AT 10:36, COURT IS IN RECESS.

AT 10:45, COURT RECONVENES.

MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ.

ATTORNEY MICHAEL J. VARTAIN APPEARING WITH/FOR DEFENDANT(S).

AT 10:45, COURT AND COUNSEL DISCUSS PLACING COUNSELS OBJECTIONS AS TO PUNITIVE

## DAMAGES

PHASE INSTRUCTIONS AND VERDICT FORMS ON THE RECORD.

DEFENDANT STATES OBJECTION TO VERDICT FORM ON PUNITIVE DAMAGES.

PLAINTIFF STATES OBJECTION TO VERDICT FORM ON PUNITIVE DAMAGES.

AT 10:47, COURT AND COUNSEL DISCUSS DEFENDANTS MOTION FOR MISTRIAL ON PUNITIVE DAMAGES PHASE.

MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.

HAVING CONSIDERED THE SUBMITTED MATTER, THE COURT RULES AS FOLLOWS:

COURT DENIES DEFENDANTS MOTION FOR MISTRIAL ON PUNITIVE DAMAGES PHASE. ON ISSUE OF INSUFFICIENT

CURATION BY COURT AS TO PLAINTIFF MENTIONING A LACK OF APOLOGY BY WITNESS GARY HAIGHT, COURT

FINDS ITS CURATIVE INSTRUCTION WAS APPROPRIATE AND COURT PRESUMES JURY CAN FOLLOW ITS

INSTRUCTIONS. ON ISSUE OF MR. LEBOWITZ NOTING MR. PETERS ABSENCE IN RELATION TO MR. PETERS

WIFES PREGNANCY, COURT FINDS THE JURY DID NOT HEAR ANYTHING ABOUT MR. PETERS ABSENCE.

COURT DOES NOT RECALL AN EARLIER MENTION BY MR. LEBOWITZ AS TO MR. PETERS WIFES PREGNANCY TO

THE JURY, AND IF SUCH A MENTION WAS MADE, NO OBJECTION WAS STATED AT THE TIME. ON ISSUE OF

MR. LEBOWITZ STATING THAT HIS CLOSING ARGUMENT WOULD BE THE LAST TIME THE JURY HEARD FROM HIM,

COURT FINDS THERE WAS NO WAIVER OF FINAL ARGUMENT BY PLAINTIFF. ON ISSUE OF ARGUMENT RE:

DOSAGE OF MEDICINE BEING FAIR, COURT FINDS THAT NO OBJECTION WAS MADE AT TIME.

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AT 11:03, UPON PLAINTIFFS REQUEST, COURT EXPLAINS ITS REASONING FOR SUSTAINING DEFENDANTS OBJECTION DURING PLAINTIFFS CLOSING ARGUING RE: LACK OF APOLOGY BY WITNESS GARY

HAIGHT, STATING THAT THE COURT DETERMINED THAT DEFENDANT SHOULD NOT BE ASKED TO POTENTIALLY

WAIVE ITS RIGHTS ON APPEAL VIA AN APOLOGY.

AT 11:04, COURT IS IN RECESS.

AT 11:21, THE JURY RECESSED FOR BREAK.

AT 11:34 THE JURORS RETIRE TO RESUME DELIBERATIONS.

AT 12:00, THE JURY RECESSED FOR LUNCH.

AT 01:06 THE JURORS RETIRE TO RESUME DELIBERATIONS.

AT 02:37, THE JURY RECESSED FOR BREAK.

AT 02:52 THE JURORS RETIRE TO RESUME DELIBERATIONS.

AT 3:32, THE JURY NOTIFIES THE BAILIFF THAT THEY HAVE REACHED A VERDICT.

AT 03:42, COURT RECONVENES.

MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ.

ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING ON BEHALF OF DEFENDANT.

AT 3:42, THE JURY, THROUGH THEIR FOREPERSON JUROR NO. 2 (#596421), INFORMS THE COURT THAT THEY HAVE

REACHED A VERDICT.

AT 3:43, THE CLERK READS THE VERDICT.

VERDICT READ, THE JURY FINDING AS FOLLOWS:

VERDICT ON THE 3RD AMENDED COMPLAINT OF MARCINE BLOUGH FOR PLAINTIFF MARCINE BLOUGH AND AGAINST DEFENDANT MENLO COLLEGE.

DATED: 12/19/08; SIGNED BY JUROR NO. 2 (#596421), JURY FOREPERSON.

AT 3:44, COUNSEL WAIVE POLLING OF JURY ON VERDICT.

AT 3:44, COURT ORDERS THE CLERK TO ENTER THE VERDICT AS READ.

COUNSEL WAIVE 24-HOUR RULE FOR PREPARATION OF JUDGMENT ON VERDICT.

AT 3:45, COURT ORIENTS JURORS AS TO BEING RELEASED FROM ADMONISHMENT.

AT 3:46, COURT GRANTS DEFENDANTS REQUEST TO NOW HAVE JURY POLLED.

AT 3:47, THE JURORS ARE POLLED ON THE VERDICT.  
 POLLED JURORS ANSWER TO QUESTIONS ON VERDICT AS FOLLOWS:  
 QUESTION #1 - 10 IN THE AFFIRMATIVE, AND 2 IN THE NEGATIVE.  
 QUESTION #2 - 9 IN THE AFFIRMATIVE, AND 3 IN THE NEGATIVE.  
 AT 3:48, COURT ORDERS CLERK TO RECORD VERDICT AS POLLED.  
 VERDICT FILED AND ATTACHED TO MINUTES.  
 AT 3:49, THANKS AND EXCUSES THE JURORS, RELEASING THEM FROM THE ADMONISHMENT.  
 AT 3:50, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL DISCUSS PREPARATION  
 OF JUDGMENT. NO  
 OBJECTION BY COUNSEL TO JUDGMENT NOT BEING SIGNED UNTIL DEPT. 3S RETURN ON  
 12/29/08.  
 AT 3:51, COURT ADJOURNS.  
 ENTERED BY SEAN KANE ON 12/19/08.  
 =====

	12/18/2008	SPECIAL VERDICT FORMS, FILED.	-	
	12/18/2008 9:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	VERDICT RENDERED	

**Minutes**  
 HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT  
 REPORTER: CHRIS PEREZ  
 TRIAL DAY 13  
 NOTICE TO PAY \$228.58 JURY FEES AND \$122.00 COURT REPORTER FEES PROVIDED TO  
 MARCINE BLOUGH ON 12/18/08.  
 NOTICE TO PAY \$0.00 JURY FEES AND \$122.00 COURT REPORTER FEES PROVIDED TO MENLO  
 COLLEGE ON 12/18/08.  
 AT 09:15 THE JURORS RETIRE TO RESUME DELIBERATIONS.  
 AT 1:28, THE JURY INFORMS THE BAILIFF THAT THEY HAVE REACHED A VERDICT.  
 AT 01:36, COURT CONVENES.  
 MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ.  
 ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING ON BEHALF OF  
 DEFENDANT.  
 JURORS PRESENT.  
 AT 1:36, THE JURY, THROUGH THEIR FOREPERSON JUROR NO. 2 (#596421), INDICATE TO THE  
 COURT THAT THEY  
 HAVE REACHED A VERDICT.  
 AT 1:37, THE CLERK READS THE VERDICT.  
 VERDICT READ, THE JURY FINDING AS FOLLOWS:  
 VERDICT ON THE 3RD AMENDED COMPLAINT OF MARCINE BLOUGH FOR PLAINTIFF MARCINE  
 BLOUGH AND AGAINST DEFENDANT MENLO COLLEGE.  
 DATED: 12/18/08; SIGNED BY JUROR NO. 2 (#596421), JURY FOREPERSON.  
 SPECIAL VERDICT FORMS FILED AND ATTACHED TO MINUTES.  
 AT 1:43, COURT ORIENTS THE JURY AS TO POLLING OF JURORS ON THE VERDICTS.  
 AT 1:45, JURORS ARE POLLED ON THE VERDICTS.  
 POLLED JURORS ANSWER QUESTIONS AS FOLLOWS (IN THE AFFIRMATIVE TO IN THE  
 NEGATIVE): 1.) 12:0; 2.)  
 9:3; 5.) 12:0; 6.) 12:0; 7.) 12:0; 8.) 12:0; 9.); 11:1; 10.) 11:1; 11.) 12:0; 12.) 12:0; 13.)  
 11:1; 14.) 10:2; 15.) 12:0; 16.) 12:0; 17.) 12:0; 18.) 12:0; 19.) 12:0; 20.) 12:0; 21.) 11:1; 22.)  
 11:1; 23.) 12:0; 24.) 12:0; 25.) 12:0; DAMAGES - 1(A) 10:2; 1(B) 10:2; 1(C) 9:3; 1(D) 10:2; TOTAL  
 - 9:3; 2.)11:1.  
 AT 2:05, AT THE DIRECT OF THE COURT, THE CLERK ENTERS THE VERDICT.  
 AT 2:05, COUNSEL WAIVE 24-HOUR RULE FOR PREPARATION OF JUDGMENT ON VERDICTS.  
 AT 02:05, SIDEBAR CONFERENCE HELD.  
 AT 02:06, SIDEBAR CONFERENCE CONCLUDED.  
 AT 2:06, COURT ORIENTS THE JURY AS TO COMMENCEMENT OF BIFURCATED TRIAL ON  
 PUNATIVE DAMAGES.  
 AT 02:08, THE JURORS ARE ADMONISHED AND DIRECTED TO RETURN ON 12/19/08 AT 09:15.  
 AT 02:10, COURT IS IN RECESS.

AT 02:15, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS.  
 AT 02:20, THE UNREPORTED CONFERENCE CONCLUDED.  
 AT 2:20, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/19/08 AT 09:15, IN DEPARTMENT 3.  
 ENTERED BY SEAN KANE ON 12/18/08.  
 =====

	12/17/2008 9:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	
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**Minutes**  
 HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: CHRIS PEREZ  
 TRIAL DAY 12  
 AT 09:09, COURT CONVENES.  
 MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ.  
 ATTORNEY MICHAEL J. VARTAIN APPEARING WITH/FOR DEFENDANT(S).  
 ALL JURORS PRESENT WITH EXCEPTION OF JUROR NO. 8 (#813157).  
 AT 9:09, COURT ORIENTS JURY AS TO JUROR NO. 8 BEING EXCUSED FOR PRE-APPROVED HARDSHIP.  
 AT 9:10, ALTERNATE JUROR (#603885) IS GIVEN THE ACKNOWLEDGMENT AND AGREEMENT TO TRY THE CASE AS A TRIAL JUROR.  
 AT 9:11, COURT INSTRUCTS JURY AS TO NEED TO RESTART DELIBERATIONS WITH SUBSTITUTED JUROR.  
 AT 09:13 THE JURORS RETIRE TO COMMENCE DELIBERATIONS.  
 AT 09:14, COURT IS IN RECESS.  
 AT 10:26, THE JURY RECESSED FOR BREAK.  
 AT 10:45 THE JURORS RETIRE TO RESUME DELIBERATIONS.  
 AT 11:57, THE JURY RECESSED FOR LUNCH.  
 AT 01:00 THE JURORS RETIRE TO RESUME DELIBERATIONS.  
 AT 02:13, THE JURY RECESSED FOR BREAK.  
 AT 02:28 THE JURORS RETIRE TO RESUME DELIBERATIONS.  
 AT 4:30, THE JURY RECESS FOR THE EVENING TO RESUME DELIBERATIONS ON 12/18/08 AT 9:00 A.M.  
 AT 4:30, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/18/08 AT 09:00, IN DEPARTMENT 3.  
 NOTICE TO PAY \$228.58 JURY FEES AND \$0.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/17/08.  
 ENTERED BY SEAN KANE ON 12/17/08.  
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	12/16/2008	JURY TRUST POSTED BY DUCKWORTH, PETERS, LEBOWITZ ON BEHALF OF MARCINE BLOUGH.	-	
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**Minutes**  
 Receipt: 081216-0072      \$98.00

	12/16/2008	JURY TRUST POSTED BY DUCKWORTH, PETERS, LEBOWITZ ON BEHALF OF MARCINE BLOUGH.	-	
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**Minutes**  
 Receipt: 081216-0070      \$150.00

	12/16/2008	COURT REPORTER FEES OF \$244.00 PAID BY MARCINE BLOUGH.	-	
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**Minutes**  
 Receipt: 081216-0069      \$244.00

	12/16/2008 9:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	
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**Minutes**

HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: NONE.

TRIAL DAY 11

AT 09:05 THE JURORS RETIRE TO RESUME DELIBERATIONS.

AT 9:45, COURT RECEIVES A NOTE FROM THE JURY.

AT 10:18, COURT AND COUNSEL HOLD AN UNREPORTED DISCUSSION RE: RESPONSE TO NOTE FROM JURY REQUESTING READBACK.

ATTORNEY NOAH D. LEBOWITZ APPEARING WITH/FOR PLAINTIFF(S).

ATTORNEY MICHAEL J. VARTAIN APPEARING WITH/FOR DEFENDANT(S).

AT 10:20, UNREPORTED DISCUSSION CONCLUDES.

AT 10:23, COURT SENDS RESPONSE TO NOTE FROM JURY INTO DELIBERATION ROOM.

AT 10:23, COURT REPORTER CHRIS PEREZ READ BACK TESTIMONY TO THE JURY.

AT 10:32, READ-BACK CONCLUDES.

AT 10:33, THE JURY RECESSED FOR BREAK.

AT 10:44 THE JURORS RETIRE TO RESUME DELIBERATIONS.

AT 12:00, THE JURY RECESSED FOR LUNCH.

NOTICE TO PAY \$248.00 JURY FEES AND \$0.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/16/08.

AT 01:05 THE JURORS RETIRE TO RESUME DELIBERATIONS.

AT 2:13, COURT RECEIVES SECOND NOTE FROM THE JURY.

AT 02:21, THE JURY RECESSED FOR BREAK.

AT 2:26, COURT AND COUNSEL HOLD AN UNREPORTED DISCUSSION RE: SECOND NOTE FROM JURY.

ATTORNEY(S): NOAH D. LEBOWITZ AND MARK C. PETERS APPEARING WITH/FOR PLAINTIFF.

ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT.

AT 02:38 THE JURORS RETIRE TO RESUME DELIBERATIONS.

AT 2:43, UNREPORTED DISCUSSION CONCLUDES.

AT 2:44, COURT SENDS WRITTEN RESPONSE TO SECOND NOTE FROM JURY INTO DELIBERATION ROOM.

AT 4:00, COURT RECEIVES THIRD NOTE FROM THE JURY.

AT 4:02, COURT AND COUNSEL HOLD AN UNREPORTED DISCUSSION RE: THIRD NOTE FROM JURY.

ATTORNEY(S): NOAH D. LEBOWITZ AND MARK C. PETERS APPEARING WITH/FOR PLAINTIFF.

ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT.

AT 4:10, COURT AND COUNSEL HOLD AN UNREPORTED DISCUSSION RE: EXCUSING JUROR NO. 8 (#813157) FOR A PRE-APPROVED HARDSHIP.

COUNSEL WAIVE EXCUSING JUROR NO. 8 ON THE RECORD.

COURT SHALL EXCUSE JUROR NO. 8 AT END OF DAY IF DELIBERATIONS CONTINUE INTO TOMORROW.

AT 4:11, UNREPORTED DISCUSSION CONCLUDES.

AT 4:12, COURT SENDS WRITTEN RESPONSE TO THIRD NOTE FROM JURY INTO DELIBERATION ROOM.

AT 4:30, THE JURY RECESS FOR THE EVENING TO RESUME DELIBERATIONS ON 12/17/08 AT 9:00 A.M.

COURT EXCUSES JUROR NO. 8 (#813157) FOR A PRE-APPROVED HARDSHIP.

CLERK NOTIFIES ALTERNATE JUROR (#603885) BY TELEPHONE THAT HE IS TO REPORT TO DEPT. 3 ON 12/17/08 AT 9:00 A.M. TO BE SWORN AS A TRIAL JUROR.

AT 4:30, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/17/08 AT 09:00, IN DEPARTMENT 3. ENTERED BY SEAN KANE ON 12/16/08.

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	12/15/2008	PORTIONS OF PLTF MARCINE BLOUGHS DEPOSITION WHICH HAVE BEEN RECEIVED INTO EVIDENCE AT TRIAL, ETC., FILED.		
	12/15/2008	JURY TRUST POSTED BY DUCKWORTH, PETERS & LEBOWITZ LLP ON BEHALF OF MARCINE BLOUGH.		

<b>Minutes</b> Receipt: 081215-0038      \$540.28				
	12/15/2008	COURT REPORTER FEES OF \$732.00 PAID BY MARCINE BLOUGH.	-	
<b>Minutes</b> Receipt: 081215-0037      \$732.00				
	12/15/2008 9:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	
<p><b>Minutes</b> HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: CHRIS PEREZ TRIAL DAY 10 ATTORNEY NOAH D. LEBOWITZ AND MARK C. PETERS APPEARING WITH/FOR PLAINTIFF(S). ATTORNEY MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT(S). AT 08:58, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS. AT 09:06, THE UNREPORTED CONFERENCE CONCLUDED. AT 09:24, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS. AT 09:25, THE UNREPORTED CONFERENCE CONCLUDED. AT 09:27, COURT CONVENES. MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ AND MARK C. PETERS. ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT. JAMES KELLY PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE. JURORS PRESENT WITH EXCEPTION OF JUROR NO. 3 (#735926). AT 9:27, COURT AND COUNSEL DISCUSS JUROR NO. 3 BEING EXCUSED DUE TO MEDICAL ILLNESS. COURT EXCUSES JUROR NO. 3 (#735926) DUE TO MEDICAL ILLNESS WITHOUT OBJECTION FROM COUNSEL. NAME OF ALTERNATE JUROR CHOSEN AT RANDOM TO BE SWORN AS JUROR NO. 3. AT 9:28, JUROR #742948 IS GIVEN THE ACKNOWLEDGMENT AND AGREEMENT TO TRY THE CASE AS JUROR NO. 3. AT 9:29, COURT ORIENTS JURY AS TO READING OF JURY INSTRUCTIONS AND CLOSING ARGUMENTS. AT 9:33, COURTS READING OF JURY INSTRUCTIONS COMMENCES. AT 10:00, SIDEBAR CONFERENCE HELD. AT 10:01, SIDEBAR CONFERENCE CONCLUDED. AT 10:01, COURTS READING OF JURY INSTRUCTIONS RESUMES. AT 10:04, COURTS READING OF JURY INSTRUCTIONS PAUSES TO ALLOW FOR CLOSING ARGUMENTS. AT 10:04, COURT ADMONISHES JURORS. AT 10:04, COURT IS IN RECESS. AT 10:19, COURT RECONVENES. ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT. JURORS PRESENT. AT 10:19, CLOSING ARGUMENT BY NOAH D. LEBOWITZ ON BEHALF OF PLAINTIFF COMMENCES. AT 11:21, CLOSING ARGUMENT FOR PLAINTIFF CONCLUDES. AT 11:21, COURT ADMONISHES JURORS. AT 11:21, COURT IS IN RECESS. AT 11:34, COURT RECONVENES. ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT. JURORS PRESENT. AT 11:35, CLOSING ARGUMENT BY MICHAEL J. VARTAIN ON BEHALF OF DEFENDANT COMMENCES. AT 11:44, AIRING OF EXCERPTS FROM VIDEO DEPOSITION OF MARCINE BLOUGH COMMENCES (UNREPORTED).</p>				

AT 11:47, CLOSING ARGUMENT FOR DEFENDANT RESUMES.  
AT 11:48, AIRING OF EXCERPTS FROM VIDEO DEPOSITION OF MARCINE BLOUGH RESUMES (UNREPORTED).  
AT 11:50, CLOSING ARGUMENT FOR DEFENDANT RESUMES.  
AT 11:50, AIRING OF EXCERPTS FROM VIDEO DEPOSITION OF MARCINE BLOUGH RESUMES (UNREPORTED).  
AT 11:51, CLOSING ARGUMENT FOR DEFENDANT RESUMES.  
AT 11:52, AIRING OF EXCERPTS FROM VIDEO DEPOSITION OF MARCINE BLOUGH RESUMES (UNREPORTED).  
AT 11:53, CLOSING ARGUMENT FOR DEFENDANT RESUMES.  
AT 11:54, COURT ADMONISHES JURORS.  
AT 11:54, COURT IS IN RECESS UNTIL 1:30 P.M.  
AT 01:34, COURT RECONVENES.  
ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.  
JURORS PRESENT.  
AT 1:34, CLOSING ARGUMENT FOR DEFENDANT RESUMES.  
AT 2:21, CLOSING ARGUMENT FOR DEFENDANT CONCLUDES.  
AT 2:21, COURT ADMONISHES JURORS.  
AT 02:21, COURT IS IN RECESS.  
NOTICE TO PAY \$248.00 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/15/08.  
NOTICE TO PAY \$0.00 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MENLO COLLEGE ON 12/15/08.  
AT 02:31, COURT RECONVENES.  
ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.  
JURORS PRESENT.  
AT 2:31, FINAL ARGUMENT BY NOAH D. LEBOWITZ ON BEHALF OF PLAINTIFF COMMENCES.  
AT 2:44, FINAL ARGUMENT FOR PLAINTIFF CONCLUDES.  
AT 02:44, SIDEBAR CONFERENCE HELD.  
AT 02:46, SIDEBAR CONFERENCE CONCLUDED.  
AT 2:46, COURTS READING OF THE JURY INSTRUCTIONS RESUMES.  
AT 2:51, COURTS READING OF THE JURY INSTRUCTIONS CONCLUDES.  
AT 2:52, COURT ORIENTS ALTERNATE JUROR AS TO SERVICE ON STANDBY.  
AT 2:54, COURT ORIENTS JURY GENERALLY AS TO JURY DELIBERATIONS.  
AT 2:56, COURT ORIENTS JURY AS TO ADMITTED EXHIBITS AND SET OF JURY INSTRUCTIONS.  
AT 2:57, COURT ORIENTS JURY AS TO SPECIAL VERDICT FORMS.  
AT 2:59, COURT ORIENTS JURY AS TO POLLING PROCESS ON SPECIAL VERDICTS IF VERDICTS REACHED.  
AT 3:01, COURT ORIENTS JURY AS TO SCHEDULING OF DELIBERATIONS.  
AT 3:03, COURT ADMONISHES JURY AGAINST USE OF TELECOMMUNICATION DEVICES WHILE IN DELIBERATION ROOM.  
AT 3:04, COURT ORIENTS JURY AS TO ASKING COURT QUESTIONS THROUGH WRITTEN QUESTION FORMS.  
AT 3:05, COURT ORIENTS JURY AS TO REQUESTING READBACK FROM COURT REPORTER.  
AT 3:07, COURT ORIENTS JURY AS TO SELECTING PRESIDING JUROR.  
AT 3:09, COUNSEL STIPULATE THAT THE JURY INSTRUCTIONS AND ALL ADMITTED EXHIBITS MAY GO INTO THE DELIBERATION ROOM WITH THE JURY. COUNSEL FURTHER STIPULATE THAT THE JURY MAY RECESS FOR BREAKS AND LUNCH AND RETIRE AT THE END OF EACH DAY WITHOUT THE NEED FOR COURT TO FORMALLY CONVENE/RECONVENE.  
AT 03:10, BAILIFF DEPUTY DAVE HENNESSY IS SWORN TO TAKE CHARGE OF THE JURY.  
AT 03:11 THE JURORS RETIRE TO COMMENCE DELIBERATIONS.  
AT 3:11, ALTERNATE JUROR IS EXCUSED AND PLACED ON STANDBY SERVICE.  
AT 3:12, COURT INSTRUCTS COUNSEL AND PARTIES THAT THEY SHALL BE PLACED ON 20 MINUTE TELEPHONE STANDBY WHILE JURY IS DELIBERATING.

