



2. On February 1, 2024, Defendant LINDA STEINHOFF HOLMES's motion for summary adjudication came on regularly for hearing in Department 501 of the above-entitled Court before the Honorable Judge Ronald E. Quidachay. Judge Quidachay stated that he was adopting his tentative ruling, which was to grant the motion as to Issue 1 on the second cause of action and deny as to Issue 2 regarding a purported claim for treble damages in the third cause of action.

3. On February 1, 2024, our office emailed a proposed order after hearing to Plaintiff Daniel Feldman, who appeared *in pro per*, and the Court. The proposed order copied the Court's tentative ruling verbatim. Mr. Feldman responded with an objection to the proposed order; however, the basis for the objection is not clear. Rather than attempt to summarize Mr. Feldman's objection, I am attaching hereto as Exhibit 1 a true and correct copy of the emails reflecting service of the proposed order on Mr. Feldman and his responses.

4. On February 12, 2024, Mr. Feldman emailed the Clerk of Department 501, advising that he was contesting "the Order that was adopted by Judge Haines on Feb. 1." A true and correct copy of Mr. Feldman's February 12, 2024 email is attached hereto as Exhibit 2.

5. On February 13, 2024, having not heard back from the Court, and not seeing the proposed order on the Register of Actions, our office had another copy of the proposed order hand-delivered to the Clerk of the Court and Department 510. A copy of the letter was also emailed to Mr. Feldman. A true and correct copy of our letter transmitting a second copy of the proposed order is attached hereto as Exhibit 3.

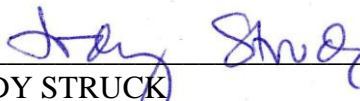
6. On or about February 23, 2024, we received from the Clerk of the Court a notice that the proposed order was rejected for failure to comply with California Rules of Court, Rule 3.3132. A true and correct copy of the Notice of Rejection is attached hereto as Exhibit 4.

7. As Mr. Feldman was provided a copy of the proposed Order Granting in Part, and Denying in Part, Defendant Holmes' Motion for Summary Adjudication on February 1, 2024, and a second copy on or about February 13, 2024, and the only objections received are those attached hereto, we respectfully request that the Court enter the accompanying [Proposed] Order Granting in Part, and Denying in Part, Defendant Holmes' Motion for Summary

Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
Oakland, California 94612  
Telephone: 510-763-2324  
Facsimile: 510-273-8534

1 Adjudication.

2 I declare under penalty of perjury under the laws of the State of California that the  
3 foregoing is true and correct and that this declaration was executed on February 27, 2024.

4  
5   
6 JODY STRUCK  
7 HAAPALA, THOMPSON & ABERN, LLP  
8 Attorneys for Defendant  
9 LINDA STEINHOFF HOLMES  
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## EXHIBIT 1



**From:** [Virginia Guthrie](#)  
**To:** [Department 501 Contest TR](#)  
**Cc:** [Steven Abern](#); [Jody Struck](#); [danieljfeldmanphd@gmail.com](#); [Nolan Armstrong](#); [Nicole Schlosser](#)  
**Subject:** Feldman v. Holmes, San Francisco County Superior Court Case No: CGC-21-594129  
**Date:** Thursday, February 1, 2024 2:50:00 PM  
**Attachments:** [MSJ-ORDER-FELDMAN.pdf](#)

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Good afternoon Dept. 501.

We represent defendant Linda Steinhoff Holmes in the above matter. Our Motion for Summary Adjudication came on for hearing today at 9:30 a.m. Per Local Rules the prevailing party that is appearing at the hearing remotely, the proposed order may be sent to the court by an email.

Attached is the **[PROPOSED] ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION** for Judge Haines signature and filing. Plaintiff and all counsel have been cc'd on this email.

Please let me know if you have any questions or require additional information. Thank you.

Virginia Guthrie

Litigation Secretary

**Haapala, Thompson & Abern, LLP**

1939 Harrison Street, Suite 800

Oakland, California 94612

Tel: 510-763-2324

Fax: 510-273-8534

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E-mail: [vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)

Confidentiality Notice

This message contains information that may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by e-mail to [vguthrie@htalaw.com](mailto:vguthrie@htalaw.com), and delete the message. Thank you.

**From:** [Daniel J. Feldman, Ph.D.](#)  
**To:** [Virginia Guthrie](#)  
**Subject:** Re: Feldman v. Holmes, San Francisco County Superior Court Case No: CGC-21-594129  
**Date:** Thursday, February 1, 2024 3:17:41 PM

---

Well I do have a problem with it because until this afternoon, I still have not been able to file, and it is a technical error at the court that they have been investigating for days. They are preparing a statement to provide the clerk. I was told by the filing clerks to ask to make verbal arguments since there were errors, and as you saw I was not allowed to make any. I wanted to file an answer and ask for additional time. I don't need legal advice to supply reasons I need more time. I needed legal eyes on my opposition to the motion, and I hired people who fell thru. I had an issue with the latest declarations that I was unable to make through no fault of my own, wasted hours submitting efilings over and over, no one could explain why it wasn't going thru other than I was removed as a Plaintiff each time I added myself for filing.

So I am not happy about this hearing at all.

As an important point in last night's declaration, I provided you with production that shows these are not conspiracy theories and especially about the Twitter account which was assigned to an email address [mrsish@holmes.net](mailto:mrsish@holmes.net). And [holmes.net](http://holmes.net) is registered to her address in Petaluma. I have asked Nolan so many times to exchange what production you provided to Julien and I need to send you the production that I had given to Julien to provide to your team. The files I received are corrupted on his drive. I know I am missing some files and I don't know if everything had been given to you. Obviously not if you didn't have any hard evidence.

So some not accurate opposition to my ex parte application, and I could not respond. And I do not think you have all of my production

***Daniel J. Feldman, Ph.D.***  
**Clinical Neuropsychologist (NYS#014127)**  
**and Touch Healer**

13647 Aragon Rd Apt 303  
Louisville, KY 40245

(307) 699.3223

***"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."***  
*The Little Prince by Antoine de Saint-Exupéry*

On Thu, Feb 1, 2024 at 5:48 PM Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)> wrote:

Good afternoon. Attached is the following document in the above referenced matter for your review and file. We will be submitting this to Dept. 501 for signature today.

1. **[PROPOSED] ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION**

Please let me know if you have any issues accessing the attached document.

Virginia Guthrie

Litigation Secretary

**Haapala, Thompson & Abern, LLP**

[1939 Harrison Street, Suite 800](#)

[Oakland, California 94612](#)

Tel: 510-763-2324

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**From:** [Daniel J. Feldman, Ph.D.](#)  
**To:** [Virginia Guthrie](#)  
**Subject:** Re: Feldman v. Holmes, San Francisco County Superior Court Case No: CGC-21-594129  
**Date:** Thursday, February 1, 2024 3:58:12 PM

---

That was a premature send.

So some not accurate opposition to my ex parte application, and I could not respond. And I do not think you have all of my production, and that's due to the refusal of Nolan to share Discovery again. i am going to assume that you have everything, so if something comes up as a surprise, i will make sure to document all the refusals to check that what i handed over, you have...

I have spent a year asking, and i am clearly treated differently as a pro se than Julien had been. i have been about as cordial and polite as i can, even when it doesnt come back to me.

So please let me know.... about the exchange, and i have no idea about the order since i never had time to review it with a legal person. i have no doctor no medication unable to get one. and only for her slander.

Which i believe you have also been provided the proof that Mrs. Holmes even fabricated what she now says was the only "assault." the video that shows your client and her husband assaulting me after i called the police on them, thats when she made the police report that I attacked her, she lied to the police WHO I CALLED. i was shocked that they flipped the story, and i offered to show the officers the video footage that i started recording the minute your client and curt were stealing my things, they just laughed at me and yelled at me trying to deliberately provoke me into attacking, i said i had called the police, i had no interest in fighting them, and then curtis got right in my face screaming at me with your client next to him saying his ugly and ridiculous i am. i just walked away,said i was going to the front of apartment to wait for the police, and when they showed, Linda and Curt gave them the story of the one assault she claims I did tp her, they said it had just happened. and the police who i called told me to stop harassing and being violent with her, i said i hadnt done a thing, asked

them tk watch the video and they wouldn't. but all of that's on tape i presume you have. and for her to continue to lie and tell this storu is slander and perjury in court. and she has to srop. its tje same as a woman making up a story that a man raped her. it is as low as you can go.

i also assumed that you have my communications with London Breed and Bill Scott, and dozens of officials. and you had proof of the energy theft with PGE walking me thru it on video. the confirmation by the electrician I had remove the lines, and the report made to the SFPD who are the ones who pointed out to me that there was a drug lab upstairs from me. i didnt know it until then, and it's all on video with her maintenance team breaking into the box, my electric line to clean out any evidence the SFPD were on their way to see. i assume you have sll of that.

and the contaminated water videos of it being tested and your client turning on a pump in the apartment above me, where she stayed with her grandson overnight. you should have all of this. so why pretend that she wasnt doing all of this? you could tell her to keep lying, but thats what her previous counsel did, in perjury form.

***Daniel J. Feldman, Ph.D.***

**Clinical Neuropsychologist (NYS#014127)  
and Touch Healer**

13647 Aragon Rd Apt 303  
Louisville, KY 40245

(307) 699.3223

***"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."***

*The Little Prince by Antoine de Saint-Exupéry*

On Thu, Feb 1, 2024 at 6:16 PM Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)> wrote:

|

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Good afternoon. Attached is the following document in the above referenced matter for your review and file. We will be submitting this to Dept. 501 for signature today.

**1. [PROPOSED] ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION**

Please let me know if you have any issues accessing the attached document.

Virginia Guthrie

Litigation Secretary

**Haapala, Thompson & Abern, LLP**

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[Oakland, California 94612](#)

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## EXHIBIT 2



**From:** [Daniel J. Feldman, Ph.D.](#)  
**To:** [Department 501 Contest TR](#); [Nolan Armstrong](#); [Steven Abern](#); [Jody Struck](#)  
**Date:** Monday, February 12, 2024 12:49:38 PM

---

Department 501 Contest:

This will be my first real submission to this court on this case, and your clarification of the rules is greatly appreciated.

I will be filing a Motion for Reconsideration for an Order that was adopted by Judge Haines on Feb 1.

Two related questions about filing:

- 1) This is my first experience with contested order. Should I assume that the Date of the Written Notice of Entry of the Order will only be known to the non-prevailing party when it is received in the mail?
- 2) Can a Motion for Reconsideration be filed sooner than a Written Notice of Entry of the Order is received in the mail?

My understanding of the rules is that I have 10 days from the Written Notice of Entry of the Order to do so, and that it is not appropriate to send it based on Order Prepared by Prevailing Party before there is a Written Notice of Entry received by mail. It is timely as I intend to file it as soon as possible and also abiding by the most common understanding of this rule.

Warmest Regards.

***Daniel J. Feldman, Ph.D.***  
**Clinical Neuropsychologist (NYS#014127)**  
**and Touch Healer**

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Louisville, KY 40245

(307) 699.3223

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## EXHIBIT 3

# HAAPALA, THOMPSON & ABERN, LLP

STEVEN SHERIFF ABERN  
AARON F. MACLEITCH  
JODY STRUCK  
ELIZABETH GONG LANDESS

ATTORNEYS AT LAW  
PARK PLAZA BUILDING  
1939 HARRISON STREET, SUITE 800  
OAKLAND, CALIFORNIA 94612-3527

RYAN L. DAHM  
TRACY A. WARNER  
MICHAEL KARATOV  
HARISH TANGRI  
SAMUEL A. LEFF

JOHN E. HAAPALA (1939-2022)  
CLYDE A. THOMPSON (1946-2013)

TELEPHONE: (510) 763-2324  
FACSIMILE: (510) 273-8534  
[www.htalaw.com](http://www.htalaw.com)

February 13, 2024

The Honorable Charles F. Haines  
Judge of the Superior Court  
Real Property Court  
Department 501  
400 McAllister Street  
San Francisco, CA 94102

*Via Hand Delivery*

Re: *Feldman v. Holmes*  
Defendant Holmes' Motion for Summary Adjudication – February 1, 2024  
San Francisco County Superior Court No. CGC-21-594129

Dear Judge Haines:

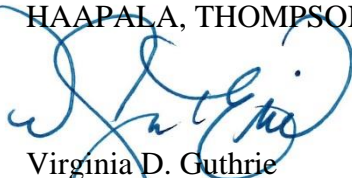
A tentative ruling was issued in this matter on January 31, 2024. On February 1, 2024 Plaintiff appeared in this matter, although Defendant Holmes contends Plaintiff did not timely or properly contest the tentative ruling. Jody Struck from our office appeared on behalf of our client, Defendant Holmes. The tentative ruling was adopted by the Court.

I sent the attached Proposed Order, which tracks the tentative ruling, via email to Department 501 on February 1, 2024. To date, the Order has not been entered by the court. Please review and execute the attached order if you find that it accurately reflects the tentative ruling or let us know if you have any questions or require additional information.

Thank you.

Very truly yours,

HAAPALA, THOMPSON & ABERN



Virginia D. Guthrie  
Secretary to Steven S. Abern  
[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)  
Direct Line: (510) 550-8545

vg  
cc: Plaintiff Daniel Feldman

## EXHIBIT 4

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

400 MCALLISTER STREET, SAN FRANCISCO, CA 94102-4514

DANIEL FELDMAN, PH.D

PLAINTIFF(S)

VS.

LINDA STEINHOFF HOLMES et al

DEFENDANT(S)

**NO. CGC-21-594129**

**REJECT**

**The submitted document could not be entered because:**

Rejected defendant's [proposed] order granting in part and denying in part deft's motion for summary adjudication because does not comply with CRC 3.1312(b)

Date: Feb 20, 2024

DEPUTY COURT CLERK

**TO EXPEDITE FURTHER PROCESSING, RETURN THIS FORM WITH YOUR  
PAPERS TO:**

**SAN FRANCISCO SUPERIOR COURT  
400 McAllister Street, Room 103  
San Francisco, CA 94102**



# HAAPALA, THOMPSON & ABERN, LLP

STEVEN SHERIFF ABERN  
AARON F. MACLEITCH  
JODY STRUCK  
ELIZABETH GONG LANDESS

JOHN E. HAAPALA (1939-2022)  
CLYDE A. THOMPSON (1946-2013)

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RYAN L. DAHM  
TRACY A. WARNER  
MICHAEL KARATOV  
HARISH TANGRI  
SAMUEL A. LEFF

February 13, 2024

The Honorable Charles F. Haines  
Judge of the Superior Court  
Real Property Court  
Department 501  
400 McAllister Street  
San Francisco, CA 94102

*Via Hand Delivery*

Re: *Feldman v. Holmes*  
Defendant Holmes' Motion for Summary Adjudication – February 1, 2024  
San Francisco County Superior Court No. CGC-21-594129

Dear Judge Haines:

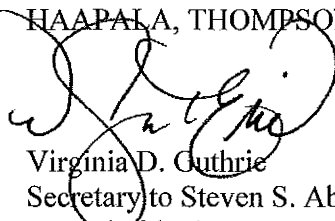
A tentative ruling was issued in this matter on January 31, 2024. On February 1, 2024 Plaintiff appeared in this matter, although Defendant Holmes contends Plaintiff did not timely or properly contest the tentative ruling. Jody Struck from our office appeared on behalf of our client, Defendant Holmes. The tentative ruling was adopted by the Court.

I sent the attached Proposed Order, which tracks the tentative ruling, via email to Department 501 on February 1, 2024. To date, the Order has not been entered by the court. Please review and execute the attached order if you find that it accurately reflects the tentative ruling or let us know if you have any questions or require additional information.

Thank you.

Very truly yours,

HAAPALA, THOMPSON & ABERN



Virginia D. Guthrie  
Secretary to Steven S. Abern  
[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)  
Direct Line: (510) 550-8545

vg  
cc: Plaintiff Daniel Feldman

FILED  
FEB 16 2024

HTA LAW MAIL RCV'D  
2024 FEB 23 PM02:54



Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
Oakland, California 94612  
Telephone: 510-763-2324  
Facsimile: 510-273-8534

**PROOF OF SERVICE**

Virginia Guthrie certifies and declares as follows:

I am employed in the County of Alameda, State of California. I am over the age of 18 years, and not a party to this action. My business address is 1939 Harrison Street, Suite 800, Oakland, California, 94612-3527, ([vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)).

On February 27, 2024, I served the foregoing document described as: **DECLARATION OF JODY STRUCK IN SUPPORT OF ORDER GRANTING IN PART, AND DENYING IN PART, DEFENDANT LINDA HOLMES' MOTION FOR SUMMARY ADJUDICATION AND [PROPOSED] ORDER** on all interested parties in this action, in the manner set forth below.

☒ **BY ELECTRONIC MAIL:** By personally emailing the document(s) to the persons at the e-mail address(es) listed below. Service is based on CCP 1010.6(5)(b)(2)(3), "(2) A person represented by counsel, who has appeared in an action or proceeding, shall accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission. (3) Before first serving a represented person electronically, the person effecting service shall confirm the appropriate electronic service address for the counsel being served."

Daniel J. Feldman, Ph.D.  
13647 Aragon Way, Apt. 303  
Louisville, KY 40245  
T: 307-699-3223  
[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)

**Plaintiff in Pro Per**

Nolan S. Armstrong  
McNamara, Ambacher, Wheeler, Hirsig &  
Gray, LLP  
3480 Buskirk Avenue, Suite 250  
Walnut Creek, CA 94523  
925-939-5330  
925-939-0203  
[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)  
[nicole.schlosser@mcnamaralaw.com](mailto:nicole.schlosser@mcnamaralaw.com)

**Co-Counsel for Defendant LINDA  
STEINHOFF HOLMES**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 27, 2024, at Oakland, California.



Virginia Guthrie

*Feldman v. Holmes*

Declaration Of Jody Struck In Support Of Order Granting In Part, And Denying In Part, Defendant Linda Holmes' Motion For Summary Adjudication

STEVEN S. ABERN, SBN 148690  
HAAPALA, THOMPSON & ABERN, LLP  
1939 Harrison Street, Suite 800  
Oakland, California 94612  
Telephone: (510) 763-2324  
Facsimile: (510) 273-8534  
E-Mail: [sabern@htalaw.com](mailto:sabern@htalaw.com)

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**03/01/2024**  
**Clerk of the Court**  
BY: BOWMAN LIU  
Deputy Clerk

NOLAN S. ARMSTRONG (State Bar No. 241311)  
MCNAMARA, AMBACHER, WHEELER, HIRSIG & GRAY LLP  
3480 Buskirk Avenue, Suite 250  
Pleasant Hill, CA 94523  
Telephone: (925) 939-5330  
Facsimile: (925) 939-0203  
E-Mail: [nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)

Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,  
Plaintiff,  
v.  
LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,  
Defendants.

Case No. CGC-21-594129

**STIPULATED EX PARTE APPLICATION  
FOR AN ORDER TO CONTINUE TRIAL  
AND RELATED CUT-OFF DATES;  
SUPPORTING POINTS AND  
AUTHORITIES; DECLARATION OF  
STEVEN ABERN**

**Date: March 5, 2024  
Time: 11:00 a.m.  
Dept: 206**

**STIPULATED EX PARTE APPLICATION**

Defendant LINDA STEINHOFF HOLMES and Plaintiff DANIEL FELDMAN, PHD.,  
*in propria persona*, hereby apply, pursuant to California Rule of Court, rule 3.1332 and Local  
Rules of Court, Rule 6.B., for an order continuing the trial of this matter, which is currently  
scheduled for March 11, 2024, to September 16, 2024, or as soon thereafter as the Court's  
calendar permits. As set forth in the following Points and Authorities and Declaration of Steven  
Sheriff Abern, both sides stipulate to the continuance (**Exhibit 2**). Plaintiff DANIEL

FELDMAN, PHD., *in propria persona*, was seriously injured in an auto accident on August 29, 2023. He has not recovered fully from his injuries and continues to be substantially disabled by them. His disability resulting from his injuries has significantly affected his ability to prepare for trial and will negatively affect his ability to attend and participate in trial.

