

N. Delaney
Book #108

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FILED

AUG 27 2010 *lh*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

VINNIE LAVENDAR, by and through her
Conservator, WANDA BAKER; WALTER
SIMON; JAMES C. BREWER;
JACQUELYN VILCHINSKY,

Plaintiff,

vs.

SKILLED HEALTHCARE GROUP, INC.;
SKILLED HEALTHCARE, LLC; GRANADA
HEALTHCARE AND REHABILITATION
CENTER, LLC; EUREKA HEALCHARE
AND REHABILITATION CENTER LLC;
PACIFIC HEALTHCARE AND REHABIL-
ITATION CENTER, LLC; SEAVIEW
HEALTHCARE AND REHABILITATION
CENTER, LLC; ST. LUKE HEALTHCARE
AND REHABILITATION CENTER LLC; BAY
CREST CARE CENTER, LLC; BRIER OAK
ON SUNSET, LLC; THE EARLWOOD, LLC;
WOYALWOOD CARE CENTER, LLC;
SYCAMORE PARK CARE CENTER, LLC;
VILLA MARIA HEALTHCARE CENTER,
LLC; VALLEY HEALTHCARE CENTER,
LLC; WILLOW CREEK HEALTHCARE
CENTER, LLC; ALTA CARE CENTER, LLC;
ANAHEIM TERRACE CARE CENTER, LLC;
CAREHOUSE HEALTHCARE CENTER,
LLC; DEVONSHIRE CARE CENTER, LLC;
ELMCREST CARE CENTER, LLC;

CASE NO: DR060264

DECISION ON: DEFENDANTS'
MOTION FOR MISTRIAL OR
NEW TRIAL ON GROUNDS OF
JUROR MISCONDUCT (Filed:
August 6, 2010)

I:\DECISION\DR060363\wgf

1 MONTEBELLO CARE CENTER, LLC;
2 ALEXANDRIA CARE CENTER, LLC;
3 HANCOCK PARK REHABILITATION
CENTER, LLC; SHARON CARE CENTER,
4 LLC; AND DOES 1 through 100, inclusive,

5 Defendants.

6 Defendants, Skilled Healthcare Group, Inc., et al., filed, August 6, 2010, a Motion For
7 Mistrial.

8 Plaintiffs, Vinnie Lavendar, et al., filed opposition.

9
10 Defendants bring their motion stating:

11 "Defendants recently have learned that serious and prejudicial juror misconduct occurred in this
12 case, no doubt leading to the annihilating jury verdict of approximately \$670 million --- hundreds
13 of millions of dollars more in damages than Plaintiffs themselves sought at trial. While the state
14 and federal constitutions require trial before an impartial jury, Juror April Garwin lied repeatedly
15 on her sworn Juror Questionnaire and concealed in voir dire her blatant bias against Defendants,
16 bias which stemmed from her pretrial familiarity with a Defendant facility and with a member of
17 the Plaintiff case. This misconduct is demonstrated by the Declaration of former Humboldt
18 County Coroner, Frank Jaeger, in addition to the Declaration of two other Jurors."

16 The Law:

17 "An accused has a constitutional right to a trial by an impartial jury. (U.S. Const., amends, VI and
18 XIV; Cal. Const., art. I, § 16; *Irvin v. Dowd* (1961) 366 U.S. 717, 722 . . . ; *In re Hitchings* (1993)
19 6 Cal.4th 97, 110; see . . . *Weathers v. Kaiser Foundation Hospitals* (1971) 5 Cal.3d 98, 110. An
20 impartial jury is one in which no member has been improperly influenced (*People v. Nesler* (1997)
21 16 Cal.4th 561, 578 . . . and every member is "capable and willing to decide the case solely on the
22 evidence before it" (*McDonough Power Equipment, Inc. v. Greenwood* (1984) 464 U.S. 548, 554
23 . . .

24 However, with narrow exceptions, evidence that the internal thought processes of one or more
25 jurors were biased is not admissible to impeach a verdict. The jury's impartiality may be
26 challenged by evidence of 'statements made, or conduct, conditions, or *events* occurring, either
27 within or without the jury room, of such a character as is *likely* to have influenced the verdict
28 improperly,' but '[n]o evidence is admissible to show the [*actual*] effect of such statement,
29 conduct, conditions, or event upon a juror . . . or concerning the *mental processes* by which [the
30 verdict] was determined.' (Evid. Code, § 1150, subd. (a), italics added; see *People v. Hutchinson*
31 (1969) 71 Cal.2d 342, 349-350.) Thus, where a verdict is attacked for juror taint, the focus is on
32 whether there is any overt event or circumstance, 'open to [corroboration by] sight, hearing, and

1 the other senses' (*Hutchinson, supra*, 71 Cal.2d at p. 350), which suggests a *likelihood* that one or
2 more members of the jury were influenced by improper bias.

3 When the overt event is a direct violation of the oaths, duties, and admonitions imposed on actual
4 or prospective jurors, such as when a juror conceals bias on voir dire, consciously receives outside
5 information, discusses the case with nonjurors, or shares improper information with other jurors,
6 the event is called juror misconduct. (See, e.g., *Nesler, supra*, 16 Cal.4th 561, 578-579; *Hitchings,*
7 *supra*, 6 Cal.4th 97, 118.)

8 The jurors' *pretrial* exposure to publicity about the case is not itself grounds to impeach the ver-
9 dict, even when the exposure led them to develop tentative opinions about the defendant's guilt or
10 innocence. 'In these days of swift, widespread and diverse methods of communication, an impor-
11 tant case can be expected to arouse the interest of the public in the vicinity, and scarcely any of
12 those best qualified to serve as jurors will not have formed some impression or opinion as to the
13 merits of the case. This is particularly true in criminal cases, To hold that the mere existence of
14 any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to
15 rebut the presumption of a prospective juror's impartiality would be to establish an impossible
16 standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict
17 based on the evidence presented in court. [Citations.]' (*Irvin, supra*, 366 U.S. 717, 722-723 . . .)

18 However, during jury selection the parties have the right to challenge and excuse candidates who
19 clearly or potentially cannot be fair. Voir dire is the crucial means for discovery of actual or po-
20 tential juror bias. Voir dire cannot serve this purpose if prospective jurors do not answer questions
21 truthfully. 'A juror who conceals relevant facts or gives false answers during the voir dire exam-
22 ination thus undermines the jury selection process and commits misconduct. [Citations.]'
23 (*Hitchings, supra*, 6 Cal.4th 97, 111; . . .

24 Misconduct by a juror, . . . usually raises a rebuttable 'presumption' of prejudice. (E.g., *Nesler,*
25 *supra*, 16 Cal.4th 561, 578; . . . This presumption aids parties who are barred by statute from
establishing the actual prejudicial effect of the incident under scrutiny (e.g., *Carpenter, supra*, 9
Cal.4th 634, 651-652; and accommodates the fact that the external circumstances of the incident
are often themselves reliable indicators of underlying bias (see, e.g., *Hitchings, supra*, 6 Cal.4th 97,
119-120).

26 Still, whether an individual verdict must be overturned for jury misconduct or irregularity' "is
27 resolved by reference to the substantial likelihood test, an objective standard."'" *Hitchings, supra*,
28 6 Cal.4th 97, 118, quoting *Marshall, supra*, 50 Cal.3d 907, 950-951, quoting 2 ABA Standards for
29 Criminal Justice, com. to st. 8-3.7 (2d ed. 1980) p. 8.58.) Any presumption of prejudice is
30 rebutted, and the verdict will not be disturbed, if the entire record in the particular case, including
31 the nature of the misconduct or other event, and the surrounding circumstances, indicates there is
32 no reasonable probability of prejudice, i.e., no *substantial likelihood* that one or more jurors were
33 actually biased against the defendant. (E.g., *Carpenter, supra*, 9 Cal.4th 634, 653; *Hitchings,*
34 *supra*, 6 Cal.4th 97, 121).