AT 03:13, COURT IS IN RECESS.  
 AT 03:28, COURT RECONVENES.  
 ATTORNEY(S): NOAH D. LEBOWITZ AND MARK C. PETERS APPEARING ON BEHALF OF PLAINTIFF.

ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING ON BEHALF OF DEFENDANT.

AT 3:28, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL DISCUSS PLACING OBJECTIONS MADE DURING CONFERENCING OF JURY INSTRUCTIONS ON THE RECORD. PLAINTIFF OBJECTS TO INCLUSION OF JURY INSTRUCTION CACI 3930. DEFENDANT OBJECTS TO LACK OF INCLUSION OF DEFENDANTS SPECIAL INSTRUCTION NO. 2

RE:  
 DISCHARGE OF EMPLOYMENT.  
 DEFENDANT OBJECTS TO INCLUSION OF JURY INSTRUCTIONS RELATED TO PUNATIVE DAMAGES.

AT 03:32, COURT IS IN RECESS.  
 AT 4:30, THE JURORS RECESS FOR THE EVENING TO RESUME DELIBERATIONS ON 12/16/08 AT 9:00 A.M.  
 AT 4:30, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/16/08 AT 09:00, IN DEPARTMENT 3. ENTERED BY SEAN KANE ON 12/15/08.

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	12/12/2008	COURT REPORTER FEES OF \$244.00 PAID BY MARCINE BLOUGH.		
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<b>Minutes</b> Receipt: 081212-0316      \$244.00				
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	12/12/2008 9:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	
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<b>Minutes</b> HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: CHRIS PEREZ TRIAL DAY 9 AT 09:04, COURT CONVENES. MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ AND MARK C. PETERS. ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT. JAMES KELLY PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE. JURORS PRESENT. AT 9:04, WITNESS NORMAN REYNOLDS RESUMES THE STAND, IS RE-SWORN, AND TESTIFIES UNDER FURTHER DIRECT EXAMINATION BY DEFENDANT. AT 09:15, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY PLAINTIFF. AT 09:41, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION. AT 09:53, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION. AT 09:54, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION. AT 09:56, THE WITNESS IS EXCUSED FROM THE STAND. AT 9:57, COURT ADMONISHES JURORS. AT 09:57, COURT IS IN RECESS. AT 10:15, COURT RECONVENES. ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT. AT 10:15, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL DISCUSS COUNSEL STIPULATING TO ADMISSION OF EXHIBITS INTO EVIDENCE. THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF DEFENDANT BY STIPULATION OF COUNSEL: EXHIBIT "A" - 07 - 08 COLLEGE CATALOG (EXCERPTS); 08 - 09 COLLEGE CATALOG (EXCERPTS). --				
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EXHIBIT "B" - YEAR 2008-2009 FULL-TIME FACULTY LIST.

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EXHIBIT "C" - LETTER TO MS. BLOUGH FROM MS. SAPRAI DATED MARCH 26, 2007, ENCLOSING LETTER OF DR. MISSETT DATED MARCH 22, 2007.

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EXHIBIT "D" - DOCUMENTS REGARDING 2007 OFFERS OF RETURN FROM LEAVE: LETTER TO MS. BLOUGH FROM MS.

SAPRAI RE: TEACHING ASSIGNMENTS DATED JULY 16, 2007; OFFER LETTER TO MS. BLOUGH FROM PRESIDENT HAIGHT DATED JULY 17, 2007; LETTER TO MS. BLOUGH FROM BOB HITE DATED MAY 25, 2007 WITH COURSE LIST.

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EXHIBIT "E-1" - EMAIL OF MS. BLOUGH DATED AUGUST 1, 2008 AND AUGUST 3, 2006.

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EXHIBIT "F" - DOCUMENTS REGARDING 2003 OFFERS OF RETURN FROM LEAVE: LETTER TO TERRY MCDOWELL FROM

MS. BLOUGH DATED FEBRUARY 20, 2003; LETTER TO TERRY MCDOWELL FROM DR. MISSETT DATED JUNE 10,

2003; LETTER TO TERRY MCDOWELL FROM DR. MISSETT DATED DECEMBER 9, 2003; LETTER TO TERRY MCDOWELL

FROM DR. MISSETT DATED MAY 21, 2004.

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EXHIBIT "G" - LETTER TO JOHN WILLIAMS FROM MS. BLOUGH DATED FEBRUARY 12, 1998; LETTER OF V.P.

WILLIAMS TO MS. BLOUGH DATED FEBRUARY 12, 1998.

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EXHIBIT "H-1" - MEDICAL RECORDS, DR. LAANE, MARCH 14, 2006.

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EXHIBIT "H-2" - MEDICAL RECORDS, DR. MARCUS, MARCH 24, 2006.

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EXHIBIT "K" - EMAIL FROM CARLOS LOPEZ TO MARCINE BLOUGH DATED MAY 30, 2006.

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EXHIBIT "S" - EMAIL OF MS. SAPRAI DATED AUGUST 12, 2006.

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EXHIBIT "FF" - MENLO COLLEGES EEO POLICY.

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EXHIBIT "JJ" - MENLO COLLEGES FACULTY HANDBOOK EXCERPTS.

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF BY STIPULATION OF COUNSEL:

EXHIBIT #37 - 11/2/06 EMAIL FROM SAPRAI TO BLOUGH (PL 0438).

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EXHIBIT #43 - 3/22/07 LETTER FROM MISSETT TO SAPRAI (PL 0461 - PL 0462).

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EXHIBIT #50 - 6/8/07 EMAIL FROM BLOUGH TO HITE (PL 0470 - PL 0471).

AT 10:17, JURORS NOW PRESENT.

AT 10:18, WITNESS ROBERT HITE IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY DEFENDANT.

AT 10:34, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY PLAINTIFF.

AT 10:35, THE WITNESS IS EXCUSED FROM THE STAND.

AT 10:35, SIDEBAR CONFERENCE HELD.

AT 10:37, SIDEBAR CONFERENCE CONCLUDED.

AT 10:37, WITNESS JAMES KELLY IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY DEFENDANT.

AT 10:48, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY PLAINTIFF.

AT 10:49, THE WITNESS IS EXCUSED FROM THE STAND.

AT 10:50, DEFENDANT RESTS SAVE OUTSTANDING VIDEOTAPE DEPOSITION TRANSCRIPT ISSUE.

AT 10:50, PLAINTIFF RESTS.

AT 10:51, COURT ORIENTS JURY AS TO READING OF JURY INSTRUCTIONS AND CLOSING ARGUMENTS TO

COMMENCE ON 12/15/08.

AT 10:52, THE JURORS ARE ADMONISHED AND DIRECTED TO RETURN ON 12/15/08 AT 09:00.

AT 10:54, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL DISCUSS ADMITTING EXHIBITS INTO EVIDENCE.

AT 10:55, COURT AND COUNSEL DISCUSS TRANSCRIPT OF VIDEOTAPED DEPOSITION OF MARCINE BLOUGH.

COURT INSTRUCTS DEFENDANT TO FILE WITH THE COURT A TRANSCRIPT OF ONLY THE EXCERPTS FROM MARCINE

BLOUGHS VIDEOTAPED DEPOSITION THAT WERE PLAYED TO THE JURY.

AT 10:56, COURT AND COUNSEL DISCUSS CONFERENCING JURY INSTRUCTIONS AT 1:45 P.M.

AT 10:57, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION FOR DIRECTED VERDICT ON DEFENDANTS

FIFTEEN AFFIRMATIVE DEFENSES.

COURT SHALL HEAR ARGUMENT ON MOTION OR DIRECTED VERDICT AT 1:45 P.M.

AT 11:00, COURT IS IN RECESS UNTIL 1:45 P.M.

NOTICE TO PAY \$270.14 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/12/08.

NOTICE TO PAY \$0.00 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MENLO COLLEGE ON 12/12/08.

AT 01:51, COURT RECONVENES.

ATTORNEY NOAH D. LEBOWITZ APPEARING ON BEHALF OF PLAINTIFF.

ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING ON BEHALF OF DEFENDANT.

AT 1:51, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION FOR DIRECTED VERDICTS AS TO DEFENDANTS

FIFTEEN AFFIRMATIVE DEFENSES IN ITS ANSWER TO THE 2ND AMENDED COMPLAINT (PREVIOUSLY STIPULATED

BY COUNSEL TO ALSO BE DEFENDANTS ANSWER TO THE 3RD AMENDED COMPLAINT).

DEFENDANT WITHDRAWS 1ST, 4TH, 5TH, 9TH, AND 12TH AFFIRMATIVE DEFENSES.

ARGUMENT PRESENTED BY COUNSEL AS TO REMAINING AFFIRMATIVE DEFENSES.

HAVING CONSIDERED THE SUBMITTED MATTER, THE COURT RULES AS FOLLOWS:

COURT DENIES PLAINTIFFS MOTION FOR DIRECTED VERDICT AS TO THE 2ND AND 8TH CAUSES OF ACTION,

FINDING SUFFICIENT EVIDENCE TO HAVE MATTERS DECIDED BY THE JURY.

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COURT DOES NOT RULE AS TO 3RD AND 6TH AFFIRMATIVE DEFENSES. JURY WILL NOT BE ASKED TO DECIDE THESE.

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DEFENDANT WITHDRAWS 7TH AFFIRMATIVE DEFENSE AFTER ARGUMENT.

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COURT DOES NOT RULE AS TO 10TH AFFIRMATIVE DEFENSE.

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COURT DENIES PLAINTIFFS MOTION FOR DIRECTED VERDICT AS TO 11TH AFFIRMATIVE DEFENSE.

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COURT SHALL RULE ON 13TH AFFIRMATIVE DEFENSE BY WAY OF DEFENDANTS MOTION FOR NONSUIT RE:

PUNATIVE DAMAGES.

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COURT DEFERS RULING AS TO 14TH AND 15TH AFFIRMATIVE DEFENSES.

AT 2:17, COURT AND COUNSEL REVISIT DEFENDANTS MOTION FOR NONSUIT RE: PUNATIVE DAMAGES.

COURT NOW DENIES DEFENDANTS MOTION FOR NONSUIT RE: PUNATIVE DAMAGES, FINDING THE ONE PIECE OF

EVIDENCE THAT PLAINTIFF HAD THE PHYSICAL AILMENT OF CANCER AND WAS SENT BY MENLO

COLLEGE TO A  
 PSYCHIATRIST TO BE ENOUGH EVIDENCE TO SURVIVE THE MOTION.  
 AT 2:21, COURT AND COUNSEL DISCUSS ADMITTING EXHIBITS INTO EVIDENCE.  
 THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO  
 EVIDENCE ON BEHALF OF PLAINTIFF BY STIPULATION OF COUNSEL:  
 EXHIBIT #65 - PHONE RECORD OF CALL FROM MARCINE BLOUGH TO DR. MISSETS OFFICE ON  
 07/08/06.  
 --  
 EXHIBIT #66 - PHONE RECORD OF CALL FROM MARCINE BLOUGH TO DR. MISSET ON 07/14/06.  
 THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO  
 EVIDENCE ON BEHALF OF DEFENDANT BY STIPULATION OF COUNSEL:  
 EXHIBIT "UU" - 8 1/2" X 11" COLOR PHOTOGRAPH OF MARCINE BLOUGHS OFFICE AT MENLO  
 COLLEGE.  
 AT 2:23, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/15/08 AT 09:00, IN DEPARTMENT 3.  
 AT 02:26, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS.  
 AT 05:50, THE UNREPORTED CONFERENCE CONCLUDED.  
 ENTERED BY SEAN KANE ON 12/12/08.  
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	12/12/2008	COURT REPORTER FEES OF \$244.00 PAID BY MARCINE BLOUGH.	-	
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**Minutes**  
 Receipt: 081212-0029      \$244.00

	12/12/2008	JURY TRUST POSTED BY DUCKWORTH, PETER & LEBOWITZ LLP ON BEHALF OF MARCINE BLOUGH.	-	
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**Minutes**  
 Receipt: 081212-0030      \$540.28

	12/11/2008 10:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	
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**Minutes**  
 HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT  
 REPORTER: CHRIS PEREZ  
 TRIAL DAY 8  
 AT 10:07, COURT CONVENES.  
 MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ AND MARK C. PETERS.  
 ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT.  
 JAMES KELLY PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE.  
 AT 10:07, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL DISCUSS DEFENDANTS  
 MOTION FOR  
 NONSUIT AS TO ALL REMAINING CAUSES OF ACTION IN THE 3RD AMENDED COMPLAINT, AND  
 PRAYER FOR  
 PUNATIVE DAMAGES.  
 MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.  
 HAVING CONSIDERED THE SUBMITTED MATTER, THE COURT RULES AS FOLLOWS:  
 COURT DENIES DEFENDANTS MOTION FOR NONSUIT AS TO THE 1ST, 2ND, 5TH, AND 8TH  
 CAUSES OF ACTION IN  
 THE 3RD AMENDED COMPLAINT. PLAINTIFF HAS PROVIDED SUFFICIENT EVIDENCE TO HAVE  
 MATTERS  
 DECIDED BY THE JURY.  
 --  
 COURT DEFERS RULING ON DEFENDANTS MOTION FOR NONSUIT AS TO THE PRAYER FOR  
 PUNATIVE DAMAGES.  
 SINGLE ISSUE REMAINS AS TO MARCINE BLOUGHS TESTIMONY THAT SHE HAD A PHYSICAL  
 AILMENT OF  
 CANCER AND WAS SENT BY MENLO COLLEGE TO A PSYCHIATRIST. COURT SHALL REVISIT

## MOTION AFTER

PRESENTATION OF DEFENDANTS EVIDENCE.

AT 11:05, JURORS NOW PRESENT.

AT 11:06, WITNESS RACHEL TIPTON RESUMES THE STAND, IS RE-SWORN, AND TESTIFIES

## UNDER FURTHER

DIRECT EXAMINATION BY DEFENDANT.

AT 11:10, SIDEBAR CONFERENCE HELD.

AT 11:11, SIDEBAR CONFERENCE CONCLUDED.

AT 11:11, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 11:16, THE WITNESS IS EXCUSED FROM THE STAND.

AT 11:18, WITNESS JAMES MISSETT IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY DEFENDANT.

AT 12:05, COURT ADMONISHES JURORS.

AT 12:05, COURT IS IN RECESS UNTIL 1:30 P.M.

AT 01:42, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.

JURORS PRESENT.

AT 01:42, WITNESS JAMES MISSETT, PREVIOUSLY SWORN, RESUMES THE STAND AND TESTIFIES FURTHER UNDER DIRECT EXAMINATION BY DEFENDANT.

AT 02:03, SIDEBAR CONFERENCE HELD.

AT 02:04, SIDEBAR CONFERENCE CONCLUDED.

AT 02:04, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 2:44, COURT ADMONISHES JURORS.

AT 02:44, COURT IS IN RECESS.

NOTICE TO PAY \$270.14 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/11/08.

NOTICE TO PAY \$0.00 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MENLO COLLEGE ON 12/11/08.

AT 03:05, COURT RECONVENES.

AT 03:05, WITNESS JAMES MISSETT, PREVIOUSLY SWORN, RESUMES THE STAND AND TESTIFIES FURTHER UNDER CROSS EXAMINATION BY PLAINTIFF.

AT 03:07, SIDEBAR CONFERENCE HELD.

AT 03:08, SIDEBAR CONFERENCE CONCLUDED.

AT 03:08, THE WITNESS TESTIFIES UNDER FURTHER CROSS EXAMINATION.

AT 3:32, COURT DENIES PLAINTIFFS REQUEST TO HAVE LIMITING INSTRUCTION TO JURY RE:

## EXHIBIT #15

LIFTED.

AT 03:32, THE WITNESS TESTIFIES UNDER FURTHER CROSS EXAMINATION.

AT 03:50, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 03:53, THE WITNESS IS EXCUSED FROM THE STAND.

AT 3:54, COURT AND COUNSEL HOLD AN UNREPORTED CONFERENCE IN HALLWAY RE: WITNESS SCHEDULING.

AT 3:57, UNREPORTED DISCUSSION CONCLUDES.

AT 03:58, WITNESS NORMAN REYNOLDS IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY DEFENDANT.

THE EXHIBITS LISTED BELOW WERE INTRODUCED AND MARKED FOR IDENTIFICATION ON BEHALF OF DEFENDANT:

EXHIBIT "PP" - CURRICULUM VITAE OF DR. NORMAN REYNOLDS.

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AT 4:10, COURT GRANTS DEFENDANTS ORAL MOTION TO ALLOW WITNESS NORMAN REYNOLDS TO TESTIFY AS AN

EXPERT IN THE FIELD OF FITNESS FOR DUTY EVALUATIONS.

AT 04:10, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 4:32, COURT ORIENTS JURY AS TO TRIAL SCHEDULING.

AT 04:34, THE JURORS ARE ADMONISHED AND DIRECTED TO RETURN ON 12/12/08 AT 09:00.

AT 4:35, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL HOLD AN UNREPORTED DISCUSSION RE:

PLAINTIFFS PRIOR REQUEST TO LIFT LIMITING INSTRUCTION TO THE JURY RE: EXHIBIT #15, PREVIOUSLY DENIED BY THE COURT.



AT 4:36, UNREPORTED DISCUSSION CONCLUDES.  
 AT 4:36, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/12/08 AT 09:00, IN DEPARTMENT 3.  
 ENTERED BY SEAN KANE ON 12/11/08.

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	12/10/2008	DEFTS SUPPLEMENT TO NOTICE OF INTENTION TO OFFER PLTF MARCINE BLOUGHS RECORDED DEPOSITION, ETC., FILED.	-	
	12/10/2008 9:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	

#### Minutes

HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: CHRIS PEREZ

TRIAL DAY 7

AT 09:16, COURT CONVENES.

MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ AND MARK C. PETERS.  
 ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT.  
 JAMES KELLY PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE.  
 JURORS PRESENT.

AT 9:17, WITNESS MARCINE BLOUGH RESUMES THE STAND, IS RE-SWORN, AND TESTIFIES UNDER FURTHER

DIRECT EXAMINATION BY PLAINTIFF.

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #4 - 7/26/04 LETTER FROM CARLOS LOPEZ TO BLOUGH (PL 0088 - PL 0089).

COUNSEL/PARTIES STIPULATE THAT EXHIBIT #4 BE ADMITTED.

EXHIBIT #56 - FALL 2004 STUDENT EVALUATIONS (M0567-M649).

COUNSEL/PARTIES STIPULATE THAT EXHIBIT #56 BE ADMITTED.

EXHIBIT #6 - FALL 2005 STUDENT EVALUATIONS (M0846-M0938).

COUNSEL/PARTIES STIPULATE THAT EXHIBIT #6 BE ADMITTED.

EXHIBIT #12 - MISSETTS CONSENT TO RELEASE MEDICAL/PSYCHIATRIC INFO. (PL 0287 - PL 0291).

COUNSEL/PARTIES STIPULATE THAT EXHIBIT #12 BE ADMITTED.