The parties also stipulate that the trial will be tried to the Court rather than to a jury, and all pre-trial dates, including discovery cut-off and expert disclosure dates, shall be calendared from the new trial date.

This application is made on the ground that good cause exists to continue the trial, as Plaintiff is currently unable to participate effectively in the trial of this matter. This application is brought by defense counsel because Plaintiff is unable to prepare it. It is based on all pleadings filed in this action, the supporting Memorandum of Points and Authorities and Declaration of Steven Sheriff Abern, the stipulation of the parties, and on such other evidence as may be presented at the time of the hearing.

**Alternative Request for an Order Shortening Time**

In the alternative, if the Court requires a noticed motion for this application, the Parties request an Order Shortening Time for the hearing, as the March 11, 2024 trial date is fast approaching.

**POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION**

**I. INTRODUCTION**

This is a landlord-tenant case. Plaintiff is Defendant's former tenant. He has asserted claims for wrongful and constructive eviction, retaliation, habitability, and defamation. He moved out of the subject apartment on December 26, 2019, and has resided in Louisville, Kentucky ever since.

///

///

///

///

///

1           **II.     STATEMENT OF FACTS**

2                   **A.     Plaintiff's Disability**

3           On January 2, 2024, Plaintiff wrote to defense counsel to advise that, on August 29,  
4 2023, he had been severely injured when he was hit by a Jeep travelling more than 100 mph. He  
5 had been immobilized for eight weeks and was awaiting surgery for spinal damage (See  
6 Declaration of Steven Abern ["Abern Dec."]: **Exhibit 3**).

7           On January 25, 2024, Plaintiff wrote to defense counsel to advise that his medical care  
8 had been delayed. Five physician groups in Louisville had refused to provide him with care.  
9 He had not been able to obtain surgery. He was scrambling to secure medical care and legal  
10 counsel (Abern Dec.: **Exhibit 4**).

11           On February 20, 2024, Plaintiff wrote to defense counsel to advise that he needed to seek  
12 a trial continuance due to the challenges he was facing in securing medical treatment and legal  
13 counsel in California. He did not believe that he was able to continue representing himself  
14 effectively (Abern Dec.: **Exhibit 5**). Defense counsel responded by offering to stipulate to a  
15 brief continuance in exchange for Plaintiff's agreement to try the case to the bench (Abern Dec.:  
16 **Exhibit 6**). Indeed, Plaintiff's fee waiver had excluded a waiver of his obligation to post jury  
17 fees and he had never posted fees (Abern Dec.: **Exhibit 1**)

18           Plaintiff responded on February 20, 2024 to advise that he could not agree to a  
19 continuance of less than six months and that he was aiming for a continuance of eight months.  
20 His medical condition was worsening. He was in incredible pain. He had prioritized finding  
21 legal counsel in California over obtaining medical care (Abern Dec.: **Exhibit 6**).

22                   **B.     Procedural History**

23           Plaintiff filed his Complaint in this action on July 28, 2021.

24           Defendant HOLMES posted jury fees on December 14, 2021.

25           On April 1, 2022, the Court set the matter for trial on November 7, 2022. Defendant  
26 HOLMES objected to that date and the Court set the matter for trial on March 6, 2023.

27           On January 6, 2023, the Court continued the trial to May 8, 2023 upon Plaintiff's  
28 motion.

On February 27, 2023, the Court granted Plaintiff's request for a fee waiver but excluded jury fees from that waiver (Abern Dec.: **Exhibit 1**).

On March 23, 2023, the Court again continued the trial to March 11, 2024 upon stipulation of the parties after Plaintiff's second attorney withdrew from representation.

**III. THERE IS GOOD CAUSE TO CONTINUE THE TRIAL OF THIS CASE**

The California Rules of Court provide that a trial may be continued "upon an affirmative showing of good cause" for the continuance. (Cal. Rules of Ct., Rule 3.1332, subd. (c).) Examples of "circumstances that may indicate good cause" include "[t]he unavailability of a party because of death, illness, or other excusable circumstances." (Cal. Rules of Ct., Rule 3.1332, subds. (c)(2) and (c)(6).) As will be shown, good cause exists to grant the requested trial continuance in this case.

Additional factors to be considered when ruling on an application to continue include:

- Whether there was any previous continuance, extension of time, or delay of trial due to any party;
- The availability of alternative means to address the problem that gave rise to the motion or application for a continuance;
- The prejudice that parties or witnesses will suffer as a result of the continuance;
- Whether all parties have stipulated to a continuance;
- Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and
- Any other fact or circumstance relevant to the fair determination of the motion or application.

(Cal. Rules of Court, rule 3.1332, subds. (d)(2), (d)(4), (d)(5), (d)(9), and (d)(10).) As shown below, a consideration of these factors leads to the conclusion that good cause exists to continue the trial date in this case until September 16, 2024, or as soon thereafter as the Court's calendar permits.

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**Plaintiff's Unavailability for Trial**

Due to Plaintiff's severe injuries sustained on August 29, 2023, his continuing disabilities related to those injuries, and his professed inability to obtain medical treatment, Plaintiff has represented to defense counsel that he is unable to effectively represent himself at trial in March 2024. He states that he has not been successful in obtaining legal counsel in California despite his diligent efforts. (Abern Dec.)

**Prior Continuances**

As outlined above, the trial has been continued several times. However, there is nevertheless good cause for another continuance because Plaintiff has represented to defense counsel that he is unable to effectively represent himself at trial in March 2024 due to his continuing disabilities related to his August 29, 2023 accident.

Defense counsel attest that their attempts to communicate with Plaintiff regarding the upcoming trial have often been hampered by long delays by Plaintiff in responding to their communications. Those long delays lend credence to Plaintiff's representation that he is currently unable to effectively represent himself at trial in March 2024. (Abern Dec.)

**Note** that the Parties have stipulated that the continued trial will be tried to the Court and not to a jury. That stipulation will promote judicial economy and flexibility of assignment to a trial department and will obviate the necessity of empaneling a jury.

**Availability of Other Means to Address to the Need for a Trial Continuance**

There are no alternative means to address Plaintiff's need for a trial continuance.

**Prejudice**

Both sides have stipulated to the continuance and will not be prejudiced by it. On the other hand, Plaintiff FELDMAN will be clearly prejudiced if this trial proceeds while he is unable to effectively represent himself.

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**Stipulation**

Plaintiff and Counsel for Defendants have stipulated to continue the trial date and try the case to the Court rather than a jury (**Exhibit 2**). Again, that stipulation will promote judicial economy and flexibility of assignment to a trial department and will obviate the necessity of empaneling a jury.

**Interests of Justice**

It is in the interests of justice to continue this matter until Plaintiff either secures legal representation or is sufficiently recovered from his injuries to enable him to effectively represent himself.

**IV. CONCLUSION**

Based on the foregoing, the parties request that the March 11, 2024 trial date in this matter be continued to September 16, 2024, or as soon thereafter as the Court's calendar permits. The parties further request that all current pre-trial hearings and conferences be continued, and that the discovery cut-off and other pre-trial deadlines be determined from the new trial date as though it were the initial trial date.

Dated: March 1, 2024

HAAPALA, THOMPSON & ABERN, LLP

By: \_\_\_\_\_



STEVEN SHERIFF ABERN  
Attorneys for Defendant  
LINDA STEINHOFF HOLMES

**DECLARATION OF STEVEN ABERN IN SUPPORT OF EX PARTE  
APPLICATION FOR AN ORDER TO CONTINUE TRIAL**

1. I am an attorney at law duly admitted and licensed to practice before all the courts of the State of California and am a partner with the law firm of Haapala, Thompson, & Abern, LLP, counsel of record for the Defendant Linda Steinhoff Holmes in the above-captioned action. I have personal knowledge of the matters stated herein and would so testify.

2. Plaintiff filed his Complaint in this action on July 28, 2021.

3. Defendant HOLMES posted jury fees on December 14, 2021.

4. On April 1, 2022, the Court set the matter for trial on November 7, 2022. Defendant HOLMES objected to that date and the Court set the matter for trial on March 6, 2023.

5. On January 6, 2023, the Court continued the trial to May 8, 2023 upon Plaintiff's motion.

6. On March 23, 2023, the Court again continued the trial to March 11, 2024 upon stipulation of the parties after Plaintiff's second attorney withdrew from representation.

7. Attached as **Exhibit 1** is a true and correct copy of the Court's February 27, 2023 Order on Court Fee Waiver. The Order excludes a waiver of Plaintiff's obligation to post jury fees. He has never posted fees.

8. Attached as **Exhibit 2** is a true and correct copy of the Stipulation to Continue Trial executed by the Parties.

8. On January 2, 2024, Plaintiff wrote to defense counsel to advise that, on August 29, 2023, he had been severely injured when he was hit by a Jeep travelling more than 100 mph. He had been immobilized for eight weeks and was awaiting surgery for spinal damage. A copy of Plaintiff's January 2, 2024 email is attached hereto as **Exhibit 3**.

9. On January 25, 2024, Plaintiff wrote to defense counsel to advise that his medical care had been delayed. Five physician groups in Louisville had refused to provide him with care. He had not been able to obtain surgery. He was scrambling to secure medical care and legal counsel. A copy of Plaintiff's January 25, 2024 email is attached hereto as **Exhibit 4**.

///



10. On February 20, 2024, Plaintiff wrote to defense counsel to advise that he needed to seek a trial continuance due to the challenges he was facing in securing medical treatment and legal counsel in California. He did not believe that he was able to continue representing himself effectively. A copy of Plaintiff's February 20, 2024 email is attached hereto as **Exhibit 5**.

11. Defense counsel responded to Plaintiff on February 20, 2024 by offering to stipulate to a brief continuance in exchange for Plaintiff's agreement to try the case to the bench. Plaintiff responded on that day to advise that he could not agree to a continuance of less than six months and that he was aiming for a continuance of eight months. His medical condition was worsening. He was in incredible pain. He had prioritized finding legal counsel in California over obtaining medical care. A copy of that February 20, 2024 email correspondence is attached hereto as **Exhibit 6**.

12. Attached as **Exhibit 7** is an email to Plaintiff and co-counsel advising of the Ex Parte Application and informing Plaintiff and counsel that we would be appearing in Department 206 on Tuesday, March 5, 2024 at 11:00 a.m. to have this matter heard.

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

Dated: March 1, 2024

HAAPALA, THOMPSON & ABERN, LLP

By:   
STEVEN SHERIFF ABERN

## EXHIBIT 1

**FW-003****Order on Court Fee Waiver  
(Superior Court)****1 Person who asked the court to waive court fees:**Name: DANIEL FELDMAN, PH.DStreet or mailing address: 13647 Aragon Way Apt 303City: Louisville State: KY Zip: 40245**2 Lawyer, if person in 1 has one (name, firm name, address, phone number, e-mail, and State Bar number):**


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**3 A request to waive court fees was filed on (date):** FEB 27 2023☐ The court made a previous fee waiver order in this case on (date):**Read this form carefully. All checked boxes ☒ are court orders.**

**Notice:** The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for \$10,000 or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

**4 After reviewing your: ☒ Request to Waive Court Fees ☐ Request to Waive Additional Court Fees the court makes the following orders:**a. ☒ The court grants your request, as follows:

- (1) ☒ **Fee Waiver.** The court grants your request and waives your court fees and costs listed below. (Cal. Rules of Court, rules 3.55 and 8.818.) You do not have to pay the court fees for the following:

- Filing papers in superior court
- Making copies and certifying copies
- Sheriff's fee to give notice
- Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
- Assessment for court investigations under Probate Code section 1513, 1826, or 1851
- Preparing, certifying, copying, and sending the clerk's transcript on appeal
- Holding in trust the deposit for a reporter's transcript on appeal under rule 8.130 or 8.834
- Making a transcript or copy of an official electronic recording under rule 8.835
- Court fee for phone hearing
- Giving notice and certificates
- Sending papers to another court department

- (2) ☐ **Additional Fee Waiver.** The court grants your request and waives your additional superior court fees and costs that are checked below. (Cal. Rules of Court, rule 3.56.) You do not have to pay for the checked items.

- ☐ Jury fees and expenses
- ☐ Fees for court-appointed experts
- ☐ Other (specify):
- ☐ Fees for a peace officer to testify in court
- ☐ Court-appointed interpreter fees for a witness

Clerk stamps date here when form is filed.

**FILED**  
**SUPERIOR COURT**  
**COUNTY OF SAN FRANCISCO****FEB 27 2023****CLERK OF THE COURT**BY: Angelica Sunga  
**ANGELICA SUNGA** Deputy Clerk

Fill in court name and street address:

**Superior Court of California, County of**  
**SAN FRANCISCO**400 McAllister Street  
San Francisco, CA 94102

Fill in case number and name:

**Case Number:**  
CGC 21-594129**Case Name:**  
DANIEL FELDMAN, PH.D VS.  
LINDA STEINHOFF HOLMES ET AL

Your name: Daniel Feldman, Ph.D

Case Number:

CGC 21-594129

- b. ☐ The court **denies** your fee waiver request because:

**Warning!** If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

- (1) ☐ Your request is incomplete. You have **10 days** after the clerk gives notice of this Order (see date of service on next page) to:

- Pay your fees and costs, or
- File a new revised request that includes the incomplete items listed:  
☐ Below ☐ On Attachment 4b(1)

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- (2) ☐ The information you provided on the request shows that you are not eligible for the fee waiver you requested for the reasons stated: ☐ Below ☐ On Attachment 4b(2)

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The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)* (form FW-006). You have **10 days** after the clerk gives notice of this order (see date of service below) to:

- Pay your fees and costs in full or the amount listed in c below, or
- Ask for a hearing in order to show the court more information. (*Use form FW-006 to request hearing.*)

- c. (1) ☐ The court needs more information to decide whether to grant your request. You must go to court on the date on page 3. The hearing will be about the questions regarding your eligibility that are stated:  
☐ Below ☐ On Attachment 4c(1)

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- (2) ☐ Bring the items of proof to support your request, if reasonably available, that are listed:  
☐ Below ☐ On Attachment 4c(2)

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**This is a Court Order.**

Your name: Daniel Feldman, Ph.D

Case Number:

CGC 21-594129

Name and address of court if different from above:

Hearing  
Date

Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

**Warning!** If item c(1) is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: FEB 27 2023

Signature of (check one)

ANGELICA SUNGA

☐

Judicial Officer

☒

Clerk, Deputy

### Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

### Clerk's Certificate of Service

I certify that I am not involved in this case and (check one):

- ☒ I handed a copy of this Order to the party and attorney, if any, listed in ① and ②, at the court, on the date below.
- ☒ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ① and ②, from (city): San Francisco, California, on the date below.
- ☐ A certificate of mailing is attached.

Date: FEB 28 2023

Clerk, by \_\_\_\_\_, Deputy  
Name: ANGELICA SUNGA



**This is a Court Order.**

## EXHIBIT 2

STEVEN S. ABERN, SBN 148690  
HAAPALA, THOMPSON & ABERN, LLP  
1939 Harrison Street, Suite 800  
Oakland, California 94612  
Telephone: (510) 763-2324  
Facsimile: (510) 273-8534  
E-Mail: [sabern@htalaw.com](mailto:sabern@htalaw.com)

NOLAN S. ARMSTRONG (State Bar No. 241311)  
MCNAMARA, AMBACHER, WHEELER, HIRSIG & GRAY LLP  
3480 Buskirk Avenue, Suite 250  
Pleasant Hill, CA 94523  
Telephone: (925) 939-5330  
Facsimile: (925) 939-0203  
E-Mail: [nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)

Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,	)	Case No. CGC-21-594129
	)	
Plaintiff,	)	<b>STIPULATION TO CONTINUE TRIAL</b>
	)	<b>AND TRY THE MATTER TO THE</b>
v.	)	<b>COURT</b>
	)	
LINDA STEINHOFF HOLMES, an	)	
individual; and DOES 1-10, inclusive,	)	<b>Assigned for All Purposes to Dept. 610</b>
	)	
Defendants.	)	

This Stipulation to Continue Trial and Try the Matter to the Court is entered into between Plaintiff DANIEL FELDMAN, PHD., *in propria persona*, and Defendant LINDA STEINHOFF HOLMES, by and through her counsel of record:

WHEREAS the trial of this matter is currently set to begin on March 11, 2024.

WHEREAS the trial of this matter has been continued once from May 8, 2023 to March 11, 2024 by stipulation of the parties.

WHEREAS Plaintiff Daniel Feldman, PhD was seriously injured in an auto ~~vs.~~ pedestrian accident on August 29, 2023, and spent two months thereafter in the hospital recovering from his injuries.

///

1 WHEREAS Plaintiff Daniel Feldman, PhD has not recovered fully from his injuries and  
2 continues to be substantially disabled by them.

3 WHEREAS Plaintiff's disability resulting from his injuries has significantly affected his  
4 ability to prepare for trial.

5 WHEREAS Plaintiff's disability resulting from his injuries has significantly affected his  
6 ability to attend and participate in trial.

7 WHEREAS Plaintiff has, to date, not filed jury fees in this matter. He obtained an Order  
8 on Court Fee Waiver, but that Order did not include a waiver of jury fees [**Exhibit 1**].

9 WHEREAS Defendant Linda Steinhoff Holmes did post jury fees but will nevertheless  
10 waive a jury.

11 THE PARTIES HERETO STIPULATE:

- 12 1. Both parties waive a jury. The trial of this matter shall be tried to the Court.  
13 2. The trial of this matter shall be continued to a date no earlier than September 16,  
14 2024.  
15 3. The Parties agree that all discovery cut-off and other pre-trial deadlines be  
16 determined from the new trial date as though it were the initial trial date.

17 IT IS SO STIPULATED

18  
19  
20 DATED: February 29, 2024



PLAINTIFF DANIEL FELDMAN, PhD.,  
*in propria persona*

MCNAMARA, AMBACHER, WHEELER,  
HIRSIG & GRAY

21  
22  
23  
24  
25 DATED: 2/28/24

By:



NOLAN S. ARMSTRONG, ESQ.  
Attorneys for Defendant  
Linda Steinhoff Holmes



Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
Oakland, California 94612  
Telephone: 510-763-2324  
Facsimile: 510-273-8534

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HAAPALA, THOMPSON & ABERN

DATED: 2/28/24

By:



STEVEN SHERIFF ABERN

Attorneys for Defendant

Linda Steinhoff Holmes

## EXHIBIT 3

**From:** [Daniel J. Feldman, Ph.D.](#)  
**To:** [Nicole Schlosser](#)  
**Cc:** [Nolan Armstrong](#); [Steven Abern](#); [Virginia Guthrie](#)  
**Subject:** Re: Feldman v. Holmes  
**Date:** Tuesday, January 2, 2024 9:53:59 AM  
**Attachments:** [image001.png](#)

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Thank you for the courtesy copy by email. On August 29, leaving a doctor appointment, I was struck by a hit and run Jeep going over 100mph. I was taken to the emergency and was immobilized for 8 weeks, without access to mail. I am awaiting surgeries for nerve and spinal damage.