35 The standard is a pragmatic one, mindful of the 'day-to-day realities of courtroom life' (*Rushen v.*
Spain (1983) 464 U.S. 114, 119). It is 'virtually impossible to shield jurors from every contact or
influence that might theoretically affect their vote.' (*Smith, supra*, 455 U.S. 209, 217.) Moreover,
the jury is a 'fundamentally human' institution; the unavoidable fact that jurors bring diverse
backgrounds, philosophies, and personalities into the jury room is both the strength and the

1 weakness of the institution. (*Marshall, supra*, 50 Cal.3d 907, 950.) '[T]he criminal justice system
2 must not be rendered impotent in quest of an ever-elusive perfection. . . . [Jurors] are imbued with
3 human frailties as well as virtues. If the system is to function at all, we must tolerate a certain
4 amount of imperfection short of actual bias.' (*Carpenter, supra*, 9 Cal.4th at pp. 654-655.)

5 There is serious question whether *honest* voir dire mistakes can ever form the basis for
6 impeachment of a verdict. (See *McDonough, supra*, 464 U.S. 548, 556; *Hitchings, supra*, 6
7 Cal.4th 97, 115; see also *Weathers, supra*, 5 Cal.3d 98, 110, fn.5.) In *McDonough*, a plurality
8 concluded . . . that '[t]o invalidate the result of a [lengthy] trial because of a juror's mistaken,
9 though honest, response to a question, is to insist on something closer to perfection than our
10 judicial system can be expected to give.' (*McDonough, supra*, 646 U.S. at p. 555.)

11 What is clear is that an honest mistake on voir dire cannot disturb a judgment in the absence of
12 proof that the juror's wrong or incomplete answer hid the juror's actual bias. Moreover, the
13 juror's good faith when answering voir dire questions is the most significant indicator that there
14 was no bias. (*McDonough, supra*, 464 U.S. 548, 556-557.) . . ."

15 (*In Re: Hamilton* (1999) 30 Cal.4th 273, 293-300.)

16 "... In *People v. Hutchinson* (1969) 71 Cal.2d 342 . . . we held that 'jurors are competent
17 witnesses to prove objective facts to impeach a verdict under section 1150 of the Evidence Code.'
18 (*Id.* at p. 351.) . . .

19 . . . [H]earsay is defined as 'evidence of a statement that was made other than by a witness while
20 testifying at the hearing and *that is offered to prove the truth of the matter stated*.' (Evid. Code, §
21 1200, subd. (a).) (Italics added.) However '[there] is a well-established exception or departure
22 from the hearsay rule applying to cases in which the very fact in controversy is whether certain
23 things were said . . . and not . . . whether these things were true or false, and in these cases the
24 words . . . are admissible not as hearsay, but as original evidence.' (*People v. Henry* (1948) 86
25 Cal.App.2d 785, 789. . . ."

26 (*Weather v. Kaiser Found. Hosps.* (1971) 5 Cal.3d 98, 104-110.)

27 "The primary authority interpreting this section (Evid. Code, § 1150) is *People v. Hutchinson*
28 (1969) 71 Cal.2d 342 in which we declared the rule as follows: '[Section 1150, subdivision (a),
29 draws a] distinction between proof of overt acts, objectively ascertainable, and proof of the
30 subjective reasoning process of the individual juror, which can be neither corroborated nor
31 disproved. . . .' We noted that Evidence Code section 1150 limits impeachment evidence to 'proof
32 of overt conduct, conditions, events, and statements. . . . This limitation prevents one juror from
33 upsetting a verdict of the whole jury by impugning his own or his fellow jurors' mental processes
34 or reasons for assent or dissent.' The only improper influences that may be proved under section
35 1150 to impeach a verdict, therefore, are those open to sight, hearing, and the other senses and
thus subject to corroboration.'" (*Id.*, at pp. 349-350.)

36 "*Krouse* (*Krouse v. Graham* (1977) 19 Cal.3d 59) merely held that when juror declarations
37 alleging misconduct are 'inconclusive,' i.e., do not clearly relate only to overt acts or only to
38 subjective mental process, the trial court should admit the declarations in their entirety and
39 consider the admissible portions thereof in ruling on the motion for a new trial. However, the trial

1 court must disregard inadmissible portions.”

2 “It is well settled that a presumption of prejudice arises from any juror misconduct. . . . However,
3 the presumption may be rebutted by proof that no prejudice actually resulted.’ (See also People v.
4 Pierce (1979) 24 Cal.3d 199, 205-209 . . .) The presumption of prejudice is an evidentiary aid to
5 those parties who are able to establish serious misconduct of a type likely to have had an effect on
6 the verdict or which deprive the complaining party of thorough consideration of his case, yet who
7 are unable to establish by a preponderance of the evidence that actual prejudice occurred. The law
8 thus recognizes the substantial barrier to proof of prejudice which Evidence Code section 1150
9 erects, and it seeks to lower that barrier somewhat.”

10 “However, the presumption is not conclusive; it may be rebutted by an affirmative evidentiary
11 showing that prejudice does not exist or by a reviewing court’s examination of the entire record to
12 determine whether there is a reasonable probability of actual harm to the complaining party
13 resulting from the misconduct. (In re Winchester (1950) 53 Cal.2d 528, 535.) . . . Some of the
14 factors to be considered when determining whether the presumption is rebutted are the strength of
15 the evidence that misconduct occurred, the nature and seriousness of the misconduct, and the
16 probability that actual prejudices may have ensued.”

17 (Hasson v. Ford Motor Co. (1982) 32 Cal.3d 388, 413-417.)

18 Defendants’ Declarations:

19 1. Juror Hildreth Schmidt Rodrigues:

20 “During trial, I was seated to the left of juror, April Garwin. During the trial April Garwin wrote
21 ‘BULLSHIT’ in large letters in her juror notebook in response to testimony or argument from
22 Defendant, and displayed the notebook to me.

23 As soon as deliberations started April Garwin called Defendants ‘fucking bastards’ and ‘liars.’
24 She was referring to the testimony of one of the Defendants’ witnesses, a physician, who was
25 reviewing Carla Hernandez’s mother’s medical records. April Garwin told me and the other jurors
that based on her knowledge and experience with osteomyelitis the physician’s testimony was
wrong.

In the beginning of deliberations Juror Glenn Cathey asked Garwin to clean up her language.
After that she merely called defendants ‘bastards.’

I was present at the meeting held in Mr. Gallegos’ office on July 15, 2010, after the jurors were
released from further service and I was sitting near April Garwin, as was Debbie McCracken.

During that meeting, April Garwin stated that she used to pick up bodies or she had seen a body or
bodies from at least one of the skilled nursing facilities in Humboldt County, or words to that
effect. Ms. Garwin also said at the meeting that it was too bad for the defense, that the defense
lawyers did not ask her the right questions in the juror selection process, and that the defense
should not have picked her as a juror, or words to that effect. I recall this specifically because I
can remember the outfit Ms. Garwin was wearing and the way she leaned forward on the table
after she made these statements directed at Mr. Gallegos and Mr. Thamer.

1 Further, I have received numerous emails from fellow jurors. One of the topics of the emails
2 relates to an overnight campout that the jurors will be having on August 21, 2010. True and
3 correct copies of those e-mails were forwarded to counsel for Defendants and are attached to the
4 Supplemental Sitar Declaration.

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6 District Attorney Paul Gallegos and plaintiffs' counsel, Michael Crowley have indicated that they
7 will attend the campout. In fact, one email states that Mr. Crowley changed his vacation plans so
8 that he may attend.

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18 2. Juror Deborah McCracken:

19 "After leaving the courtroom I spoke with defense attorney, Laura Sitar, followed by investigator,
20 Chris Cook, for a little over an hour. Several other jurors were present during parts of those
21 conversations. After speaking with Ms. Sitar and Ms. Cook, I went up to the fourth floor of the
22 courthouse to the District Attorneys' office where other jurors were meeting with the District
23 Attorney, Paul Gallegos and several of plaintiffs' attorneys.

24 The other jurors present when I arrived in the DA's office were Susie Jones, Jason Henderson,
25 Stockel Schueter, Hildreth Rodrigues, April Garwin, Lynn Delgado, Donna Kaukonen, Heather
Walker, Brian Walker, William Hart and one alternate juror (the only juror not present was Glen
Cathey). Paul Gallegos was present as was plaintiffs' attorneys, Mr. Thamer and Mr. Needham.