EXHIBIT #13 - 5/26/06 EMAIL FROM BLOUGH TO LOPEZ (PL 0292 - PL 0293).

COUNSEL/PARTIES STIPULATE THAT EXHIBIT #13 BE ADMITTED.

THE EXHIBITS LISTED BELOW WERE PREVIOUSLY MARKED FOR IDENTIFICATION ON BEHALF OF PLAINTIFF AND ARE NOW ADMITTED:

EXHIBIT #21.

COUNSEL/PARTIES STIPULATE THAT EXHIBIT #21 BE ADMITTED.

AT 10:23, COURT ADMONISHES JURORS.

AT 10:23, COURT IS IN RECESS.

AT 10:42, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.

JURORS PRESENT.

AT 11:00, WITNESS MARCINE BLOUGH, PREVIOUSLY SWORN, RESUMES THE STAND AND TESTIFIES FURTHER UNDER DIRECT EXAMINATION BY PLAINTIFF.

THE EXHIBITS LISTED BELOW WERE PREVIOUSLY MARKED FOR IDENTIFICATION ON BEHALF OF PLAINTIFF AND ARE NOW ADMITTED:

EXHIBIT #19.

COUNSEL/PARTIES STIPULATE THAT EXHIBIT #19 BE ADMITTED.

AT 11:00, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

AT 11:25, COUNSEL STIPULATE THAT A LAWSUIT HAD NOT YET BEEN FILED AT THE TIME THE LETTER OFFER

WAS MADE TO PLAINTIFF.

AT 11:25, THE WITNESS TESTIFIES UNDER FURTHER CROSS EXAMINATION.

AT 11:37, COUNSEL STIPULATE THAT COURT REPORTER NEED NOT TRANSCRIBE AIRING OF VIDEO DEPOSITION OF MARCINE BLOUGH.

AT 11:38, SIDEBAR CONFERENCE HELD.

AT 11:39, SIDEBAR CONFERENCE CONCLUDED.

AT 11:40, AIRING OF EXCERPTS FROM MARCINE BLOUGHS VIDEO DEPOSITION COMMENCES.  
(PROCEEDINGS NOW UNREPORTED.)

AT 11:48, AIRING OF VIDEO DEPOSITION CONCLUDES.

AT 11:48, THE WITNESS TESTIFIES UNDER FURTHER CROSS EXAMINATION.  
(PROCEEDINGS NOW REPORTED.)

AT 11:52, COURT ADMONISHES JURORS.

AT 11:52, COURT IS IN RECESS UNTIL 1:30 P.M.

AT 01:31, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.

AT 1:31, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL DISCUSS PLAINTIFFS  
PROPERLY

RESERVED OBJECTION AS TO SCOPE OF VIDEO DEPOSITION OF MARCINE BLOUGH SHOWN TO  
JURY, AND

PLAINTIFFS REQUEST FOR EXPANSIONS.

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COURT HAD ALLOWED PLAINTIFF TO RESERVE RE-DIRECT EXAMINATION OF MARCINE BLOUGH  
UNTIL TOMORROW TO

BE TAKEN OUT-OF-ORDER AFTER START OF DEFENDANTS CASE-IN-CHIEF.

AT 1:39, JURORS NOW PRESENT.

AT 01:39, WITNESS MARCINE BLOUGH, PREVIOUSLY SWORN, RESUMES THE STAND AND  
TESTIFIES FURTHER UNDER CROSS EXAMINATION BY DEFENDANT.

AT 2:17, AIRING OF EXCERPTS FROM MARCINE BLOUGHS VIDEO DEPOSITION COMMENCES.  
(PROCEEDINGS NOW UNREPORTED.)

AT 2:21, AIRING OF VIDEO DEPOSITION CONCLUDES.

AT 02:21, THE WITNESS TESTIFIES UNDER FURTHER CROSS EXAMINATION.  
(PROCEEDINGS NOW REPORTED.)

AT 2:34, COURT ADMONISHES JURORS.

AT 02:34, COURT IS IN RECESS.

NOTICE TO PAY \$270.14 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO  
MARCINE BLOUGH ON 12/10/08.

NOTICE TO PAY \$0.00 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MENLO  
COLLEGE ON 12/10/08.

AT 02:44, COURT RECONVENES.

AT 02:44, WITNESS MARCINE BLOUGH, PREVIOUSLY SWORN, RESUMES THE STAND AND  
TESTIFIES FURTHER UNDER RE-DIRECT EXAMINATION BY PLAINTIFF.

AT 3:03, PLAINTIFF READS FROM DEPOSITION OF MARCINE BLOUGH (VOLUME III, STARTING ON  
P. 548,  
LINE 13).

AT 03:06, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION.

AT 03:10, THE WITNESS IS EXCUSED FROM THE STAND.

AT 3:11, COURT ADMONISHES JURORS.

AT 03:11, COURT IS IN RECESS.

DEFENDANT LODGES DEPOSITION OF CHARLES R. MAHLA, PH.D. (11/21/08) WITH THE COURT  
(UNREPORTED).

AT 03:28, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.  
JURORS PRESENT.

AT 03:29, WITNESS CHARLES MAHLA IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION  
BY PLAINTIFF.

AT 3:31, COURT GRANTS PLAINTIFFS ORAL MOTION TO ALLOW WITNESS CHARLES MAHLA TO  
TESTIFY AS AN

EXPERT IN ECONOMICS.

AT 03:31, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 03:41, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

AT 03:56, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 03:57, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION.

AT 03:59, SIDEBAR CONFERENCE HELD.

AT 04:00, SIDEBAR CONFERENCE CONCLUDED.  
 AT 04:00, THE WITNESS IS EXCUSED FROM THE STAND.  
 AT 4:00, PLAINTIFF RESTS.  
 AT 4:00, DEFENDANT RESERVES MAKING MOTION(S) TO COMMENCE WITNESS TESTIMONY IN CASE-IN-CHIEF.  
 AT 04:02, WITNESS RACHEL TIPTON IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY DEFENDANT.  
 AT 04:31, THE JURORS ARE ADMONISHED AND DIRECTED TO RETURN ON 12/11/08 AT 10:00.  
 AT 4:32, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL DISCUSS ALLOWING DEFENDANT TO STATE ORAL MOTION(S) ON 12/11/08 AT 10:00 A.M.  
 AT 4:33, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/11/08 AT 10:00, IN DEPARTMENT 3. ENTERED BY SEAN KANE ON 12/10/08.  
 =====

	12/09/2008	COURT REPORTER FEES OF \$488.00 PAID BY MARCINE BLOUGH.	-	
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**Minutes**  
 Receipt: 081209-0072      \$488.00

	12/09/2008	JURY TRUST POSTED BY DUCKWORTH PETERS LEBOWITZ ON BEHALF OF MARCINE BLOUGH.	-	
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**Minutes**  
 Receipt: 081209-0069      \$512.28

	12/09/2008 10:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	
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**Minutes**  
 HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: CHRIS PEREZ  
 TRIAL DAY 6  
 DEFENDANT LODGES DEPOSITION OF JOHN V. SIEBEL, M.D. (11/21/08) WITH THE COURT (UNREPORTED).  
 AT 10:16, COURT CONVENES.  
 MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ AND MARK C. PETERS. ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT. JAMES KELLY PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE. JURORS PRESENT.  
 AT 10:17, WITNESS ERIC RAINES IS SWORN AND TESTIFIES OUT-OF-ORDER UNDER DIRECT EXAMINATION BY PLAINTIFF.  
 AT 10:36, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.  
 AT 10:41, THE WITNESS IS EXCUSED FROM THE STAND.  
 AT 10:43, WITNESS JOHN SIEBEL IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.  
 THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:  
 EXHIBIT #18 - 7/28/06 LETTER FROM DR. SIEBEL TO WHOM IT MAY CONCERN (PL 0301).  
 AT 10:56, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.  
 AT 11:01, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.  
 AT 11:02, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION.  
 AT 11:03, SIDEBAR CONFERENCE HELD.  
 AT 11:03, SIDEBAR CONFERENCE CONCLUDED.  
 AT 11:05, WITNESS STEPHANIE SAPRAI IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.  
 (WITNESS IS CALLED PURSUANT TO EVIDENCE CODE SECTION 776.)  
 AT 11:12, PLAINTIFF LODGES DEPOSITION OF STEPHANIE SAPRAI (09/22/08) WITH THE COURT.  
 AT 11:13, PLAINTIFF READS FROM DEPOSITION OF STEPHANIE SAPRAI (P. 35, LINES 4-7).

AT 11:13, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.  
THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #24 - 8/10/06 EMAIL FROM SAPRAI TO BLOUGH (PL 0350).

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EXHIBIT #25 - 8/14/06 LETTER FROM SAPRAI TO BLOUGH (PL 0351).

COUNSEL/PARTIES STIPULATE THAT OBLISCURED DATE ON EXHIBIT #25 IS AUGUST 14, 2006.

EXHIBIT #27 - 9/7/06 LETTER FROM SAPRAI TO BLOUGH (M0290).

THE EXHIBITS LISTED BELOW WERE PREVIOUSLY MARKED FOR IDENTIFICATION ON BEHALF OF PLAINTIFF AND ARE NOW ADMITTED:

EXHIBIT #17.

AT 11:49, COURT GIVES LIMITING INSTRUCTION TO THE JURY RE: EXHIBIT #17.

AT 11:49, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 11:55, COURT ADMONISHES JURORS.

AT 11:55, COURT IS IN RECESS UNTIL 1:30 P.M.

AT 01:35, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT WITH EXCEPTION OF JAMES KELLY.

JOSEPH KARINGADA PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE.

JURORS PRESENT.

AT 01:38, WITNESS JOHN HAYWARD IS SWORN AND TESTIFIES OUT-OF-ORDER UNDER DIRECT EXAMINATION BY PLAINTIFF.

AT 01:53, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

AT 02:10, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 02:10, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION.

AT 02:11, THE WITNESS IS EXCUSED FROM THE STAND.

AT 2:12, COURT AND COUNSEL HOLD AN UNREPORTED CONFERENCE IN HALLWAY RE: OBJECTION ISSUE AS TO

WITNESS.

AT 2:16, UNREPORTED CONFERENCE CONCLUDES.

AT 02:17, WITNESS SHARON GAROUTTE IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #15 - 7/10/06 LETTER FROM SHERRI GAROUTTE TO WHOM IT MAY CONCERN RE: BLOUGH (PL 0298).

AT 2:27, COURT GIVES LIMITING INSTRUCTION TO THE JURY RE: EXHIBIT #15.

AT 02:28, SIDEBAR CONFERENCE HELD.

AT 02:28, SIDEBAR CONFERENCE CONCLUDED.

AT 02:28, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 02:35, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

AT 02:42, SIDEBAR CONFERENCE HELD.

AT 02:42, SIDEBAR CONFERENCE CONCLUDED.

AT 02:43, THE WITNESS IS EXCUSED FROM THE STAND.

AT 2:43, COURT ADMONISHES JURORS.

AT 02:43, COURT IS IN RECESS.

AT 02:43, SIDEBAR CONFERENCE HELD.

AT 02:44, SIDEBAR CONFERENCE CONCLUDED.

NOTICE TO PAY \$270.14 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/09/08.

NOTICE TO PAY \$0.00 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MENLO COLLEGE ON 12/09/08.

AT 03:02, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.

JURORS PRESENT.

AT 03:02, WITNESS STEPHANIE SAPRAI, PREVIOUSLY SWORN, RESUMES THE STAND AND TESTIFIES FURTHER UNDER DIRECT EXAMINATION BY PLAINTIFF.

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #31 - 9/29/06 EMAIL FROM SAPRAI TO BLOUGH RE: RESPONSE (PL 0434).

COUNSEL/PARTIES STIPULATE THAT EXHIBIT #31 BE ADMITTED.  
 EXHIBIT #33 - 10/13/06 LETTER FROM SAPRAI TO BLOUGH (PL 0435 - PL 0436).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #33 BE ADMITTED.  
 EXHIBIT #34 - 10/25/06 EMAIL FROM BLOUGH TO SAPRAI (M0313).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #34 BE ADMITTED.  
 EXHIBIT #35 - 10/26/06 LETTER FROM SAPRAI TO BLOUGH (M0314).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #35 BE ADMITTED.  
 EXHIBIT #36 - 11/1/06 EMAIL FROM SAPRAI TO BLOUGH (PL 0437).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #36 BE ADMITTED.  
 EXHIBIT #40 - 11/22/06 EMAIL FROM BLOUGH TO SAPRAI (PL 0440).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #40 BE ADMITTED.  
 EXHIBIT #42 - 1/26/07 EMAIL FROM BLOUGH TO SAPRAI (PL 0457).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #42 BE ADMITTED.  
 EXHIBIT #45 - 3/26/07 LETTER FROM SAPRAI TO BLOUGH (PL 0460).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #45 BE ADMITTED.  
 EXHIBIT #46 - 4/11/07 EMAIL FROM SAPRAI TO BLOUGH (PL 0464).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #46 BE ADMITTED.  
 EXHIBIT #63 - EMAIL THREAD BETWEEN STEPHANIE SAPRAI, LOWELL PRATT, AND JAMES KELLY

WITH

4/13/07 EMAIL FROM JAMES KELLY TO STEPHANIE SAPRAI AT TOP (M 0250).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #63 BE ADMITTED.  
 EXHIBIT #47 - 4/17/07 EMAIL FROM SAPRAI TO BLOUGH AND PEGGY LOYA (PL 0465).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #47 BE ADMITTED.  
 EXHIBIT #48 - 4/18/07 LETTER TO BLOUGH FROM LOYA (PL 0466).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #48 BE ADMITTED.  
 EXHIBIT #49 - 5/25/07 LETTER TO BLOUGH FROM HITE (PL 0469).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #49 BE ADMITTED.  
 EXHIBIT #51 - 7/16/07 LETTER FROM SAPRAI TO BLOUGH (PL 0472 - PL 0473).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #51 BE ADMITTED.  
 EXHIBIT #64 - 07/26/07 EMAIL FROM MARCINE BLOUGH TO STEPHANIE SAPRAI (M 0253).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #64 BE ADMITTED.  
 EXHIBIT #53 - 8/3/07 EMAIL FROM BLOUGH TO SAPRAI (PL 0480).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #53 BE ADMITTED.  
 EXHIBIT #54 - 8/7/07 EMAIL FROM BLOUGH TO SAPRAI (PL 0481 - PL 0482).  
 COUNSEL/PARTIES STIPULATE THAT EXHIBIT #54 BE ADMITTED.  
 AT 03:44, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.  
 THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO

EVIDENCE ON BEHALF OF DEFENDANT:

EXHIBIT "GG" - MENLO COLLEGES DISCRIMINATION PREVENTION TRAINING.  
 AT 04:08, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.  
 AT 04:20, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION.  
 AT 04:21, THE WITNESS IS EXCUSED FROM THE STAND.  
 AT 04:22, THE JURORS ARE ADMONISHED AND DIRECTED TO RETURN ON 12/10/08 AT 09:00.  
 AT 4:22, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL HOLD AN UNREPORTED

DISCUSSION RE:

TRIAL SCHEDULING.  
 AT 4:26, UNREPORTED DISCUSSION CONCLUDES.  
 AT 4:26, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/10/08 AT 09:00, IN DEPARTMENT 3.  
 ENTERED BY SEAN KANE ON 12/10/08.

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	12/08/2008 9:30 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	
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**Minutes**  
 HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT  
 REPORTER: CHRIS PEREZ  
 TRIAL DAY 5  
 ATTORNEY(S): NOAH D. LEBOWITZ AND MARK C. PETERS APPEARING WITH/FOR PLAINTIFF.  
 ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT.

AT 09:24, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS.

AT 09:33, THE UNREPORTED CONFERENCE CONCLUDED.

AT 09:36, COURT CONVENES.

MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ AND MARK C. PETERS.

ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT.

JAMES KELLY PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE.

JURORS PRESENT.

AT 09:39, WITNESS CRAIG MEDLEN IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #58 - 3/8/91 LETTER FROM MEDLEN (M1089).

AT 10:07, SIDEBAR CONFERENCE HELD.

AT 10:08, SIDEBAR CONFERENCE CONCLUDED.

AT 10:08, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 10:09, SIDEBAR CONFERENCE HELD.

AT 10:10, SIDEBAR CONFERENCE CONCLUDED.

AT 10:10, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 10:11, SIDEBAR CONFERENCE HELD.

AT 10:12, SIDEBAR CONFERENCE CONCLUDED.

AT 10:12, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 10:12, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

AT 10:29, SIDEBAR CONFERENCE HELD.

AT 10:29, SIDEBAR CONFERENCE CONCLUDED.

AT 10:29, THE WITNESS TESTIFIES UNDER FURTHER CROSS EXAMINATION.

AT 10:32, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 10:35, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION.

AT 10:36, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 10:36, THE WITNESS IS EXCUSED FROM THE STAND.

AT 10:37, COURT ADMONISHES JURORS.

AT 10:37, COURT IS IN RECESS.

AT 10:49, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS.

AT 10:53, THE UNREPORTED CONFERENCE CONCLUDED.

AT 10:54, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.

JUROR NO. 6 (#72171) PRESENT.

AT 10:54, OUTSIDE THE PRESENCE OF THE REST OF THE JURORS, COURT ADDRESSES JUROR NO. 6S FINANCIAL

HARDSHIP.

COURT DOES NOT EXCUSE JUROR, BUT OFFERS TO CONTACT JURORS EMPLOYER TO REQUEST PAY EXCEPTION.

AT 10:57, ALL JURORS NOW PRESENT.

AT 10:58, WITNESS BRUCE PITHER IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.

AT 11:08, SIDEBAR CONFERENCE HELD.

AT 11:08, SIDEBAR CONFERENCE CONCLUDED.

AT 11:08, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 11:12, DEFENDANT LODGES DEPOSITION OF BRUCE F. PITHER, PH.D. (11/18/08) WITH THE COURT.

AT 11:12, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

AT 11:32, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 11:36, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION.

AT 11:41, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 11:43, THE WITNESS IS EXCUSED FROM THE STAND.

AT 11:45, WITNESS SAMANTHA LIU IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.

AT 11:59, COURT ADMONISHES JURORS.

AT 11:59, COURT IS IN RECESS UNTIL 1:30 P.M.

AT 01:34, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.

JURORS PRESENT.

AT 01:34, WITNESS SAMANTHA LIU, PREVIOUSLY SWORN, RESUMES THE STAND AND TESTIFIES FURTHER UNDER DIRECT EXAMINATION BY PLAINTIFF.

AT 01:40, SIDEBAR CONFERENCE HELD.

AT 01:40, SIDEBAR CONFERENCE CONCLUDED.

AT 01:40, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 01:42, SIDEBAR CONFERENCE HELD.

AT 01:43, SIDEBAR CONFERENCE CONCLUDED.

AT 01:43, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #11 - 5/12/06 LETTER FROM SAMANTHA LIU, M.D. TO CARLOS LOPEZ RE: BLOUGH (PL 0286).

AT 01:59, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

AT 02:20, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 02:26, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION.

AT 02:26, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 02:28, THE WITNESS IS EXCUSED FROM THE STAND.

AT 02:28, SIDEBAR CONFERENCE HELD.

AT 02:29, SIDEBAR CONFERENCE CONCLUDED.

AT 2:30, COURT ADMONISHES JURORS.

AT 02:30, COURT IS IN RECESS.

NOTICE TO PAY \$270.14 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/08/08.

NOTICE TO PAY \$0.00 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MENLO COLLEGE ON 12/08/08.

AT 02:53, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.

JURORS PRESENT.

AT 02:54, WITNESS JOHN MCDONOUGH IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.

AT 03:09, SIDEBAR CONFERENCE HELD.

AT 03:10, SIDEBAR CONFERENCE CONCLUDED.

AT 03:19, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

AT 03:22, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 03:25, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION.

AT 03:25, THE WITNESS IS EXCUSED FROM THE STAND.

AT 03:26, WITNESS MARCINE BLOUGH IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #1 - 7/28/77 LETTER FROM RICHARD OBRIEN TO BLOUGH (PL 0346).

AT 04:14, THE JURORS ARE ADMONISHED AND DIRECTED TO RETURN ON 12/09/08 AT 10:00.

AT 4:17, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL DISCUSS DEFENDANTS MOTION IN LIMINE

RE: FRONT PAY DAMAGES.

MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.

HAVING CONSIDERED THE SUBMITTED MATTER, THE COURT RULES AS FOLLOWS:

COURT DENIES DEFENDANTS MOTION IN LIMINE TO EXCLUDE EVIDENCE OR REFERENCE BEFORE THE JURY TO

FRONT PAY DAMAGES (FUTURE WAGE LOSS).

COURT FINDS IT WOULD BE A DEPARTURE FROM MANNER IN WHICH FEHA STATUE HAS BEEN ENFORCED TO LIMIT

PLAINTIFF TO COURT TRIAL AND EQUITABLE REMEDIES ON ISSUE OF FRONT PAY. UNDER FEDERAL LAW,

EQUITABLE REMEDY OF REINSTATEMENT IS PREFERRED, BUT SIMILAR LAW DOES NOT EXIST UNDER STATE LAW.