I was aware of some of the new filings checking with the court website since I did not have access to my mail. For any future filings, given I may be back in the hospital, please email me for service as that may be the only way to reach me.

To be clear, Stephanie Davin's office is no longer involved and does not need service, correct? I just received the interrogatories yesterday with all of my mail.

We have never decided on a replacement for my previous counsel's Dropbox account to share discovery. I have offered numerous times, and been denied by Mr. Armstrong, to use my shared Google drive with the same directory structure as my previous counsel's Dropbox. I do not have Dropbox and if I did, it would still not be the same as my previous counsel as that was owned by them. Please advise as to an alternative that would be amenable to all parties, if not the Google Shared Drive.

Warm loving peace to you,

***Daniel J. Feldman, Ph.D.***  
**Clinical Neuropsychologist (NYS#014127)**  
**and Touch Healer**

13647 Aragon Rd Apt 303  
Louisville, KY 40245

(307) 699.3223

***"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."***

*The Little Prince by Antoine de Saint-Exupéry*

On Tue, Jan 2, 2024 at 12:30 PM Nicole Schlosser <[nicole.schlosser@mcnamaralaw.com](mailto:nicole.schlosser@mcnamaralaw.com)> wrote:

Good morning,

Please see the attached which is being sent to you on behalf of Mr. Armstrong in this matter.

Thank you.

**Nicole Schlosser**

**Assistant to Nolan S. Armstrong, Esq. and John C. Adams, Esq.**



**3480 Buskirk Avenue, Suite 250**

**Pleasant Hill, CA 94523**

**925.939.5330**

**925.939.0203 Fax**

**[www.mcnamaralaw.com](http://www.mcnamaralaw.com)**

**[vCard](#)**

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## EXHIBIT 4

**From:** [Daniel J. Feldman, Ph.D.](#)  
**To:** [Virginia Guthrie](#)  
**Cc:** [Nolan Armstrong](#); [Steven Abern](#)  
**Subject:** Re: Feldman v. Holmes, San Francisco County Superior Court Case No: CGC-21-594129  
**Date:** Thursday, January 25, 2024 5:58:36 PM

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Ms. Guthrie:

I am writing to update you that on Dec 5th I hired a service to connect me with lawyers in California to answer documents that I received that were not served to me and mistakenly contain a proof of service that I was emailed where I received no such emails from Defendant counsel. I had also explained that at the time of writing you I had the first surgery of three and that my arm was immobilized for 6 weeks following the surgery and had limited use for eight weeks after a car accident with a hit and run driver going over 100mph who plowed into the back of my vehicle which ripped my bicep in two, which is irreparable and was 100% tear of my rotator cuff. This has made activities of daily living, cooking and laundry, impossible as I live alone. I have nerve damage in the same arm that causes painful seizure like contractions in my left hand. My neck vertebrae are also damaged and awaiting evaluation for surgery.

My medical care had been delayed and is now halted as I currently do not have a primary care doctor as the fifth physician group in Louisville to outright refuse me care for no reason other than a broadcast Zero Tolerance Policy for violence written by a Risk Management officer at UCSF who said that she based the policy on her personal communication with my landlord, claiming that I had committed the most heinous and disgusting acts of violence toward her. She denied me any appeal when I told her I wanted to know what I was being accused of, that I had not even seen my landlady in person for nearly a year. The impact of this slander is immeasurable as it continues to be broadcast even to this day, even bolstered with more recent statements from providers who appear to have had recent communications with the Defendant, UCSF, or both in which the slander was reiterated.

I have been refused surgery outright twice now because I have been dismissed from my second primary care practice without notice other than a vague letter stating I need to find other doctors. I had delayed surgery on my arm as on August 29th, the date of the MVA, I had already been dismissed without notice from my previous primary care office, the manager of that practice alluding to events at UCSF but stopped short of directly implicating them, telling me they had a "Zero Tolerance" policy toward my behavior. When asked what behavior they were alluding to, they twisted up a reason that claimed I did not trust their ability to treat me, which is absurd.

Following the MVA, I could not get surgery without a primary care physician, which took me 8 weeks of waiting after enrolling with a new primary care group who I got along with very well. I was shocked to learn that like the other practice, on or around January 12th, I found a letter in MyChart telling me that I was dismissed from this new practice and needed to find another primary care doctor, which also means I cannot proceed with needed evaluations and surgery for my neck and hand until I get another one.

These events are identical to what I experienced in SF, which was due to a broadcast of a UCSF Zero Tolerance Policy for Violence based on outright lies that were perjured to the court multiple times as affidavits and declarations in 2020 by this client with her attorney suborning perjury during a speakerphone meeting in May 2019 that was transcribed, which was shared alongside recordings of bribes with three DBI Inspectors to the District Attorney

Gascon's office in July 2019. This is the slander that appears to continue to be told, cumulatively adding to the harm done by unlawful providers who refuse medical care once they believe me to be a violent elder abuser. It should be noted that nearly a dozen requests to cease and desist slander have been sent directly to the Defendant or her counsel.

In addition to scrambling to find a new primary care group, for which I have none now to even get refills of medicaid let alone surgery, the legal counsel I requested and was referred to had not responded since providing them what forms I had received, and I was getting concerned. Daily requests went unanswered and despite asking a referral to another attorney group, the original one then canceled on me, more than a month of providing documents and not a single response back from them. Since that time, the referral group I paid were vetting new attorneys. And I still have not had any deliverable, not a single word word of advice, and the same time, I am trying to survive without primary care.

Add to these issues, I have had multiple power outages that are preventing me from responding at all or on time. I have been sitting in the dark all day today without access to the internet other than my phone that I am conserving for emergency use only.

I had power this morning to continue preparing but lost power about 8 hours ago, still in the dark. As soon as I am able, i am and have had every intention of responding and filing on time, including the documentation of these events as they occurred. I will let you know when I hsvc power again, and please keep me informed via email.

Thank you for understanding.

On Thu, Jan 25, 2024, 13:28 Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)> wrote:

Good morning. Attached is the following document in the above referenced matter for your review and file.

**1. DEFENDANTS' NOTICE OF DEPOSITION OF PLAINTIFF'S RETAINED  
EXPERT AND REQUEST TO PRODUCE DOCUMENTS.**

Please let me know if you have any issues accessing the attached document.

Virginia Guthrie

Litigation Secretary

**Haapala, Thompson & Abern, LLP**

1939 Harrison Street, Suite 800

Oakland, California 94612

Tel: 510-763-2324

Fax: 510-273-8534

Dir: 510-550-8545

Cell: 925-222-0528

E-mail: [vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)

Confidentiality Notice

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## EXHIBIT 5

**From:** [Daniel J. Feldman, Ph.D.](#)  
**To:** [Steven Abern](#)  
**Subject:** Re: Feldman v Holmes - CGC-21-594129  
**Date:** Tuesday, February 20, 2024 10:52:57 AM

---

Dear Mr. Abern,

I hope this letter finds you well. As we approach the scheduled trial date, I find myself in a position that necessitates a further request for a continuance. This request is driven by my ongoing challenges in securing suitable legal representation in California, a situation exacerbated by a recent accident and subsequent medical issues.

To briefly outline my circumstances without delving into unnecessary detail, my search for legal representation has been significantly hindered by the accident I experienced last summer, which resulted in surgery and the anticipation of more medical procedures in the near future. The time and focus required for my recovery have severely limited my ability to engage with potential legal counsel. Moreover, the complexity of my case, including its sensitive nature and the extensive preparation required, has made it particularly challenging to find an attorney willing to undertake such representation at this stage.

I understand the importance of proceeding with legal matters in a timely fashion, and it is not my intention to unduly delay the court's schedule. However, the unique circumstances I find myself in have left me with no choice but to seek additional time to find appropriate legal representation. Representing myself in this matter is not a viable option, given the complexities involved and the potential for my personal experiences to affect my ability to advocate effectively on my own behalf.

I am committed to finding legal counsel who can represent me adequately and am actively pursuing all available avenues to this end. However, the constraints imposed by my medical situation and the intricate nature of the case have necessitated more time than originally anticipated.

Given these circumstances, I respectfully request a continuance of the trial date to allow me the necessary time to secure legal representation. This request is made in the interest of ensuring a fair and just legal process for all parties involved.

I appreciate your understanding and consideration of this request. I am prepared to discuss this matter further if required and look forward to finding a resolution that allows for the proper administration of justice. Thank you for your time and attention to this matter.

Sincerely,

***Daniel J. Feldman, Ph.D.***  
**Clinical Neuropsychologist (NYS#014127)**  
**and Touch Healer**

13647 Aragon Rd Apt 303  
Louisville, KY 40245

(307) 699.3223

*"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."*  
*The Little Prince by Antoine de Saint-Exupéry*

On Tue, Feb 20, 2024 at 12:45 PM Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)> wrote:

Mr. Feldman:

Have you had an opportunity to consider my proposal that we agree to a short continuance and try the case to a judge? At this time, we are just 19 days from trial.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

---

**From:** Steven Abern

**Sent:** Friday, February 16, 2024 10:55 AM

**To:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Cc:** Nolan Armstrong (<[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>)

<[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>; Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>; Nicole Schlosser <[nicole.schlosser@mcnamaralaw.com](mailto:nicole.schlosser@mcnamaralaw.com)>

**Subject:** RE: Feldman v Holmes - CGC-21-594129

Mr. Feldman:

First, I'm not quite clear on which files you are referring to. The events to which you refer occurred prior to my involvement in the case. However, if you are referring to discovery

exchanged between the parties, including documents produced in discovery, I can have my office send you a Sharefile link with those materials. That said, I do not believe for a moment that your prior attorney does not have a copy of the file for this litigation. He is required to keep a file for no less than five years.

On another note, I'd like to explore your willingness to agree to try this case to a judge rather than to a jury. In exchange, we would agree to a short continuance. A bench trial would significantly reduce the length of trial and would increase the probability of getting a courtroom on the appointed day. Please let us know if you are amenable to such an agreement.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

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**From:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Sent:** Wednesday, February 14, 2024 4:17 PM

**To:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>

**Cc:** Nolan Armstrong (<[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>

<[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>; Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>; Nicole Schlosser <[nicole.schlosser@mcnamaralaw.com](mailto:nicole.schlosser@mcnamaralaw.com)>

**Subject:** Re: Feldman v Holmes - CGC-21-594129

Dear Mr. Abern: Mr. Fanelli is not available Friday and we will need to reschedule. My apologies for any inconvenience.

I would prefer not to have to file an MtC and handle this informally, regarding production and discovery. I believe both parties benefit from ensuring what was shared and what is pending or missing, especially your side given the volume of evidence I provided to Julien

to share with you and forthcoming interogs I owe you. The files my attorney received from you and/or were shared with you had been corrupt. Neither he nor I have any way of knowing which files are missing. Copying from his Dropbox, it quickly flashed through a dozen file names I could not get as they were corrupted. I have no way of knowing how many, what names are missing. The only answer, unfortunately, is to share the files in a directory set up exactly the same as my previous counsel provided. I am not trying to trick anyone or do this with any animosity. It just needs to happen, and a year of waiting is too long. Can you give me a reasonable argument other than "Get it from your attorney" because, like me, he doesn't have it either?

*Daniel J. Feldman, Ph.D.*

*Clinical Neuropsychologist (NYS#014127)*

*and Touch Healer*

*13647 Aragon Rd Apt 303*

*Louisville, KY 40245*

*(307) 699.3223*

*"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."*

*The Little Prince by Antoine de Saint-Exupéry*

On Mon, Feb 12, 2024 at 4:38 PM Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)> wrote:

Mr. Feldman:

Will you be producing Mr. Fanelli for deposition on Friday or will you not.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

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F: 510/273-8534

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**From:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Sent:** Wednesday, February 7, 2024 8:15 PM

**To:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>

**Subject:** Re: Feldman v Holmes - CGC-21-594129

yes sir. i am doing the best i can given the circumstances. i still notify him. he did tell me he was available for the trial date. i would like to be present of course. and at the moment i have no idea that u can do that. and since this is not a joint stipulated continuance, we are going to end up scheduling and rescheduling for even longer until i can get this resolved. i can't stress to anyone how dire my medical situation is without a doctor, and the reason this is happening is because of the slander of your client. has anyone heard of this happening to another patient? in over 30 years of working in healthcare, i have never thought such a thing could happen. the slander combined with technology and relaxed HIPPA standards, your client, maybe unknowingly, was granted the world biggest megaphone. it seemed like it her life purpose to tell everyone these lies, and they are all lies.

please put yourself in my shoes and assume for a second what i have told you is true. how one person at ucsf after listening to your landlord hellbent on retaliation can decide that you are going to be flagged as a violent Elder abuser, threatened with arrest if you go back to any of your previous doctors, and that flag will follow you to any Healthcare system with the new "care anywhere" MyChart that gives doctors heads up about troublesome patients, pain pill addicts going to multiple docs and ERs for meds, or particularly violent patients. and despite never being convicted, had 911 or the police called on you for violence, no injuries ever reported, no police reports, only hearsay for the people who work for her in the building and her son above you, and without any of this evidence, a single risk management lawyer who spoke with your landlady and accuses you of the most violent heinous behavior towards an elderly woman, and despite saying you have any idea what she is taking about and that you want an appeal for crimes you have no idea and are not even told that you supposedly committed, and you are told there is no appeal

because it is a zero tolerance policy and they won't even read any rebuttal if you sent it. this person listened to stories of your landlady, complete fabrication, and decided that she was not only the prosecutor, but the judge and jury too, and the executioner in a system where the defendant, you, are not even given a voice to defend yourself, let alone plead the 5th. and that ruling is then sent to act practice that looks up your background, and they can decide, based on what the risk management lawyer said, that they will make the same ruling. so the next doctor doesn't see just one but multiple charges. and they use that to justify denying you any medical care and they just might call the police on you if you show up to get treated. you can't get refills or medications for serious conditions. and if you're sick, too bad, deal with it. let alone need surgery after a car accident but oh no you need a primary care physician to follow up with you to have surgery. "you'll just have to wait to get surgery until you find another pcp," knowing that they are going to eventually kick you out of their practice and you'll have to find another.

So that's a snapshot of what I've had to deal with since november 2017 bc of my landlady hellbent on retaliation. i can't work. i am sick all the time. i can't get needed surgeries. and I'm trying my best to keep up with this case so it will be a fair trial for me. i have lost everything due to the lies of one person who just laughs and thinks this is hilarious. she is the cruelest person i have ever known. and this needs to be a fair trial since she won't be brought up on criminal charges, already gotten away with murder.

So please, i appreciate your understanding but i have been put into the biggest nightmare i think I've ever heard of next to concentration camps. and violent is the last thing anyone would ever have used to describe me before moving to San Francisco.

I will call Mr. Fanelli and i appreciate the heads up very much. Sorry for the detail but it's important as i don't really think anyone knows how bad this is. just imagine it.

Thank you, have a good night .

On Wed, Feb 7, 2024, 19:21 Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)> wrote:

Mr. Feldman:

We have noticed the deposition of your expert witness, Mr. Fanelli, to be taken on February 16<sup>th</sup>. We have not received confirmation that Mr. Fanelli will appear. We will also need a W-9 and fee schedule so that we can arrange to pay him for his time on the record. Please attend to these details.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

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**From:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Sent:** Wednesday, February 7, 2024 3:58 PM

**To:** Nolan Armstrong <[Nolan.Armstrong@mcnamaralaw.com](mailto:Nolan.Armstrong@mcnamaralaw.com)>

**Cc:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>; Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>

**Subject:** Re: Feldman v Holmes - CGC-21-594129

Thank you for clarifying that indeed I was requesting a joint stipulation, which would have been important to know before filing anything. Since that is not a possibility, I will go forward on my own.

I did think it was important for the ADR to know that I am sick currently and requesting a continuance. And you are correct, he does not need to be included in replies.

***Daniel J. Feldman, Ph.D.***

**Clinical Neuropsychologist (NYS#014127)**

**and Touch Healer**

**13647 Aragon Rd Apt 303**

**Louisville, KY 40245**

**(307) 699.3223**



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*The Little Prince by Antoine de Saint-Exupéry*

On Tue, Feb 6, 2024 at 2:35 PM Nolan Armstrong  
<[Nolan.Armstrong@mcnamaralaw.com](mailto:Nolan.Armstrong@mcnamaralaw.com)> wrote:

Mr. Feldman,

I removed the ADR Coordinator from this email thread. They do not need to be involved in our discussion regarding the trial continuance or other issues. At this point, the defense is not in a position to stipulate to continue the trial, which I think is what you mean by a "joint request for a continuance." I would suggest that you comply with the Code of Civil Procedure and San Francisco Superior Court Local Rules concerning requests for a trial continuance. After we have received any formal submission to the court, we will of course evaluate whether an opposition is warranted.

Nolan

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**From:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>  
**Sent:** Monday, February 5, 2024 1:09 PM  
**To:** Nolan Armstrong <[Nolan.Armstrong@mcnamaralaw.com](mailto:Nolan.Armstrong@mcnamaralaw.com)>  
**Cc:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>; Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>; ADR Coordinator <[ADRCoordinator@sftc.org](mailto:ADRCoordinator@sftc.org)>  
**Subject:** Re: Feldman v Holmes - CGC-21-594129

**CAUTION: [External E-Mail] - DO NOT** click on links or open attachments unless you recognize the **source** of the email AND know the content is safe.

**ALWAYS VERIFY** the source of **unexpected or suspicious** emails before opening.

At the time being, I have no doctor and am gravely ill. My condition has worsened, and I am out of medication without a means to get refills. I attempted to explain this last week, but I did not have any ability to respond to the Court, verified by Managing eFiling Clerk Lynn Bura who investigated and determined after 40 minutes with me that 1) I had not had the ability to file with the Court with One Legal for days before until after the February 1 date, with a failure of One Legal Technical Support to investigate the issue for more than three days, and as such, it was a matter both outside of my control and the control of the Court, 2) the message she had reviewed with me from One Legal erroneously claimed that the rejection was coming from the Court Clerk as it was actually a One Legal technical issue that was occurring before my filings would even reach the Court, and 3) the issue was no longer replicating by the afternoon of February 1. Lynn recommended that I no longer use One Legal for my eFiling, to choose another vendor.

If any of your attorneys had indicated to me that they had difficulty filing, I would have conveyed that to the Judge. I would have let the Court know that the opposing side had earnestly been attempting to file with the Court, and I would concede to allowing more time for you to resolve the issue or if the Court would allow the courtesy copies as an extenuating circumstance. Instead, your team took that as an opportunity to make disingenuous claims about why I had not answered or filed, knowing I could not retort.

Now I am stuck in a medical situation that has preceded any of my attempts to address the issues on this case. At the heart of it, this is a case about "gaslighting" slander that goes to the extent of perjuring claims of violence to the court, making false statements to law enforcement, and worst of all, making false statements to medical authorities that can decide not what kind of medical care I get but if I get medical care at all. And she did this to someone who already had a life-threatening medical condition and had been deemed to be unable to work due to physical disabilities and post-traumatic stress, mostly from an armed attack in front of his residence and now even more so from the actions of the Defendant herself. The actions of her counsel in "gaslighting" my intentions to file an opposition, to file an application requesting more time, and ironically, characterizing that my claims are baseless conspiracy theories when your client has not offered anything but hearsay from her son and employees as her defense, are about as disgusting as it gets. But you did it because you knew I couldn't respond, and you knew that the Judge would not consider any of the valid reasons I provided in my application. I simply wanted a lawyer to look over my opposition before filing it. I paid money to consult with two firms who never replied at all, let alone within the 48-72 hour window. Maybe her counsel is more heartless than a "violent elder abuser."