During that meeting, juror April Garwin, stated that, through her prior work with the Humboldt
County Coroner's office, she used to pick up bodies from at least one of the skilled nursing
facilities in Humboldt County that is a defendant in this case. Ms. Garwin also stated that some of
the bodies she picked up from the defendant skilled nursing facilities had 'bed sores' on them.

Ms. Garwin said to the group of people present at the meeting 'too bad for the defense' and that
the defense lawyers did not ask her 'the right questions' in the juror selection process. Ms.
Garwin also said that the defense 'shouldn't' have picked her as a juror."

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18 3. Frank J. Jager:

19 "I was the Coroner and Public Administrator for the County of Humboldt from 1998 to 2009. . . .

20 April Garwin worked at the Humboldt County Coroner's Office, which I headed for at least five
21 years, ending about the time I left the office in 2009. She worked in the capacity of an
22 anthropologist and office staff member on a regular basis. Her primary duty was to identify
23 bones. Her other duties included, but were not limited to, routine office work, filing reports, and
24 assisting the officer manager with record maintenance. In that capacity, she had access to
25 coroner's reports, law enforcement reports, and photographs of bodies brought into the Coroner's
Office. She was also present during autopsies and examinations of deceased persons. The
Coroner's Office was a small, tightly knit office, which occupied only a few rooms, so the
business of the office was routinely known by all employees.

I have knowledge based on personal observation that, in her work in the Coroner's Office, April

1 Garwin worked closely with Deputy Coroner Charles Van Buskirk. Mr. Van Buskirk was the
2 primary deputy coroner who handled the case involving the death of the father of Pam Millsap,
3 Herman C. Hentz. Mr. Hentz died on or about August 18, 2007 and his body was collected and
4 received by the Coroner's Office. Immediately prior to his death, Mr. Hentz had been a resident at
5 Granada Healthcare in Humboldt County, which is where his body was collected.

6 Upon receipt of Mr. Hentz's body from Granada Healthcare, Mr. Van Buskirk took numerous
7 photographs of Mr. Hentz's body. Those photographs were part of the file in the Coroner's
8 Office. Those photographs reflected that Mr. Hentz's body had bedsores.

9 The Coroner's Office undertook these steps as to Mr. Hentz's body at the request of his daughter,
10 Pam Millsap. I know from her statements made at the time of Hentz's death that Ms. Millsap was
11 upset with the neglect she believed her father had experienced at Granada Healthcare, which led to
12 her request to the coroner's deputy to document Mr. Hentz's condition at the time of death. Ms.
13 Millsap's statements regarding the death were made in our office to Mr. Van Buskirk and to me.

14 To say thank you for the Coroner's Office's work on and assistance with handling matters related
15 to her father's death, Ms. Millsap took our office staff to lunch on at least two occasions. April
16 Garwin attended at least one of these luncheons. This luncheon took place at an Asian restaurant
17 located across the street from the Eureka Theatre. I know that the subject of Ms. Milsap's opinion
18 of her father's situation at Granada Healthcare was part of the discussion at these luncheons when
19 April Garwin was present. I specifically recall Ms. Millsap expressing her displeasure at the care
20 her father received at Granada Healthcare to the Coroner's Office group at lunch, which included
21 April Garwin."

22 Defendants' Declarations:

23 1. Juror Brian Walker:

24 "On July 15, 2010 . . . I visited with the Defense Attorney Laura Sitar and her investigator Chris
25 Cook. I told both of them that I thought the jury process worked the way it should and that the
jurors were very fair to both sides and considered all of the evidence. I told them that we lowered
the number of violations that we initially calculated based on looking at the expert testimony. I
then went up to the conference room at the District Attorney's Office and met with several jurors.
When I left the room with Laura Sitar and Chris Cook the only two jurors who stayed in that room
were Ms. McCracken and Ms. Rodrigues.

I went up to the District Attorney's Office and sat nearby April Garwin. A while later Ms.
McCracken and Ms. Rodrigues showed up at the meeting. I was at the meeting the whole time
that Ms. McCracken and Ms. Rodrigues were there and I can say for a certainty that April Garwin
never said anything about picking up bodies from nursing homes.

I never heard Ms. Garwin say anything about bed sores.

I remember Ms. Garwin mentioning that she was a bone specialist during that meeting, but
nothing about how it related to the evidence or defendants.

I also do not recall her saying that "the defense lawyers did not ask her "the right questions" in the

1 jury selection process,' and that they 'shouldn't have picked me as a juror.'

2 During deliberations I remember April Garwin always listening to everyone in the group and
3 expressed her opinion during her time. The voting usually went very smoothly for each issue.
4 She seemed to be fair about every issue. She never expressed any opinions until we went into
5 deliberations.

6 I did not hear Ms. Garwin say that 'based on her knowledge and experience with osteomyelitis
7 that the physician's testimony was wrong.' I did not hear her say that she knew better than the
8 doctors. I remember she had questioned whether the defendants were introducing the right
9 documents for the right patient because one document had osteomyelitis and the other didn't and
10 she said it would seem that you either have osteomyelitis or you don't.

11 I heard Ms. Garwin mention she worked for the Coroner's Office during jury selection, but she
12 didn't say anything about her experiences at the Coroner's Office during deliberations or
13 afterwards.

14 Last week I met with Laura Sitar and Chris Cook for about an hour at Ms. Cook's office. They
15 asked me what they thought they could have different, which witnesses were the most credible,
16 whether the judge was fair to both sides. I told them about how the jury process worked and how
17 we orderly voted on each issue by looking at all of the evidence, including the arguments on both
18 sides. Ms. Sitar and Ms. Cook never asked me about what was said at the District Attorney
19 meeting. I would have told them that Ms. Garwin did not say anything about picking up bodies
20 from nursing homes or anything about bed sores.

21 I can honestly say that Ms. Garwin never said anything that suggested to me that she had a
22 preexisting bias against Defendants. I did hear Juror Debbie McCracken say things that indicated
23 she had a strong bias for the defense. She kept saying she was worried about the amount of
24 money and what it would do to the company and we kept saying that it is not something that we
25 should consider.

April Garwin never tried to show me her notes or influence my vote in any manner other than
expressing her opinion."

19 2. Juror Stock Schlueter:

20 "On July 15, 2010 . . . Right after he (the Court) released us I went up to the District Attorney's
21 conference room and met with several jurors and was present for the entire meeting. We were just
22 generally talking about the trial and our experiences.

23 I was present at the meeting the whole time April Garwin was there and I never heard her say
24 anything about picking up bodies from nursing homes or from any of the defendants. And I never
25 heard her talk about bed sores on bodies.

I did hear April Garwin talk about working at the Coroner's Office, but that was during jury
selection and in open court.

1 During jury deliberations we all worked together to be very fair to both sides. I remember that
2 April Garwin was fair to both sides and in fact readily agreed that we should lower the number of
3 violations we originally found because of the expert testimony. She didn't mention anything in
4 deliberations that would show she had a preexisting bias against Defendants.

5 I do remember that she did cuss during the initial deliberations, but it was the way she spoke and
6 not particularly directed at one side or another or one subject or another. She did apologize when
7 one of the jurors took offense.

8 I don't remember April Garwin saying at the meeting at the District Attorney's Office that 'the
9 defense lawyers did not ask her "the right questions" in the jury selection process,' and that they
10 'shouldn't have picked me as a juror.'

11 I do remember Ms. Garwin mentioning osteomyelitis during deliberations, but it was not in the
12 context that she knew better than doctors. I remember she had a problem with the fact that one
13 document for a patient said something about osteomyelitis and another didn't and she said you
14 either had it or you didn't and that we should make sure that we have the right documents for the
15 right patients. It was a short discussion and didn't affect our deliberations.

16 I know that many of the jurors expressed some anger about the evidence about Defendants'
17 conduct, Ms. Garwin included, but we all made our decisions based on reason and the evidence,
18 which was overwhelming. Ms. Garwin was always willing to listen and as I said she readily
19 agreed with all of us to reduce violations for Defendants when deemed appropriate.

20 I never heard Ms. Garwin mention anything during trial or deliberations about the case other than
21 the evidence that was presented at trial.

22 I did not hear Ms. Garwin ever say anything that suggested to me that she had a preexisting
23 bias against Defendants."