RUTTER GROUPS GUIDE RE: CLOUD CASE DEFINES FRONT PAY AS DAMAGES, AND DAMAGES

ARE TRIED  
 BEFORE A JURY. JURY INSTRUCTION CACI 2433 ALSO INDICATES A DETERMINATION OF  
 FUTURE WAGES BY A  
 JURY.  
 AT 4:42, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/09/08 AT 10:00, IN DEPARTMENT 3.  
 ENTERED BY SEAN KANE ON 12/08/08.  
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	12/08/2008	PLTFS OPPOSITION TO DEFTS SUPP. BRIEF ON MOT. IN LIM. TO EXCLUD. EVID. B/F JURY TO FRONT PAY, ETC., FILED.	-	
	12/05/2008	JURY TRUST POSTED BY DUCKWORTH PETERS LEBOWITZ ON BEHALF OF MARCINE BLOUGH.	-	

**Minutes**

Receipt: 081205-0012 \$972.84

	12/05/2008	VOID JURY TRUST	-	
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**Minutes**

081205-0009 VOIDED 081204-0049 ( 1094.84)

	12/04/2008	PROOF OF SERVICE OF DEFTS SUPPLEMENTAL BRIEF ON MOT. IN LIM TO EXCL. EVID. FRONT PAY DAMAGES, FILED.	-	
	12/04/2008	DEFTS APPENDIX OF AUTHORITY CITED IN SUPP. BRIEF ON MOT. IN LIM. EXCLUD. EVID. TO FRONT PAY, ETC., FILED.	-	
	12/04/2008	DEFTS SUPPLEMENTAL BRIEF ON MOT. IN LIM. TO EXCL. EVID. B/F JURY TO FRONT PAY DAMAGES, ETC., FILED.	-	
	12/04/2008 10:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	

**Minutes**

HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT  
 REPORTER: CHRIS PEREZ  
 TRIAL DAY 4  
 PLAINTIFF LODGES THE FOLLOWING ORIGINAL DEPOSITIONS WITH THE COURT: LOWELL PRATT  
 (09/23/08), MICHAEL C. SCHULTZ (09/19/08), CARLOS LOPEZ (10/02/08), AND TIMOTHY HAIGHT  
 (09/26/08).  
 AT 10:12, COURT CONVENES.  
 MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ AND MARK C. PETERS.  
 ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT.  
 JAMES KELLY PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE.  
 JURORS PRESENT.  
 AT 10:13, WITNESS LOWELL PRATT IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY  
 PLAINTIFF.  
 (WITNESS CALLED PURSUANT TO EVIDENCE CODE SECTION 776.)  
 THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO  
 EVIDENCE ON BEHALF OF PLAINTIFF:  
 EXHIBIT #57 - SPRING 2005 STUDENT EVALUATIONS (M0752-M-845).  
 --  
 EXHIBIT #59 - 5/23/05 LETTER FROM MCDONOUGH (M1090).  
 --  
 EXHIBIT #5 - 12/19/05 LETTER FROM LOWELL PRATT TO CARLOS LOPEZ (M 0320).  
 --  
 EXHIBIT #8 - 2/7/06 EMAIL FROM BLOUGH TO LOWELL PRATT RE: HEARING (PL 0307).  
 THE EXHIBITS LISTED BELOW WERE INTRODUCED AND MARKED FOR IDENTIFICATION ON



BEHALF OF PLAINTIFF:

EXHIBIT #9 - SPRING 2006 STUDENT EVALUATIONS (PL 0182 - PL 0283).

AT 11:25, JAMES KELLY NOT PRESENT.

AT 11:25, JOSEPH KARINGADA NOW PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE.

THE EXHIBITS LISTED BELOW WERE PREVIOUSLY MARKED FOR IDENTIFICATION ON BEHALF OF PLAINTIFF AND ARE NOW ADMITTED:

EXHIBIT #9.

AT 11:33, COURT ADMONISHES JURORS.

AT 11:33, COURT IS IN RECESS.

AT 11:42, COURT RECONVENES.

ALL-ABOVE NOTED PARTIES AND COUNSEL PRESENT.

JURORS PRESENT.

AT 11:42, WITNESS LOWELL PRATT, PREVIOUSLY SWORN, RESUMES THE STAND AND TESTIFIES FURTHER UNDER DIRECT EXAMINATION BY PLAINTIFF.

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #60 - BLOUGHS PROFESSIONAL GOALS AND PRIORITIES 2004-2006 (M1091-M1092).

THE EXHIBITS LISTED BELOW WERE INTRODUCED AND MARKED FOR IDENTIFICATION ON BEHALF OF PLAINTIFF:

EXHIBIT #17 - 7/22/06 EMAIL FROM BLOUGH TO LOPEZ, SCHULTZ, AND PRATT (PL 0300).

AT 11:48, SIDEBAR CONFERENCE HELD.

AT 11:51, SIDEBAR CONFERENCE CONCLUDED.

AT 11:51, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

THE EXHIBITS LISTED BELOW WERE INTRODUCED AND MARKED FOR IDENTIFICATION ON BEHALF OF PLAINTIFF:

EXHIBIT #19 - 8/1/06 EMAIL FROM BLOUGH TO LOPEZ, SCHULTZ, AND PRATT

AT 11:57, COURT ADMONISHES JURORS AND ORDERS THEM TO RETURN AT 1:30 P.M.

11:58, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL HOLD AN UNREPORTED DISCUSSION RE:

HEARSAY OBJECTIONS TO ADMITTING EXHIBITS #17 AND 19 INTO EVIDENCE.

AT 12:03, UNREPORTED DISCUSSION CONCLUDES.

AT 12:03, COURT IS IN RECESS UNTIL 1:30 P.M..

AT 01:33, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.

JURORS PRESENT.

AT 01:33, WITNESS LOWELL PRATT, PREVIOUSLY SWORN, RESUMES THE STAND AND TESTIFIES FURTHER UNDER DIRECT EXAMINATION BY PLAINTIFF.

AT 01:34, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

(COURT GRANTS DEFENDANTS REQUEST TO RECALL WITNESS IN ITS CASE-IN-CHIEF.)

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF DEFENDANT:

EXHIBIT "H" - EMAIL TO LOWELL PRATT DATED MARCH 21, 2006 RE: MARCINE BLOUGHS ABSENCES AND EMAIL

FROM MARCINE BLOUGH TO LOWELL PRATT DATED FEBRUARY 7, 2006.

AT 01:55, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 02:00, THE WITNESS TESTIFIES UNDER RE-CROSS EXAMINATION.

AT 2:01, THE WITNESS IS EXCUSED FROM THE STAND SUBJECT TO RECALL IN DEFENDANTS CASE-IN-CHIEF.

AT 02:02, WITNESS MICHAEL SCHULTZ IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.

(WITNESS IS CALLED PURSUANT TO EVIDENCE CODE SECTION 776.)

THE EXHIBITS LISTED BELOW WERE INTRODUCED AND MARKED FOR IDENTIFICATION ON BEHALF OF PLAINTIFF:

EXHIBIT #21 - 8/7/06 EMAIL FROM BLOUGH TO LOPEZ, SCHULTZ, PRATT, SAPRAI AND MEDLEN (PL 0347).

AT 02:25, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION BY DEFENDANT.

AT 02:26, THE WITNESS IS EXCUSED FROM THE STAND.

AT 02:27, SIDEBAR CONFERENCE HELD.

AT 02:28, SIDEBAR CONFERENCE CONCLUDED.

AT 02:29, WITNESS CARLOS LOPEZ IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.

(WITNESS IS CALLED PURSUANT TO EVIDENCE CODE SECTION 776.)

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #10 - 5/8/06 LETTER FROM CARLOS LOPEZ TO BLOUGH (PL 0284 - PL 0285).

AT 2:57, COURT ADMONISHES JURORS.

AT 02:57, COURT IS IN RECESS.

NOTICE TO PAY \$270.14 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/04/08.

NOTICE TO PAY \$0.00 JURY FEES AND \$244.00 COURT REPORTER FEES PROVIDED TO MENLO COLLEGE ON 12/04/08.

AT 03:20, COURT RECONVENES.

ALL ABOVE-NOTED PARTES AND COUNSEL PRESENT.

JURORS PRESENT.

AT 03:20, WITNESS CARLOS LOPEZ, PREVIOUSLY SWORN, RESUMES THE STAND AND TESTIFIES FURTHER UNDER DIRECT EXAMINATION BY PLAINTIFF.

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #14 - 7/7/06 LETTER FROM CARLOS LOPEZ TO BLOUGH (PL 0295 - PL 0297).

--

EXHIBIT #7 - 8/4/94 MENLO COLLEGE FACULTY HANDBOOK (PL 0020 - PL 0063).

AT 3:42, PLAINTIFF READS FROM DEPOSITION OF CARLOS LOPEZ (P. 75, LINES 7-23).

AT 03:43, THE WITNESS TESTIFIES UNDER FURTHER DIRECT EXAMINATION.

AT 3:45, COURT ORIENTS JURORS AS TO OBJECTIONS MADE AT DEPOSITIONS.

AT 3:46, COURT AND COUNSEL HOLD AN UNREPORTED CONFERENCE IN HALLWAY RE: OBJECTIONS MADE AT

DEPOSITION OF CARLOS LOPEZ (10/02/08).

AT 3:48, UNREPORTED CONFERENCE CONCLUDES.

AT 3:49, DEFENDANT READS FROM DEPOSITION OF CARLOS LOPEZ (P. 78, STARTING AT LINE 25 & P.

79, LINES 5-19).

AT 03:50, THE WITNESS TESTIFIES UNDER FURTHER CROSS EXAMINATION.

AT 03:51, THE WITNESS TESTIFIES UNDER RE-DIRECT EXAMINATION.

AT 03:51, THE WITNESS IS EXCUSED FROM THE STAND SUBJECT TO RECALL.

AT 03:52, WITNESS GARY HAIGHT IS SWORN AND TESTIFIES UNDER DIRECT EXAMINATION BY PLAINTIFF.

(WITNESS IS CALLED PURSUANT TO EVIDENCE CODE SECTION 776.)

THE EXHIBITS LISTED BELOW WERE MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

EXHIBIT #52 - 7/17/07 LETTER TO BLOUGH FROM G. TIMOTHY HAIGHT (PL 0476 - PL 0477).

(EXHIBIT #52 MODIFIED WITHOUT OBJECTION TO REMOVE LAST TWO PAGES BATE STAMPED PL 0478 & 0479.)

AT 04:11, THE WITNESS TESTIFIES UNDER CROSS EXAMINATION.

(COURT ALLOWS DEFENDANT TO ENLARGE SCOPE OF CROSS EXAMINATION WITHOUT OBJECTION FROM COUNSEL.)

AT 04:21, THE WITNESS IS EXCUSED FROM THE STAND.

AT 04:22, THE JURORS ARE ADMONISHED AND DIRECTED TO RETURN ON 12/08/08 AT 09:30.

AT 4:23, OUTSIDE THE PRESENCE OF THE JURY, COURT AND COUNSEL HOLD AN UNREPORTED DISCUSSION AS TO

BRIEFING ON DEFENDANTS MOTION IN LIMINE RE: ISSUE OF FRONT PAY DAMAGES, AND AS TO TRIAL

SCHEDULING ISSUES.

AT 4:24, UNREPORTED DISCUSSION CONCLUDES.

AT 4:24, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/08/08 AT 09:30, IN DEPARTMENT 3.

ENTERED BY SEAN KANE ON 12/04/08.

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12/04/2008

		COURT REPORTER FEES OF \$122.00 PAID BY MARCINE BLOUGH.		
<b>Minutes</b>				
Receipt: 081204-0048      \$122.00				
	12/04/2008	JURY TRUST POSTED BY 94484 ON BEHALF OF MARCINE BLOUGH.	-	
<b>Minutes</b>				
Receipt: 081204-0049      \$1,094.84 RECEIPT# 081204-0049 VOIDED BY RWILS FROM CKANT				
	12/03/2008	PLTFS OPP. TO DEFTS MOT. IN LIMINE TO EXCLUDE TESTIMONY OF PROFS. MCDONOUGH & MEDLEN, ETC., FILED.	-	
	12/03/2008 9:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	
<b>Minutes</b>				
HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: CHRIS PEREZ TRIAL DAY 3 AT 09:00, COURT CONVENES. MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ AND MARK C. PETERS. ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT. JAMES KELLY PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE. AT 9:00, OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS, COURT AND COUNSEL DISCUSS DEFENDANTS MOTION IN LIMINE TO EXCLUDE ALL TESTIMONY AT TRIAL OF PROFESSOR JACK MCDONOUGH AND PROFESSOR CRAIG MEDLEN, OR IN THE ALTERNATIVE, FOR AN ORDER OF THE COURT REQUIRING THESE WITNESSES TO PROVIDE EN CAMERA TESTIMONY PRIOR TO GIVING TESTIMONY IN OPEN COURT BEFORE THE JURY. ARGUMENT PRESENTED BY COUNSEL. COURT ORDERS PLAINTIFFS WITNESSES PROFESSOR JACK MCDONOUGH AND PROFESSOR CRAIG MEDLEN BE MADE AVAILABLE TO DEFENDANT TO BE DEPOSED. PLAINTIFF SHALL BEAR COST OF COURT REPORTER AS TO PROFESSOR MCDONOUGH. DEFENDANT SHALL BEAR COST OF COURT REPORTER AS TO PROFESSOR MEDLEN, AS PROFESSOR MEDLEN WAS PROPERLY IDENTIFIED BY PLAINTIFF. AT 9:18, COURT AND COUNSEL HOLD AN UNREPORTED DISCUSSION RE: JURY SELECTION. AT 9:19, UNREPORTED DISCUSSION CONCLUDES. AT 09:19, COURT IS IN RECESS. AT 9:20, CLERK CONDUCTS ROLL CALL OF PROSPECTIVE JURORS (UNREPORTED). AT 09:24, COURT RECONVENES. (PROCEEDINGS NOW UNREPORTED.) ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT. JOSEPH KARINGADA NOW PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE. PROSPECTIVE JURORS PRESENT. AT 9:24, JURY VOIR DIRE BY THE PLAINTIFF RESUMES. AT 9:37, JURY VOIR DIRE BY THE DEFENDANT COMMENCES. AT 10:01, COURT IS IN RECESS. AT 10:02, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS. AT 10:17, THE UNREPORTED CONFERENCE CONCLUDED. AT 10:18, COURT RECONVENES. ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT. PROSPECTIVE JURORS PRESENT.				

AT 10:18, COURT ORIENTS PROSPECTIVE JURORS AS TO EXCUSING PROSPECTIVE JURORS FOR CAUSE, AND AS TO PEREMPTORY CHALLENGES PHASE.

AT 10:19, COURT THANKS AND EXCUSES THE FOLLOWING PROSPECTIVE JURORS FOR CAUSE: #684635, 866758, 833077, 731395, AND 612400.

AT 10:20, PEREMPTORY CHALLENGES COMMENCE.

PROSPECTIVE JUROR #904406 EXCUSED UNDER PEREMPTORY CHALLENGE BY PLAINTIFF.

PROSPECTIVE JUROR #664853 EXCUSED UNDER PEREMPTORY CHALLENGE BY DEFENDANT.

AT 10:22, CALLING OF RANDOMIZED NAMES OF PROSPECTIVE JURORS RESUMES.

AT 10:24, JURY VOIR DIRE BY THE COURT RESUMES.

AT 10:37, JURY VOIR DIRE BY THE PLAINTIFF RESUMES.

AT 10:42, JURY VOIR DIRE BY THE COURT RESUMES.

AT 10:43, JURY VOIR DIRE BY THE DEFENDANT RESUMES.

AT 10:57, COURT AND COUNSEL HOLD AN UNREPORTED CONFERENCE IN HALLWAY RE: EXCUSING PROSPECTIVE JURORS FOR CAUSE.

AT 11:00, UNREPORTED CONFERENCE IN HALLWAY CONCLUDES.

AT 11:00, COURT THANKS AND EXCUSES PROSPECTIVE JUROR #846446 FOR CAUSE.

AT 11:01, PEREMPTORY CHALLENGES RESUME.

THE FOLLOWING PROSPECTIVE JURORS ARE EXCUSED UNDER PEREMPTORY CHALLENGES BY PLAINTIFF:

#694751, 629812, AND 590211.

THE FOLLOWING PROSPECTIVE JURORS ARE EXCUSED UNDER PEREMPTORY CHALLENGES BY DEFENDANT:

#902295, 842833, AND 607576.

AT 11:04, CALLING OF RANDOMIZED NAMES OF PROSPECTIVE JURORS RESUMES.

AT 11:07, JURY VOIR DIRE BY THE COURT RESUMES.

AT 11:07, COURT THANKS AND EXCUSES PROSPECTIVE JUROR #694862 FOR HARDSHIP (WITHOUT OBJECTION FROM COUNSEL).

AT 11:08, PROSPECTIVE JUROR #756319 NOT PRESENT.

COUNSEL STIPULATE THAT JURY VOIR DIRE MAY PROCEED OUTSIDE PRESENCE OF PROSPECTIVE JUROR #756319.

AT 11:08, JURY VOIR DIRE BY THE COURT RESUMES.

AT 11:13, PROSPECTIVE JUROR #756319 NOW PRESENT.

AT 11:26, JURY VOIR DIRE BY THE PLAINTIFF RESUMES.

AT 11:37, JURY VOIR DIRE BY THE DEFENDANT RESUMES.

AT 11:45, COURT AND COUNSEL CONDUCT VOIR DIRE IN CHAMBERS WITH PROSPECTIVE JUROR #816657.

AT 11:47, VOIR DIRE OF PROSPECTIVE JUROR #816657 CONCLUDES.

AT 11:47, COURT AND COUNSEL CONDUCT VOIR DIRE IN CHAMBERS WITH PROSPECTIVE JUROR #818536.

AT 11:50, VOIR DIRE OF PROSPECTIVE JUROR #818536 CONCLUDES.

AT 11:50, COURT AND COUNSEL CONDUCT VOIR DIRE IN CHAMBERS WITH PROSPECTIVE JUROR #895492.

AT 11:51, VOIR DIRE OF PROSPECTIVE JUROR #895492 CONCLUDES.

AT 11:54, COURT AND COUNSEL CONDUCT VOIR DIRE IN CHAMBERS WITH PROSPECTIVE JUROR #816657.

AT 11:55, VOIR DIRE OF PROSPECTIVE JUROR #816657 CONCLUDES.

AT 11:55, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS.

AT 11:59, THE UNREPORTED CONFERENCE CONCLUDED.

AT 11:59, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.

PROSPECTIVE JURORS PRESENT.

AT 11:59, COURT THANKS AND EXCUSES THE FOLLOWING PROSPECTIVE JURORS FOR CAUSE: #895492, 816657, AND 818536.

AT 12:00, PEREMPTORY CHALLENGES RESUME.

PROSPECTIVE JURORS #699649 AND 756319 ARE EXCUSED UNDER PEREMPTORY CHALLENGES BY PLAINTIFF.

PROSPECTIVE JURORS #909250 AND 861372 ARE EXCUSED UNDER PEREMPTORY CHALLENGES BY DEFENDANT.

AT 12:02, COURT ADMONISHES PROSPECTIVE JURORS AND ORDERS THEM TO RETURN AT 1:30 P.M.

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AT 12:04, OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS, COURT AND COUNSEL DISCUSS HARDSHIP

DECLARATION SUBMITTED BY PROSPECTIVE JUROR, AND TRIAL SCHEDULING ISSUES.

AT 12:05, COURT IS IN RECESS UNTIL 1:30 P.M.

AT 01:30, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS.

AT 01:35, THE UNREPORTED CONFERENCE CONCLUDED.

AT 01:39, COURT RECONVENES.

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT WITH EXCEPTION OF JOSEPH KARINGADA.

PROSPECTIVE JURORS PRESENT.

AT 1:39, CALLING OF RANDOMIZED NAMES OF PROSPECTIVE JURORS RESUMES.

A 1:42, JURY VOIR DIRE BY THE COURT RESUMES.

AT 2:00, JURY VOIR DIRE BY THE PLAINTIFF RESUMES.

AT 2:08, DEFENDANT PASSES FOR JURY VOIR DIRE.

AT 2:08, COURT AND COUNSEL CONDUCT UNREPORTED CONFERENCE IN HALLWAY RE: EXCUSING PROSPECTIVE JURORS FOR CAUSE.

AT 2:13, UNREPORTED CONFERENCE IN HALLWAY CONCLUDES.

NOTICE TO PAY \$1,094.84 JURY FEES AND \$122.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/03/08.

NOTICE TO PAY \$0.00 JURY FEES AND \$122.00 COURT REPORTER FEES PROVIDED TO MENLO COLLEGE ON 12/03/08.

AT 2:13, COURT THANKS AND EXCUSES PROSPECTIVE JUROR #603867 FOR CAUSE.

AT 2:14, BOTH SIDES BEING SATISFIED, THE FOLLOWING PERSONS ARE GIVEN THE ACKNOWLEDGMENT

AND AGREEMENT TO TRY THE CASE AS JURORS:

JUROR NO. 1 - #747358.

JUROR NO. 2 - #596421.

JUROR NO. 3 - #735926.

JUROR NO. 4 - #880944.

JUROR NO. 5 - #655727.

JUROR NO. 6 - #72171.

JUROR NO. 7 - #879496.

JUROR NO. 8 - #813157.

JUROR NO. 9 - #830534.

JUROR NO. 10 - #915193.

JUROR NO. 11 - #580574.

JUROR NO. 12 - #649643.

AT 2:15, PEREMPTORY CHALLENGES RESUME AS TO ALTERNATE JURORS.