I cannot focus on healthcare, when your client has caused irreparable damage to my ability to attain it for 7 years, and I am particularly vulnerable following a serious car accident that has left me with another permanent disability. I have postponed consideration for asking for another continuance, but now I am at a critical point medically and without counsel, as my search had to stop for three months while I dealt with being immobilized from the accident.

Are you opposed to filing jointly on a continuance? I would like to know if there is any chance to discuss that. Given the history, I understand there is a slim chance of getting it. In this case, I need to decide on that or if I need to take other measures to ensure that this case is heard fairly and on its merits. As it stands, I cannot agree that there is any fair assessment of damages that we can discuss in Arbitration. Not to mention that your side has refused for a year to square up what Discovery you have from me, that my previous counsel gave you everything, and conversely, what I am missing from you. In mediation, I would prefer to have counsel, as the chance of that grows slimmer to impossible the closer the trial date gets, as I have discovered since resuming the search in December. And I doubt I will be in a medical position to even attend in a couple of weeks.

I do indeed blame my worsening medical state on the deliberate actions of your client and the providers who have acted unlawfully by refusing medical care on the assumption I am a violent elder abuser with multiple zero tolerance policies, all completely unfounded.

Please advise. Would you agree:

- 1) to a joint request for a continuance?
- 2) to end Mr. Armstrong's refusal to confirm Discovery since the sub out of Mr. Swanson?
- 3) to put off Arbitration until I have had a chance to recover from the current illness and the Court can decide on continuance?

Thank you for your consideration,

***Daniel J. Feldman, Ph.D***

**Clinical Neuropsychologist (NYS#014127)**

**and Touch Healer**

13647 Aragon Rd Apt 303

Louisville, KY 40245

(307) 699.3223

*"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."*

*The Little Prince by Antoine de Saint-Exupéry*

On Mon, Feb 5, 2024 at 11:59 AM Nolan Armstrong  
<[Nolan.Armstrong@mcnamaralaw.com](mailto:Nolan.Armstrong@mcnamaralaw.com)> wrote:

Feb 14 and 20 work for us.

---

**From:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>

**Sent:** Monday, February 5, 2024 8:43 AM

**To:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>; Nolan Armstrong  
<[Nolan.Armstrong@mcnamaralaw.com](mailto:Nolan.Armstrong@mcnamaralaw.com)>

**Cc:** Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>; ADR Coordinator  
<[ADRCoordinator@sftc.org](mailto:ADRCoordinator@sftc.org)>

**Subject:** RE: Feldman v Holmes - CGC-21-594129

**CAUTION: [External E-Mail] - DO NOT** click on links or open attachments unless you recognize the **source** of the email AND know the content is safe. **ALWAYS VERIFY** the source of **unexpected or suspicious** emails before opening.

Gentlemen:

I don't believe that either of you have responded to the ADR Coordinator. Please give your availability for a Mandatory Settlement Conference.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

---

**From:** Steven Abern

**Sent:** Thursday, February 1, 2024 9:09 AM

**To:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Cc:** Nolan Armstrong ([nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com))

<[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>; Virginia Guthrie

<[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>; ADR Coordinator <[ADRCoordinator@sftc.org](mailto:ADRCoordinator@sftc.org)>

**Subject:** RE: Feldman v Holmes - CGC-21-594129

Mr. Feldman:

Please respond to the ADR Coordinator (cc'd to us all) regarding your availability for a Mandatory Settlement Conference. Let her know that you will need to appear via Zoom.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

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**From:** ADR Coordinator <[ADRCoordinator@sftc.org](mailto:ADRCoordinator@sftc.org)>

**Sent:** Tuesday, January 30, 2024 9:59 AM

**To:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>; Steven Abern  
<[sabern@htalaw.com](mailto:sabern@htalaw.com)>

**Cc:** Nolan Armstrong ([nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com))  
<[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>; Virginia Guthrie  
<[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>

**Subject:** RE: Feldman v Holmes - CGC-21-594129

Dear all,

The court has the following dates available for an MSC:

- Feb 2 (8:30am)
- Feb 6 (8:30am)
- Feb 7 (8:30am or 1pm)
- Feb 8 (8:30am or 1pm)
- Feb 13 (8:30am or 1pm)
- Feb 14 (1pm)
- Feb 16 (8:30am)
- Feb 20 (8:30am or 1pm)
- Feb 21 (8:30am or 1pm)
- Feb 22 (1pm)
- Feb 23 (8:30am)
- Feb 27 (8:30am)
- Feb 28 (8:30am or 1pm)
- Feb 29 (8:30am)

Please advise.


Because of the Defendants actions and continued broadcast of slander, I have remained impaired and unable to get needed surgery.

That is coupled with the fact that the motions were improperly served to me, or not served at all. The Defense has submissions claiming email service with a list of emails to whom the documents were served, and mine is not listed. And not surprisingly, I did not get them. I received a hard copy for the first time a month after Defense claimed service.\

My medical disability, the recent medical emergency that is not resolved, the improper and missing service are just the main reasons that an answer is forthcoming. I have attempted to contact the Court clerks about this matter yet have had no reply.

**1) Motor Vehicle Accident With Severe Injuries**

**2) Inaccurate Proof Of Service Of The Motion From Defendant**

**3) Lack Of Medical Care**

**4) Attorneys Hired December 5<sup>th</sup> To Answer These Motions And  
Discovery Ghosted And Have Not Returned Funds Or Calls, Hired Locally  
Which Would Have Allowed Plaintiff To Stay In Kentucky**

**5) Power Outage at Residence for Two Full Days January 25<sup>th</sup> and 26<sup>th</sup>**

**6) Sabotage And Abandonment From Previous Counsel Either As A  
Defendant Previously Or Plaintiff Currently**

**7) Lack Of 5<sup>th</sup> Amendment Right To Due Process In That No One Will  
Serve As My Legal Counsel Or Offer Legal Advice Either As A Defendant  
Previously Or Plaintiff Currently**

**8) Lack Of Resources To Assist Plaintiff With Disabilities:**



**9) Defendant Attorneys Do Not Treat Pro Se Plaintiff As They Do Other Attorneys, Ignoring Reasonable But Essential Requests About Discovery**

**10) Defendant Argued Successfully To Overturn The Previous Demurrer In Her Unlawful Detainer Case Promising This Judge In This Court That She Had Ample And Undeniable Evidence Of Her Claims Yet In 10 Months Granted She Provided Only Perjured Hearsay Evidence Suborned By Her Previous Counsel At Least Three Times; The Plaintiff Has Never Been Allowed To Present His Case And Claims For Which There Is An Embarrassment Of Hard Evidence**

**11) Given The Settlement Made Upon Dismissing The Prior Unlawful Detainer Case Damages Must Be Considered As The Settlement Was Only Drafted Under Those Terms**

**12) Defendant Has Had The Wrongful Death Cause Of Action Dismissed And Not Consolidated With This Case Simply For Lack Of Counsel, Has Not Been Criminally Charged Nor Civilly Held Accountable By What The Evidence Will Show To Be Murder With Malicious Intent**

**13) This Case Is Stacked In Favor In Every Way To The Defendant On Resources And Counsel With The Exception Of Facts, Truth, Evidence And Law; Yet The Plaintiff Rendered Destitute Because Of The Actions Of The Defendant Currently Lacks The Ability To Be Evenly Matched**

**14) The Goal Of The Defendant Is Not Winning In Trial But To Prevent Her Testimony As She Cannot Risk Exposing The Full Extent Of Her Crimes Including Bribery Of Public Officials, Perjury To This Judge In This Court, Narcotics Manufacturing And Trafficking, Malicious Prosecution,**

Energy Theft, Animal Cruelty, Harassment, Slander

**15) Public Officials Who Are Complicit With The Defendant Are Likely Exerting Pressure For Having This Trial Dismissed To Prevent Exposure Of Their Corruption**

*Daniel J. Feldman, Ph.D.*

Clinical Neuropsychologist (NYS#014127)

and Touch Healer

13647 Aragon Rd Apt 303

Louisville, KY 40245

(307) 699.3223

*"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."*

*The Little Prince by Antoine de Saint-Exupéry*

On Mon, Jan 29, 2024 at 12:58 PM Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)> wrote:

ADR Coordinator:

I and attorney Nolan Armstrong represent Defendant Linda Holmes in the matter

of *Feldman v Holmes* - CGC-21-594129. Plaintiff Daniel Feldman, copied here, represents himself *in propria persona*.

The trial of this matter is set for March 11, 2024.

I am writing to request a Mandatory Settlement Conference or ADR conference prior to trial. If something could be scheduled for a date in February, it may save the parties considerable time and expense preparing for trial. Mr. Feldman resides in Kentucky and so may have to appear via Zoom.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

## EXHIBIT 6

**From:** [Daniel J. Feldman, Ph.D.](#)  
**To:** [Steven Abern](#)  
**Cc:** [Nolan Armstrong \(nolan.armstrong@mcnamaralaw.com\)](#); [Virginia Guthrie](#); [Nicole Schlosser](#); [Jody Struck](#)  
**Subject:** Re: Feldman v Holmes - CGC-21-594129  
**Date:** Tuesday, February 20, 2024 5:37:37 PM

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My apologies, but I cannot agree to a continuance less than 6 months, aiming for 8 months. My worsening medical situation is only going to get worse without a primary care or refills for life threatening conditions, so i need to find representation still. And I would be open to trial without a jury as a means to get more quickly to a verdict and resolve this issue. Can i think about it for a few days?

Would you be amenable to a joint stip on a later date if i also proposed a trial by Judge?

The challenge is I am in incredible pain, still need the surgical evaluation re: my neck and hand. And I completely shifted gears looking for medical care and focusing on counsel, and partial counsel to file the opposition. I finally have someone now reviewing what I wrote and making changes. Once I get counsel in SF, I can get these other injuries assessed to know how emergent it is, once I have another PCP.

In other news, Mr. Fanelli should be contacting you soon regarding some dates for deposition. As you know I was pretty sick when the expert exchange arrived. I should clarify who Mr. Fanelli is. He is a professional with a long history of doing environmental testing who sampled the air and water and mold levels in apartment on February 1, 2020, the week Chris went hospice care. Verbally, Mr. Fanelli told me it was one of the most toxic residences he ever tested, and in his report, he documented that the apartment was uninhabitable with severe levels of mold and his belief that our water was being intentionally contaminated. He would not leave the apartment without me leaving with him with my suitcase and cats, he felt that strongly about it. Neither Mrs. Holmes nor her counsel would respond to a single complaint or to this report in over 8 months despite Chris' death and that I did not have a guarantee of habitability until repairs were made.

Your Notice of Deposition for Mr. Fanelli seemed positioned for a health care provider which he is not. I accept responsibility for the confusion as if I wasnt sick when writing the expert disclosure, I would have been more clear as to his role in this case.

If Mr. Fanelli contacts you to set up this meeting, let me know so i can send you the requested production on time.

Thank you for the offer and time.

***Daniel J. Feldman, Ph.D.***  
**Clinical Neuropsychologist (NYS#014127)**  
**and Touch Healer**

13647 Aragon Rd Apt 303  
Louisville, KY 40245

(307) 699.3223

*"And now here is my secret, a very simple secret: It is only with the heart that one can see*

*rightly; what is essential is invisible to the eye.”*  
*The Little Prince by Antoine de Saint-Exupéry*

On Tue, Feb 20, 2024 at 2:34 PM Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)> wrote:

Mr. Feldman:

You have not answered my very specific question. Will you agree to a short continuance to try the case to a judge rather than a jury?

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

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**From:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Sent:** Tuesday, February 20, 2024 10:52 AM

**To:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>

**Subject:** Re: Feldman v Holmes - CGC-21-594129

Dear Mr. Abern,

I hope this letter finds you well. As we approach the scheduled trial date, I find myself in a position that necessitates a further request for a continuance. This request is driven by my ongoing challenges in securing suitable legal representation in California, a situation exacerbated by a recent accident and subsequent medical issues.

To briefly outline my circumstances without delving into unnecessary detail, my search for legal representation has been significantly hindered by the accident I experienced last summer, which resulted in surgery and the anticipation of more medical procedures in the near future. The time and focus required for my recovery have severely limited my ability to engage with potential legal counsel. Moreover, the complexity of my case, including its sensitive nature and the extensive preparation required, has made it particularly challenging to find an attorney willing to undertake such representation at this stage.

I understand the importance of proceeding with legal matters in a timely fashion, and it is not my intention to unduly delay the court's schedule. However, the unique circumstances I find myself in have left me with no choice but to seek additional time to find appropriate legal representation. Representing myself in this matter is not a viable option, given the complexities involved and the potential for my personal experiences to affect my ability to advocate effectively on my own behalf.

I am committed to finding legal counsel who can represent me adequately and am actively pursuing all available avenues to this end. However, the constraints imposed by my medical situation and the intricate nature of the case have necessitated more time than originally anticipated.

Given these circumstances, I respectfully request a continuance of the trial date to allow me the necessary time to secure legal representation. This request is made in the interest of ensuring a fair and just legal process for all parties involved.

I appreciate your understanding and consideration of this request. I am prepared to discuss this matter further if required and look forward to finding a resolution that allows for the proper administration of justice. Thank you for your time and attention to this matter.

Sincerely,

***Daniel J. Feldman, Ph.D.***

**Clinical Neuropsychologist (NYS#014127)**

**and Touch Healer**

**13647 Aragon Rd Apt 303**

Louisville, KY 40245

(307) 699.3223

*"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."*

*The Little Prince by Antoine de Saint-Exupéry*

On Tue, Feb 20, 2024 at 12:45 PM Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)> wrote:

Mr. Feldman:

Have you had an opportunity to consider my proposal that we agree to a short continuance and try the case to a judge? At this time, we are just 19 days from trial.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

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**From:** Steven Abern

**Sent:** Friday, February 16, 2024 10:55 AM

**To:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Cc:** Nolan Armstrong ([nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com))



<[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>; Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>;  
Nicole Schlosser <[nicole.schlosser@mcnamaralaw.com](mailto:nicole.schlosser@mcnamaralaw.com)>

**Subject:** RE: Feldman v Holmes - CGC-21-594129

Mr. Feldman:

First, I'm not quite clear on which files you are referring to. The events to which you refer occurred prior to my involvement in the case. However, if you are referring to discovery exchanged between the parties, including documents produced in discovery, I can have my office send you a Sharefile link with those materials. That said, I do not believe for a moment that your prior attorney does not have a copy of the file for this litigation. He is required to keep a file for no less than five years.

On another note, I'd like to explore your willingness to agree to try this case to a judge rather than to a jury. In exchange, we would agree to a short continuance. A bench trial would significantly reduce the length of trial and would increase the probability of getting a courtroom on the appointed day. Please let us know if you are amenable to such an agreement.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

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**From:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Sent:** Wednesday, February 14, 2024 4:17 PM

**To:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>

**Cc:** Nolan Armstrong (<[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>)

<[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>; Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>;

Nicole Schlosser <[nicole.schlosser@mcnamaralaw.com](mailto:nicole.schlosser@mcnamaralaw.com)>

**Subject:** Re: Feldman v Holmes - CGC-21-594129

Dear Mr. Abern: Mr. Fanelli is not available Friday and we will need to reschedule. My apologies for any inconvenience.

I would prefer not to have to file an MtC and handle this informally, regarding production and discovery. I believe both parties benefit from ensuring what was shared and what is pending or missing, especially your side given the volume of evidence I provided to Julien to share with you and forthcoming interogs I owe you. The files my attorney received from you and/or were shared with you had been corrupt. Neither he nor I have any way of knowing which files are missing. Copying from his Dropbox, it quickly flashed through a dozen file names I could not get as they were corrupted. I have no way of knowing how many, what names are missing. The only answer, unfortunately, is to share the files in a directory set up exactly the same as my previous counsel provided. I am not trying to trick anyone or do this with any animosity. It just needs to happen, and a year of waiting is too long. Can you give me a reasonable argument other than "Get it from your attorney" because, like me, he doesn't have it either?

*Daniel J. Feldman, Ph.D.*

*Clinical Neuropsychologist (NYS#014127)*

*and Touch Healer*

*13647 Aragon Rd Apt 303*

*Louisville, KY 40245*

*(307) 699.3223*

*"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."*

*The Little Prince by Antoine de Saint-Exupéry*

On Mon, Feb 12, 2024 at 4:38 PM Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)> wrote:

Mr. Feldman:

Will you be producing Mr. Fanelli for deposition on Friday or will you not.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

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**From:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Sent:** Wednesday, February 7, 2024 8:15 PM

**To:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>

**Subject:** Re: Feldman v Holmes - CGC-21-594129

yes sir. i am doing the best i can given the circumstances. i still notify him. he did tell me he was available for the trial date. i would like to be present of course. and at the moment i have no idea that u can do that. and since this is not a joint stipulated continuance, we are going to end up scheduling and rescheduling for even longer until i can get this resolved. i can't stress to anyone how dire my medical situation is without a doctor, and the reason this is happening is because of the slander of your client. has anyone heard of this happening to another patient? in over 30 years of working in healthcare, i have never thought such a thing could happen. the slander combined with technology and relaxed HIPPA standards, your client, maybe unknowingly, was granted the world biggest megaphone. it seemed like it her life purpose to tell everyone these lies, and they are all lies.

please put yourself in my shoes and assume for a second what i have told you is true. how one person at ucsf after listening to your landlord hellbent on retaliation can decide

that you are going to be flagged as a violent Elder abuser, threatened with arrest if you go back to any of your previous doctors, and that flag will follow you to any Healthcare system with the new "care anywhere" MyChart that gives doctors heads up about troublesome patients, pain pill addicts going to multiple docs and ERs for meds, or particularly violent patients. and despite never being convicted, had 911 or the police called on you for violence, no injuries ever reported, no police reports, only hearsay for the people who work for her in the building and her son above you, and without any of this evidence, a single risk management lawyer who spoke with your landlady and accuses you of the most violent heinous behavior towards an elderly woman, and despite saying you have any idea what she is taking about and that you want an appeal for crimes you have no idea and are not even told that you supposedly committed, and you are told there is no appeal because it is a zero tolerance policy and they won't even read any rebuttal if you sent it. this person listened to stories of your landlady, complete fabrication, and decided that she was not only the prosecutor, but the judge and jury too, and the executioner in a system where the defendant, you, are not even given a voice to defend yourself, let alone plead the 5th. and that ruling is then sent to act practice that looks up your background, and they can decide, based on what the risk management lawyer said, that they will make the same ruling. so the next doctor doesn't see just one but multiple charges. and they use that to justify denying you any medical care and they just might call the police on you if you show up to get treated. you can't get refills or medications for serious conditions. and if you're sick, too bad, deal with it. let alone need surgery after a car accident but oh no you need a primary care physician to follow up with you to have surgery. "you'll just have to wait to get surgery until you find another pcp," knowing that they are going to eventually kick you out of their practice and you'll have to find another.

So that's a snapshot of what I've had to deal with since november 2017 bc of my landlady hellbent on retaliation. i can't work. i am sick all the time. i can't get needed surgeries. and I'm trying my best to keep up with this case so it will be a fair trial for me. i have lost everything due to the lies of one person who just laughs and thinks this is hilarious. she is the cruelest person i have ever known. and this needs to be a fair trial since she won't be brought up on criminal charges, already gotten away with murder.

So please, i appreciate your understanding but i have been put into the biggest nightmare i think I've ever heard of next to concentration camps. and violent is the last thing anyone would ever have used to describe me before moving to San Francisco.