24 3. Juror Donna Kaukonen:

25 "On July 29, 2010, several weeks after the jury rendered its verdict for the Plaintiffs in the
Lavender vs. Skilled Healthcare matter, Bill Cook, an investigator for the Defendants, came to my
home requesting to speak with me about the case. I advised him that I did not want to speak with
him outside the presence of a representative for the Plaintiffs.

Despite that, Mr. Cook advised me that after the jury was excused by the court from service, a
couple of the jurors indicated that a juror who had worked at the Coroner's Office at one time
commented about seeing bodies at the Coroner's from the nursing homes and that she should
never have been selected for the jury.

I advised Mr. Cook that the alleged statements about the juror were untrue (it obviously referred to
juror April Garwin, who had at one time worked at the Coroner's Office).

I and all the other jurors knew that Ms. Garwin had some experience working in the Coroner's
Office, because it was openly discussed by the attorneys during jury selection in open court.

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2 I was present for all but the first 10 minutes of the post-verdict meeting at the District Attorney's
3 Office and never heard April Garwin make any statement about seeing any bodies from the
4 nursing homes or that she should not have been selected for the jury during the meeting in the
5 District Attorney's Office once the jury was released from service, and such topic never came up
6 during the trial or during any of the jurors deliberations.

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8 I was also present during deliberations and I do not recall Ms. Garwin stating that 'based on her
9 knowledge and experience with osteomyelitis that the physician's testimony was wrong' or claim
10 she knew better than the doctors. I don't think she was questioning the doctor, but instead was
11 saying something about whether an exhibit regarding osteomyelitis was for the right person or
12 accurate. The topic was not relevant to me or my decision and I do not recall it being discussed
13 much or anything else about it."

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4. Juror Susie Jones:

"On July 15, . . . I went up to the conference room at the District Attorney's Office and met with
several jurors and was present for the entire meeting.

April Garwin never said that 'she used to pick up bodies from at least one of the skilled nursing
facilities in Humboldt County that is a defendant in this case.' I did not hear Ms. Garwin say
anything about picking up bodies at nursing homes.

She also did not state that 'some of the bodies she picked up from the defendant skilled nursing
facility had "bed sores on them".' I don't remember her mentioning bed sores on bodies or
nursing homes or the Coroner's Office.

I also do not recall Ms. Garwin saying anything about 'the defense lawyers did not ask her "the
right questions "in the jury selection process," and that they "shouldn't have picked me as a juror.'
I do remember she expressed that she was not happy with the defense attorneys and how they
presented their case and that she was a smart juror.

I sat next to Ms. Garwin during deliberations and did not hear Ms. Garwin say that 'based on her
knowledge and experience with osteomyelitis that the physician's testimony was wrong.' I did not
hear her say that she knew better than the doctors. I remember she said something about
osteomyelitis, but it was short and not discussed generally or important to me.

I never heard Ms. Garwin say anything about her experiences at the Coroner's Office other than
during jury selection.

I never heard Ms. Garwin mention anything during trial or deliberations about the case other than
the evidence that was presented at trial.

I did not hear Ms. Garwin ever anything say that suggested to me that she had a preexisting bias
against Defendants. She was vocal about what the evidence showed.

I did hear Ms. Garwin use language that offended some jurors when we started, but she stopped

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when asked and apologized.

I also remember two of the jurors were put off by Ms. Garwin's outward personality, but we seemed to be able to work around that and it did not seem to be based on a preexisting bias against defendant.

In fact, I remember that Ms. Garwin always gave the defendants the benefit of the doubt when we had disputed evidence and agreed to go with the lesser number of violations as we all did.

Approximately two weeks ago I called Hildreth Rodrigues ('Hilly') after I had received a call from Cook Associates, investigators for defendants. I had told them that I was not interested in talking to them.

When I called Hilly she told me she had to go, that they (Cook Associates, and Laura Sitar) were there. After her meeting, Hilly called me and told me that they were really nice and that things went well. She said that she didn't believe she said anything that would jeopardize the verdict. She said something to the effect that in this conversation with her, they had told her that they had gotten 'run down' during the long trial. She stated that she had sold them Mona Vie, a berry drink that she sells."

5. Juror Jason Henderson:

"On July 15, 2010 . . . I (then) went up to the conference room at the District Attorney's office and met with several jurors.

I was at the meeting the whole time that Ms. McCracken and Ms. Rodrigues were there and I can say for a certainty that I never heard April Garwin say anything about picking up bodies from nursing homes.

I also never heard Ms. Garwin say anything about bed sores.

I also do not recall Ms. Garwin saying that 'the defense lawyers did not ask her "the right questions" in the jury selection process,' and that they 'shouldn't have picked me as a juror.'

During deliberations, I remember April Garwin always listening to everyone in the group and expressed her opinion during her time. The voting usually went very smoothly for each issue. She seemed to be fair about every issue. She never expressed any opinions until we went into deliberations.

I do recall April Garwin swearing once in the heat of the moment. She then apologized for swearing. There was something mentioned about osteomyelitis but it was irrelevant and ignored by me.

I heard Ms. Garwin mention she worked for the Coroner's Office during jury selection, but she didn't say anything about her experiences at the Coroner's Office during deliberations, or afterwards.

1 I can honestly say that Ms. Garwin never said anything that suggested to me that she had a pre-
2 existing bias against Defendants. I did hear Juror Debbie McCracken say things that indicated that
3 she had a strong bias for the defense. She kept saying that she was worried about the amount of
4 money and what it would do to the company and we kept saying that it is not something that we
5 should consider.

6 April Garwin never tried to show me her notes or influence my vote in any manner about than
7 expressing her opinion.”

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16 6. Juror Eric Hedstrom:

17 “On July 15, 2010 . . . I went to the District Attorney’s office right after he (the Court) released us.
18 There were a number of jurors there and lawyers for plaintiffs and investigators. We all were
19 taking an opportunity to talk about the trial and our experiences. Most of the questions were just
20 about what we thought about the attorneys, the witnesses, and the evidence.

21 I was present at the meeting the whole time April Garwin was there. I believe I sat two seats away
22 from Ms. Garwin at that table during that meeting. I did not hear Ms. Garwin say anything about
23 bodies or picking up bodies from nursing homes or persons with bed sores.

24 I did hear April Garwin talk about working at the Coroner’s Office during jury selection and in
25 open court.

I was not present during deliberations because I was an alternate juror. But during the trial I never
saw Ms. Garwin do anything inappropriate. She didn’t attempt to show me her notes or talk about
the case.”

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25 7. Juror Lynn Delgado:

“On July 15, 2010 . . . I went to talk to Defense attorney Laura Sitar and her investigator for a few
minutes. They asked me questions about the trial and our decisions. I told them that I gained
respect for Ms. Wroten during the trial. I also told them that I thought the jury deliberations were
fair and that we carefully considered all of the evidence.

After speaking to Ms. Sitar and her investigator I went up to the District Attorney’s office to meet
with other jurors. Sometime after I arrived, jurors Rodriguez and McCracken came up to the
District Attorney’s Office. I was present at the meeting in the District Attorney’s Office the entire
time that Ms. Rodriguez and Ms. McCracken were present. Jurors Rodriguez and McCracken
were the last to arrive and were only there a short time. I remember that they sat in a corner of the
room behind April Garwin.

I never heard Ms. Garwin say anything about picking up bodies from nursing homes for the
coroner’s office at that meeting at the District Attorney’s office. I also did not hear her say
anything about seeing dead bodies from nursing homes with bed sores during that meeting.

I also never heard Ms. Garwin talking about picking up decedents from nursing homes or seeing

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bed sores during the deliberations. I did hear April Garwin talk about working at the Coroner's Office during jury selection.

Ms. Garwin had an outgoing personality and used foul language when we started deliberation, but she was considerate about our feelings when we asked her to curb the language. I did not feel her language showed that she had a preexisting bias against defendants. I think she was fair to both sides during deliberations.

During jury deliberations we all worked together to be very fair to both sides, including April. I remember that April Garwin kept many notebooks worth of notes and was very interested in looking at all of the evidence.

I don't remember April Garwin saying at the meeting at the District Attorney's Office that 'the defense lawyers did not ask her "the right questions" in the jury selection process,' and that they 'shouldn't have picked me as a juror.' She did say that she was not happy with the defense attorneys and how they presented their case, but her arguments during deliberations were based on the evidence.