PROSPECTIVE JURORS #918774 AND 777704 ARE EXCUSED UNDER PEREMPTORY CHALLENGES BY PLAINTIFF.

AT 2:17, BOTH SIDES BEING SATISFIED, THE FOLLOWING PERSONS ARE GIVEN THE ACKNOWLEDGMENT

AND AGREEMENT TO SERVE AS ALTERNATE JURORS:

#742948 AND 603885.

AT 2:17, COURT THANKS AND EXCUSES THE REMAINING PROSPECTIVE JURORS.

AT 02:17, COURT IS IN RECESS.

AT 02:34, COURT RECONVENES.

(PROCEEDINGS NOW REPORTED.)

ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.

ATTORNEY LINDA K. ADLER APPEARING WITH/FOR DEFENDANT.

JURORS PRESENT.

AT 2:34, COURT ORIENTS JURORS AS TO TRIAL PROCESS.

AT 2:42, COURT ADMONISHES JURORS TO NOT SPEAK TO PARTIES AND COUNSEL IN THE CASE.

AT 2:45, COURT READS INITIAL INSTRUCTIONS TO THE JURY (CACI 100 SERIES).  
 AT 02:59, OPENING STATEMENT BY NOAH D. LEBOWITZ ON BEHALF OF PLAINTIFF COMMENCES.

AT 03:34, SIDEBAR CONFERENCE HELD.  
 AT 03:35, SIDEBAR CONFERENCE CONCLUDED.  
 AT 3:35, OPENING STATEMENT FOR PLAINTIFF RESUMES.  
 AT 3:43, OPENING STATEMENT FOR PLAINTIFF CONCLUDES.  
 AT 3:43, COUNSEL STIPULATE THAT JURORS AND ALTERNATES MAY BE DEEMED ADMONISHED EACH TIME  
 COURT RECESSES/ADJOURNS WITHOUT NEED FOR FULL ADMONISHMENT TO BE READ.  
 COUNSEL STIPULATE  
 FURTHER THAT ALL PARTIES, COUNSEL, JURORS AND ALTERNATES MAY BE DEEMED PRESENT EACH TIME COURT  
 CONVENES/RECONVENES UNLESS NOTED OTHERWISE FOR THE RECORD.  
 AT 3:44, COURT ADMONISHES JURORS.  
 AT 03:44, COURT IS IN RECESS.  
 AT 04:02, COURT RECONVENES.  
 ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.  
 JURORS PRESENT.  
 AT 04:02, OPENING STATEMENT BY MICHAEL J. VARTAIN ON BEHALF OF DEFENDANT COMMENCES.  
 AT 04:26, SIDEBAR CONFERENCE HELD.  
 AT 04:26, SIDEBAR CONFERENCE CONCLUDED.  
 AT 4:27, COUNSEL STIPULATE THAT DEFENDANTS AIRING OF VIDEOTAPE NEED NOT BE REPORTED BY THE  
 COURT REPORTER.  
 AT 4:27, DEFENDANTS AIRING OF VIDEOTAPE COMMENCES.  
 (PROCEEDINGS NOW UNREPORTED.)  
 AT 4:36, DEFENDANTS AIRING OF VIDEOTAPE CONCLUDES.  
 AT 4:36, OPENING STATEMENT FOR DEFENDANT RESUMES.  
 (PROCEEDINGS NOW REPORTED.)  
 AT 4:37, OPENING STATEMENT FOR DEFENDANT CONCLUDES.  
 AT 04:38, THE JURORS ARE ADMONISHED AND DIRECTED TO RETURN ON 12/04/08 AT 10:00.  
 AT 4:38, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/04/08 AT 10:00, IN DEPARTMENT 3.  
 ENTERED BY SEAN KANE ON 12/03/08.  
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	12/03/2008	JURY TRUST POSTED BY NOAH LEBOWITZ ON BEHALF OF MARCINE BLOUGH.	-	
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**Minutes**  
 Receipt: 081203-0017      \$122.00

	12/02/2008	PROOF OF SERVICE OF DEFTS NOTICE & MOT. IN LIM. TO EXCL. TEST. OF PROFS. MCDONOUGH/MEDLEN, ETC., FILED.	-	
	12/02/2008	PROPOSED ORDER NO. 2 GRANT. DEFTS MOT. IN LIM. REQ. PROFS. PROVIDE EN CAMERA TESTIMONY RECVD.	-	
	12/02/2008	PROPOSED ORDER NO. 1 GRANT. MOT. IN LIM. TO EXCL. TEST. OF PROFS. MCDONOUGH/MEDLEN RECVD.	-	
	12/02/2008	DEC. OF LINDA K. ADLER IN SUPP. OF DEFTS MOT. IN LIM. TO EXCL. TEST. OF PROFS. MCDONOUGH/MEDLEN, FILED.	-	
	12/02/2008	DEFTS NOTICE & MOT. IN LIMINE TO EXCLUDE TEST. OF PROFS. MCDONOUGH & MEDLEN, ETC., FILED.	-	
	12/02/2008		-	

		DEFENDANT MENLO COLLEGES WITNESS LIST, FILED.		
	12/02/2008 10:00 AM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	

**Minutes**

HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT  
 REPORTER: CHRIS PEREZ  
 TRIAL DAY 2  
 AT 10:07, COURT CONVENES.  
 ATTORNEY(S): NOAH D. LEBOWITZ AND MARK C. PETERS APPEARING WITH/FOR PLAINTIFF.  
 ATTORNEY MICHAEL J. VARTAIN APPEARING WITH/FOR DEFENDANT MENLO COLLEGE.  
 AT 10:08, COURT INDICATES THAT COURT AND COUNSEL HAVE AGREED TO SELECTION OF  
 TWO ALTERNATE JURORS.  
 COUNSEL WAIVE REPORTING OF JURY SELECTION.  
 AT 10:09, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION IN LIMINE NO. 1.  
 COURT DENIES PLAINTIFFS MOTION IN LIMINE NO. 1 TO PRECLUDE THE DEFENDANT FROM  
 RAISING THE  
 AFFIRMATIVE DEFENSES THAT THERE WAS A BUSINESS NECESSITY FOR THE MEDICAL EXAMS  
 IN QUESTION OR  
 THAT THOSE EXAMS WERE JOB RELATED. BASED UPON DEFENDANTS ANSWER TO THE  
 SECOND AMENDED  
 COMPLAINT, COURT FINDS THE 2ND AND 8TH AFFIRMATIVE DEFENSES ARE SUFFICIENT TO  
 ALLOW  
 DEFENDANT TO PRESENT SUCH EVIDENCE. COURT DEEMS THE DEFENDANTS ANSWER TO THE  
 SECOND AMENDED  
 COMPLAINT TO ALSO BE THE DEFENDANTS ANSWER TO THE THIRD AMENDED COMPLAINT.  
 AT 10:11, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION IN LIMINE NO. 2.  
 MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.  
 HAVING CONSIDERED THE SUBMITTED MATTER, THE COURT RULES AS FOLLOWS:  
 COURT DENIES PLAINTIFFS MOTION IN LIMINE NO. 2 TO PRECLUDE DEFENDANTS RETAINED  
 EXPERT NORMAN  
 REYNOLDS MDS FROM TESTIFYING TO EXCLUDE ENTIRELY. WITNESS MAY TESTIFY AS TO THE  
 KINDS OF  
 RECORDS DR. MISSETT SHOULD HAVE REVIEWED, BUT NOT AS TO WHAT CONCLUSIONS DR.  
 MISSETT SHOULD HAVE  
 REACHED.  
 AT 10:16, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION IN LIMINE NO. 3.  
 MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.  
 HAVING CONSIDERED THE SUBMITTED MATTER, THE COURT RULES AS FOLLOWS:  
 COURT GRANTS IN PART AND DENIES IN PART PLAINTIFFS MOTION IN LIMINE NO. 3 TO LIMIT  
 TESTIMONY OF DEFENDANTS EXPERT WITNESS TO CONCLUSIONS OR OPINIONS EXPRESSED  
 IN DEPOSITION.  
 MOTION GRANTED IN PART AS TO DR. REYNOLDS WHO SHALL BE ADMONISHED THAT HIS  
 OPINIONS SHALL BE  
 LIMITED TO THOSE HE GAVE AT DEPOSITION. DURING TESTIMONY, PLAINTIFF MUST STATE  
 OBJECTION AT  
 TIME OPINION IS GIVEN AND MUST SUBMIT DEPOSITION TO COURT AS EVIDENCE OPINION NOT  
 GIVEN AT TIME OF  
 DEPOSITION. MOTION DENIED IN PART AS TO DR. MISSETT, BUT DR. MISSETT SHALL MAKE  
 HIMSELF  
 AVAILABLE FOR A FOLLOW-UP DEPOSITION. COUNSEL SHALL MEET AND CONFER TO  
 DETERMINE IF FOLLOW-UP  
 DEPOSITION IS NECESSARY. COURT CONSIDERS 12/05/08 TO BE AN APPROPRIATE DAY FOR  
 DR. MISSETT  
 TO BE DEPOSED.  
 AT 10:28, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION IN LIMINE NO. 4.  
 MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.  
 HAVING CONSIDERED THE SUBMITTED MATTER, THE COURT RULES AS FOLLOWS:

COURT DENIES PLAINTIFFS MOTION IN LIMINE NO. 4 TO PRECLUDE ANY EVIDENCE OR MENTION OF DEFENDANTS "NON-PROFIT" STATUS. COURT FINDS IT APPROPRIATE FOR DEFENDANT TO BE ABLE TO DESCRIBE ITSELF AS THE NON-PROFIT ENTITY IT IS.

AT 10:37, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION IN LIMINE NO. 5. COURT GRANTS PLAINTIFFS MOTION IN LIMINE NO. 5 TO PRECLUDE ANY EVIDENCE OR TESTIMONY THAT JAMES MISSETT, M.D. WAS ORIGINALLY NAMED AS A DEFENDANT IN THIS MATTER. COURT FINDS UNDER EVIDENCE CODE SECTION 352 THAT SUCH EVIDENCE OR TESTIMONY WOULD BE AN UNDUE CONSUMPTION OF THE COURTS TIME.

AT 10:39, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION IN LIMINE NO. 6. MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT. HAVING CONSIDERED THE SUBMITTED MATTER, THE COURT RULES AS FOLLOWS: COURT GRANTS PLAINTIFFS MOTION IN LIMINE NO. 6 TO PRECLUDE ANY EVIDENCE OR MENTION OF DISMISSED CAUSES OF ACTION. COURT SHALL PRECLUDE MENTIONING OF CAUSES OF ACTION, BUT IS NOT PRECLUDING EVIDENCE. PLAINTIFF MAY OBJECT TO DEFENDANTS EVIDENCE AS IT IS SUBMITTED.

AT 10:43, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION IN LIMINE NO. 7. COURT GRANTS PLAINTIFFS MOTION IN LIMINE NO. 7 TO PRECLUDE THE DEFENDANT FROM ARGUING THAT PLAINTIFF COULD HAVE OR SHOULD HAVE FILED A GRIEVANCE OR OTHER INTERNAL COMPLAINT (WITHOUT OPPOSITION).

AT 10:43, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION IN LIMINE NO. 8. COURT GRANTS PLAINTIFFS MOTION IN LIMINE NO. 8 TO EXCLUDE WITNESSES FROM THE COURTROOM (WITHOUT OPPOSITION). DEFENSE COUNSEL SHALL INFORM THE COURT AS TO WHO SHALL BE REPRESENTING MENLO COLLEGE. COURT DENIES DEFENSE COUNSELS REQUEST TO HAVE BOTH VICE-PRESIDENT AND PRESIDENT OF MENLO COLLEGE PRESENT DURING OPENING STATEMENTS.

AT 10:47, COURT AND COUNSEL DISCUSS PLAINTIFFS MOTION IN LIMINE NO. 9. COURT ORDERS COUNSEL TO NOTIFY OPPOSING COUNSEL EACH DAY OF TRIAL BY 6:00 P.M. OF WITNESSES TO BE CALLED THE NEXT DAY. NOTICE MAY BE DONE ORALLY OR VIA VOICEMAIL OR FAX. COUNSEL SHALL MEET AND CONFER AS TO AGREED UPON METHOD. HOWEVER, COUNSEL SHALL NOTIFY OPPOSING COUNSEL 24-HOURS IN ADVANCE OF ANY "NTA" WITNESS INTENDED TO BE CALLED.

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AT 10:48, COURT ADMONISHES COUNSEL THAT THEY MUST HAVE WITNESSES AVAILABLE TO FILL ENTIRE COURT DAY. IF A PARTY RUNS OUT OF WITNESSES FOR THE DAY, COURT SHALL CONSIDER THAT PARTY TO HAVE RESTED. COURT WILL PERMIT PARTIES TO CALL THEIR WITNESSES OUT-OF-ORDER DURING THEIR CASE-IN-CHIEF.

AT 10:50, DEFENDANT INFORMS COURT OF PENDING MOTION TO EXCLUDE UNDISCLOSED WITNESSES. COURT SHALL NOT MAKE ANY DETERMINATIONS AT THIS TIME, AS ISSUE IS NOT FORMALLY BEFORE THE COURT.

AT 10:52, COURT AND COUNSEL DISCUSS DEFENDANTS MOTION IN LIMINE #1. COURT GRANTS DEFENDANTS MOTION IN LIMINE (#1) TO EXCLUDE EVIDENCE OF THE COLLEGES FINANCIAL



CONDITION UNLESS AND UNTIL THE JURY AWARDS ACTUAL DAMAGES AND FINDS LIABILITY FOR PUNITIVE

DAMAGES (WITHOUT OPPOSITION).

AT 10:53, COURT AND COUNSEL DISCUSS DEFENDANTS MOTION IN LIMINE #2.

ARGUMENT PRESENTED BY COUNSEL.

AT 11:04, PROCEEDINGS UNREPORTED AS COURT AND COUNSEL REVIEW CLOUD V. CASEY CASE.

AT 11:11, COURT AND COUNSEL DISCUSS FURTHER DEFENDANTS MOTION IN LIMINE #2.

AT 11:13, PROCEEDINGS UNREPORTED AS COURT AND COUNSEL REVIEW BIHUN V. AT&T CASE.

AT 11:14, COURT AND COUNSEL DISCUSS FURTHER DEFENDANTS MOTION IN LIMINE #2.

COURT DEFERS RULING AT THIS TIME ON DEFENDANTS MOTION IN LIMINE (#2) TO EXCLUDE EVIDENCE OR

REFERENCE BEFORE THE JURY TO FRONT PAY DAMAGES (FUTURE WAGE LOSS).

COURT GRANTS DEFENDANTS REQUEST FOR FURTHER BRIEFING AND OUTLINES THE FOLLOWING ISSUES:

1.) WHETHER REINSTATEMENT VS. FRONT PAY IS ONLY TO BE DETERMINED BY THE COURT, 2.) IF

REINSTATEMENT IS NOT AVAILABLE, HOW THE COURT IS TO DETERMINE REMEDY, 3.) WHAT EVIDENCE OF FRONT

PAY COULD BE MADE AVAILABLE TO A JURY.

COURT SHALL NOT RESTRICT PLAINTIFF FROM PROCEEDING ON ISSUE.

COURT SHALL PROCEED AS IF ISSUE SHALL BE TRIED BY A JURY, AND RULE ON MOTION AT A LATER TIME.

NOTICE TO PAY \$0.00 JURY FEES AND \$122.00 COURT REPORTER FEES PROVIDED TO MARCINE BLOUGH ON 12/02/08.

NOTICE TO PAY \$0.00 JURY FEES AND \$122.00 COURT REPORTER FEES PROVIDED TO MENLO COLLEGE ON 12/02/08.

AT 11:39, COURT AND COUNSEL DISCUSS DEFENDANTS MOTION IN LIMINE #3.

ARGUMENT PRESENTED BY COUNSEL.

COURT DEFERS RULING AT THIS TIME ON DEFENDANTS MOTION IN LIMINE (#3) TO EXCLUDE INADMISSIBLE

HEARSAY EVIDENCE OF OUT-OF-COURT OPINIONS OF TREATING MEDICAL PROVIDERS.

AT 11:42, COURT AND COUNSEL DISCUSS DEFENDANTS MOTION IN LIMINE #4.

MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.

HAVING CONSIDERED THE SUBMITTED MATTER, THE COURT RULES AS FOLLOWS:

COURT DENIES DEFENDANTS MOTION IN LIMINE (#4) TO LIMIT PLAINTIFF FROM CERTAIN QUESTIONING OF JAMES

R. MISSETT, M.D., PH.D.

AT 11:56, DEFENSE COUNSEL STATES ITS NOTICE TO NOAH LEBOWITZ OF INTENT TO CALL HIM AS WITNESS.

COURT INDICATES IT SHALL NOT RULE AT THIS TIME ON WHETHER SUCH NOTICE IS PROPER.

AT 11:58, COURT IS IN RECESS UNTIL 1:30 P.M.

AT 1:35, COURT AND COUNSEL HOLD AN UNREPORTED DISCUSSION RE: PROPOSED JURY VOIR DIRE QUESTIONS

AND JURY SELECTION PROCESS.

AT 1:42, UNREPORTED DISCUSSION CONCLUDES.

AT 2:06, CLERK CONDUCTS ROLL CALL OF PROSPECTIVE JURORS SUMMONED TO DEPT. 3 (UNREPORTED).

AT 2:11, CLERK ADMINISTERS OATH TO PROSPECTIVE JURORS RE: THEIR QUALIFICATIONS AND COMPETENCY

TO SERVE AS TRIAL JURORS (UNREPORTED).

AT 02:13, COURT RECONVENES.

(PROCEEDINGS NOW UNREPORTED.)

MARCINE BLOUGH PRESENT WITH COUNSEL NOAH D. LEBOWITZ AND MARK C. PETERS.

ATTORNEY MICHAEL J. VARTAIN APPEARING WITH/FOR DEFENDANT(S).

JAMES KELLY PRESENT AS REPRESENTATIVE FOR DEFENDANT MENLO COLLEGE.

PROSPECTIVE JURORS PRESENT.

AT 2:13, COURT ORIENTS PROSPECTIVE JURORS AS TO JURY DUTY.

AT 2:19, COURT ORIENTS PROSPECTIVE JURORS AS TO ACCEPTED EXCUSES FOR HARDSHIP UNDER LAW.  
 AT 2:20, COURT INFORMS PROSPECTIVE JURORS THAT TRIAL IS ESTIMATED TO LAST UNTIL 12/17/08.  
 AT 2:22, COURT ORIENTS PROSPECTIVE JURORS AS TO HARDSHIP DECLARATION PROCESS.  
 AT 2:24, COURT IS IN RECESS TO ALLOW PROSPECTIVE JURORS TO FILL OUT HARDSHIP DECLARATIONS FORMS.  
 AT 02:32, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS.  
 AT 02:38, THE UNREPORTED CONFERENCE CONCLUDED.  
 AT 2:40, CLERK READS THE NAMES OF THE FOLLOWING PROSPECTIVE JURORS EXCUSED FOR HARDSHIP:  
 #560231, 606851, 715648, 616321, 817566, 716022, 427285, 884730, 914232, 788837, 622214, 706701, 798620, 667195, 791704, 423866, 813131, 784326, 678862, 7792392, 720697, AND 756969. (#715648, 62214, AND 813131 ARE INSTRUCTED TO RESCHEDULE THEIR JURY SERVICE.)  
 AT 02:46, COURT RECONVENES.  
 ALL ABOVE-NOTED PARTIES AND COUNSEL PRESENT.  
 PROSPECTIVE JURORS PRESENT.  
 AT 2:49, COURT ORIENTS PROSPECTIVE JURORS AS TO JURY VOIR DIRE PROCESS.  
 AT 2:53, COURT READS THE TITLE OF THE CASE, AND INTRODUCES THE PARTIES AND COUNSEL TO THE CASE.  
 AT 2:55, MINI-OPENING STATEMENT MADE BY NOAH D. LEBOWITZ ON BEHALF OF PLAINTIFF.  
 AT 2:59, PLAINTIFFS MINI-OPENING STATEMENT CONCLUDES.  
 AT 2:59, MINI-OPENING STATEMENT MADE BY MICHAEL J. VARTAIN ON BEHALF OF DEFENDANT.  
  