I will call Mr. Fanelli and i appreciate the heads up very much. Sorry for the detail but it's important as i don't really think anyone knows how bad this is. just imagine it.

Thank you, have a good night .

On Wed, Feb 7, 2024, 19:21 Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)> wrote:

Mr. Feldman:

We have noticed the deposition of your expert witness, Mr. Fanelli, to be taken on February 16<sup>th</sup>. We have not received confirmation that Mr. Fanelli will appear. We will also need a W-9 and fee schedule so that we can arrange to pay him for his time on the record. Please attend to these details.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

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**From:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Sent:** Wednesday, February 7, 2024 3:58 PM

**To:** Nolan Armstrong <[Nolan.Armstrong@mcnamaralaw.com](mailto:Nolan.Armstrong@mcnamaralaw.com)>

**Cc:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>; Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>

**Subject:** Re: Feldman v Holmes - CGC-21-594129

Thank you for clarifying that indeed I was requesting a joint stipulation, which would have been important to know before filing anything. Since that is not a possibility, I will go forward on my own.

I did think it was important for the ADR to know that I am sick currently and requesting a continuance. And you are correct, he does not need to be included in replies.

***Daniel J. Feldman, Ph.D.***

**Clinical Neuropsychologist (NYS#014127)**

**and Touch Healer**

13647 Aragon Rd Apt 303

Louisville, KY 40245

(307) 699.3223

***"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."***

*The Little Prince by Antoine de Saint-Exupéry*

On Tue, Feb 6, 2024 at 2:35 PM Nolan Armstrong  
<[Nolan.Armstrong@mcnamaralaw.com](mailto:Nolan.Armstrong@mcnamaralaw.com)> wrote:

Mr. Feldman,

I removed the ADR Coordinator from this email thread. They do not need to be involved in our discussion regarding the trial continuance or other issues. At this point, the defense is not in a position to stipulate to continue the trial, which I think is what you mean by a "joint request for a continuance." I would suggest that you comply with the Code of Civil Procedure and San Francisco Superior Court Local Rules concerning requests for a trial continuance. After we have received any formal submission to the court, we will of course evaluate whether an opposition is warranted.

Nolan

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**From:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>  
**Sent:** Monday, February 5, 2024 1:09 PM  
**To:** Nolan Armstrong <[Nolan.Armstrong@mcnamaralaw.com](mailto:Nolan.Armstrong@mcnamaralaw.com)>  
**Cc:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>; Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>; ADR Coordinator <[ADRCoordinator@sftc.org](mailto:ADRCoordinator@sftc.org)>  
**Subject:** Re: Feldman v Holmes - CGC-21-594129

**CAUTION: [External E-Mail] - DO NOT** click on links or open attachments unless you recognize the **source** of the email AND know the content is safe. **ALWAYS VERIFY** the source of **unexpected or suspicious** emails before opening.

At the time being, I have no doctor and am gravely ill. My condition has worsened, and I am out of medication without a means to get refills. I attempted to explain this last week, but I did not have any ability to respond to the Court, verified by Managing eFiling Clerk Lynn Bura who investigated and determined after 40 minutes with me that 1) I had not had the ability to file with the Court with One Legal for days before until after the February 1 date, with a failure of One Legal Technical Support to investigate the issue for more than three days, and as such, it was a matter both outside of my control and the control of the Court, 2) the message she had reviewed with me from One Legal erroneously claimed that the rejection was coming from the Court Clerk as it was actually a One Legal technical issue that was occurring before my filings would even reach the Court, and 3) the issue e was no longer replicating by the afternoon of February 1. Lynn recommended that I no longer use One Legal for my eFiling, to choose another vendor.

If any of your attorneys had indicated to me that they had difficulty filing, I would have conveyed that to the Judge. I would have let the Court know that the opposing side had earnestly been attempting to file with the Court, and I would concede to allowing more time for you to resolve the issue or if the Court would allow the courtesy copies as an extenuating circumstance. Instead, your team took that as an opportunity to make disingenuous claims about why I had not answered or filed, knowing I could not retort.

Now I am stuck in a medical situation that has preceded any of my attempts to address the issues on this case. At the heart of it, this is a case about "gaslighting" slander that goes to the extent of perjuring claims of violence to the court, making false statements to law enforcement, and worst of all, making false statements to medical authorities that can decide not what kind of medical care I get but if I get medical care at all. And she did this to someone who already had a life-threatening medical condition and had been deemed to be unable to work due to physical

disabilities and post-traumatic stress, mostly from an armed attack in front of his residence and now even more so from the actions of the Defendant herself. The actions of her counsel in "gaslighting" my intentions to file an opposition, to file an application requesting more time, and ironically, characterizing that my claims are baseless conspiracy theories when your client has not offered anything but hearsay from her son and employees as her defense, are about as disgusting as it gets. But you did it because you knew I couldn't respond, and you knew that the Judge would not consider any of the valid reasons I provided in my application. I simply wanted a lawyer to look over my opposition before filing it. I paid money to consult with two firms who never replied at all, let alone within the 48-72 hour window. Maybe her counsel is more heartless than a "violent elder abuser."

I cannot focus on healthcare, when your client has caused irreparable damage to my ability to attain it for 7 years, and I am particularly vulnerable following a serious car accident that has left me with another permanent disability. I have postponed consideration for asking for another continuance, but now I am at a critical point medically and without counsel, as my search had to stop for three months while I dealt with being immobilized from the accident.

Are you opposed to filing jointly on a continuance? I would like to know if there is any chance to discuss that. Given the history, I understand there is a slim chance of getting it. In this case, I need to decide on that or if I need to take other measures to ensure that this case is heard fairly and on its merits. As it stands, I cannot agree that there is any fair assessment of damages that we can discuss in Arbitration. Not to mention that your side has refused for a year to square up what Discovery you have from me, that my previous counsel gave you everything, and conversely, what I am missing from you. In mediation, I would prefer to have counsel, as the chance of that grows slimmer to impossible the closer the trial date gets, as I have discovered since resuming the search in December. And I doubt I will be in a medical position to even attend in a couple of weeks.

I do indeed blame my worsening medical state on the deliberate actions of your client and the providers who have acted unlawfully by refusing medical care on the assumption I am a violent elder abuser with multiple zero tolerance policies, all completely unfounded.

Please advise. Would you agree:

1) to a joint request for a continuance?

2) to end Mr. Armstrong's refusal to confirm Discovery since the sub out of Mr. Swanson?



3) to put off Arbitration until I have had a chance to recover from the current illness and the Court can decide on continuance?

Thank you for your consideration,

*Daniel J. Feldman, Ph.D*

Clinical Neuropsychologist (NYS#014127)

and Touch Healer

13647 Aragon Rd Apt 303

Louisville, KY 40245

(307) 699.3223

*"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."*

*The Little Prince by Antoine de Saint-Exupéry*

On Mon, Feb 5, 2024 at 11:59 AM Nolan Armstrong  
<[Nolan.Armstrong@mcnamaralaw.com](mailto:Nolan.Armstrong@mcnamaralaw.com)> wrote:

Feb 14 and 20 work for us.

---

**From:** Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>

**Sent:** Monday, February 5, 2024 8:43 AM

**To:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>; Nolan Armstrong <[Nolan.Armstrong@mcnamaralaw.com](mailto:Nolan.Armstrong@mcnamaralaw.com)>

**Cc:** Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>; ADR Coordinator <[ADRCoordinator@sftc.org](mailto:ADRCoordinator@sftc.org)>

**Subject:** RE: Feldman v Holmes - CGC-21-594129

**CAUTION: [External E-Mail] - DO NOT** click on links or open attachments unless you recognize the **source** of the email AND know the content is safe. **ALWAYS VERIFY** the source of **unexpected or suspicious** emails before opening.

Gentlemen:

I don't believe that either of you have responded to the ADR Coordinator. Please give your availability for a Mandatory Settlement Conference.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534

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**From:** Steven Abern

**Sent:** Thursday, February 1, 2024 9:09 AM

**To:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>

**Cc:** Nolan Armstrong ([nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com))

<[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>; Virginia Guthrie

<[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>; ADR Coordinator <[ADRCoordinator@sftc.org](mailto:ADRCoordinator@sftc.org)>

**Subject:** RE: Feldman v Holmes - CGC-21-594129

Mr. Feldman:

Please respond to the ADR Coordinator (cc'd to us all) regarding your availability for a Mandatory Settlement Conference. Let her know that you will need to appear via Zoom.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

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C: 510/332-4310

F: 510/273-8534

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**From:** ADR Coordinator <[ADRCoordinator@sftc.org](mailto:ADRCoordinator@sftc.org)>

**Sent:** Tuesday, January 30, 2024 9:59 AM

**To:** Daniel J. Feldman, Ph.D. <[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)>; Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)>

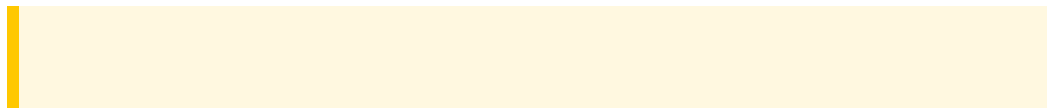
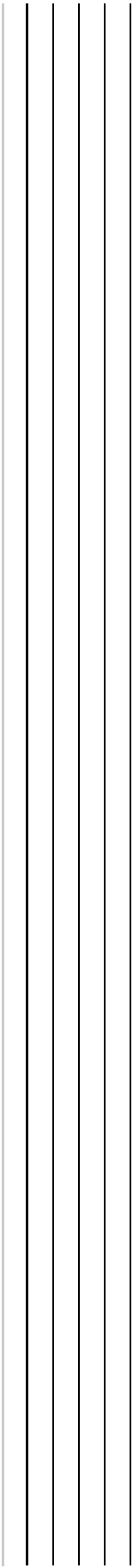
**Cc:** Nolan Armstrong ([nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)) <[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)>; Virginia Guthrie <[vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)>

**Subject:** RE: Feldman v Holmes - CGC-21-594129

Dear all,

The court has the following dates available for an MSC:

- Feb 2 (8:30am)
- Feb 6 (8:30am)
- Feb 7 (8:30am or 1pm)
- Feb 8 (8:30am or 1pm)
- Feb 13 (8:30am or 1pm)
- Feb 14 (1pm)
- Feb 16 (8:30am)



I am in the process of submitting to the court today a late response and ex parte request for a longer opposition to the Defendant's motion for summary adjudication. There are 15 reasons I have cited, the most important being that the Defendant;s attorneys have been aware that I have been disabled, and recently the victim of a major hit and run traffic accident struck by a Jeep traveling in excess of 100mph. I am awaiting surgery, yet cannot get access to medical care to complete that due to the slander of the Defendant that appears in my medical chart, slander that is broadcast with each new physician group through MyChart, a Zero Tolerance Policy for Violence that was solely based on the Defendant's deliberate lies to UCSF Risk Management about violence that never occurred, and I was never allowed to counter her claims.

Because of the Defendant's actions and continued broadcast of slander, I have remained impaired and unable to get needed surgery.

That is coupled with the fact that the motions were improperly served to me, or not served at all. The Defense has submissions claiming email service with a list of emails to whom the documents were served, and mine is not listed. And not surprisingly, I did not get them. I received a hard copy for the first time a month after Defense claimed service.\

My medical disability, the recent medical emergency that is not resolved, the improper and missing service are just the main reasons that an answer is forthcoming. I have attempted to contact the Court clerks about this matter yet have had no reply.

**1) Motor Vehicle Accident With Severe Injuries**

**2) Inaccurate Proof Of Service Of The Motion From Defendant**

**3) Lack Of Medical Care**

**4) Attorneys Hired December 5<sup>th</sup> To Answer These Motions And  
Discovery Ghosted And Have Not Returned Funds Or Calls, Hired Locally  
Which Would Have Allowed Plaintiff To Stay In Kentucky**

**5) Power Outage at Residence for Two Full Days January 25<sup>th</sup> and**

26<sup>th</sup>

**6) Sabotage And Abandonment From Previous Counsel Either As A Defendant Previously Or Plaintiff Currently**

**7) Lack Of 5<sup>th</sup> Amendment Right To Due Process In That No One Will Serve As My Legal Counsel Or Offer Legal Advice Either As A Defendant Previously Or Plaintiff Currently**

**8) Lack Of Resources To Assist Plaintiff With Disabilities:**

**9) Defendant Attorneys Do Not Treat Pro Se Plaintiff As They Do Other Attorneys, Ignoring Reasonable But Essential Requests About Discovery**

**10) Defendant Argued Successfully To Overturn The Previous Demurrer In Her Unlawful Detainer Case Promising This Judge In This Court That She Had Ample And Undeniable Evidence Of Her Claims Yet In 10 Months Granted She Provided Only Perjured Hearsay Evidence Suborned By Her Previous Counsel At Least Three Times; The Plaintiff Has Never Been Allowed To Present His Case And Claims For Which There Is An Embarrassment Of Hard Evidence**

**11) Given The Settlement Made Upon Dismissing The Prior Unlawful Detainer Case Damages Must Be Considered As The Settlement Was Only Drafted Under Those Terms**

**12) Defendant Has Had The Wrongful Death Cause Of Action Dismissed And Not Consolidated With This Case Simply For Lack Of Counsel, Has Not Been Criminally Charged Nor Civilly Held Accountable By What The Evidence Will Show To Be Murder With Malicious Intent**

**13) This Case Is Stacked In Favor In Every Way To The Defendant On Resources And Counsel With The Exception Of Facts, Truth, Evidence And Law; Yet The Plaintiff Rendered Destitute Because Of The Actions Of The Defendant Currently Lacks The Ability To Be Evenly Matched**

**14) The Goal Of The Defendant Is Not Winning In Trial But To Prevent Her Testimony As She Cannot Risk Exposing The Full Extent Of Her Crimes Including Bribery Of Public Officials, Perjury To This Judge In This Court, Narcotics Manufacturing And Trafficking, Malicious Prosecution, Energy Theft, Animal Cruelty, Harassment, Slander**

**15) Public Officials Who Are Complicit With The Defendant Are Likely Exerting Pressure For Having This Trial Dismissed To Prevent Exposure Of Their Corruption**

***Daniel J. Feldman, Ph.D.***

***Clinical Neuropsychologist (NYS#014127)***

***and Touch Healer***

***13647 Aragon Rd Apt 303***

***Louisville, KY 40245***

***(307) 699.3223***

***"And now here is my secret, a very simple secret: It is only with the heart that one can see rightly; what is essential is invisible to the eye."***

*The Little Prince by Antoine de Saint-Exupéry*

On Mon, Jan 29, 2024 at 12:58 PM Steven Abern <[sabern@htalaw.com](mailto:sabern@htalaw.com)> wrote:

ADR Coordinator:

I and attorney Nolan Armstrong represent Defendant Linda Holmes in the matter of *Feldman v Holmes* - CGC-21-594129. Plaintiff Daniel Feldman, copied here, represents himself *in propria persona*.

The trial of this matter is set for March 11, 2024.

I am writing to request a Mandatory Settlement Conference or ADR conference prior to trial. If something could be scheduled for a date in February, it may save the parties considerable time and expense preparing for trial. Mr. Feldman resides in Kentucky and so may have to appear via Zoom.

Steven Abern

Managing Partner

**Haapala, Thompson & Abern**

[1939 Harrison Street, Suite 800](#)

[Oakland, CA 94612](#)

T: 510/763-2324

C: 510/332-4310

F: 510/273-8534



|||.

## EXHIBIT 7

**From:** [Virginia Guthrie](#)  
**To:** [danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com); [Nolan Armstrong](#); [Nicole Schlosser](#)  
**Cc:** [Steven Abern](#)  
**Subject:** Feldman v. Holmes, San Francisco County Superior Court Case No: CGC-21-594129  
**Date:** Friday, March 1, 2024 8:38:00 AM

---

Good morning Mr. Feldman and Mr. Armstrong.

Please allow this to serve as notice that Defendant will be appearing Ex Parte on Tuesday, March 5, 2024, at 11:00am in Department 206 of the San Francisco Superior Court on an application to continue the trial date pursuant to stipulation. You will be served with the Ex Parte Application shortly.

Thank you,

Virginia Guthrie  
Litigation Secretary  
**Haapala, Thompson & Abern, LLP**  
1939 Harrison Street, Suite 800  
Oakland, California 94612  
Tel: 510-763-2324  
Fax: 510-273-8534  
Dir: 510-550-8545  
Cell: 925-222-0528  
E-mail: [vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)

Confidentiality Notice

This message contains information that may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by e-mail to [vguthrie@htalaw.com](mailto:vguthrie@htalaw.com), and delete the message. Thank you.

**PROOF OF SERVICE**

Virginia Guthrie certifies and declares as follows:

I am employed in the County of Alameda, State of California. I am over the age of 18 years, and not a party to this action. My business address is 1939 Harrison Street, Suite 800, Oakland, California, 94612-3527, ([vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)).

On March 1, 2024, I served the foregoing document described as:

1. **STIPULATED EX PARTE APPLICATION FOR AN ORDER TO CONTINUE TRIAL AND RELATED CUT-OFF DATES; SUPPORTING POINTS AND AUTHORITIES; DECLARATION OF STEVEN ABERN**
2. **[PROPOSED] ORDER CONTINUING TRIAL AND RELATED DATES**

on all interested parties in this action, in the manner set forth below.

☒ **BY ELECTRONIC MAIL:** By personally emailing the document(s) to the persons at the e-mail address(es) listed below. Service is based on CCP 1010.6(5)(b)(2)(3), "(2) A person represented by counsel, who has appeared in an action or proceeding, shall accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission. (3) Before first serving a represented person electronically, the person effecting service shall confirm the appropriate electronic service address for the counsel being served."

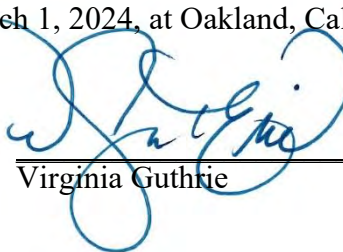
Daniel J. Feldman, Ph.D.  
13647 Aragon Way, Apt. 303  
Louisville, KY 40245  
T: 307-699-3223  
[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)

**Plaintiff in Pro Per**

Nolan S. Armstrong  
McNamara, Ambacher, Wheeler, Hirsig &  
Gray, LLP  
3480 Buskirk Avenue, Suite 250  
Walnut Creek, CA 94523  
925-939-5330  
925-939-0203  
[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)  
[nicole.schlosser@mcnamaralaw.com](mailto:nicole.schlosser@mcnamaralaw.com)

**Co-Counsel for Defendant LINDA  
STEINHOFF HOLMES**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 1, 2024, at Oakland, California.

  
\_\_\_\_\_  
Virginia Guthrie

Haapala, Thompson & Abery LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
Oakland, California 94612  
Telephone: 510-763-2324  
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NOLAN S. ARMSTRONG (State Bar No. 241311)  
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E-Mail: [nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)

Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,

Plaintiff,

v.

LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,

Defendants.

Case No. CGC-21-594129

~~PROPOSED~~ ORDER CONTINUING  
TRIAL AND RELATED DATES

Date: March 5, 2024  
Time: 11:00 a.m.  
Dept: 206

Having considered Defendant LINDA STEINHOFF HOLMES'S moving papers and the  
Stipulation of the Parties, and for good cause appearing:

THE COURT HEREBY ORDERS:

The date for the trial of this matter (currently scheduled for March 11, 2024) shall be  
vacated and reset to September 16, 2024 at 9:30 a.m. in Department 206.