I do remember Ms. Garwin mentioning osteomyelitis during deliberations, but I don't remember her saying that she thought she knew better than the doctors. Her discussion had something to do with documents."

8. Juror Robert Hart:

"I was the jury foreperson in *Lavendar v. Skilled Healthcare Group* . . .

On July 15, 2010 . . . After we were released from jury service we were asked if we wanted to talk to Paul Gallegos and Tim Needham in the library of the DA's office. The majority of us went up there and others straggled in. During that meeting we talked about the trial and the witnesses and attorneys. Also, we just talked to each other generally and vented because we had not been able to discuss many thing up until that point. During the conversation we spoke about many things.

I did not hear April Garwin speak about a case from the Coroner's Office involving a patient from Granada and I was seated only one person away from her. I didn't hear Ms. Garwin say anything about picking up bodies from nursing homes for the coroner's office at that meeting. I also did not hear her say anything about seeing dead bodies from nursing homes with bed sores at that meeting.

Ms. McCracken sat in a corner of the room behind Ms. Garwin and I do not know how it would be possible for her to have heard something from Ms. Garwin without myself or the rest of the jurors hearing it. She was in the worst position to hear Ms. Garwin as she was not even looking at her. Ms. Garwin, like many of us, including myself, vented generally about how the defense presented their case. They tried to confuse the issues. The defense wasted our time with rehearsed witnesses who remembered everything when the defense questioned them and nothing when the plaintiffs questioned them. It was obvious to me and others that the Defense was trying to confuse us as much as possible.

1 I don't remember April Garwin saying at the meeting at the DA's Office that 'the defense lawyers
2 did not ask her "the right questions" in the jury selection process,' and that they 'shouldn't have
3 picked me as a juror.' I remember Ms. Garwin saying that if the Defense intended to fool people
4 that they should not have picked someone with an education and scientific background who was
going to demand support for their arguments and could see through their subterfuge.

5 I do remember Ms. Garwin talking about her work at the Coroner's Office when the jury was
6 being picked, but she didn't mention anything about it during deliberations or at the meeting at the
DA's office.

7 Ms. Garwin had very colorful language and she used it on a regular basis no matter what came up
8 in her life. It was not reserved for the defendants. At one point one juror asked her to stop cussing
9 and I then enforced that rule, but not with one hundred percent success. She apologized to
10 everyone and made an effort to police her language. I do not feel her language showed that she
11 had a preexisting bias against defendants. I think she was fair to both sides.

12 There were several of the votes that she led off voting one way and then we discussed the evidence
13 and took motions and she changed her mind. Several of the motions were proposed by her and
14 were in favor of the defendants' position. After going through the facts and looking at the
15 notebooks she would often change her mind. She was adamant about certain things and colorful
16 in her description, but I have no doubt that she was fair to both sides.

17 If April wrote 'bullshit' in one of her books, it would not be surprising because there were times
18 that I found particular witnesses to not be credible. I do remember Ms. Garwin talking about some
19 particular bone disease during deliberations, but it wasn't that she knew about it more than the
20 doctor. She stated that you either have it or you don't and it was on one patient record and not the
21 other. I remember she had an argument about it with Ms. Rodriguez, but it had no effect on the
22 deliberation or outcome.

23 I wish everybody would realize that the verdict was not so high because of what we did, but
24 because of the number of days that the Defendants were below 3.2 PPD."

25 9. Juror April Garwin:

"I reviewed Defendant's Memorandum of Points and Authorities in Support of Motion for Mistrial
or New Trial On Grounds of Juror Misconduct, my juror questionnaire, the excerpts from my
answers to voir dire, and the Declaration of Frank Jager.

Defendants' accusations regarding my prior knowledge about Defendants and/or bias or prejudice
against Defendants are not true. I properly disclosed that I had worked with the Humboldt County
Coroner's Office on my questionnaire and during jury selection. I do not know Pamlyn Millsap or
have any knowledge regarding her father's death at Granada Healthcare. I did not attend a lunch
with a woman named Pamlyn Millsap or listen to her talk about her Father. Nor did I have any
preconceived bias or prejudice against Defendants because I had no knowledge of them.

Defendants claim on page 3 of their brief that I answered 'no less than nine questions on my juror
questionnaire falsely, in each instance designed to conceal [my] knowledge of any egregious bias

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toward Defendants.’ This is untrue. I answered every question to the best of my ability and was truthful on each question. I had no knowledge of or bias toward Defendants.

Defendants start by claiming that I falsely answered Question 23 because I did not disclose that I was employed in the Humboldt County Coroner’s Office. Defendants misrepresent my questionnaire. As anyone can see from a review of my questionnaire, I did in fact specifically disclose that I had worked for the Humboldt County Coroner’s Office. In fact, I was questioned during voir dire about my work for the Coroner’s Office which shows that Defendants were aware from my answers that I had been employed with the Coroner’s Office.

Defendants then state that I falsely answered Question 64, which asked, ‘Have you or anyone close to you ever known someone who was mistreated or neglected in a nursing home or other care facility.’ I truthfully answered ‘no’ to this questions as to the best of my knowledge neither I nor anyone close to me ever knew someone mistreated or neglected in a nursing home or other care facility.

Defendants claim I lied in Question 64 because ‘Juror Garwin knows Plaintiff class Member Pamlyn Millsap, who took Ms. Garwin to lunch and complained about Granada Healthcare’s mistreatment of her father.’ I do not know Plaintiff class member Pamlyn Millsap. To the best of my knowledge I have never met her and prior to this accusation had never even heard of her. I have no idea who she is. Ms. Millsap did not take me to lunch and complain about Granada Healthcare’s mistreatment of her Father.

Defendants state that I also lied on Question 68, which asked, ‘Have you or anyone you know filed a lawsuit or considered filing a lawsuit against a nursing home?’ I truthfully replied, ‘No’ as neither myself nor anyone I knew ever filed a lawsuit or considered filing a lawsuit against a nursing home.

According to Defendants, my answer to Question 68 was false because I supposedly knew a Ms. Millsap, a Plaintiff class member and listed witness in this case. As stated above, I do not know Ms. Millsap and to the best of my knowledge had never heard of her before reviewing Defendants’ motion. To the best of my knowledge, I have never met Ms. Millsap and therefore have no knowledge as to whether she had filed a lawsuit or considered filing a lawsuit against a nursing home.

Defendants then claim I lied on Questions 71 and 87, which asked, ‘Prior to coming here today, have you read or heard anything about this lawsuit or any of the nursing homes listed in Exhibit A’; and ‘Have you heard of or had any involvement with any of the companies listed in Exhibit A,’ I truthfully answered, ‘No’ to both questions after reviewing the list in exhibit A and determining that I had not read or heard about the lawsuit and none of the names listed in Exhibit A looked familiar to me.

Defendants claim my answers to Questions 71 and 87 were false because ‘Juror Garwin had heard about Granada Healthcare from Ms. Millsap and in Ms. Garwin’s work in the Coroner’s Office.’ I had not heard about Granada Healthcare from Ms. Millsap nor to the best of my knowledge had I read or heard anything about Granada Healthcare prior to answering the questionnaire.

Defendants claim I falsely answered Question 72, which asked, ‘Do you have any preconceived notions about this lawsuit?’ I truthfully answered, ‘No’ because I did not have any preconceived notions about the lawsuit when I answered the questionnaire honestly and to the best of my ability

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and went into my juror duty with an open mind.

Defendants claim generally that I had clear and unequivocal bias and hostility against Defendants. I did not have any bias or hostility toward Defendants. After hearing the evidence in this case I understandably was saddened and angered by the evidence regarding Defendants' conduct and the manner in which Defense counsel disrespected, berated and belittled some witnesses and seemed to misrepresent evidence, but I made my decision in this case based solely on the evidence presented to me during trial.

Defendants claim I falsely answered Question 73, which asked, 'If there is something, what would give you the most trouble being completely open minded as a juror in a case involving a nursing home.' I did not list anything because there was nothing that I was aware of that would have given me trouble being completely open minded as a juror in a case involving a nursing home.

Defendants claim I falsely answered Question 89, which asked if I knew any of the potential witnesses listed on Exhibit C. I carefully scrutinized the list in Exhibit C because my prior jobs in a small town have brought me into contact with many people. I made a concerted effort to discern whether I knew any of these people. After reviewing the list I honestly stated that 'I don't think I know any of these folks.'