 AT 3:01, DEFENDANTS MINI-OPENING STATEMENT CONCLUDES.  
 AT 3:02, COURT ORIENTS PROSPECTIVE JURORS AS TO JURY SELECTION PROCESS.  
 AT 3:04, JURY SELECTION AND CALLING OF RANDOMIZED NAMES OF PROSPECTIVE JURORS COMMENCES.  
 AT 3:10, JURY VOIR DIRE BY THE COURT COMMENCES.  
 AT 3:13, COURT READS THE WITNESS LIST.  
 AT 3:15, JURY VOIR DIRE BY THE COURT RESUMES.  
 AT 4:17, JURY VOIR DIRE BY THE PLAINTIFF COMMENCES.  
 AT 4:27, COURT ADMONISHES PROSPECTIVE JURORS.  
 AT 4:30, COURT EXCUSES PROSPECTIVE JURORS AND ORDERS THEM TO RETURN ON 12/03/08 AT 9:00 A.M.  
 AT 04:31, SIDEBAR CONFERENCE HELD.  
 AT 04:33, SIDEBAR CONFERENCE CONCLUDED.  
 AT 4:33, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/03/08 AT 09:00, IN DEPARTMENT 3. ENTERED BY SEAN KANE ON 12/02/08.  
 =====

	12/02/2008	PLTFs RESPONSE TO DEFTS NOTICE OF INTENT TO OFFER BLOUGHS VIDEO DEPOSITION INTO EVID., ETC., FILED.	-	
	12/01/2008	PROOF OF SERVICE OF NOTICE & MOT. IN LIMINE TO LIMIT PLTF FROM CERTAIN QUESTION., ETC., FILED.	-	
	12/01/2008	DEFTS OPPOSITION (IN PART) TO MS. BLOUGHS NINE MOTIONS IN LIMINE, FILED.	-	
	12/01/2008	PROPOSED ORDER GRANTING DEFTS MOT. IN LIMINE TO LIMIT PLTF FROM CERTAIN QUESTION, ETC. RECVD.	-	
	12/01/2008	DECLARATION OF MICHAEL J. VARTAIN IN SUPP. OF MOT. IN LIMINE TO LIMIT PLTF FROM CERTAIN QUESTION., ETC. FILED.	-	
	12/01/2008	DEFTS NOTICE & MOT. IN LIMINE TO LIMIT PLAINTIFF FROM CERTAIN QUESTIONING OF DR. MISSETT, ETC., FILED.	-	

	12/01/2008	PROPOSED ORDER GRANTING DEFTS MOT. IN LIMINE TO EXC. INADMISSIBLE HEARSAY EVIDENCE, ETC. RECEIVED..	-	
	12/01/2008	PROOF OF SERVICE OF DEFTS NOTICE & MOT. IN LIMINE TO EXC. INADMISSIBLE HEARSAY EVID., ETC., FILED.	-	
	12/01/2008	DECLARATION OF MICHAEL J. VARTAIN IN SUPP. OF DEFTS MOT. IN LIMINE TO EXC. INADMISSIBLE HEARSAY, ETC. FILED.	-	
	12/01/2008	PROOF OF SERVICE OF DEFTS NOTICE & MOT. IN LIMINE TO EXC. EVIDENCE COLLEGES FINANCIAL, ETC., FILED.	-	
	12/01/2008	DEFTS NOTICE & MOT. IN LIMINE TO EXCLUDE INADMISSIBLE HEARSAY EVIDENCE, ETC., FILED.	-	
	12/01/2008	PROPOSED ORDER GRANTING DEFTS MOT. IN LIMINE TO EXC. EVIDENCE OF COLLEGES FINAN., ETC. RECIEVED.	-	
	12/01/2008	PROOF OF SERVICE OF MOT. IN LIMINE TO EXCLUDE EVIDENCE TO FRONT PAY, ETC., FILED.	-	
	12/01/2008	DEFTS NOTICE & MOT. IN LIMINE TO EXCLUDE EVIDENCE OF COLLEGES FINANCIAL CONDITION, ETC., FILED.	-	
	12/01/2008	PROPOSED ORDER GRANTING DEFT.S MOT. IN LIMINE TO EXCLUDE EVIDENCE TO FRONT PAY, ETC. RECEIVED.	-	
	12/01/2008	DECLARATION OF MICHAEL J. VARTAIN IN SUPP. OF DEFTS MOT. IN LIMINE TO EXCLUDE EVID. TO FRONT PAY, ETC. FILED	-	
	12/01/2008	DEFTS NOTICE & MOT. IN LIMINE TO EXCLUDE EVIDENCE OR REFERENCE B/F JURY TO FRONT PAY DAMAGES, ETC., FILED.	-	
	12/01/2008	DEFTS NOTICE OF INTENT TO OFFER DR. LIUS RECORDED DEPOSITION INTO EVIDENCE, ETC., FILED.	-	
	12/01/2008	MENLO COLLEGES TRIAL BRIEF, FILED.	-	
	12/01/2008	DEFT MENLO COLLEGES REQUEST FOR JURY INSTRUCTIONS AND SPECIAL VERDICT FORMS, FILED.	-	
	12/01/2008	PLTFS NON-OPP. TO DEFTS MOT. IN LIMINE TO EXCLUDE EVIDENCE OF COLLEGES FINANCIAL COND., ETC, FILED.	-	
	12/01/2008	PLTFS OPP. TO DEFTS MOT. IN LIMINE TO EXCLUDE OR REFERENCE TO FRONT PAY DAMAGES, ETC., FILED.	-	
	12/01/2008	PLTFS OPP. TO DEFTS NOTICE OF INTENTION TO DR. LIUS RECORD DEPOSITION, ETC., FILED.	-	
	12/01/2008	PLTFS OPP. TO DEFTS MOT. IN LIMINE TO EXCLUDE INADMISSIBLE HEARSAY EVIDENCE, ETC., FILED.	-	
	12/01/2008	PLAINTIFFS MOTION IN LIMINE NO. 9, ETC., FILED.	-	
	12/01/2008	INDEX OF EXHIBITS IN SUPPORT OF PLAINTIFFS MOTIONS IN LIMINE, FILED.	-	
	12/01/2008	PROOF OF SERVICE OF PLAINTIFFS MOTIONS IN LIMINE, FILED.	-	

	12/01/2008	PLAINTIFFS MOTION IN LIMINE NO. 5, ETC., FILED.	-	
	12/01/2008	PLAINTIFFS MOTION IN LIMINE NO. 6, ETC., FILED.	-	
	12/01/2008	PLAINTIFFS MOTION IN LIMINE NO. 7, ETC., FILED.	-	
	12/01/2008	PLAINTIFFS MOTION IN LIMINE NO. 8, ETC., FILED.	-	
	12/01/2008	PLAINTIFFS MOTION IN LIMINE NO. 2, ETC., FILED.	-	
	12/01/2008	PLAINTIFFS MOTION IN LIMINE NO. 3, ETC., FILED.	-	
	12/01/2008	PLAINTIFFS MOTION IN LIMINE NO. 4, ETC., FILED.	-	
	12/01/2008	PLAINTIFFS PROPOSED JURY INSTRUCTIONS, FILED.	-	
	12/01/2008	PLAINTIFFS MOTION IN LIMINE NO. 1, ETC., FILED.	-	
	12/01/2008	PLAINTIFFS WITNESS LIST, FILED.	-	
	12/01/2008	PLAINTIFFS PROPOSED EXHIBIT LIST, FILED.	-	
	12/01/2008	PLAINTIFFS PROPOSED JUROR QUESTIONNAIRE, FILED.	-	
	12/01/2008	PLAINTIFFS STATEMENT OF THE CASE, FILED.	-	
	12/01/2008	PLAINTIFFS TRIAL BRIEF, FILED.	-	
	12/01/2008 2:00 PM DEPT. 3	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.	CONTINUED	

**Minutes**

HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: NONE.  
 TRIAL DAY 1  
 ATTORNEY(S): NOAH D. LEBOWITZ AND MARK C. PETERS APPEARING WITH/FOR PLAINTIFF.  
 ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA K. ADLER APPEARING WITH/FOR DEFENDANT  
 MENLO COLLEGE.  
 AT 02:10, THE COURT AND COUNSEL HELD AN UNREPORTED CONFERENCE IN CHAMBERS.  
 AT 03:45, THE UNREPORTED CONFERENCE CONCLUDED.  
 AT 3:45, THE COURT ADJOURNS FURTHER TRIAL UNTIL 12/02/08 AT 10:00, IN DEPARTMENT 3.  
 ENTERED BY SEAN KANE ON 12/01/08.  
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	12/01/2008 9:00 AM DEPT. PJ	JURY TRIAL. TIME ESTIMATE: 21 DAYS 00:00 HOURS.	COMPLETED	
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**Minutes**

HONORABLE ROBERT D. FOILES, JUDGE PRESIDING. CLERK: JENNIFER ARNOTT COURT REPORTER: CINDY DEL ROSARIO  
 ATTORNEY(S): MARK C. PETERS AND NOAH D. LEBOWITZ APPEARED ON BEHALF OF PLAINTIFF, MARCINE BLOUGH  
 ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA ADLER APPEARED ON BEHALF OF DEFENDANT, MENLO COLLEGE  
 TIME ESTIMATE = 10 DAYS.  
 ALL COUNSEL/PARTIES ANSWER READY FOR TRIAL.  
 THIS MATTER IS ASSIGNED TO DEPARTMENT 28, JUDGE MIRAM, AT 10:00 A.M. THIS MORNING FOR A DAY OF TRIAL SETTLEMENT CONFERENCE.  
 ENTERED BY JENNIFER ARNOTT ON 12/01/08.  
 =====  
 HONORABLE GEORGE A. MIRAM, JUDGE PRESIDING. CLERK: ANN SIEVERT COURT REPORTER: NONE.  
 ATTORNEY(S): NOAH LEBOWITZ & MARK PETERS APPEARED WITH AND ON BEHALF OF THE PLAINTIFF  
 ATTORNEY(S): MICHAEL VARTAIN & LINDA ADLER APPEARED ON BEHALF OF THE DEFENDANT

COURT CONDUCTS CONFERENCE IN CHAMBERS WITH COUNSEL.  
CASE NOT SETTLED.  
PARTIES INSTRUCTED TO RETURN TO THE DEPARTMENT OF THE PRESIDING JUDGE FOR TRIAL ASSIGNMENT.  
ENTERED BY A. SIEVERT ON 12/01/08.  
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LATER, AT 2:00 P.M., COUNSEL AND THE PARTIES RETURNED TO THE PRESIDING JUDGES DEPARTMENT.  
AT 02:10, COURT RECONVENES.  
ATTORNEY(S): MARK C. PETERS AND NOAH D. LEBOWITZ APPEARED ON BEHALF OF PLAINTIFF, MARCINE BLOUGH.  
ATTORNEY(S): MICHAEL J. VARTAIN AND LINDA ADLER APPEARED ON BEHALF OF DEFENDANT, MENLO COLLEGE  
ALL COUNSEL/PARTIES ANSWER READY FOR TRIAL.  
THIS MATTER IS ASSIGNED TO DEPARTMENT 3, JUDGE FREEMAN, FORTHWITH.  
HEARING TRANSFERRED TO 12/01/08 AT 2:00 P.M. IN DEPARTMENT 3.  
ENTERED BY JENNIFER ARNOTT ON 12/01/08.

	11/26/2008 9:01 AM DEPT. LM	HEARING: MOTION RE: MOTION AND DEF MENLO COLLEGES MOTION TO COMPEL FILED BY MENLO COLLEGE	OFF-CALENDAR	
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**Minutes**  
HONORABLE BETH LABSON FREEMAN, JUDGE PRESIDING. CLERK: SEAN KANE COURT REPORTER: NONE.  
NO APPEARANCE IS MADE BY ANY PARTIES HEREIN OR THEIR COUNSEL OF RECORD.  
HEARING OFF CALENDAR. REASON: DROPPED AT REQUEST OF THE MOVING PARTY.  
ENTERED BY SEAN KANE ON 11/26/08.  
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-11 -

	11/21/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MARCINE BLOUGH IN OPPOSITION TO DEFS MOTION TO COMPEL DEPOSITION OF EXPER DR. SAMANATHA LIU		
	11/18/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MENLO COLLEGE IN SUPPORT OF DEF MENLO COLLEGES MOTION TO COMPEL THE DEPOSITION OF EXPERT DR. SAMANTHA		
	11/18/2008	DECLARATION OF LINDA K. ADLER IN SUPPORT OF DEF MENLO COLLEGES MOTION TO COMPEL FILED BY MENLO COLLEGE		
	11/18/2008	NOTICE OF MOTION AND DEF MENLO COLLEGES MOTION TO COMPEL THE DEPOSITION OF EXPERT DR. SAMANTHA LIU FILED BY MENLO COLLEGE		
	11/18/2008	ORDER GRANTING EX PARTE APPLICATION OF DEF MENLO COLLEGE FOR ORDER SHORTENING TIME, SIGNED BY JUDGE WEINER ON 11/18/08 FILED.		
	11/18/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MENLO COLLEGE IN SUPPORT OF EX PARTE APPLICATION OF DEF MENLO COLLEGE FOR ORDER SHORTENING TIME		
	11/18/2008	EX-PARTE APPLICATION OF DEF MENLO COLLEGE FOR ORDER SHORTENING TIME TO HEAR MOTION TO COMPEL FILED BY MENLO COLLEGE		
	11/18/2008	MOTION FEE PAID BY MENLO COLLEGE.		

**Minutes**  
Receipt: 081118-0206                      \$40.00

	11/18/2008	MOTION FEE PAID BY MENLO COLLEGE.	-	
<b>Minutes</b> Receipt: 081118-0205      \$40.00				
	11/13/2008 9:00 AM DEPT. TBA	MANDATORY SETTLEMENT CONFERENCE	TRANSFERRED TO ANOTHER DEPT	
<b>Minutes</b> HEARING TRANSFERRED TO 11/13/08 AT 09:00 IN DEPARTMENT 28.				
	11/13/2008 9:00 AM DEPT. 28	MANDATORY SETTLEMENT CONFERENCE	NOT SETTLED	
<b>Minutes</b> HONORABLE GEORGE A. MIRAM, JUDGE PRESIDING. CLERK: ANN SIEVERT COURT REPORTER: NONE. ATTORNEY(S): NOAH D. LEBOWITZ APPEARED ON BEHALF OF AND WITH THE PLAINTIFF, MARCINE BLOUGH ATTORNEYS: LINDA K. ADLER AND MICHAEL J. VARTAIN APPEARED ON BEHALF OF DEFENDANT, MENLO COLLEGE. BRYAN BOYLE, CLAIMS REPRESENTATIVE FOR THE HARTFORD INSURANCE COMPANY WAS ALSO PRESENT. CONFERENCE HELD WITH THE COURT AND ABOVE-NOTED COUNSEL AND PARTIES. MANDATORY SETTLEMENT CONFERENCE HELD, NOT SETTLED. CASE REMAINS SET FOR TRIAL. ENTERED BY A. SIEVERT ON 11/13/08.				
	11/06/2008	MANDATORY SETTLEMENT CONFERENCE STATEMENT RECEIVED FROM MARCINE BLOUGH	-	
	11/05/2008	MANDATORY SETTLEMENT CONFERENCE STATEMENT RECEIVED FROM MENLO COLLEGE	-	
	10/30/2008	JURY TRUST POSTED BY LAW OFFICES OF MCGUINN, HILLSMAN & PALEFSKY ON BEHALF OF MARCINE BLOUGH.	-	
<b>Minutes</b> Receipt: 081030-0024      \$150.00				
	10/28/2008 9:00 AM DEPT. LM	MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION OF ISSUES BY MENLO COLLEGE AGAINST MARCINE BLOUGH.	COMPLETED	
<b>Minutes</b> HONORABLE MARIE S. WEINER, JUDGE PRESIDING. CLERK: THERESA MARAGOULAS COURT REPORTER: RHONDA GUESS NO APPEARANCE IS MADE BY ANY PARTIES HEREIN OR THEIR COUNSEL OF RECORD. SUBMITTED ON POINTS AND AUTHORITIES WITHOUT ARGUMENT. TENTATIVE RULING ADOPTED AND BECOMES THE ORDER: DEFENDANT MENLO COLLEGES MOTION FOR SUMMARY JUDGMENT IS DENIED. ** ** THE COURT NOTES THAT THE THIRD, FOURTH AND SIXTH CAUSES OF ACTION WERE DISMISSED ON OCTOBER 9, 2008. ** ** DEFENDANT MENLO COLLEGES REQUEST FOR JUDICIAL NOTICE IS GRANTED. ** ** DEFENDANT MENLO COLLEGES EVIDENCE OBJECTION IS OVERRULED. ** ** DEFENDANT MENLO COLLEGES MOTION FOR SUMMARY ADJUDICATION OF ISSUE #1 AS TO THE FIRST CAUSE				

OF ACTION IS DENIED. MATERIAL ISSUES OF DISPUTED FACT EXISTS AS TO WHETHER THE DEMANDED EXAMINATION WAS JOB RELATED AND CONSISTENT WITH BUSINESS NECESSITY, PARTICULARLY WITH RESPECT TO THE DELAY IN DEMAND OF THE EXAM AND THAT IT BE PERFORMED BY A PSYCHIATRIST. (SEE UMF NO. 14 AND RESPONSE).

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DEFENDANT MENLO COLLEGES MOTION FOR SUMMARY ADJUDICATION OF ISSUE #2 AS TO THE SECOND, FIFTH, SEVENTH AND EIGHTH CAUSES OF ACTION IS DENIED. DEFENDANT FAILED TO MAKE A PRIMA FACIE SHOWING THAT PLAINTIFF COULD NOT PERFORM THE ESSENTIAL FUNCTIONS OF HER JOB, AND AT THE VERY LEAST THERE ARE TRIABLE ISSUES OF MATERIAL DISPUTED FACT AS TO WHETHER PLAINTIFF COULD PERFORM THE ESSENTIAL FUNCTIONS OF HER JOB. (SEE UMG NO. 7 AND RESPONSE AND DEFENDANTS EX. Q.).


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IF THE TENTATIVE RULING IS UNCONTESTED, IT SHALL BECOME THE ORDER OF THE COURT, PURSUANT TO RULE 3.1308(A)(1), ADOPTED BY LOCAL RULE 3.10, EFFECTIVE IMMEDIATELY, AND NO FORMAL ORDER PURSUANT TO RULE 3.1312 OR ANY OTHER NOTICE IS REQUIRED, AS THE TENTATIVE RULING AFFORDS SUFFICIENT NOTICE TO THE PARTIES.  
ENTERED BY TERRI M ON 10/28/08.

	10/23/2008	DEFT MENLO APPENDIX OF NON-CALIF AUTHOR IN REPLY MEMO IN SUPPORT OF MOT FOR SUM JMT/ADJUD BY, FILED.	-	
	10/23/2008	REQUEST FOR JUDICIAL NOTICE OF SEE LIST FILED BY MENLO COLLEGE.	-	
	10/23/2008	OBJECTION TO PLTF EVIDENCE IN SUPPORT OF COLLEGE SUM JMT/SUM ADJUD REPLY MEMO FILED BY MENLO COLLEGE	-	
	10/23/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MENLO COLLEGE IN (REPLY) IN SUPPORT OF MOT FOR SUM JMT/SUM ADJUD	-	
	10/23/2008	DECLARATION OF LINDA K ADLER IN SUPPORT OF REPLY MEMO OF MENLO IN SUPPORT OF MOT FOR SUM JMT/SUM ADJUD FILED BY MENLO COLLEGE	-	
	10/23/2008	NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE FILED BY MARCINE BLOUGH.	-	
	10/14/2008	PROOF OF SERVICE (BY MAIL) OF MEMO P&A IN OPP TO DEFT MENLO MOT FOR SUMM JDGMT/ADJUD; SUPPORTING DOCS SERVED ON MICHAEL J VARTAIN WITH A SERVICE DATE OF 10/14/08 FILED.	-	
	10/14/2008	NON-CALIF AUTHOR IN SUPPORT OF PLTF OPP TO MENLO MOT FOR SUM JMT/SUM ADJUD, FILED.	-	
	10/14/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MARCINE BLOUGH IN OPP TO DEFT MENLO MOT FOR SUM JMT/SUM ADJUD	-	
	10/14/2008	SEPARATE STATEMENT OF OOPP TO DEFT MENLO MOT FOR SUM JMT/SUM ADJUD; ADDL FACTS, FILED.	-	
	10/14/2008		-	

		EVIDENCE IN SUPPORT OF PLTF OPP TO MENLO MOT FOR SUM JMT/SUM ADJUD, FILED.		
	10/09/2008	REQUEST FOR DISMISSAL OF 3RD, 4TH AND 6TH * (CAUSE OF ACTION) WITHOUT PREJUDICE FILED BY MARCINE BLOUGH.	-	
	09/15/2008	NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE FILED BY JAMES MISSETT M.D.PH.D..	-	
	08/25/2008 9:00 AM DEPT. LM	HEARING: DEMURRER TO 3RD AMENDED COMPLAINT OF MARCINE BLOUGH BY JAMES MISSETT M.D.PH.D.	OFF-CALENDAR	
<b>Minutes</b> HEARING OFF CALENDAR. REASON: DISMISSAL FILED 8-21-08 AT TO DEF. JAMES MISSETT, M.D., ONLY.				
	08/21/2008	REQUEST FOR DISMISSAL ON 3RD AMENDED COMPLAINT OF MARCINE BLOUGH AS TO DEFENDANT JAMES MISSETT M.D.PH.D. WITH PREJUDICE FILED AND ENTERED.	-	
	08/15/2008	PROOF OF SERVICE (BY MAIL) OF MOT FOR SUM JMT/SUM ADJUD & SUPPORTING DOCS SERVED ON NOAH D LEBOWITZ WITH A SERVICE DATE OF 08/14/08 FILED.	-	
	08/15/2008	PROOF OF SERVICE (BY MAIL) OF MOT FOR SUM JMT/SUM ADJUD & SUPPORTING DOCS SERVED ON BARRY C MARSH WITH A SERVICE DATE OF 08/14/08 FILED.	-	
	08/14/2008	PROOF OF SERVICE OF OF MOTION & SUPPORTING DOCS SERVED ON MARCINE BLOUGH, JAMES MISSETT M.D.PH.D. BY PERSONAL DELIVERY WITH A SERVICE DATE OF 08/14/08.	-	
	08/14/2008	VOLUME II; EXHIBITS IN SUPPORT OF DEFTS MOTION FOR SUMMARY JUDGMENT/ADJUDICATION, FILED.	-	
	08/14/2008	PROPOSED ORDER, RECEIVED.	-	
	08/14/2008	DECLARATION IN SUPPORT OF MENLO COLLEGES MOTION FOR SUMMARY JUDGMENT/ADJUDICATION FILED BY MENLO COLLEGE	-	
	08/14/2008	DEFT MENLO COLLEGE APPENCIX OF NON-CALIFORNIA AUTHORITY CITED IN MPA, FILED.	-	
	08/14/2008	VOLUME 1: EXHIBITS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT/ADJUDICATION, FILED.	-	
	08/14/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MENLO COLLEGE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT/ADJUDICATION	-	
	08/14/2008	SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF SUMMARY JUDGMENT/ADJUDICATION, FILED.	-	
	08/14/2008	MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION OF ISSUES FILED BY MENLO COLLEGE AGAINST MARCINE BLOUGH.	-	
<b>Minutes</b> Receipt: 080815-0006      \$200.00				
		HEARING: DEMURRER TO 3RD AMENDED COMPLAINT OF MARCINE BLOUGH BY JAMES MISSETT M.D.PH.D.	CONTINUED	