The matter will be tried to the Court, as all parties have waived a jury.

All pre-trial dates and deadlines in this matter, including discovery, discovery motions  
and expert discovery deadlines, shall be calculated using the new trial date.

///

///

**FILED**

San Francisco County Superior Court

MAR 05 2024

CLERK OF THE COURT

BY:

Deputy Clerk

Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
Oakland, California 94612  
Telephone: 510-763-2324  
Facsimile: 510-273-8534

1 THE COURT FURTHER ORDERS ALL PARTIES to call (415) 551-3685 or email the  
2 court at Department206@sftc.org seven to 14 days before the trial date and provide the  
3 following information:

- 4 1. Party Name and Attorney Name (if represented).
- 5 2. Case Name and Number.
- 6 3. Trial date and estimate of total trial time (including motions in limine and jury  
7 selection).
- 8 4. Are you interested in a settlement conference on the day of trial?
- 9 5. Provide a brief description of the case, including damages. If calling, description  
10 is limited to three minutes or less.
- 11 6. If the case has settled, is this a global settlement as to all parties and all causes of  
12 action, and is the settlement conditional or unconditional?

13 Parties must appear on the day of trial unless a Dismissal, Notice of Settlement, or  
14 Notice of Stay is filed with courtesy copies delivered to Department 206 by 4:00 p.m. on the  
15 Thursday before trial.

16 If the trial date is continued, this order applies to the new trial date. Failure to comply  
17 with this Order may result in monetary sanctions, CCP §177.5.

18 SEE NEXT PAGE

19 DATED: \_\_\_\_\_

20 JUDGE OF THE SUPERIOR COURT

1 THE COURT FURTHER ORDERS ALL PARTIES to call 415-551-3685 or e-mail the  
2 court at Department206@sftc.org seven to fourteen days before the trial date and  
3 provide the following information:

- 4 1. Party Name and Attorney Name (if represented)
- 5 2. Case Name and Number
- 6 3. Trial date and estimate of total trial time (including motions in limine and  
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16 on the Thursday before trial.

17 All parties must email adrcoordinator@sftc.org no later than six (6) weeks before  
18 the trial date to set a mandatory settlement conference with the court.

19 If the trial date is continued, this order applies to the new trial date. Failure to  
20 comply with this order may result in monetary sanctions, C.C.P. §177.5.

21  
22 *Anne-Christine Massullo*

23 DATE: 3/5/2024

24 HONORABLE ANNE-CHRISTINE MASSULLO

25 Presiding Judge

26 San Francisco Superior Court

27 CAC-21-594124  
28 \*

\* NO further continuances  
absent good cause and brought by noticed motion.

Haapala, Thompson & ABERN LLP  
Attorneys At Law  
Park Plaza Building  
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Telephone: 510-763-2324  
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Telephone: (510) 763-2324  
Facsimile: (510) 273-8534  
E-Mail: [sabern@htalaw.com](mailto:sabern@htalaw.com)

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**03/06/2024**  
Clerk of the Court  
BY: MARK UDAN  
Deputy Clerk

NOLAN S. ARMSTRONG (State Bar No. 241311)  
MCNAMARA, AMBACHER, WHEELER, HIRSIG & GRAY LLP  
3480 Buskirk Avenue, Suite 250  
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Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,

Plaintiff,

v.

LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,

Defendants.

Case No. CGC-21-594129

**NOTICE OF ENTRY OF ORDER  
CONTINUING TRIAL AND RELATED  
DATES**

**Assigned for All Purposes to Dept.**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the attached Order Continuing Trial and Related Dates  
was signed by The Honorable Ann-Christine Massullo on March 5, 2024.

Dated: March 6, 2024

HAAPALA, THOMPSON & ABERN, LLP

By: 

STEVEN SHERIFF ABERN  
Attorneys for Defendant  
LINDA STEINHOFF HOLMES



Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
Oakland, California 94612  
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NOLAN S. ARMSTRONG (State Bar No. 241311)  
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Facsimile: (925) 939-0203  
E-Mail: [nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)

Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,

Plaintiff,

v.

LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,

Defendants.

Case No. CGC-21-594129

~~PROPOSED~~ ORDER CONTINUING  
TRIAL AND RELATED DATES

Date: March 5, 2024  
Time: 11:00 a.m.  
Dept: 206

Having considered Defendant LINDA STEINHOFF HOLMES'S moving papers and the  
Stipulation of the Parties, and for good cause appearing:

THE COURT HEREBY ORDERS:

The date for the trial of this matter (currently scheduled for March 11, 2024) shall be  
vacated and reset to September 16, 2024 at 9:30 a.m. in Department 206.

The matter will be tried to the Court, as all parties have waived a jury.

All pre-trial dates and deadlines in this matter, including discovery, discovery motions  
and expert discovery deadlines, shall be calculated using the new trial date.

///

///

**FILED**

San Francisco County Superior Court

MAR 05 2024

CLERK OF THE COURT

BY:

Deputy Clerk

Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
Oakland, California 94612  
Telephone: 510-763-2324  
Facsimile: 510-273-8534

1 THE COURT FURTHER ORDERS ALL PARTIES to call (415) 551-3685 or email the  
2 court at Department206@sftc.org seven to 14 days before the trial date and provide the  
3 following information:

- 4 1. Party Name and Attorney Name (if represented).
- 5 2. Case Name and Number.
- 6 3. Trial date and estimate of total trial time (including motions in limine and jury  
7 selection).
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15 Thursday before trial.

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18 SEE NEXT PAGE

19 DATED: \_\_\_\_\_

20 JUDGE OF THE SUPERIOR COURT

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3 provide the following information:

- 4 1. Party Name and Attorney Name (if represented)
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18 the trial date to set a mandatory settlement conference with the court.

19 If the trial date is continued, this order applies to the new trial date. Failure to  
20 comply with this order may result in monetary sanctions, C.C.P. §177.5.

21  
22 *Anne-Christine Massullo*

23 DATE: 3/5/2024

24 HONORABLE ANNE-CHRISTINE MASSULLO

25 Presiding Judge

26 San Francisco Superior Court

27 CAC-21-594129  
28 \*

\* NO further continuances  
absent good cause and brought by noticed motion.

**PROOF OF SERVICE**

Virginia Guthrie certifies and declares as follows:

I am employed in the County of Alameda, State of California. I am over the age of 18 years, and not a party to this action. My business address is 1939 Harrison Street, Suite 800, Oakland, California, 94612-3527, ([vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)).

On March 6, 2024, I served the foregoing document described as: NOTICE OF ENTRY OF ORDER CONTINUING TRIAL AND RELATED DATES on all interested parties in this action, in the manner set forth below.

☒ **BY ELECTRONIC MAIL:** By personally emailing the document(s) to the persons at the e-mail address(es) listed below. Service is based on CCP 1010.6(5)(b)(2)(3), “(2) A person represented by counsel, who has appeared in an action or proceeding, shall accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission. (3) Before first serving a represented person electronically, the person effecting service shall confirm the appropriate electronic service address for the counsel being served.”

Daniel J. Feldman, Ph.D.  
13647 Aragon Way, Apt. 303  
Louisville, KY 40245  
T: 307-699-3223  
[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)

**Plaintiff in Pro Per**

Nolan S. Armstrong  
McNamara, Ambacher, Wheeler, Hirsig &  
Gray, LLP  
3480 Buskirk Avenue, Suite 250  
Walnut Creek, CA 94523  
925-939-5330  
925-939-0203  
[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)  
[nicole.schlosser@mcnamaralaw.com](mailto:nicole.schlosser@mcnamaralaw.com)

**Co-Counsel for Defendant LINDA  
STEINHOFF HOLMES**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 6, 2024, at Oakland, California.

  
\_\_\_\_\_  
Virginia Guthrie

Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
Oakland, California 94612  
Telephone: 510-763-2324  
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STEVEN S. ABERN, SBN 148690  
JODY STRUCK, SBN 121097  
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Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,

Plaintiff,

v.

LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,

Defendants.

Case No. CGC-21-594129

~~PROPOSED~~ ORDER GRANTING IN  
PART AND DENYING IN PART  
DEFENDANT'S MOTION FOR  
SUMMARY ADJUDICATION

Date: February 1, 2024

Time: 9:30 a.m.

Dept.: 501

Complaint filed: July 28, 2021

On February 1, 2024, Defendant LINDA STEINHOFF HOLMES's motion for summary adjudication came on regularly for hearing in Department 501 of the above-entitled Court. Having considered all papers submitted by the parties and good cause appearing, the Court adopts its tentative ruling as follows:

DEFENDANT LINDA STEINHOFF HOLMES' MOTION FOR SUMMARY ADJUDICATION is GRANTED in part and DENIED in part. Motion is granted as to issue 1 on the second cause of action. Moving party shifted its burden and the plaintiff failed to create a triable issue of material fact. Motion is denied as to issue 2 regarding the purported claim for

**FILED**  
San Francisco County Superior Court

MAR 11 2024

CLERK OF THE COURT

By: *Ramona J. [Signature]*  
Deputy Clerk

1 treble damages in the third cause of action. Motion for Summary Adjudication is framed by the  
2 pleadings. Moving party fails to point to any part of the third cause of action claiming treble  
3 damages by paragraph or page/line number. The Court took judicial notice of the Complaint and  
4 could not locate any request for treble damages within the third cause of action, pages 12:15-  
5 13:1.

6 Accordingly, IT IS HEREBY ORDERED that judgment be entered in favor of  
7 Defendant HOLMES on Plaintiff's second cause of action for damages pursuant to the San  
8 Francisco Residential Rent Stabilization and Arbitration Ordinance.

9  
10 DATED: 3/11/24

11   
12 JUDGE OF THE SUPERIOR COURT

13 RONALD E. QUIDACHAY  
14  
15  
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Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
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E-Mail: [nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)

Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,

Plaintiff,

v.

LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,

Defendants.

) Case No. CGC-21-594129  
)  
)  
)

**NOTICE OF ENTRY OF ORDER  
GRANTING IN PART AND DENYING IN  
PART DEFENDANT'S MOTION FOR  
SUMMARY ADJUDICATION**

) Complaint filed: July 28, 2021  
)  
)  
)

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the attached Order Granting in Part and Denying in Part  
Defendant's Motion for Summary Adjudication was signed by The Honorable Ronald E.  
Quidachay on March 11, 2024.

Dated: March 15, 2024

HAAPALA, THOMPSON & ABERN, LLP

By: 

JODY STRUCK  
Attorneys for Defendant  
LINDA STEINHOFF HOLMES

ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**03/15/2024**  
Clerk of the Court

BY: MARK UDAN  
Deputy Clerk

Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
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E-Mail: [jstruck@htalaw.com](mailto:jstruck@htalaw.com)

NOLAN S. ARMSTRONG, SBN 241311  
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Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,

Plaintiff,

v.

LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,

Defendants.

Case No. CGC-21-594129

~~PROPOSED~~ ORDER GRANTING IN  
PART AND DENYING IN PART  
DEFENDANT'S MOTION FOR  
SUMMARY ADJUDICATION

Date: February 1, 2024

Time: 9:30 a.m.

Dept.: 501

Complaint filed: July 28, 2021

On February 1, 2024, Defendant LINDA STEINHOFF HOLMES's motion for summary adjudication came on regularly for hearing in Department 501 of the above-entitled Court. Having considered all papers submitted by the parties and good cause appearing, the Court adopts its tentative ruling as follows:

DEFENDANT LINDA STEINHOFF HOLMES' MOTION FOR SUMMARY ADJUDICATION is GRANTED in part and DENIED in part. Motion is granted as to issue 1 on the second cause of action. Moving party shifted its burden and the plaintiff failed to create a triable issue of material fact. Motion is denied as to issue 2 regarding the purported claim for

**FILED**  
San Francisco County Superior Court

MAR 11 2024

CLERK OF THE COURT

By: *Ramona J. [Signature]*  
Deputy Clerk



1 treble damages in the third cause of action. Motion for Summary Adjudication is framed by the  
2 pleadings. Moving party fails to point to any part of the third cause of action claiming treble  
3 damages by paragraph or page/line number. The Court took judicial notice of the Complaint and  
4 could not locate any request for treble damages within the third cause of action, pages 12:15-  
5 13:1.

6 Accordingly, IT IS HEREBY ORDERED that judgment be entered in favor of  
7 Defendant HOLMES on Plaintiff's second cause of action for damages pursuant to the San  
8 Francisco Residential Rent Stabilization and Arbitration Ordinance.

9  
10 DATED: 3/11/24

11   
12 JUDGE OF THE SUPERIOR COURT

13 RONALD E. QUIDACHAY  
14  
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27  
28

Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
Oakland, California 94612  
Telephone: 510-763-2324  
Facsimile: 510-273-8534

**PROOF OF SERVICE**

Virginia Guthrie certifies and declares as follows:

I am employed in the County of Alameda, State of California. I am over the age of 18 years, and not a party to this action. My business address is 1939 Harrison Street, Suite 800, Oakland, California, 94612-3527, ([vguthrie@htalaw.com](mailto:vguthrie@htalaw.com)).

On March 15, 2024, I served the foregoing document described as: **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION** on all interested parties in this action, in the manner set forth below.

☒ **BY ELECTRONIC MAIL:** By personally emailing the document(s) to the persons at the e-mail address(es) listed below. Service is based on CCP 1010.6(5)(b)(2)(3), "(2) A person represented by counsel, who has appeared in an action or proceeding, shall accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission. (3) Before first serving a represented person electronically, the person effecting service shall confirm the appropriate electronic service address for the counsel being served."

Daniel J. Feldman, Ph.D.  
13647 Aragon Way, Apt. 303  
Louisville, KY 40245  
T: 307-699-3223  
[danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)

**Plaintiff in Pro Per**

Nolan S. Armstrong  
McNamara, Ambacher, Wheeler, Hirsig &  
Gray, LLP  
3480 Buskirk Avenue, Suite 250  
Walnut Creek, CA 94523  
925-939-5330  
925-939-0203  
[nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)  
[nicole.schlosser@mcnamaralaw.com](mailto:nicole.schlosser@mcnamaralaw.com)

**Co-Counsel for Defendant LINDA  
STEINHOFF HOLMES**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 15, 2024, at Oakland, California.

  
\_\_\_\_\_  
Virginia Guthrie

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: <del>Daniel J. Feldman</del> <b>PH.D.</b> FIRM NAME: STREET ADDRESS: <del>1111 Alameda</del> <b>400 McAllister Street</b> CITY: <del>San Francisco</del> <b>San Francisco</b> STATE: KY ZIP CODE: 40245 TELEPHONE NO.: <del>415-398-3223</del> <b>415-398-3223</b> FAX NO.: E-MAIL ADDRESS: danieljfeldmanphd@gmail.com ATTORNEY FOR (name): pro se	<b>FOR COURT USE ONLY</b>          
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, CA 94012 BRANCH NAME: Civic Center Courthouse Department 501	
PLAINTIFF/PETITIONER: Feldman, PH.D, Daniel DEFENDANT/RESPONDENT: Steinhoff-Holmes, Linda	CASE NUMBER: <b>CGC - 21- 594129</b>
	JUDICIAL OFFICER:
<b>PROOF OF ELECTRONIC SERVICE</b>	DEPARTMENT:

1. I am at least 18 years old.
  - a. My residence or business address is (specify):  
13647 Aragon Way Apt 303  
Louisville, KY 40245
  - b. My electronic service address is (specify):  
danieljfeldmanphd@gmail.com
2. I electronically served the following documents (exact titles):  
**2024.3.28 PLAINTIFFS MOTION TO RECONSIDER THE ORDER GRANTING IN PART AND DENYING IN PART CGC-21-594129.PDF**  
  
**2024.3.28 PLAINTIFFS AFFIDAVIT IN SUPPORT OF MOTION TO RECONSIDER THE ORDER IN PART CGC-21-594129.PDF**
3. **2024.3.28 POS PLAINTIFFS MOTION TO RECONSIDER THE ORDER CGC-21-594129.PDF**
  - a. Name of person served: STEVENS.ABERN JODY STRUCK NOLAN ARMSTRONG  
On behalf of (name or names of parties represented, if person served is an attorney):  
Linda Steinhoff-Holmes
  - b. Electronic service address of person served :  
sabern@htalaw jstruck@htalaw.com nolan.armstrong@mcnamaralaw.com
  - c. On (date): March 28, 2024

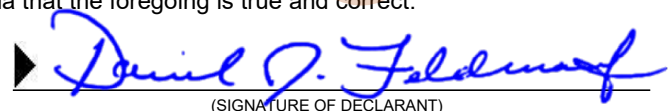
☐ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment.  
(Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: **March 28, 2024**

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

Daniel J. Feldman, PH.D.

(TYPE OR PRINT NAME OF DECLARANT)

  
(SIGNATURE OF DECLARANT)

1 DANIEL J. FELDMAN, PH.D  
13647 Aragon Way Apt 303  
2 Louisville, KY 40245  
Tel: (307) 699-3223  
3 Email: [danieljfeldmanphd@gmail.com](mailto:danieljfeldmanphd@gmail.com)

4 PLAINTIFF PRO SE

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA

6 FOR THE COUNTY OF SAN FRANCISCO

7 UNLIMITED JURISDICTION

8 DANIEL J. FELDMAN, PH.D  
9 Plaintiff,

10 vs.

11 LINDA STEINHOFF HOLMES,  
12 AND DOES 1-30  
13 Defendants

) Case No.: CGC 21-594129

)

) MOTION FOR RECONSIDERATION OF ORDER

) GRANTING IN PART AND DENYING IN PART

) SUMMARY ADJUDICATION

)

) Date: March 28, 2024

) Dept. 501

) Hon. Ronald Quidachay

)

)

)

16  
17 **MOTION TO RECONSIDER**

18 **The Plaintiff**, Daniel J. Feldman, Ph.D. ("Dr. Feldman") respectfully requests the Court  
19 reconsider the Order Granting Summary Adjudication as to Cause of Action 2 of the Complaint. In  
20 support of this Motion please see the Affidavit of Dr. Feldman attached hereto as **Exhibit 1**. This  
21 Motion is made pursuant to CCCP §1008 and additional facts and circumstances the Court did not  
22 consider at the February 1, 2024 hearing that show a genuine issues of material fact are in dispute,  
23 specifically:  
24

- 25 1. The date the cause of action for retaliatory eviction accrued.  
26  
27 2. The date the Plaintiff actually vacated the apartment.

28 PLAINTIFF MOTION FOR RECONSIDERATION OF ORDER GRANTING & DENYING IN PART  
SUMMARY ADJUDICATION

3. The date possession was transferred to the Landlord.
4. The date the statute of limitations began to run.
5. The event that triggers the start of the one-year statute of limitations.

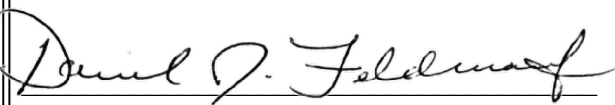
Additionally, the Defendant, Linda Steinhoff Holmes (“Ms. Holmes”), and her attorneys provided the Court with incomplete and misleading information with regard to:

1. the date that Dr. Feldman vacated the apartment,
2. the date that Dr. Feldman surrendered possession of the apartment,
3. the date the statute of limitations began to run and expired,
4. multiple retaliatory acts of Ms. Holmes in 2020 from which the statute of limitations should be assigned,
5. the Stipulation of Entry of Future Judgment (“Stipulation”),
6. Civil Action CUD-19-666401 (Unlawful Detainer) filed December 12, 2019,
7. Amended Complaint for Civil Action CUD-19-666401 (Unlawful Detainer) filed 2/20/20,
8. the Memorandum of Points and Authorities, and finally,
9. the Motion for Summary Adjudication violated CCCP §128.5.