Again, Defendants claim that my answer to Question 89 was false because I 'knew Ms. Millsap who had visited the coroner's office and taken me out to lunch as a thank you for assistance with matters related to Ms. Millsap's father's death at Granada Healthcare.' Defendants are mistaken. As stated above, I do not know a Ms. Millsap, I did not go to lunch with Ms. Millsap, and to the best of my knowledge I was not involved with matters related to the death of her father at Granada Healthcare.

Finally, Defendants claim I falsely answered Question 90, which asked the following, 'In regard to the issues involved in this case, is there anything about you that this questionnaire do not address that you think might be important for the attorneys and judges to know?' I truthfully answered the question by saying, 'No.'

Defendants claim my answer to Question 90 was false because, 'The attorneys for Defendants would have wanted to know about the true nature of Juror Garwin's involvement with the Coroner's Office, her knowledge of an involvement with Granada Healthcare, her relationship to Plaintiff Pamlyn Millsap, and her hostility to Defendants. Juror Garwin knew Defendants would want to know this information, but she concealed it, asserting Defendants had not asked her the right questions.' Defendants' accusations against me are false.

As stated above, I answered questions about my work at the Coroner's Office in both my questionnaire and in voir dire. I had no relationship with Pamlyn Millsap to disclose. I had no knowledge of an involvement with Granada Healthcare, and I had no hostility toward Defendants. To the extent Defendants would have wanted to know more generally about my involvement with the Coroner's Office, I did not know this and could only presume that they did not want to know more because they did not ask me more questions about the subject despite the fact I was open and honest with them.

I understand that Defendants are also making false accusations about what I said at a meeting at the District Attorney's Office. I never said that 'I used to pick up bodies from at least one of the

1 skilled nursing facilities in Humboldt County that is a defendant in this case.' I would not have
2 said that because it is not true. These claims are false and I can only assume that the undisclosed
juror misheard me or had a personal animosity toward me or is trying to help the defense.

3 Likewise, I never said that 'some of the bodies I picked up from the defendant skilled nursing
4 facilities had bed sores on them.' I have never picked up decedents from any nursing home, much
less ones with bed sores on them.

5 I understand that Defendants claim at the same meeting at the District Attorney's Office I said it
6 was 'too bad for the defense,' or that 'the defense lawyers did not ask me the right questions' or
7 that they 'shouldn't have picked me as a juror.' I did not make those statements. I remember
8 there was a general discussion about how it was too bad for the defense attorneys and expressing
something about how the defense seemed to think I was already in their camp because they didn't
ask me almost any questions during voir dire. My comments were not intended to mean that I was
on any side at the start of the trial because I was not.

9 I am informed that a juror is claiming that during deliberations I said 'based on her knowledge and
10 experience with osteomyelitis that the physician's testimony was wrong.' This is also not true. I
11 remember a doctor testified that osteomyelitis was a bone infection. I did not disagree with that
12 because to my knowledge it is a bone infection. The issue was that one of the exhibits offered by
13 defendants for a patient mentioned osteomyelitis and the defendants offered another exhibit for the
14 same patient that did not mention osteomyelitis. I questioned whether both documents really
15 belonged to the same patient because there were other inconsistencies between the exhibits and it
16 did not make sense.

17 I understand from reviewing the paperwork that Defendants obtained declarations from
18 undisclosed jurors claiming that I used foul language to describe the Defendants during
19 deliberations. I do recall that two jurors were offended by my language and took a personal
20 dislike to me at the beginning of deliberations. To the extent that I used slang language it was not
21 intended to offend those jurors. I was chastised and profusely apologized and made efforts to
22 discontinue using that language. My use of this language was not because I had a preconceived
23 bias towards the Defendants.

24 I am also aware that an undisclosed juror claim that I wrote the word 'bullshit' during a witnesses
25 testimony. I probably did write the word in my personal notes, but I didn't intentionally show my
notes to another juror or try to influence another juror by writing a word like that. Those were my
notes and I thought they were private.

I carefully listened and considered all of the evidence from both sides and took my duties to be a
fair and impartial juror very seriously. It was a lot of work to sit on a trial for almost six months
and I filled more than ten notebooks in an effort to get all of the evidence. I would not have done
that if I had already decided the case before it started. I strongly believed it was my civic duty to
serve as a juror and to ensure that each side has a fair trial.

During deliberations I recall raising evidence from both plaintiffs' and defendants' witnesses to
determine the facts and correctly answer the verdict form. In fact, during initial deliberations the
jurors came up with a much higher total number of violations than the one listed in the verdict
form and I was one of the jurors who agreed that the number should be lower. I am surprised at
the accusations that I was biased because I remember using my notes to strongly argue during the

1 deliberations for a lower number of total violations for defendants based on the evidence that was
2 presented from the plaintiffs' and defense' experts.

3 As stated earlier, I do recall expressing surprise at one point that I was not asked more questions
4 during voir dire, as did other jurors present at the meeting. My comments were not because I had
5 a bias or prejudice against defendants or a bias for plaintiffs. I did not. My comments were also
6 not intended to convey I had prior knowledge about the defendants because I did not. I was just
7 surprised that defendants did not wish to know more about my work in the Coroner's office and
8 my background as a scientist.

9 In summary, I took my duties as a juror very seriously and would not have served as a juror if I
10 believed I had prior knowledge of defendants or the lawsuit that would have interfered with my
11 ability to act fair and impartial. I thought it would be a great learning experience to serve as a
12 juror. I took my job very seriously. The false accusations against me are heartbreaking and have
13 caused me great distress and humiliation and I would never wish this experience on any other
14 juror."

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10. Michael D. Thamer:

11 "On July 15, 2010 . . . I went up to the conference room at the District Attorney's Office, met with
12 several jurors and was present for the meeting. Other jurors were present for the meeting. Other
13 jurors present that I recall were: Susie Jones, Jason Henderson, Stockel Schlueter, Hildrith
14 Rodrigues, April Garwin, Lynne Delgado, Donna Kaukonen, Heather Walker, Brian Walker,
15 Robert Hart, and Debbie McCracken, as well as alternate jurors Eric Hedstrom and William
16 Minor. Not all jurors were present throughout the entire meeting: some came in after the meeting
17 was underway, and at least one left earlier.

18 During that meeting Ms. Garwin and the other jurors responded to general questions about the jury
19 process. I stood close to Ms. Garwin and believe I would have heard any statements made by her
20 during the meeting. Ms. Garwin did not state that 'she used to pick up bodies from at least one of
21 the skilled nursing facilities in Humboldt County that is a defendant in this case', or anything
22 remotely close to such a statement.

23 Finally, Ms. Garwin did not state that it was 'too bad for the defense,' or that 'the defense lawyers
24 did not ask her "the right questions" in the jury selection process,' and that they 'shouldn't have
25 picked me as a juror.' The only thing I recall Ms. Garwin saying about the jury selection process
was that she was surprised she was not asked more questions, by both sides, about her background
and experiences at the Coroner's office."

11. Timothy Needham:

23 "On July 15, 2010 . . . I went up to the conference room at the District Attorney's Office, met with
24 several jurors and was present for the entire meeting. Other jurors present that I recall were:
25 Susie Jones, Jason Henderson, Stockel Schlueter, April Garwin, Lynne Delgado, Donna
Kaukonen, Heather Walker, Brian Walker, Robert Hart, and Eric Hedstrom. Deborah McCracken
and Hildreth Rodrigues showed up late, after most of the discussions had ended.

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2 During that meeting the jurors were asked questions by others and myself about the juror process,
3 to which they responded. I was listening very attentively to assure that there was no indication of
4 misconduct. Ms. Garwin did not state that 'she used to pick up bodies from at least one of the
5 skilled nursing facilities in Humboldt County that is a defendant in this case.' This is pure
6 fabrication.

7
8 She also did not state that 'some of the bodies she picked up from the defendant skilled nursing
9 facility had "bed sores on them."'

10 Finally, Ms. Garwin did not state that it was 'too bad for the defense,' or that 'the defense lawyers
11 did not ask her "the right questions" in the jury selection process,' and that they 'shouldn't have
12 picked me as a juror.' Again, these statements are incorrect."