	08/14/2008 9:00 AM DEPT. LM			
<b>Minutes</b> HEARING CONTINUED TO 08/25/08 AT 09:00 IN DEPARTMENT LM.				
	07/17/2008	ORDER RE STIP TO CONTINUE HEARING ON TE DEMURRER, SIGNED BY JUDGE FREEMAN ON 07/16/08 FILED.	-	
	07/17/2008	(S) STIPULATION TO CONTINUE HEARING ON THE DEMURRER FILED	-	
	07/15/2008	MOTION FEE PAID BY JAMES MISSETT M.D.PH.D..	-	
<b>Minutes</b> Receipt: 080715-0015      \$20.00				
	07/15/2008	STIP TO CONTINUE DEMURRER SENT TO DEPT. #3 FOR SIGNATURE..	-	
	07/11/2008	AMENDED DECL OF SCOTT R KANTER IN SUPPORT OF REQ FOR JUD NOTICE & DEMURRER FILED BY JAMES MISSETT M.D.PH.D..	-	
	07/11/2008	AMENDED REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER FILED BY JAMES MISSETT M.D.PH.D..	-	
	07/11/2008	AMENDED DEMURRER TO 9TH CAUSE OF ACTION IN 3RD AMENDED COMPLAINT FILED BY JAMES MISSETT M.D.PH.D..	-	
	07/11/2008	AMENDED MEMO OF P&A IN SUPPORT OF DEMURRER TO 3RD AMENDED COMPLAINT FILED BY JAMES MISSETT M.D.PH.D..	-	
	07/11/2008	AMENDED NOTICE OF HEARING DEMURRER TO 9TH CAUSE OF ACTION IN 3RD AMENDED COMPL BY MISSETT FILED BY JAMES MISSETT M.D.PH.D..	-	
	07/08/2008	FIRST PAPER FEE PAID BY JAMES MISSETT M.D.PH.D..	-	
<b>Minutes</b> Receipt: 080709-0170      \$320.00				
	07/08/2008	DECLARATION OF SCOTT R. KANTER IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE AND DEMURRER FILED BY JAMES MISSETT M.D.PH.D.	-	
	07/08/2008	REQUEST FOR JUDICIAL NOTICE OF IN SUPPORT OF DEM TO THE NINTH CAUSE OF ACTION IN PLAS THIR AMENDED COMPLAINT FILED BY JAMES MISSETT M.D.PH.D..	-	
	07/08/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY JAMES MISSETT M.D.PH.D. IN SUPPORT OF DEM TO THE NINTH CAUSE OF ACTION IN PLAS THIRD AMENDED COMPLAINT	-	
	07/08/2008	(S) DEMURRER TO 3RD AMENDED COMPLAINT OF MARCINE BLOUGH FILED BY JAMES MISSETT M.D.PH.D. REPRESENTED BY BARRY C MARSH	-	
	07/08/2008	NOTICE OF HEARING RE DEMURRER TO THE NINTH CAUSE OF ACTION FILED.	-	
N	07/01/2008		-	

		(U) 3RD AMENDED COMPLAINT OF MARCINE BLOUGH FILED (AMENDED COMPLAINT)		
	06/10/2008	NOTICE OF ENTRY OF ORDER FILED BY MARCINE BLOUGH.	-	
	06/04/2008	ORDER GRANT IN PART/DENY IN PART PLTF MOT TO COMPEL PROD DOCS & SANCTIONS, SIGNED BY JDG WEINER ON 05/28/08 FILED.	-	
	05/27/2008 9:00 AM DEPT. LM	HEARING: MOTION RE: MOT TO COMPEL PLAINTIFF TO FURTHER RESPOND FILED BY JAMES MISSETT M.D.PH.D.	COMPLETED	

**Minutes**

HONORABLE MARIE S. WEINER, JUDGE PRESIDING. CLERK: THERESA MARAGOULAS COURT  
REPORTER: RHONDA GUESS.

NO APPEARANCE IS MADE BY ANY PARTIES HEREIN OR THEIR COUNSEL OF RECORD.

SUBMITTED ON POINTS AND AUTHORITIES WITHOUT ARGUMENT.

TENTATIVE RULING ADOPTED AND BECOMES THE ORDER:

DEFENDANT MISSETTS REQUEST FOR MONETARY SANCTIONS IS DENIED.

\*\* \*\*

DEFENDANT MISSETTS MOTION TO COMPEL FURTHER ANSWERS TO SPECIAL  
INTERROGATORIES, SET ONE,

(WHICH HE CALLED "CUSTOM" INTERROGATORIES) IS GRANTED. PLAINTIFF SHALL SERVE  
WRITTEN VERIFIED

SUBSTANTIVE ANSWERS (WITHOUT OBJECTION OTHER THAN PRIVILEGE) TO THE  
INTERROGATORIES WITHIN 20

DAYS FROM THE DATE OF THIS HEARING.

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IF THE TENTATIVE RULING IS UNCONTESTED, IT SHALL BECOME THE ORDER OF THE COURT,  
PURSUANT TO RULE

3.1308(A)(1), ADOPTED BY LOCAL RULE 3.10, EFFECTIVE IMMEDIATELY, AND NO FORMAL ORDER

PURSUANT TO RULE 3.1312 OR ANY OTHER NOTICE IS REQUIRED, AS THE TENTATIVE RULING  
AFFORDS

SUFFICIENT NOTICE TO THE PARTIES.

ENTERED BY TERRI M ON 05/27/08.

	05/20/2008	REPLY TO PLTF'S OPPOSITION TO MOTION TO COMPEL FILED BY JAMES MISSETT M.D.PH.D.	-	
	05/13/2008	PROOF OF SERVICE (BY MAIL) OF PLTF MEMO P&A IN OPP TO MOT TO COMPEL & DECL IN SUPPORT SERVED ON SEE LIST WITH A SERVICE DATE OF 05/12/08 FILED.	-	
	05/13/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MARCINE BLOUGH IN OPP TO MOT TO COMPEL PLTF FURTHER RESPOND TO INTERROGS & SANCTIONS	-	
	05/13/2008	DECLARATION OF NOAH D LEBOWITZ IN SUPPORT OF PLTF OPP TO MOT TO COMPEL PLTF FURTHER RESPOND & SANCT FILED BY MARCINE BLOUGH	-	
	05/13/2008 9:00 AM DEPT. LM	HEARING: MOTION RE: TO COMPEL FURTHER RESPONSES, PROD DOCS & SANCT FILED BY MARCINE BLOUGH	COMPLETED	

**Minutes**

HONORABLE MARIE S. WEINER, JUDGE PRESIDING. CLERK: THERESA MARAGOULAS COURT  
REPORTER: WENDY WACHHORST

ATTORNEY NOAH LEBOWITZ (BY COURT CALL) APPEARING WITH/FOR PLAINTIFF(S).

ATTORNEY BARRY MARSH APPEARING WITH/FOR DEFENDANT(S).


MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.


TENTATIVE RULING ADOPTED AND BECOMES THE ORDER:  
 PLAINTIFFS MOTION TO COMPEL FURTHER RESPONSES AND/OR PRODUCTION OF DOCUMENTS IS MOOT AS TO NOS. 18, 19, 24, AND 25; IS GRANTED AS TO NOS. 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 18, 19, 20, 22, 23, 24, AND 25; AND IS DENIED AS TO NOS. 7, 8, 9, 16, 17, AS THE REQUESTS ARE OVERBROAD, OPPRESSIVE, AND IMPINGES UPON CONSTITUTIONAL RIGHTS WHICH OUTWEIGH THE DIRECT RELEVANCE OF THE EVIDENCE.  
 \*\* \*\*  
 THE REQUEST FOR JUDICIAL NOTICE IS GRANTED.  
 \*\* \*\*  
 THE JOINDER BY MENLO COLLEGE IS DENIED AS UNTIMELY.  
 \*\* \*\*  
 THE REQUESTS FOR MONETARY SANCTIONS ARE DENIED.  
 \*\* \*\*  
 DEFENDANT MISSETT SHALL SERVE WRITTEN VERIFIED AMENDED RESPONSES (WITHOUT OBJECTION OTHER THAN ATTORNEY-CLIENT PRIVILEGE OR ATTORNEY WORK PRODUCT) TO THE REQUESTS FOR PRODUCTION OF DOCUMENTS, AND PRODUCE ALL RESPONSIVE NON-PRIVILEGED DOCUMENTS, ON OR BEFORE MAY 30, 2008, AND PRODUCE A PRIVILEGE LOG OF ALL RESPONSIVE DOCUMENT WITHHELD ON THE BASIS OF PRIVILEGE ON OR BEFORE MAY 30, 2008.  
 FORMAL ORDER TO BE PREPARED, SIGNED AND FILED.  
 ENTERED BY TERRI M ON 05/13/08.

	05/06/2008	PROOF OF SERVICE (BY MAIL) OF REPLY MPA IN SUPPORT OF PLAS W/SUPPORTING DOCUMENTS SERVED ON SEE SERVICE LIST WITH A SERVICE DATE OF 05/06/08 FILED.	-	
	05/06/2008	SUPPLEMENTAL DECL OF NOAH D. LEBOWITZ IN SUPPORT OF PLAS MOTION TO COMPEL FURTHER RESPONSES FILED BY MARCINE BLOUGH.	-	
	05/06/2008	REPLY MPA IN SUPPORT OF PLAS MOTION TO COMPEL FURTHER RESPONSES, FILED.	-	
	05/02/2008	SUPPLEMENTAL DECLARATION OF SCOTT KANTER IN SUPPORT OF OPPOSITION TO MOTION TO COMPEL FILED BY JAMES MISSETT M.D.PH.D..	-	
	05/02/2008	SUPPLEMENTAL OPPOSITION TO MOTION TO COMPEL FILED BY JAMES MISSETT M.D.PH.D..	-	
	05/02/2008	JOINDER OF MENLO COLLEGE RE: OPPOSITION TO MOTION TO COMPEL FILED	-	
	05/01/2008 9:00 AM DEPT. LM	HEARING: DEMURRER TO 2ND AMENDED COMPLAINT OF MARCINE BLOUGH BY JAMES MISSETT M.D.PH.D.	COMPLETED	

#### Minutes

HONORABLE MARIE S. WEINER, JUDGE PRESIDING. CLERK: THERESA MARAGOULAS COURT REPORTER: WENDY WACHHORST  
 ATTORNEY NOAH LEBOWITZ APPEARING WITH/FOR PLAINTIFF(S).  
 ATTORNEY SCOTT KANTER APPEARING WITH/FOR DEFENDANT(S).  
 MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT.  
 THE COURT CHANGES ITS TENTATIVE RULING.  
 DEFENDANT MISSETTS DEMURRER TO THE NINTH CAUSE OF ACTION IN THE SECOND AMENDED COMPLAINT, WHICH IS THE ONLY CLAIM AGAINST DEFENDANT MISSETT, IS SUSTAINED WITH LEAVE TO AMEND.  
 \*\* \*\*  
 AMENDED COMPLAINT TO BE FILED BY JULY 1, 2008.

FORMAL ORDER TO BE PREPARED, SIGNED AND FILED. ENTERED BY TERRI M ON 05/01/08.				
	04/30/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY JAMES MISSETT M.D.PH.D. IN OPP TO PLTF MOT TO COMPEL FURTHER RESPONSES & PROD DOCS	-	
	04/29/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY JAMES MISSETT M.D.PH.D. IN SUPPORT OF MOTION TO COMPEL PLAINTIFF TO FURTHER RESPOND TO CUSTOM INTERROGATORIES	-	
	04/29/2008	DECLARATION OF SCOTT R KANTER IN SUPPORT OF MOTION TO COMPEL PLA TO FURTHER RESPOND TO CUSTOM FILED BY JAMES MISSETT M.D.PH.D.	-	
	04/29/2008	SEPARATE STATEMENT OF OF ITEMS IN DISPUTE IN SUPPORT OF MOTION TO COMPEL PLA MARCINE BLOUGHS RESPONSE, FILED.	-	
	04/29/2008	NOTICE OF MOTION AND MOTION TO COMPEL PLAINTIFF TO FURTHER RESPOND TO CUSTOM INTERROGATORIES FILED BY JAMES MISSETT M.D.PH.D.	-	
<b>Minutes</b> Receipt: 080429-0136      \$40.00				
	04/23/2008	REPLY IN SUPPORT OF DEMURRER TO THE NINTH CAUSE OF ACTION IN PLAS 2ND AMENDED COMPLAINT, FILED.	-	
	04/18/2008	REQUEST FOR JUDICIAL NOTICE OF SEE LIST FILED BY MARCINE BLOUGH.	-	
	04/18/2008	PROOF OF SERVICE (BY MAIL) OF PLTF MEMO P&A IN OPP TO DEMURRER; REQ JUD NOTICE SERVED ON SEE LIST WITH A SERVICE DATE OF 04/17/08 FILED.	-	
	04/18/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MARCINE BLOUGH IN OPP TO DEMURRER TO 9TH CAUSE OF ACTION IN 2ND AMENDED COMPLAINT	-	
	04/16/2008	PROOF OF SERVICE OF ANSWER SERVED ON MARCINE BLOUGH, JAMES MISSETT M.D.PH.D. BY MAIL WITH A SERVICE DATE OF 04/16/08.	-	
N	04/16/2008	(S) ANSWER TO 2ND AMENDED COMPLAINT OF MARCINE BLOUGH FILED BY MENLO COLLEGE, REPRESENTED BY MICHAEL J. VARTAIN	-	
	04/11/2008	PROOF OF SERVICE (BY MAIL) OF MOT TO COMPEL FURTHER RESPONSES, PROD DOCS & SANCT; SUPPORTING DOCS SERVED ON SEE LIST WITH A SERVICE DATE OF 04/11/08 FILED.	-	
	04/11/2008	REQUEST FOR JUDICIAL NOTICE OF SEE LIST FILED BY MARCINE BLOUGH.	-	
	04/11/2008	APPENDIX OF NON-CALIF AUTHOR IN SUPPORT OF MOT TO COMPEL FURTHER RESPONSES &, BY PLTF, FILED.	-	
	04/11/2008	DECLARATION OF NOAH D LEBOWITZ IN SUPPORT OF MOT TO COMPEL FURTHER RESPONSES, PROD DOCS & SANCT FILED BY MARCINE BLOUGH	-	
	04/11/2008	SEPARATE STATEMENT OF ITEMS IN DISPUTE IN SUPPORT OF MOT TO COMPEL FURTHER RESPONSES, PROD DOCS & SANCT, FILED.	-	

	04/11/2008	COPY OF DECL OF MARCINE BLOUGH IN SUPPORT OF MOT T O COMPEL FURTHER RESPONSES, PROD DOCS, RECEIVED F.	-	
	04/11/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MARCINE BLOUGH IN SUPPORT OF MOT TO COMPEL FURTHER RESPONSES, PROD DOCS & SANCTIONS	-	
	04/11/2008	NOTICE OF MOTION TO COMPEL FURTHER RESPONSES, PROD DOCS & SANCTIONS FILED BY MARCINE BLOUGH	-	
<b>Minutes</b> Receipt: 080411-0087      \$40.00				
	03/28/2008	MOTION FEE PAID BY JAMES MISSETT M.D.PH.D..	-	
<b>Minutes</b> Receipt: 080328-0093      \$40.00				
	03/28/2008	REQUEST FOR JUDICIAL NOTICE OF IN SUPPORT OF DEM TO THE NINTH CAUSE OF ACTION IN PLAS SECOND AMENDED COMPLAINT FILED BY JAMES MISSETT M.D.PH.D..	-	
	03/28/2008	DECLARATION OF SCOTT R. KANTER IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE AND DEM TO THE NINTH CAUSE FILED BY JAMES MISSETT M.D.PH.D.	-	
	03/28/2008	(S) DEMURRER TO 2ND AMENDED COMPLAINT OF MARCINE BLOUGH FILED BY JAMES MISSETT M.D.PH.D. REPRESENTED BY BARRY C MARSH	-	
	03/28/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY JAMES MISSETT M.D.PH.D. IN SUPPORT OF ACTION IN PLAS SECOND AMENDED COMPLAINT BY DEF	-	
	03/28/2008	NOTICE OF HEARING RE DEMURRER TO THE NINTH CAUSE OF ACTION FILED.	-	
	03/26/2008	STIP AND ORDER TO ADR SIGNED BY BETH LABSON FREEMAN ON 03/25/08	-	
	03/25/2008	RECD PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF AND SENT TO JUDGE WEINER.	-	
	03/24/2008	STIP TO ADR SENT TO CMC CLERK TO OBTAIN JUDGES SIGNATURE.	-	
N	03/18/2008	(U) 2ND AMENDED COMPLAINT OF MARCINE BLOUGH FILED (AMENDED COMPLAINT)	-	
	03/03/2008 9:00 AM DEPT. LM	HEARING: DEMURRER TO 1ST AMENDED COMPLAINT OF MARCINE BLOUGH BY JAMES MISSETT M.D.PH.D.	COMPLETED	
<b>Minutes</b> HONORABLE MARIE S. WEINER, JUDGE PRESIDING. CLERK: THERESA MARAGOULAS COURT REPORTER: KAREN ANDERSON ATTORNEY NOAH LEBOWITZ APPEARING WITH/FOR PLAINTIFF(S). ATTORNEY(S): SCOTT KANTER APPEARING FOR DR. MISSETT MATTER ARGUED BY COUNSEL AND SUBMITTED TO THE COURT. TENTATIVE RULING ADOPTED AND BECOMES THE ORDER: THE REQUEST FOR JUDICIAL NOTICE IS GRANTED. ** **				

THE FIRST AMENDED COMPLAINT IS DEFECTIVE IN THAT THE NINTH CAUSE OF ACTION IS ENTITLED A CLAIM FOR AIDING AND ABETTING VIOLATION OF FEHA, YET THE TEXT OF THE CLAIM SET FORTH THEREUNDER ALLEGES COMMON LAW WRONGFUL TERMINATION; CONVERSELY THE TITLE FOR THE TENTH CAUSE OF ACTION IS FOR AIDING AND ABETTING VIOLATION OF PUBLIC POLICY (A COMMON LAW CLAIM), YET THE TEXT REFERENCES VIOLATION OF FEHA.

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THE DEMURRER TO THE CLAIM FOR AIDING AND ABETTING A VIOLATION OF PUBLIC POLICY AS A COMMON LAW CLAIMS IS SUSTAINED WITHOUT LEAVE TO AMEND. THE DEMURRER TO THE CLAIM FOR AIDING AND ABETTING A VIOLATION OF FEHA IS SUSTAINED WITH LEAVE TO AMEND. THE DEMURRER TO THE ELEVENTH CAUSE OF ACTION FOR VIOLATION OF EVIDENCE CODE SECTION 1158 IS SUSTAINED WITHOUT LEAVE TO AMEND, AS THERE IS NO PHYSICIAN-PATIENT RELATIONSHIP WHEN A DOCTOR IS HIRED TO PERFORM AN EXAMINATION FOR EMPLOYMENT-RELATED, OR INSURANCE RELATED, PURPOSES.

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PLAINTIFF SHALL FILE AND SERVE HER SECOND AMENDED COMPLAINT WITHIN 15 DAYS FROM THE DATE OF THIS HEARING.

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THE PARTIES WAIVED FORMAL NOTICE OF ORDER, SO NO FORMAL ORDER NEED BE PREPARED AND SUBMITTED TO THE COURT PURSUANT TO RULE 391(A) OF THE CALIFORNIA RULES OF COURT. ENTERED BY TERRI M ON 03/03/08.

	03/03/2008 9:00 AM DEPT. LM	HEARING: JOINDER OF MENLO COLLEGE TO DEMURRER TO CAUSES IN 1ST AMEND COMPL BY MISSETT (DEM)	DENIED	
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**Minutes**

HONORABLE MARIE S. WEINER, JUDGE PRESIDING. CLERK: THERESA MARAGOULAS COURT REPORTER: KAREN ANDERSON  
 ATTORNEY NOAH LEBOWITZ APPEARING WITH/FOR PLAINTIFF(S).  
 ATTORNEY(S): SCOTT KANTER APPEARING FOR DR. MISSETT  
 TENTATIVE RULING ADOPTED AND BECOMES THE ORDER:  
 MOTION DENIED.  
 THE JOINDER OF MENLO COLLEGE TO THE DEMURRER IS DENIED AS UNTIMELY.