Specifically, the Motion was:

- a. made in bad faith,
- b. was totally and completely without merit,
- c. was made for the sole purpose of harassing an opposing party, or
- d. to cause unnecessary delay.

Respectfully submitted,



Daniel J. Feldman, Ph.D.  
Pro se

March 28, 2024

Date

Haapala, Thompson & Abern LLP  
Attorneys At Law  
Park Plaza Building  
1939 Harrison St., Suite 800  
Oakland, California 94612  
Telephone: 510-763-2324  
Facsimile: 510-273-8534

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E-Mail: [sabern@htalaw.com](mailto:sabern@htalaw.com)

NOLAN S. ARMSTRONG (State Bar No. 241311)  
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Facsimile: (925) 939-0203  
E-Mail: [nolan.armstrong@mcnamaralaw.com](mailto:nolan.armstrong@mcnamaralaw.com)

Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,  
  
Plaintiff,  
  
v.  
  
LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,  
  
Defendants.

Case No. CGC-21-594129

**Assigned for All Purposes to Dept. 206**

**DECLARATION OF STEVEN ABERN IN  
SUPPORT OF DEFENDANT LINDA  
HOLMES'S MOTION FOR AWARD OF  
ATTORNEY'S FEES AND COSTS  
PURSUANT TO SFAC §37.9(f)**

**Date: May 24, 2024  
Time: 9:30 a.m.  
Dept: 501**

1. I am an attorney at law duly admitted and licensed to practice before all the courts of the State of California and am a partner with the law firm of Haapala, Thompson, & Abern, LLP, counsel of record for the Defendant Linda Steinhoff Holmes in the above-captioned action. I have personal knowledge of the matters stated herein and would so testify.

2. Attached as Exhibit 1 is a true and correct copy of Plaintiff's Complaint filed on May 25, 2017.

///

///

ELECTRONICALLY

**FILED**

Superior Court of California,  
County of San Francisco

**04/24/2024**

**Clerk of the Court**

BY: SANDRA SCHIRO

Deputy Clerk

3. On February 1, 2024, this Court granted Defendant's Motion for Summary Adjudication as to Plaintiff's Second Cause of Action which asserted a claim for violation Sections 37.9 et seq. of the San Francisco Residential Rent Stabilization and Arbitration Ordinance. [A true and correct copy of the Court's Order is attached here as Exhibit 2.]

4. Throughout the pendency of this litigation, Defendant has been defended by two liability insurance carriers; Allstate and CSAA. Those carriers retained separate counsel because they had different times on the risk. Both carriers are defending subject to a reservation of rights.

5. From January 2022 through August 2023, Defendant was defended by Allstate through the Rankin|Stock|Haeberlin|O'Neal firm. My firm took over the handling of the litigation from the Rankin firm as Allstate-retained defense counsel on August 29, 2023, as the Rankin firm was winding up its operations at that time.

6. Although my office was retained as insurance defense counsel, my clients are entitled to recover "reasonable" attorney's fees and therefore a "reasonable" hourly rate. There is no requirement that the reasonable market rate mirror the actual rate billed. The reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the community.

7. The Laffey Matrix is often used to determine the reasonable market rate of a lawyer's services. It is an official source of attorney rates based in the District of Columbia area, which can be adjusted to the San Francisco Bay Area by using the Locality Pay Tables. This Matrix has been approved as a basis (although a court is not required to follow it) which a Court may look to in determining reasonable market rate. Attached as Exhibit 3 is a true and correct copy of the USAO Attorney's Fees ("Laffey") Matrix for the years 2015-2019, which I obtained by downloading it at: <https://www.justice.gov/usao-dc/file/796471/download>.

8. My partner, Jody Struck, and I are the primary handling attorneys for this litigation in our firm. At all times during this litigation, I have had 33 years of litigation experience and Ms. Struck had 38 years of litigation experience. I have handled well over 300 landlord-tenant litigation matters, approximately a third of which were venued in San Francisco, and more than 90% of which were venued in jurisdictions having rent and eviction control ordinances; e.g., San Francisco, Oakland, Berkeley, San Jose and Richmond. I have acted as a mediator in tens

of landlord-tenant matters and represented clients well over 1,500 litigation matters involving issues other than landlord-tenants. Based on the foregoing calculation, the reasonable hourly rate for my work is \$665.00.

9. My partner, Jody Struck, also worked on the matter, particularly on preparing the Motion for Summary Adjudication. She was admitted to the bar in 1985. Accordingly, her reasonable hourly rate is also \$665.00.

10. Between September 1, 2023, when my firm took over the handling of the litigation from the Rankin,|Stock|Haeberlin|O’Neal firm, and January 31, 2024, Ms. Struck and I have spent a combined total of 70.4 hours defending the action on behalf of Defendant Holmes.

11. Multiplying 70.4 hours by \$665 yields reasonable attorney’s fees of \$46,816.

12. The number of hours billed by my firm was reasonable. Plaintiff has produced in discovery many hundreds of pages of documents and several lengthy videos. Those all had to be reviewed and analyzed. During his six-and-a-half-year tenancy, Plaintiff complained to the Department of Building Inspection at least 21 times. Those all had to be reviewed and analyzed. Plaintiff has dubiously alleged that the apartment was infested with mold and that Defendant somehow contrived, in conspiracy with other tenants in the building, to taint the water supply to his apartment which resulted in his hospitalization and contributed to the death of his domestic partner. He has alleged that Defendant conspired with the Department of Building Inspection officials, the police and other public officials to obtain impunity. He has alleged that Defendant and her counsel conspired with others to set him up to be arrested for assault with a deadly weapon. Those claims all had to be reviewed and analyzed. In short, Plaintiff has presented an extraordinarily complex and idiosyncratic claim which has caused defense counsel to spend more time than is usual to mount a defense. Most of that time implicates the defense of the SFAC §37.9 claim.

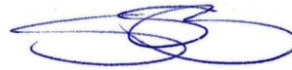
13. The risks faced by a Defendant who is sued under Section 37.9 are unique insofar as they include the risk of an award of treble damages in addition to an award of attorney’s fees and costs. Allstate, which company retained my firm, has been providing a defense subject to a reservation of rights. Accordingly, my firm made the defense of the Section 37.9 claim the



primary focus of our efforts because that claim was the only claim that carried such an onerous risk and because it implicated damages for which coverage was disputed. I estimate that Ms. Struck and I expended at least 50% of the time billed by our firm on the case to defending the Section 37.9 claim.

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

Dated: April 24, 2024



---

STEVEN S. ABERN

## EXHIBIT 1

JULIEN SWANSON (SBN 193957)  
584 Castro St #2126  
San Francisco, CA 94114-2512  
Tel: (415) 282.4511  
Fax: (415) 282.4536  
swanson@austinlawgroup.com

**FILED**  
Superior Court of California  
County of San Francisco

JUL 28 2021

CLERK OF THE COURT  
BY: [Signature]  
Deputy Clerk

Attorneys for Plaintiff DANIEL FELDMAN, Ph.D.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO - UNLIMITED

Case No. **CGC-21-594129**

DANIEL FELDMAN, Ph.D.,

Plaintiff,

v.

LINDA STEINHOFF HOLMES, an individual;  
and DOES 1-10, inclusive,

Defendants.

**PLAINTIFF'S COMPLAINT FOR DAMAGES  
AND DEMAND FOR JURY TRIAL:**

1. **Constructive Eviction;**
2. **Retaliatory Eviction;**
3. **Negligence Per Se;**
4. **Negligence/Personal Injury;**
5. **Breach of the Warranties of Habitability;**
6. **Breach of Covenant of Quiet Enjoyment;**
7. **Defamation;**
8. **Intentional Infliction of Emotional Distress;**
9. **Unlawful Business Practice;**
10. **Nuisance.**

## INTRODUCTION

1. This action stems from the harassment and the constructive, wrongful and retaliatory eviction of the Plaintiff from his rent controlled San Francisco apartment.

2. The Plaintiff, Daniel Feldman, is a Clinical Neuropsychologist and a long time survivor of HIV.

3. As a result of the Defendant-landlord Linda Steinhoff Holmes' illegal actions as they are described herein, Dr. Feldman lost not only his housing he was forced to spend tens of thousands of dollars in relocation expenses.

4. Moreover, his ability to work and earn income as well as his ability access medical treatment was interfered with by Holmes, who defamed him, tarnished his reputation with his neighbors and his medical providers and falsely accused him of being violent, dangerous, and mentally unsound.

5. He remains traumatized by the events that are described herein.

6. He also remains without stable housing as a direct result of these events.

7. Over the course of his tenancy, which spanned from 2013 until 2019, Dr. Feldman made complaints to the City's building inspector about the unlivable and unsafe conditions on the property, to the police and district attorney about the drug dealing being conducted from the upstairs units, and to the United States Attorney about the corruption he witnessed with city officials accepting bribes and refusing to remedy the unsafe conditions or drug activity.

8. In return, Ms. Holmes made living at the Property hell for him, culminating in his constructive eviction in December 2019, and the subsequent, retaliatory unlawful detainer she filed against him.

9. Under the law, Holmes is liable for her actions because Dr. Feldman was forced to vacate the premises as a result of her "[f]ailure to repair and keep the premises in a condition suitable for the purposes for which they were leased."<sup>1</sup>

10. He hired experts at his own expense to test for water contamination and mold, and though dangerous mold levels and water leaks were confirmed and the report found the unit

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<sup>1</sup> Stoiber v. Honeychuck, 101 Cal. App. 3d 903, 926 (1980).

1 uninhabitable, Holmes refused to abate the problem.

2 11. Dr. Feldman seeks and claims damages herein for the discrimination and loss of  
3 reputation he faced, as well as the loss of the value of the rent-controlled unit for the non-fixed term,  
4 the tens of thousands of dollars in forced relocation costs, and the emotional distress and mental  
5 anguish he suffered, and punitive damages, attorney's fees and costs of suit.

6 **PARTIES**

7 12. Daniel Feldman, PhD., the Plaintiff, ("Plaintiff" or Feldman") was at all times relevant  
8 herein, a resident of San Francisco, California, a United States citizen, and an individual over the age of  
9 18.

10 13. Defendant Linda Steinhoff Holmes ("Holmes") is, and was at all times relevant herein,  
11 an individual over the age of 18, and was conducting business in the City and County of San Francisco,  
12 California as a residential landlord.

13 14. Holmes is the owner of the real property located at 884-886 14th Street, San Francisco,  
14 California ("Property").

15 15. **Fictitiously-Named DOE Defendants**

16 (a) Defendants DOE 1 through DOE 10, inclusive ("DOE Defendants") are fictitious names  
17 of defendants sued herein under the provisions of Section 474 of the Code of Civil Procedure.  
18 Their true names and capacities are unknown to Plaintiff. When said true names and capacities  
19 are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities  
20 herein.

21 (b) Plaintiff is informed and believes and thereon alleges that each of the fictitiously named  
22 defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's  
23 damages as herein alleged were proximately caused by such defendants.

24 (c) At all times herein mentioned the DOE Defendants were the agents, servants,  
25 employees, employers, principals, owners, co-owners, lessors, sublessors, predecessors, or  
26 successors of their codefendants, and in doing the things alleged below were acting in the scope  
27 of their authority as such agents, servants, employees, employers, principals, owners, co-  
28 owners, lessors, sublessors, predecessors, or successors, and with the permissions and consent

1 of their codefendants.

2 16. Wherever this complaint refers to "defendants," such reference shall mean and include  
3 each expressly named defendant and all DOE defendants.

4 **JURISDICTION AND VENUE**

5 17. This Court has jurisdiction over Mr. FELDMAN's claims because This Court has  
6 personal jurisdiction over Defendant, each of which is licensed to conduct and/or conducting business  
7 in the State of California.

8 18. Venue is proper in this Court because Defendant transacts business in this County, and  
9 the conduct complained of occurred in this County.

10 **STATEMENT OF FACTS**

11 19. Feldman was at all relevant times a disabled, HIV-positive San Francisco resident.

12 20. Dr. Feldman resided in unit 884 of the Property ("Feldman's Unit") pursuant to a written  
13 lease agreement with Holmes beginning March 2013 until his retaliatory and wrongful, constructive  
14 eviction in December of 2019 and the eviction lawsuit filed against him thereafter.

15 21. Feldman's Unit was registered as a rent-controlled unit under the San Francisco Rent  
16 Stabilization Ordinance<sup>2</sup> ("Rent Ordinance") with a monthly rent of \$2800.

17 22. Defendant was a landlord, and Plaintiff was a tenant within the definition of the Rent  
18 Ordinance, and Defendant was in a landlord-tenant relationship with Plaintiff at all times relevant  
19 herein.

20 23. Plaintiff qualifies as a "person who hires a dwelling" (i.e. a tenant) as defined by  
21 California Civil Code Section 1940 and avail themselves of all the rights, remedies and benefits  
22 contained therein.

23 24. By way of Plaintiff's long-term tenancy and regular monthly payment of rent, Plaintiff  
24 was also a common law tenant of the Property.

25 25. In November of 2019, subtenant Christopher Hefner began to reside with Feldman in  
26 Feldman's Unit as a subtenant.

27  
28 <sup>2</sup> San Francisco Administrative Code, Chapter 37.23 originally enacted June 13, 1979

1           26.     During his tenancy, Dr. Feldman complained about the Property to both Holmes and the  
2 San Francisco Building Inspector, for defects in the Property that included but were not limited to: (i)  
3 Mold and water leak(s) that were improperly repaired or ignored; (ii) Peeling lead paint; (iii) Exposed  
4 electrical wiring; (iv) Overloaded electrical fuse box; (v) malfunctioning and/or missing windows;  
5 (vi); No heat/heater dysfunction; (vii) carbon monoxide leak without detector (leading to the death of  
6 Dr. Feldman's cat and his losing consciousness and subsequent hospitalization); (viii) Contamination of  
7 water supply (causing the hospitalization and serious illness of four adults).

8           27.     There were 25 complaints made by Dr Feldman to the San Francisco Department of  
9 Building Inspection ("DBI") from 2016 through 2020 detailing the above issues, most notably the water  
10 leaks and mold, the lead paint, and the water contamination.

11           28.     On May 28, 2019, Feldman wrote to the San Francisco Department of Building  
12 Inspection, including Taras Madison, Deputy Director, James Sanbonmatsu, Chief Housing Inspector,  
13 and copied Emily Morrison, Human Resource Manager and Jose E. Lopez, Senior Housing Inspector,  
14 alleging there were fraudulent inspections and improper abatements of the multiple Notice of  
15 Violations ("NOV") issued by DBI, stating in part:

16           *"It is my expectation that Human Resources will investigate the allegations and make revisions*  
17 *and/or addendums to existing NOV's which have been wrongfully abated. As I attempt to*  
18 *recover costs and retribute unlawfully collected rents with the Rent Board, I will need*  
19 *correspondence when the investigations begin, as well as progress notes leading up to and*  
20 *including the final outcome of the investigations."*

21           29.     Instead of rectifying the situation, a three-day quit notice dated December 2, 2019 was  
22 issued by Defendant Holmes against Plaintiff, falsely alleging he was a risk to public health and safety,  
23 falsely alleging noise complaints, vandalism, and threats and attacks made on her and her other tenants  
24 (who worked for her, and one of whom is allegedly her son).

25           30.     The notice stated:

26           *"May, 2013 - Present: At all hours of the day and night, you scream, bang the floor, yell*  
27 *obscenities, play music at extremely loud volume, causing your neighbors to be fearful and*  
28 *disturbed. On two separate occasions, you have vandalized the building by causing the window*

1        *of your front door to break. Your misconduct has resulted in the landlord and a building*  
2        *resident to seek SF Police intervention to stop your behavior. You have repeatedly*  
3        *threatened to kill the owner with a machete and to kill the other building resident by using a*  
4        *gun. You have attempted to physically attack the owner and only stopped when others*  
5        *restrained you”.*

6        31.       Holmes also published the above defamatory statements to Dr. Feldman’s neighbors,  
7        other tenants, workers who had access to Feldman’s apartment, law enforcement, his treatment  
8        providers, and to city officials.

9        32.       Despite the lack of any police report, complaint or other evidence, Dr. Feldman was  
10       banned from UCSF campus and primary medical care and subjected to harassment and humiliation as a  
11       result of the allegation made by Holmes that he had committed elder abuse and was dangerous.

12       33.       Holmes knew these criminal accusations were false, and made them for the purpose of  
13       tarnishing Feldman’s reputation, to support her efforts to rid him of the unit, specifically, in order to (i)  
14       retaliate against him for making complaints about the Property, (ii) to illegally bypass rent control and  
15       related regulations, and (iii) to recover the Property for her own use.

16       34.       Instead of any protection from the police, or mandated repair orders from the city,  
17       Feldman was constructively evicted when his unit became totally uninhabitable, and it remained that  
18       way from December 26, 2019 on, due to the lack of potable water, mold, but also due to the dangerous  
19       conditions created by the Defendant and her other tenants, at her direction.

20       35.       He wrote to the Defendant that day, and multiple times thereafter, as well as to  
21       Defendant’s attorney, Daniel Bornstein, to request that water be restored and mold be removed, and to  
22       alert him when he needed to be on the Premises for repairs and when he could return.

23       36.       He heard nothing in response from either the Defendant or her attorney, until the final  
24       days of the Unlawful Detainer proceedings, when Defendant agreed to dismiss the complaint and  
25       because the necessary repairs had not been made - the mold had not been removed, the water had not  
26       been changed or assessed for potability, there was an active water leak flooding the kitchen floor, there  
27       was racoon feces all over the back stairs and patio, there was flooding water outside from the absence  
28       of proper drains. Dr. Feldman agreed to move out within one month – Dr. Feldman agreed to move his



1 belongings out.

2 37. The long-standing failure to repair the Property rendered Feldman's Unit both  
3 uninhabitable and incapable of being occupied thereby forcing him to vacate and thereby, he became  
4 entitled to relocation benefits under the California Health and Safety Code, Section 17975, et seq. and  
5 San Francisco Rent Ordinance Section 37.9(a)( II), et seq., which Defendants failed to provide.

6 38. Plaintiff had resided in Feldman's Unit as a tenant as defined in the San Francisco Rent  
7 Ordinance, with the express and implied knowledge and consent of Defendants, and each of them.

8 39. Defendant expressly and impliedly warranted that Feldman's Unit was a lawful rental  
9 unit fit for human habitation, that the Property was and would remain habitable and that they would  
10 maintain and repair the Feldman's Unit in such a manner as to keep it habitable and safe to occupy.  
11 Instead, Feldman's Unit lacked the basic services and requirements set forth under Civil Code Section  
12 1941 to meet minimum standards of habitability.

13 40. Defendants, and each of them, among other things, expressly and impliedly warranted  
14 that Feldman's Unit was and would remain habitable and that they would maintain and repair the  
15 Premises in such a manner as to keep it habitable and safe to occupy. Instead, Defendant permitted the  
16 Property, specifically Feldman's Unit, to deteriorate into a dilapidated, substandard, uninhabitable and  
17 uninhabitable state in bad faith.

18 41. At all times throughout the remainder of Plaintiff's tenancy, Plaintiff was exposed to  
19 excessive moisture and airborne contaminants due to Defendants', and each of them, failure to return  
20 Feldman's Unit to a habitable condition.