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12. Patrik Griego:

"I am . . . , one of counsel for plaintiffs and Class in this action. . . .

On July 15, 2010, . . . Immediately after the jurors were excused, Defense Counsel Laura Sitar
and her investigator Chris Cook approached the jurors and asked them to speak with he about the
case. A handful did walk into a room just outside courtroom two (2) to meet with Ms. Sitar. I
walked into that room with Ms. Sitar and attended the entirety of the interviews.

Initially, four jurors entered the room, Brian Walker, Lynn Delgado, Debbie McCracken, and
Hildreth Rodrigues.

Ms. Sitar asked each of the jurors a series of questions, including the following:

- a. What did you think of Ms. Wroten?
- b. Ms. Wroten has a uniquely aggressive style and did that style both you?
- c. Did you notice Ms. Wroten fighting with the judge and did that impact you?
- d. What did you think of the witnesses?
- e. What did you think of the other attorneys, including myself and Mr. Ross?
- f. Did the jury consider Ms. Hernandez's testimony that a person died?
- g. What did you think about our Cross-Train Argument?
- h. What evidence did you consider important?

These questions generated follow up questions from Ms. Sitar.

Two jurors, Brian Walker and Lynn Delgado stayed for only a short while. Lynn Delgado said
that the jury considered all of the defendants' arguments, but that the evidence against them was
overwhelming. Ms. Delgado asked about the whereabouts of Ms. Wroten and wondered how she
reacted to the jury's verdict. Ms. Sitar said that Ms. Wroten understood the jury's decision in light
of the evidence, but had disagreements regarding the law. Ms. Delgado agreed with Ms. Sitar that
Ms. Wroten was a very aggressive attorney that alienated many jurors, but Ms. Delgado herself
said she felt sympathetic towards Ms. Wroten when one of the witnesses challenged her claim that
the stories about the patient care were breaking her heart. Ms. Delgado also asked about Ms.

1 Wroten's leg brace and it led to a conversation about Ms. Wroten running marathons.

2 Mr. Walker agreed that the jury was very deliberate and considered all of the defendants'
3 arguments and that the evidence was simply overwhelming that they were inadequately staffed
4 and below the 3.2 minimum. Mr. Walker was complimentary of Ms. Sitar's courtroom demeanor
5 and then he left after a short while.

6 Ms. McCracken and Ms. Rodrigues stayed for much longer. Both Ms. Rodriguez and Ms.
7 McCracken stated that they were the 'defense jurors.' They both told Ms. Sitar that they were
8 rooting for the defense the entire trial and were very sorry about the amount of damages. They
9 said that if there had been more jurors that were against class action lawsuits like themselves the
10 damages would have been lower. They said that they were considering approximately \$250 per
11 violation. They said they knew Ms. Sitar was looking for information to overturn the verdict and
12 would help if they could.

13 Ms. McCracken talked to Ms. Sitar about jury selection and said that defendant should have
14 knocked off another juror because she knew some of the jurors that were still in the audience that
15 were very defense minded. Ms. Sitar said that there were many considerations at play and that
16 was a tough choice for the defense.

17 Both jurors emphatically said that they are against lawsuits and particularly opposed to class
18 action lawsuits. They stated that in their experience the lawyers get all of the money and that they
19 did not like plaintiff attorneys. Ms. Rodrigues and Ms. McCracken apologized to me as they said
20 that, but claimed that is just how they feel. I said I do defense work also and did not take it
21 personally. Ms. Sitar told the jurors that the Janssen firm was unique in that it did do plaintiff and
22 defense work.

23 After awhile, an investigator named Chris Cook walked into the room and I believe she sat next to
24 Ms. McCracken. Ms. McCracken said, 'Hi Chris' and asked her if it was a problem if she helped
25 Ms. Cook given that they were such good friends. Ms. Cook stared in my direction and did not
26 respond to that comment in my presence.

27 Ms. Cook began asking Ms. Rodrigues and Ms. McCracken many of the same questions that Ms.
28 Sitar had just asked.

29 Ms. Rodrigues and Ms. McCracken again told Ms. Cook that if the defense had more defense
30 minded jurors like them they might have been able to keep the verdict down. Both jurors said that
31 they wanted the defense to win from the start, but they simply couldn't ignore the evidence. Juror
32 Rodrigues said that Ms. Wroten's admission that the defendants were under 3.2 made a big
33 difference to her because that meant that she could not credibly argue to other jurors that there
34 were no violations.

35 Both Jurors Rodrigues and McCracken said that the evidence was very clear that the defendants
36 violated the law and that the emails showed that the facilities were being controlled by the entities
37 that set their budgets.

38 In response to a question from Ms. Sitar, Jurors Rodrigues and McCracken said that somebody
39 during the deliberations might have mentioned the testimony from Ms. Hernandez about someone
40 dying, but somebody else said it was not to be considered because of what the Judge said and they

1 all agreed not to consider it.

2 Both Jurors Rodrigues and McCracken said that the jury initially found a much higher number of
3 violations based on their own review of the evidence, but picked a lower number based on expert
4 testimony.

4 Jurors Rodrigues and McCracken said the jury decided issues in an orderly process and everybody
5 had their say. The only issue they personally struggled with was whether the damages should
6 have been closer to \$250 per violation as opposed to the majority decision to make it \$500 per
7 violation. They told Ms. Sitar that defendants made a good choice to let the judge decide punitive
8 damages because the jury agreed that the defendants acted fraudulently and they thought the jury
9 probably would award punitive damages.

7 Both Ms. McCracken and Ms. Rodriguez said that they particularly disliked juror April Garwin
8 because she had used foul language when the deliberations commenced. They said that they and
9 another juror complained about Ms. Garwin's language to the foreperson and April Garwin then
10 curbed her language somewhat.

10 Both jurors said the jurors did not find Jose Lynch credible because his crying looked very
11 rehearsed.

11 Ms. Cook told the jurors that she would like to talk to them in private and that she would contact
12 them at home.

13 Jurors McCracken and Rodrigues asked me if I was going up to the District Attorney's Office and
14 I said I was and walked up with them.

14 By the time we arrived, the meeting in the District Attorney's Office was almost over.

15 I stood in the room because there were no seats available. I was directly across from Juror April
16 Garwin. Ms. Garwin did not make any claims that she had picked up dead bodies at nursing
17 homes or homes run by the defendants. Ms. Garwin also did not claim she had seen bed sores on
18 people coming from defendants' nursing homes. I didn't hear anything like that. I believe Ms.
19 Garwin was critical of Ms. Wroten, as were other jurors. I also believe there was a general
20 discussion between many jurors regarding how the defense attorneys treated them like fools."

20 13. Melanie E. Harrington:

21 "On July 15, 2010 . . . I went up to the conference room at the District Attorney's Office, met with
22 several jurors and was present for the meeting. Other jurors present that I recall were: Susie
23 Jones, Jason Henderson, Stockel Schlueter, Hildrith Rodrigues, April Garwin, Lynne Delgado,
24 Donna Kaukonen, Hether Walker, Brian Walker, Robert Hart, and Debbie McCracken, as well as
25 alternate jurors Eric Hedstrom and William Minor. Not all jurors were present throughout the
entire meeting; some came in after the meeting was underway, and at least one left earlier.

During that meeting Ms. Garwin and the other jurors responded to general questions about the jury
process. Ms. Garwin did not state that 'she used to pick up bodies from at least one of the skilled

1 nursing facilities in Humboldt County that is a defendant in this case.’

2 She also did not state that ‘some of the bodies she picked up from the defendant skilled nursing
3 facility had “bed sores on them.”’

4 Finally, Ms. Garwin did not state that it was ‘too bad for the defense,’ or that ‘the defense lawyers
5 did not ask her “the right questions” in the jury selection process,’ and that they ‘shouldn’t have
6 picked me as a juror.’”

7 **14. Pamlyn Millsap:**

8 “I am employed with the Humboldt County Department of Health & Human Services Mental
9 Health Branch . . .

10 I am informed that Defendants in Lavendar v. Skilled Healthcare Group filed a motion for a
11 mistrial claiming juror misconduct by April Garwin.