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THE PARTIES WAIVED FORMAL NOTICE OF ORDER, SO NO FORMAL ORDER NEED BE PREPARED AND SUBMITTED TO THE COURT PURSUANT TO RULE 391(A) OF THE CALIFORNIA RULES OF COURT. ENTERED BY TERRI M ON 03/03/08.

	02/26/2008	WITHDRAWL OF NOTICE OF NON-OPP RE DEM TO THE NINTH, TENTH AND ELEVENTH CAUSES OF ACTION, FILED.	-	
	02/22/2008	DECLARATION OF BARRY C. MARSH IN SUPPORT OF DEM TO THE NINTH, TENTH AND ELEVENTH CAUSES OF ACTION FILED BY JAMES MISSETT M.D.PH.D.	-	
	02/22/2008	REPLY TO PLAS OPP TO DEM TO THE NINTH, TENTH AND ELEVENTH CAUSES OF ACTION IN PLAS 1ST AMEN CO, FILED.	-	
	02/21/2008	NOTICE NON-OPP RE DEMURRER FILED BY JAMES MISSETT M.D.PH.D..	-	

	02/19/2008	MOTION FEE PAID BY MENLO COLLEGE.	-	
<b>Minutes</b>				
Receipt: 080219-0217 \$40.00				
	02/19/2008	JOINDER OF MENLO COLLEGE RE: DEMURRER TO 9TH,10TH,11TH CAUSES IN FILED	-	
	02/19/2008	DECLARATION OF NOAH D LEBOWITZ IN SUPPORT OF PLTF OPP TO DEMURRER BY MISSETT FILED BY MARCINE BLOUGH	-	
	02/19/2008	PROOF OF SERVICE (BY MAIL) OF PLTF MEMO OF P&A IN OPP TO DEMURRER & SUPPORTING DOC SERVED ON SEE LIST WITH A SERVICE DATE OF 02/19/08 FILED.	-	
	02/19/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MARCINE BLOUGH IN OPP TO DEMURRER BY MISSETT	-	
	02/14/2008	CASE MANAGEMENT STATEMENT FILED BY JAMES MISSETT M.D.PH.D..	-	
	02/08/2008	PRINT COMBINED MANDATORY SETTLEMENT CONFERENCE AND JURY TRIAL OR COURT TRIAL NOTICE	-	
	02/08/2008 9:00 AM DEPT. 28	CASE MANAGEMENT CONFERENCE	COMPLETED	N/A
<b>Minutes</b>				
HONORABLE GEORGE A. MIRAM, JUDGE PRESIDING. CLERK: CHERYL LYSSAND COURT REPORTER: LORNA TRAUBE				
COUNSEL NOAH LEBOWITZ FOR PLAINTIFF APPEARED BY COURT CALL.				
ATTORNEY(S): LINDA ADLER APPEARED ON BEHALF OF DEFT. MENLO COLLEGE				
ATTORNEY(S): BARRY MARSH APPEARED ON BEHALF OF DEFT. MISSETT				
THE COURT DEEMS THIS MATTER AT ISSUE.				
PARTIES STIPULATE TO GO TO MEDIATION. COURT ORDERS PARTIES TO COMPLETE MEDIATION BY THE MANDATORY SETTLEMENT CONFERENCE DATE.				
PARTIES ARE ORDERED TO FILE A WRITTEN STIPULATION & ORDER FOR MEDIATION WITH THE COURT WITHIN 21 DAYS.				
MASTER CALENDAR TO SET PLAINTIFF AND DEFENDANT JURY TRIAL FOR DECEMBER 1, 2008. 21 DAY JURY TRIAL.				
MASTER CALENDAR TO SET A MSC DATE ACCORDINGLY & SEND PROPER NOTICE.				
THE PARTIES SPOKE WITH ADR STAFF REGARDING MEDIATION.				
ENTERED BY C LYSSAND ON 02/08/08.				
- 10 -				
	02/01/2008	CASE MANAGEMENT STATEMENT FILED BY MARCINE BLOUGH.	-	
	01/29/2008	REQUEST FOR JUDICIAL NOTICE OF IN SUPPORT OF DEM TO THE NINTH,TENTH, AND ELEVENTH CAUSES OF ACTION FILED BY JAMES MISSETT M.D.PH.D..	-	
	01/29/2008	DECLARATION OF SCOTT R. KANTER IN SUPPORT OF DEM TO THE NINTH, TENTH AND ELEVENTH CAUSES FILED BY JAMES MISSETT M.D.PH.D.	-	
	01/29/2008	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY JAMES MISSETT M.D.PH.D. IN SUPPORT OF DEM TO THE NINTH, TENTH, AND ELEVENTH CAUSES OF ACTION	-	
	01/29/2008	NOTICE OF HEARING RE DEMURRER TO THE NINTH, TENTH, AND ELEVENTH CAUSES FILED.	-	

	01/29/2008	(S) DEMURRER TO 1ST AMENDED COMPLAINT OF MARCINE BLOUGH FILED BY JAMES MISSETT M.D.PH.D. REPRESENTED BY BARRY C MARSH	-	
<b>Minutes</b> Receipt: 080130-0051      \$40.00				
	01/24/2008	CASE MANAGEMENT STATEMENT FILED BY MENLO COLLEGE.	-	
	01/24/2008	PROOF OF SERVICE (BY MAIL) OF CASE MGMT STATEMENT SERVED ON SEE LIST WITH A SERVICE DATE OF 01/24/08 FILED.	-	
	01/07/2008 9:00 AM DEPT. LM	HEARING: MOTION RE: TO STRIKE "SLAPP" SUIT & FOR ATTY FEES FILED BY JAMES MISSETT M.D.PH.D.	DENIED	
<p><b>Minutes</b> HONORABLE MARIE S. WEINER, JUDGE PRESIDING. CLERK: THERESA MARAGOULAS COURT REPORTER: KAREN ANDERSON NO APPEARANCE IS MADE BY ANY PARTIES HEREIN OR THEIR COUNSEL OF RECORD. SUBMITTED ON POINTS AND AUTHORITIES WITHOUT ARGUMENT. TENTATIVE RULING ADOPTED AND BECOMES THE ORDER: MOTION DENIED. THE BASIS OF THE SUIT AGAINST DEFENDANT MISSETT IS HIS MEDICAL OPINION REGARDING PLAINTIFF, GIVEN TO HER EMPLOYER, WHICH EMPLOYER PAID MISSETT TO CONDUCT AN EXAMINATION AND PROVIDE AN OPINION. THIS IS NOT A MATTER OF "FREE SPEECH". THIS IS NOT AN ISSUE OF PUBLIC INTEREST. THIS IS NOT A STATEMENT OR WRITING MADE BEFORE A LEGISLATIVE, EXECUTIVE, OR JUDICIAL PROCEEDING, OR ANY OTHER OFFICIAL PROCEEDING AUTHORIZED BY LAW. THE ELEVENTH CAUSE OF ACTION FOR FAILURE TO TURN OVER MEDICAL RECORDS TO THE PATIENT HAS NOTHING TO DO WITH FREE SPEECH. CONTRARY TO THE ASSERTION OF MISSETT, A REQUEST BY AN EMPLOYER FOR A PSYCHIATRIC EXAMINATION OF AN EMPLOYEE, EVEN IF PERMITTED BY STATUTE, IS NOT AN "OFFICIAL PROCEEDING", AND DEFENDANT HAS NOT PRESENTED ANY CASE LAW SO HOLDING. THERE IS NO SHOWING SUCH AN EXAMINATION WAS REQUIRED UNDER LAW. A PROCEDURE BY A PRIVATE ENTITY EMPLOYER IS NOT A GOVERNMENT NOR OFFICIAL PROCEEDING UNDER SECTION 425.16. OLAES V. NATIONWIDE MUTUAL INS. CO. (2006) 135 CAL.APP.4TH 1501, 1508-1509. OLAES ALSO SUPPORTS THE FINDING THAT THIS IS NOT AN ISSUE OF PUBLIC INTEREST UNDER SECTION 425.16. ** **</p> <p>ACCORDINGLY, THE SPECIAL MOTION TO DISMISS UNDER THE SLAPP STATUTE, CODE OF CIVIL PROCEDURE SECTION 425.16 IS DENIED, AS DEFENDANT MISSETT DID NOT MEET HIS INITIAL BURDEN OF DEMONSTRATING THAT THIS ACTION FALLS WITH THE SLAPP STATUTE. ** **</p> <p>DEFENDANT SHALL FILE AND SERVE HIS RESPONSE TO THE FIRST AMENDED COMPLAINT WITHIN 15 DAYS FROM THE DATE OF THIS HEARING. ** **</p> <p>IF THE TENTATIVE RULING IS UNCONTESTED, IT SHALL BECOME THE ORDER OF THE COURT, PURSUANT TO RULE</p>				




3.1308(A)(1), ADOPTED BY LOCAL RULE 3.10, EFFECTIVE IMMEDIATELY, AND NO FORMAL ORDER PURSUANT TO RULE 3.1312 OR ANY OTHER NOTICE IS REQUIRED, AS THE TENTATIVE RULING AFFORDS SUFFICIENT NOTICE TO THE PARTIES.  
ENTERED BY TERRI M ON 01/07/08.

	01/07/2008 9:00 AM DEPT. LM	HEARING: MOTION RE: MOTION TO STRIKE CLAIM FOR PUNITIVE DAMAGES FILED BY JAMES MISSETT M.D.PH.D.	DENIED	
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**Minutes**  
HONORABLE MARIE S. WEINER, JUDGE PRESIDING. CLERK: THERESA MARAGOULAS COURT REPORTER: KAREN ANDERSON  
NO APPEARANCE IS MADE BY ANY PARTIES HEREIN OR THEIR COUNSEL OF RECORD. SUBMITTED ON POINTS AND AUTHORITIES WITHOUT ARGUMENT.  
TENTATIVE RULING ADOPTED AND BECOMES THE ORDER:  
MOTION DENIED.  
THE MOTION TO STRIKE PUNITIVE DAMAGES PURSUANT TO CIVIL CODE SECTION 425.13 IS DENIED, AS PLAINTIFF IS NOT SUING FOR THE PROFESSIONAL NEGLIGENCE OF DEFENDANT MISSETT.  
\*\* \*\*  
THE MOTION TO STRIKE PUNITIVE DAMAGES AS TO THE CLAIM FOR AIDING AND ABETTING VIOLATION OF FEHA IS DENIED. (GOVT. CODE §12940(I).)  
\*\* \*\*  
THE MOTION TO STRIKE PUNITIVE DAMAGES AS TO THE TENTH CAUSE OF ACTION FOR AIDING AND ABETTING THE TORT OF WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY IS GRANTED, SINCE AS A MATTER OF LAW THERE CAN BE NO CLAIM FOR AIDING AND ABETTING OF THE TORT LIABILITY OF THE EMPLOYER FOR VIOLATION OF PUBLIC POLICY. PHILLIPS V. GEMINI MOVING SPECIALISTS (1998) 63 CAL.APP.4TH 563, 575-576; WEINBAUM V. GOLDFARB, WHITMAN & COHEN (1996) 46 CAL.APP.4TH 1310, 1315; JACOBS V. UNIVERSAL DEVELOPMENT CORP. (1997) 53 CAL.APP.4TH 692, 703-704.  
\*\* \*\*  
UNFORTUNATELY, THE FIRST AMENDED COMPLAINT IS POORLY DRAFTED, IN THAT THE NINTH CAUSE OF ACTION PROFESSES TO BE FOR "AIDING AND ABETTING A VIOLATION OF EHA", YET MAKES NO REFERENCE TO THE FEHA STATUTE SPECIFICALLY IN THE ALLEGATIONS, BUT RATHER HAS ALLEGATIONS REGARDING PUBLIC POLICY; WHILE THE TENTH CAUSE OF ACTION IS CAPTIONED "AIDING AND ABETTING IN VIOLATION OF PUBLIC POLICY", YET CONTAINS THE SPECIFIC ALLEGATIONS OF VIOLATION OF GOVERNMENT CODE SECTION 12940(I). ACCORDINGLY, THIS COURTS RULING ON THE MOTION TO STRIKE IS NOT BROKEN DOWN BY SPECIFIC CAUSE OF ACTION VERSUS SUBSTANTIVE CLAIM.  
\*\* \*\*  
IF THE TENTATIVE RULING IS UNCONTESTED, IT SHALL BECOME THE ORDER OF THE COURT, PURSUANT TO RULE 3.1308(A)(1), ADOPTED BY LOCAL RULE 3.10, EFFECTIVE IMMEDIATELY, AND NO FORMAL ORDER PURSUANT TO RULE 3.1312 OR ANY OTHER NOTICE IS REQUIRED, AS THE TENTATIVE RULING AFFORDS SUFFICIENT NOTICE TO THE PARTIES.  
ENTERED BY TERRI M ON 01/07/08.

	12/28/2007			
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		REPLY TO SUPPORT MOT TO STRIKE SLAPP SUIT & FEES FILED BY JAMES MISSETT M.D.PH.D.		
	12/28/2007	REPLY TO SUPPORT MOT TO STRIKE PUNITIVE DAMAGES: MISSETT FILED BY JAMES MISSETT M.D.PH.D.	-	
	12/21/2007	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MARCINE BLOUGH IN OPPOSITION TO MOTION TO STRIKE	-	
	12/21/2007	DECLARATION OF NOAH LEBOWITZ	-	
	12/21/2007	PROOF OF SERVICE (BY MAIL) OF DECLARATION W/RELATED DOCS SERVED ON SEE SERVICE LIST WITH A SERVICE DATE OF 12/21/07 FILED.	-	
	12/21/2007	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY MARCINE BLOUGH IN SUPPORT OF OPPOSITION TO MOTION TO STRIKE AND ATTORNEY FEES	-	
	12/21/2007	DECLARATION OF NOAH LEBOWITZ	-	
	12/21/2007	PROOF OF SERVICE (BY MAIL) OF MEMO OF P & A W/RELATED DOCS SERVED ON SEE SERVICE LIST WITH A SERVICE DATE OF 12/21/07 FILED.	-	
	12/18/2007	NOTICE OF ENTRY OF ORDER FILED BY JAMES MISSETT M.D.PH.D..	-	
N	12/14/2007 9:00 AM DEPT. 2	CASE MANAGEMENT CONFERENCE	CONTINUED	

**Minutes**

HONORABLE MARIE S. WEINER, JUDGE PRESIDING. CLERK: SHARON GLASS COURT REPORTER: KAREN ANDERSON

ATTORNEY(S): NOAH LEBOWITZ APPEARED ON BEHALF OF PLAINTIFF

ATTORNEY(S): LINDA ADLER APPEARED ON BEHALF OF DEFENDANT MENLO COLLEGE

ATTORNEY(S): SCOTT KANTER APPEARED ON BEHALF OF DEFENDANT JAMES MISSETT, MD, PH.D

COURT NOTES PARTIES HAVE AN ANTI-SLAPP MOTION & MOTION TO STRIKE SET FOR 1/7/08.

HEARING CONTINUED TO 02/08/08 AT 09:00 IN DEPARTMENT 28.

PLAINTIFF AND DEFENDANT SHALL SUBMIT AN UPDATED CASE MANAGEMENT STATEMENT.

ENTERED BY SHARON ON 12/14/07.

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	12/13/2007 9:00 AM DEPT. LM	HEARING: MOTION RE: TO STRIKE "SLAPP" SUIT & FOR ATTY FEES FILED BY JAMES MISSETT M.D.PH.D.	CONTINUED	
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**Minutes**

HONORABLE GEORGE A. MIRAM, JUDGE PRESIDING. CLERK: TERRI PETRIAT COURT REPORTER: NONE.

NO APPEARANCE IS MADE BY ANY PARTIES HEREIN OR THEIR COUNSEL OF RECORD.

HEARING CONTINUED TO 01/07/08 AT 09:00 IN DEPARTMENT LM.

SEE "STIPULATION AND ORDER TO CONTINUE MOTIONS TO STRIKE" SIGNED BY JUDGE MIRAM ON 12/6/07.

ENTERED BY TPETRIAT ON 12/06/07.

	12/13/2007 9:00 AM DEPT. LM	HEARING: MOTION RE: MOTION TO STRIKE CLAIM FOR PUNITIVE DAMAGES FILED BY JAMES MISSETT M.D.PH.D.	CONTINUED	
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**Minutes**

HONORABLE GEORGE A. MIRAM, JUDGE PRESIDING. CLERK: TERRI PETRIAT COURT REPORTER: NONE.





NO APPEARANCE IS MADE BY ANY PARTIES HEREIN OR THEIR COUNSEL OF RECORD.

HEARING CONTINUED TO 01/07/08 AT 09:00 IN DEPARTMENT LM.

SEE "STIPULATION AND ORDER TO CONTINUE MOTIONS TO STRIKE" SIGNED BY JUDGE MIRAM ON 12/6/07.

ENTERED BY TPETRIAT ON 12/06/07.

	12/06/2007	STIPULATION AND ORDER TO CONTIN MOTS(2) TO STRIKE (TO 1-7-08) SIGNED BY GEORGE A. MIRAM ON 12/06/07.	-	
	12/06/2007	MOTION FEE PAID BY JAMES MISSETT M.D.PH.D..	-	
<b>Minutes</b>				
Receipt: 071206-0237      \$60.00				
	12/06/2007	PROPOSED STIP/ORDER CONTIN MOTS(2) - SENT TO DEPT.28.	-	
	12/05/2007	CASE MANAGEMENT STATEMENT FILED BY JAMES MISSETT M.D.PH.D..	-	
	11/30/2007	CASE MANAGEMENT STATEMENT FILED BY MARCINE BLOUGH.	-	
	11/29/2007	CASE MANAGEMENT STATEMENT FILED BY MENLO COLLEGE.	-	
	11/29/2007	PROOF OF SERVICE (BY MAIL) OF CASE MGMT STATEMENT SERVED ON SEE LIST WITH A SERVICE DATE OF 11/29/07 FILED.	-	
	11/13/2007	PROPOSED STATEMENT OF DECISION RECEIVED.	-	
	11/13/2007	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY JAMES MISSETT M.D.PH.D. IN SUPPORT OF MOT TO STRIKE "SLAPP" SUIT	-	
	11/13/2007	DECLARATION OF BARRY C MARSH IN SUPPORT OF MOT TO STRIKE "SLAPP" SUIT & FOR ATTY FEES FILED BY JAMES MISSETT M.D.PH.D.	-	
	11/13/2007	NOTICE OF MOTION TO STRIKE "SLAPP" SUIT & FOR ATTY FEES FILED BY JAMES MISSETT M.D.PH.D.	-	
<b>Minutes</b>				
Receipt: 071113-0194      \$40.00				
	11/13/2007	FIRST PAPER FEE PAID BY JAMES MISSETT M.D.PH.D..	-	
<b>Minutes</b>				
Receipt: 071113-0193      \$320.00				
	11/13/2007	ATTORNEY ADDED FOR THE DEFENDANT (S)/RESPONDENT(S) JAMES MISSETT M.D.PH.D.. ATTORNEY: BARRY C MARSH.	-	
	11/13/2007	PROPOSED ORDER RECEIVED.	-	
	11/13/2007	NOTICE OF MOTION AND MOTION TO STRIKE CLAIM FOR PUNITIVE DAMAGES AGAINST DEF JAMES MISSETT FILED BY JAMES MISSETT M.D.PH.D.	-	
<b>Minutes</b>				
Receipt: 071114-0057      \$40.00				
	10/23/2007	(U) 1ST AMENDED COMPLAINT OF MARCINE BLOUGH FILED (AMENDED COMPLAINT)	-	
	10/15/2007		-	

		STIPULATION AND ORDER TO FILE 1ST AMENDED COMPLAINT SIGNED BY BETH LABSON FREEMAN ON 10/09/07.		
	10/15/2007	MOTION FEE PAID BY MARCINE BLOUGH.	-	
<b>Minutes</b> Receipt: 071015-0196      \$20.00				
	10/04/2007	PROPOSED STIP/ORDER AMEND COMPL - SENT TO DEPT.3.	-	
	08/31/2007	(S) ANSWER TO COMPLAINT FILED 08/07/2007 OF MARCINE BLOUGH FILED BY MENLO COLLEGE, REPRESENTED BY MICHAEL J. VARTAIN	-	
<b>Minutes</b> Receipt: 070831-0197      \$320.00				
	08/29/2007	PROOF OF SERVICE (PERSONAL) OF SUMMONS AND COMPLAINT FILED 08/07/2007 OF MARCINE BLOUGH SERVED ON MENLO COLLEGE WITH SERVICE DATE OF 08/13/07.	-	
	08/29/2007	PROOF OF SERVICE (PERSONAL) OF SUMMONS AND COMPLAINT FILED 08/07/2007 OF MARCINE BLOUGH SERVED ON JAMES MISSETT M.D.PH.D. WITH SERVICE DATE OF 08/13/07.	-	
N	08/07/2007	CIVIL CASE COVERSHEET RECEIVED	-	
N	08/07/2007	30 DAY SUMMONS, ISSUED AND FILED.	-	
N	08/07/2007	AFFIDAVIT OF PERSONAL DELIVERY BY G JACKSON FILED	-	
N	08/07/2007	(S) COMPLAINT FILED	-	
<b>Minutes</b> Receipt: 070808-0017      \$320.00				

### Case CIV465027 - Pending Hearings

Date	Action Text	Disposition	Image
<b>This Case Does Not Have Any Pending Hearings</b>			

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