12 I am further informed that the Defendants are claiming that April Garwin failed to disclose in a
13 questionnaire and during voir dire examination that she knew me and/or knew that my Father,
14 Herman C. Hentz, had been a resident at Granada Healthcare immediately prior to his death.

15 I do not know now, nor have I ever known a woman named April Garwin.

16 I have never discussed my Father with April Garwin and to my knowledge I have never talked to
17 anyone about my Father in April Garwin’s presence.

18 I am informed Defendants are claiming that I took members of the Humboldt County Coroner’s
19 Office out to lunch to thank them for their assistance with handling matters related to my Father
20 and that during lunch I discussed my displeasure at Granada Healthcare’s care of my father.

21 I did take members of the Coroner’s office out to lunch and recall the persons at that lunch,
22 including Frank Jager, but to my knowledge there was no woman named April Garwin who
23 attended any lunches with me.

24 Moreover, I clearly recollect that during lunch with members of the Coroner’s Office we did not
25 discuss my Father or his care at Granada as the subject was too upsetting to me and something I
would not discuss in a public place. I remember that I specifically stayed away from the subject of
my Father during lunch with members of the Coroner’s Office.”

15. Charles VanBuskirk:

“I am employed with the Humboldt County Coroner’s Office . . .

I am informed that Defendants in Lavendar v. Skilled Healthcare Group filed a motion for a
mistrial claiming juror misconduct by April Garwin.

1 I am further informed that the Defendants are claiming that April Garwin failed to disclose in a
2 questionnaire and during voir dire examination that she knew Pamlyn Millsap or that Ms.
3 Millsap's Father, Herman C. Hentz, had been a resident at Granada Healthcare immediately prior
4 to his death.

5 I was the primary deputy coroner who handled the case involving the death of the father of
6 Pamlyn Millsap, Herman C. Hentz.

7 To my knowledge, April Garwin did not work with me on the Herman C. Hentz case and had no
8 knowledge about this case.

9 I did attend at least one lunch with Ms. Millsap and members of the Coroner's office and I recall
10 who attended. April Garwin was not in attendance at lunches with Ms. Millsap and to my
11 knowledge does not know Ms. Millsap or information about Ms. Millsap's father.

12 The last time I saw Ms. Garwin was approximately six months ago. When I asked her what she
13 had been doing she said she was on a jury. She said she could not tell me anything about the case,
14 which to me was indicative of the her integrity."

15
16 Discussion

17 As stated in Hamilton, "where a verdict is attacked for juror taint, the focus is on whether
18 there is any overt event or circumstances, open to [corroboration by] sight, hearing, and the other
19 senses" (citation omitted), "which suggests a likelihood that one or more members of the jury
20 were influenced by improper bias."

21 Health and Safety § 1150(a) provides, "upon an inquiry as to the validity of a verdict, any
22 otherwise admissible evidence may be received as to statements made, or conduct, conditions, or
23 events occurring, either within or without the jury room, of such a character as is likely to have
24 influenced the verdict improperly."

25 Under CCP § 658 only affidavits are admissible to support a motion for new trial pur-
suant to CCP § 657(2). An affidavit, conforming to CCP § 2015.5, may be used as permitted
by CCP § 2009, the affiant a witness under CCP § 1878.

Hearsay affidavits may not be used to impeach a jury verdict (*Peo. v. Williams* (1988) 45
Cal.3d. 1268, 1318). Juror affidavits restating remarks of other jurors reflecting an impermiss-
ible bias are not offered for the truth of the matter and, therefore, are not hearsay. (*Enyart v. City*

1 of Los Angeles (1999) 76 Cal.App.4th 499, 508; Simons, California Evidence Manual).

2 When evidence is admitted of statements, conduct, conditions, or events that are likely to
3 improperly influence a jury's verdict, a presumption of prejudice is raised. (Peo. v. Holloway
4 (1990) 50 Cal.3d 1098, 1108; Jefferson's California Evidence Benchbook) Juror misconduct is
5 presumed prejudicial. (Peo. v. Marshall (1990) 50 Cal.3d 907, 949) However, this presumption
6 may be rebutted or a reviewing court's examination of the entire record may reflect no
7 reasonable probability of actual harm from the misconduct. (Hanson, supra; Simons, supra.)
8

9 Defendants' declarations, and other evidence, raise a presumption of prejudice,
10 misconduct, that on voir dire Juror Garwin concealed bias against defendants; that during trial
11 she improperly communicated with a fellow juror; and in deliberation she substituted her
12 knowledge and experience for that of a witness.
13

14 Plaintiffs rebut the allegations, presenting counter-declarations which assert, the
15 statements attributed to Juror Garwin at the post-trial meeting were not stated, and the statements
16 made by Juror Garwin during deliberations, as admissible to demonstrate misconduct, referenced
17 only a possible conflict in the evidence, not a substitution of knowledge. The declarations
18 further assert the pre-trial conduct of Juror Garwin with the Coroner's Office, as to Pamlyn
19 Millsap and her father, did not occur.
20

21 Findings.

22 There was no misconduct by Juror Garwin.
23

24 Defendants raise a presumption of prejudice with assertions by jurors stating a bias in
25 favor of defendants. There is no corroborating evidence. No other person present at the post-

1 trial meeting heard Juror Garwin make the statements defendants attribute to her. There is no
2 evidence she had any involvement with defendants' facilities through her work with the
3 Coroner's Office. Juror Garwin fully disclosed her work with the Coroner's office in voir dire.
4 There is no substantiation of pre-trial bias by Juror Garwin.

5
6 During trial Jurors Garwin and Rodrigues sat side-by-side. Juror Garwin acknowledges
7 she probably wrote an emphatic note during trial, but denies intentionally displaying the note to
8 Juror Rodrigues. Juror Rodrigues does not assert any such note influenced her decision. Any
9 such note is harmless.

10
11 The discussions during deliberation regarding a possible conflict in the medical testimony
12 cross the areas of an overt statement open to analysis, and the subjective reasoning of a juror not
13 open to analysis. In no event, however, is there a reasonable probability of actual harm from any
14 such statement or interjection of knowledge. The comment as made appears to go to the
15 reasoning process, not substitution of knowledge.

16
17 Defendants did not meet their burden of establishing misconduct, although the three
18 affidavits presented constitute a prima facie showing of misconduct, they are rebutted in all
19 important aspects by the counterdeclarations. (*Hasson, supra.*)

20
21 Defendants' Motion For Mistrial or New Trial on Grounds of Juror Misconduct is denied.

22
23 Dated: August 26, 2010

24
25 W. BRUCE WATSON

W. Bruce Watson, Judge of the Superior Court

STATE OF CALIFORNIA,)
COUNTY OF HUMBOLDT) SS. AFFIDAVIT OF SERVICE BY MAIL

I, KATHY S., say:

That I am a citizen of the United States, over 18 years of age, a resident of the County of Humboldt, State of California, and not a party to the within action; that my business address is Humboldt County Courthouse, Eureka, California; that I served a true copy of the attached DECISION ON: DEFENDANTS' MOTION FOR MISTRIAL OR NEW TRIAL ON GROUNDS OF JUROR MISCONDUCT (Filed: August 6, 2010) by placing said copies in the attorney's mail delivery box in the Court Operations Office at Eureka, California on the date indicated below, or by placing said copies in envelope(s) and then placing the envelope(s) for collection and mailing on the date indicated below following our ordinary business practices. I am readily familiar with this business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Eureka, California in a sealed envelope with postage prepaid. These copies were addressed to:

Nancy Delaney, Attorney at Law – in Court Op's Box #100

Kippy L. Wroten, Attorney at Law; 29 Pacifica, Suite 300; Irvine, CA 92618

Felicia Y. Sze, Attorney at Law; 575 Market St., 23rd Flr.; San Francisco, CA 94105

Michael J. Crowley, Attorney at Law – in Court Op's Box #4

Michael D. Thamer, Attorney at Law; P. O. Box 1568; Callahan, CA 96014-1568

Christopher J. Healey, Attorney at Law; 600 W. Broadway, Ste. 2600; San Diego, CA 92101

Paul Gallegos, Humboldt County District Attorney – in Court Op's Box #64

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

Executed on the 27 day of August 2010, at the City of Eureka, County of Humboldt, State of California.

KERRI L. KEENAN, Clerk of the Court

By KATHY S.
Deputy Clerk