21 42. Feldman's Unit was substandard and uninhabitable due to the Defendant's failure to  
22 maintain and repair it, as described herein, which resulted in Dr. Feldman's forced relocation.

23 43. Plaintiff repeatedly requested repairs of the defective conditions with Defendant, who  
24 either ignored said requests or responded in an untimely fashion. When requests were responded to,  
25 they were addressed in a substandard fashion, without necessary permits and which failed to resolve the  
26 substandard, uninhabitable and defective conditions including, but not limited to, failing to resolve the  
27 water intrusion defects throughout Feldman's Unit.

28 44. Defendant's refusal and failure to repair Feldman's Unit and provide housing fit for

1 human habitation was in bad faith.

2 45. Plaintiff thereby became entitled to relocation benefits under the California Health and  
3 Safety Code, Section 17975, et seq. and San Francisco Rent Ordinance Section 37.LJ(a)(II), et seq.,  
4 which Defendant failed to provide.

5 46. Plaintiff has a compromised immune system, that made him more susceptible to the  
6 environmental contaminants, and while Plaintiff took all necessary steps to mitigate the surface and  
7 airborne contaminants, but despite these efforts, they did not respond to treatment.

8 47. The Property had an extreme direct negative impact on Plaintiff's health

9 48. Defendant had actual and constructive knowledge of the conditions at the Property and  
10 within Feldman's Unit, and failed to cure the conditions listed herein.

11 49. Defendant did not perform her obligation under the rental agreement in ways that  
12 include, but are not limited to the following

13 a. Breached the warranty of habitability by not making the needed repairs;

14 b. Failed to maintain Feldman's Unit in a safe and habitable condition;

15 c. Denied Plaintiffs peaceable quiet enjoyment of Feldman's Unit and the Property.

16 50. Said defective conditions were not caused by wrongful or abnormal use by Plaintiff or  
17 anyone acting under Plaintiff's authority.

18 51. As a direct and proximate result of the above conduct and resultant conditions, Plaintiff  
19 suffered and continues to suffer severe physical, mental, and emotional pain, injury and distress,  
20 including, but not limited to, respiratory ailments, shortness of breath, wheezing, coughing, allergies,  
21 eye irritation, interrupted sleep, general discomfort and fatigue, embarrassment, humiliation,  
22 discomfort, exacerbation and annoyance, and extreme emotional distress all to their general damage in  
23 an amount to be proven at trial.

24 52. As a direct and proximate result of the above acts by Defendant Plaintiff paid excessive  
25 rent for the Premises during the length of his tenancy.

26 53. As a direct and proximate result of the above acts by Defendant Plaintiff lost possession  
27 of Feldman's Unit.

28 54. Defendant endeavored to recover possession of Feldman's Unit in bad faith through

1 unlawful harassment and other means, including but not limited to the following actions:

- 2 a. Refusing to perform effective repairs of the severely dilapidated conditions which
- 3 rendered Feldman's Unit uninhabitable;
- 4 b. Demanding rent despite Feldman's Unit being in a condition of severe dilapidation and
- 5 disrepair;
- 6 c. Seeking to force Plaintiff to vacate by permitting his unit to fall into and/or remain in a
- 7 condition that was substandard, uninhabitable and a threat to the health and safety of Plaintiff,
- 8 and any occupants, in an effort to recover possession of the rent controlled unit;
- 9 d. Seeking to coerce Plaintiff to not assert his legal rights through intimidation, and
- 10 harassment,
- 11 e. Refusing to return possession of Feldman's Unit after the completion of repairs
- 12 and remediation; and
- 13 f. Wrongfully instituting eviction proceedings against him.

14 55. Defendant owed various statutory and non-statutory duties to Plaintiff flowing from her  
15 status as owner of the Property, "landlord" as defined by Section 37.2(h) of the San Francisco  
16 Administrative Code and property manager, including, but not limited to, duties to maintain Feldman's  
17 Unit in a habitable condition and in compliance with local and state statutes, housing and building  
18 codes and other obligations stemming from the renting of residential dwellings.

19 56. As a direct and proximate result of the above mentioned conduct, Plaintiff has suffered  
20 and continues to suffer damages, all in an amount to be proven at trial.

21 57. As a direct and proximate result of the above conduct, Plaintiff has suffered and  
22 continues to suffer the loss of use of his unit, attorneys' fees, and other special damages.

23 58. As a direct and proximate result of the above conduct, Plaintiff has suffered and  
24 continues to suffer severe physical, mental, and emotional pain, injury and distress, including, but not  
25 limited to respiratory distress, nervousness, fatigue, embarrassment, humiliation, discomfort,  
26 exacerbation and suffered loss of use of Feldman's Unit, causing general damages in an amount to  
27 be proven.

28 59. Defendants', and each or them, conduct was without right or justification and done for

1 the purpose of depriving Plaintiff of his right to possession of the Premises. Defendants engaged in the  
2 above-described conduct with the knowledge that the conduct was without right or justification and  
3 without regard for the fact that it would cause injury to Plaintiff, notwithstanding their obligation to  
4 comply with applicable ordinances and statutes providing for quiet possession and enjoyment of the  
5 Property.

6 60. Plaintiff is therefore entitled to punitive damages.

7  
8 **CLAIM ONE**  
9 **Constructive Eviction**  
10 **(Against all Defendants)**

11 61. The allegations set forth in the above paragraphs are re-alleged and incorporated as  
12 restated herein.

13 62. A landlord is liable for constructive eviction where a tenant elects to vacate the premises  
14 as a result of the landlord's failure to repair and keep the premises in a condition suitable for the  
15 purposes for which they were leased.

16 63. Here, Plaintiff was forced to elect to vacate the Property December 26, 2019 because of  
17 the deplorable condition the Defendant created and maintained, by design.

18 64. He wrote to the Defendant that day, and multiple times thereafter, as well as to  
19 Defendant's attorney, Daniel Bornstein, to request that water be restored and mold be removed, and to  
20 alert him when he needed to be on the Premises for repairs and when he could return.

21 65. The damages recoverable for constructive eviction include the value of the term, less the  
22 rent reserved, expenses for removal, for mental anguish, and exemplary or punitive damages. See  
23 *Stoiber v. Honeychuck*, 101 Cal. App. 3d 903, 926 (1980).

24 66. Here, Defendant is liable to Plaintiff for an amount to be determined at trial, to include  
25 tens of thousands of dollars in relocation costs.  
26  
27  
28

**CLAIM TWO**  
**Retaliatory Eviction**  
**Violation of San Francisco Administrative Code § 37.9, et seq.**  
**(Against all Defendants)**

67. The allegations set forth in the above paragraphs are re-alleged and incorporated as restated herein.

68. Defendant acted as described herein, in retaliation for Dr. Feldman complaining about the illegal conditions of the Property and filing complaints related thereto.

69. Defendant endeavored to recover, and in fact recovered, possession of the Premises in bad faith, with ulterior reason, and without honest intent, and in a manner not permitted by the San Francisco Administrative Code § 37, et. seq. ("Rent Ordinance") and thereby violated the provisions of the Rent Ordinance § 37.9, et. seq.

70. Defendant failed to provide Plaintiff just cause to evict him as required by the Rent Ordinance.

71. Defendant's eviction of Plaintiff was lacking in the requisite just cause and was incapable of being remedied as Plaintiff's tenancy was protected from eviction.

72. The Rent Ordinance establishes a procedure for assisting persons such as Plaintiff in relocating from dwelling units that have been determined to be sub-standard and/or illegal for residential use.

73. The Rent Ordinance establishes a procedure for assisting persons such as Plaintiff in relocating from dwelling units that have been lawfully evicted for "just cause" and in compliance with the Rent Ordinance.

74. Pursuant to the terms of the Rent Ordinance, a dislocated tenant is entitled to receive certain payments, among other substantive and procedural rights.

75. Defendants failed to provide Plaintiff with any of the benefits and/or assistance required by the Rent Ordinance.

76. Instead, Defendant sought to evict Plaintiff, and refused to repair his unit permanently

1 removing him therefrom.

2 77. Section 37.9(f) of the Rent Ordinance provides for an award of not less than three times  
3 the actual damages when a landlord or any other person willfully assists the landlord to endeavor to  
4 recover possession of a rental unit in violation of Chapter 37.9 et. seq., and Plaintiff is entitled to three  
5 times actual damages.

6 78. Defendants acted in knowing violation of or reckless disregard for Plaintiff's rights  
7 under the Rent Ordinance, and Plaintiff is thereby entitled to three times damages for economic injuries  
8 emotional distress.

9 79. Section 37.9(f) of the Rent Ordinance provides for the award of reasonable attorney's  
10 fees to the prevailing party in any action brought under this section.

11 80. As a direct and proximate result of Defendants' repeated violation of the San Francisco  
12 Rent Ordinance, Plaintiff has suffered damages as is set forth herein including, but not limited to, loss  
13 of use of the rent controlled apartment, and costs incurred while it was unsafe for him to stay in his  
14 unit, and costs to relocate.

15 **CLAIM THREE**  
16 **Negligence Per Se**  
17 **(Against all Defendants)**

18 81. Plaintiff realleges and incorporates all prior allegations above as though fully set forth  
19 herein.

20 82. Defendant violated their duty of due care to Plaintiff and violated their statutory duties  
21 to Plaintiff by violating certain housing, building and fire codes, local ordinances and state statutes,  
22 including but not limited to: Civil Code Section 1941, e/ seq., Health & Safety Code section 17920.3,  
23 and San Francisco Administrative Code § 37.9, et seq. and 37.10B, et seq.

24 83. At all times relevant, Plaintiff belonged to the class of persons for which these statutes  
25 were designed to offer protection. The harm that has befallen Plaintiff is of the type these statutes were  
26 designed to prevent.

27 84. As a proximate result of Defendants' negligent violation of statutory duty, as set forth  
28 above, Plaintiff has suffered actual, special and general damages as set forth herein and to be proven at

trial.

**CLAIM FOUR**  
**Negligence / Personal Injury**  
**(Against all Defendants)**

85. Plaintiff realleges and incorporates all prior allegations above as though fully set forth herein.

86. By reason of the landlord-tenant relationship between Defendants and Plaintiff, Defendant owed Plaintiff a duty to exercise reasonable care in the ownership, management, inspection, and control of Feldman's Unit, which included a statutory duty to comply with all applicable laws governing Plaintiffs rights as a tenant and all duties listed below.

87. Defendant also owed a duty to exercise reasonable care in maintaining the Property and Feldman's Unit free of defects and/or hazards and in inspecting the Property for same, so as to preclude any person, including Plaintiff, from unreasonable risk of harm.

88. Defendant also owed a duty to warn Plaintiff of any potential and non-obvious hazards.

89. The duty to exercise reasonable care owed by Defendant to Plaintiff also included, but was not limited to the following duties the duty to provide Plaintiff with legal, tenantable housing, fit for human occupancy; the duty to refrain from interfering with Plaintiff's full use and quiet enjoyment of the rented residence; and the duty to comply with all applicable state and local laws governing Plaintiffs rights as tenants.

90. Defendant, by the acts and omissions alleged herein, were negligent and careless and thereby breached said duties. Defendants also breached their duties to Plaintiff by failing to inspect Feldman's Unit, to repair Feldman's Unit properly, to maintain Feldman's Unit free of defects and hazards, and to warn Plaintiff of the potentially hazardous nature of the contaminants being released into Feldman's Unit.

91. As a direct and proximate result of these breaches of duty by Defendants, Plaintiff suffered actual and special damages as herein alleged.

92. The aforementioned duties breached by Defendant were breached with knowing and/or reckless disregard for Plaintiff's rights and/or safety and/or health and therefore justify an award of



substantial exemplary and punitive damages in an amount to be proven at trial.

**CLAIM FIVE**  
**Breach of the Warranties of Habitability**  
**(Against all Defendants)**

93. Plaintiff realleges and incorporates all prior allegations above as though fully set forth herein.

94. Defendant has violated statutes, including, among others, Civil Code Section 1941, et seq, and Health & Safety Code section 179203 related to the implied warranty of habitability.

95. Plaintiff repeatedly notified Defendants, and each or them, both orally and in writing, of these unsanitary, unhealthy and/or defective conditions. Defendants, and each or them failed and/or refused to repair these dangerous and defective conditions within a reasonable time, or at all.

96. Accordingly, Defendant had actual and/or constructive notice of each of the defective conditions described above at all relevant times herein.

97. Indeed active NOV's were in place throughout Plaintiff's tenancy.

98. Despite such notice, Defendant failed to take the steps necessary to repair said conditions at all times relevant herein.

99. Plaintiff paid Defendant rent during the time they occupied the Property.

100. Plaintiff did nothing to cause, create or contribute to the existence of the defective conditions stated above.

101. Further, Feldman's Unit as it existed in its defective and dangerous condition, had no rental value whatsoever as a result of its defective and dangerous condition.

102. Plaintiff's injuries were a direct and proximate result of Defendants' breach of the statutory warranty of habitability and their failure to repair the defective and dangerous conditions or have them repaired within a reasonable time or at all.

103. As a direct and proximate result of the above conduct and resultant conditions in Feldman's Unit, Plaintiff suffered and continues to suffer severe physical, mental, and emotional pain, injury and distress, including, but not limited to, respiratory ailments, shortness of breath, wheezing, coughing, eye irritation, interrupted sleep, general discomfort and fatigue, embarrassment, humiliation,



1 discomfort, exacerbation and annoyance, and extreme emotional distress all to their general damage in  
2 an amount tour, medical and related expenses in amount to be proven at trial.

3 **CLAIM SIX**  
4 **Breach of Covenant OF Quiet Enjoyment**  
5 **(Against all Defendants)**

6 104. Plaintiff realleges and incorporates all prior allegations above as though fully set forth  
7 herein.

8 105. By the acts and omissions described above, Defendant interfered with, interrupted, and  
9 deprived Plaintiff of the full and beneficial use of the Property and disturbed Plaintiff's peaceful  
10 possession of the Property and Feldman's Unit therein.

11 106. These acts of interference, interruption, deprivation, and disturbance by Defendant  
12 amount to a breach of the covenant of quiet enjoyment implied in all rental agreements, and codified in  
13 California Civil Code section 1927.

14 107. As a direct and proximate result thereof, Plaintiff has suffered, and continue to suffer,  
15 pain, discomfort, annoyance, inconvenience, anxiety, economic loss, loss of use, and mental anguish,  
16 all to their detriment in amounts to be determined at trial

17  
18 **CLAIM SEVEN**  
19 **Defamation**  
20 **(Against All Defendants)**

21 108. PLAINTIFF incorporates by reference all of the allegations in the above paragraphs as  
22 though fully stated in this cause of action.

23 109. Defendant intentionally and knowingly made false statements about Dr. Feldman,  
24 statements that included false allegations that he had committed a crime, published these statements to  
25 third parties, those parties reasonably understood the statements to mean that Dr. Feldman was  
26 dangerous, that he committed the crime of elder abuse and attacked the Defendant and her other  
27 tenants, and that he should be feared.

28 110. As a result, he suffered a loss of reputation, he was banned from the UCSF campus

1 where he received medical care, he was humiliated and shamed, and he suffered general damages in an  
2 amount to be proven at trial.

3 **CLAIM EIGHT**  
4 **Intentional Infliction of Emotional Distress**  
5 **(Against all Defendants)**

6 111. PLAINTIFF incorporates by reference all of the allegations in the above paragraphs as  
7 though fully stated in this cause of action.

8 112. The acts of Defendant, as alleged herein were extreme and outrageous and done with  
9 conscious disregard for the rights of Plaintiff Defendants knew that Plaintiff was susceptible to  
10 additional discomfort as a result of the conduct described, knew that the conduct adversely affected  
11 him, had the wherewithal to avoid the conduct, yet consciously failed and refused to do s

12 113. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, and  
13 continues to suffer, severe mental, emotional, and physical distress, pain, and suffering, all to Plaintiff's  
14 general and punitive damage, in an amount to be proven at trial.

15 **CLAIM NINE**  
16 **Unlawful Business Practice**  
17 **(Against all Defendants)**

18 114. PLAINTIFF incorporates by reference all of the allegations in the above paragraphs as  
19 though fully stated in this cause of action.

20 115. Plaintiff, bring this cause of action under Business and Professions Code § 17200 et seq.  
21 as private person affected by the acts described in this complaint.

22 116. Plaintiff, in bringing this action, is suing as an individual, and on behalf of the public at  
23 large.

24 117. At all times relevant times herein, Defendant was conducting business under the laws of  
25 the State of California and the City and County of San Francisco,

26 118. In conducting said business, Defendant was obligated to comply with applicable  
27 California and San Francisco laws.  
28

1           119. By failing to comply with State and local law and common law obligations relating to  
2 lessors of residential premises, as alleged herein, all of which resulted in the constructive eviction of  
3 Plaintiff, as heretofore alleged, Defendant acted in contradiction to the law and are engaged in unfair  
4 and unlawful business practices California Business and Professions Code section 17200 et seq,  
5 prohibits unfair competition in the form of any unlawful, unfair, deceptive or fraudulent business  
6 practice.

7           120. California Health and Safety Code Section 17920 et seq sets forward minimum  
8 conditions for habitable premises. California Health and Safety Code Section 17920.3 (n) states that all  
9 buildings or portions thereof occupied for living, sleeping, cooking, or dining purposes that were not  
10 designed or intended to be used for those occupancies are deemed substandard and, as a matter of law,  
11 uninhabitable.

12           121. California Health and Safety Code Section 17922 established the Uniform Building  
13 Code as a minimum standard for habitability.

14           122. California Civil Code Section 1941 et seq sets forth minimum standards for habitability.

15           123. California Civil Code Section 1941.1 states that a dwelling is untenable if it fails to  
16 meet certain health and safety requirements such as being free of vermin, having adequate heating  
17 facilities, and meeting the proper electrical, plumbing and other building codes in effect at the time of  
18 installation.

19           124. California Health and Safety Code § 17980.7 (d)(1) provides for payment of attorneys  
20 fees where a condition is found to exist which endangers health and safety and a tenant has to seek legal  
21 redress of their grievance.

22           125. The San Francisco Rent Ordinance ("The Ordinance") Chapter 37.9 of the San Francisco  
23 Administrative Code, establishes conditions under which Tenants may be charged ;ncreases in rent  
24 and/or under which they may be evicted.

25           126. By failing and refusing to comply with their legal obligations under California Civil  
26 Code Section 1950.5, and Chapter 49 of the San Francisco Administrative Code, Defendant engaged in  
27 unfair business practices.

28           127. Plaintiff is informed and believes and thereupon alleges that the acts of Defendant as

described herein, constitute an unlawful business practice and unfair competition in violation of California Business and Professions Code, Sections 17200 et seq.

128. Plaintiff is informed and believes and thereupon allege that Defendants, as a pattern and practice engage in such unlawful business practice as aforementioned, directly having effect upon other members of the public to whom Defendants have legal obligations.

129. Plaintiff is informed and believes and thereupon allege that Defendants have been unjustly enriched by their violations of their legal obligations as landlords and lessors of residential property and related provisions of the Business and Professions Code, which thereby justifies the award of restitution in an amount to be proven at trial, including but not limited to attorney fees and injunctive relief, enjoining Defendants from future unlawful or unfair business practice.

130. Plaintiff is informed and believes and thereupon allege that Defendants, as a pattern and practice engage in such unlawful business practice as aforementioned, directly having effect upon other members of the public to whom Defendants have legal obligations.

131. Plaintiff is informed and believes and thereupon allege that Defendants have been unjustly enriched by their violations of their legal obligations as landlords and lessors of residential property and related provisions of the Business and Professions Code, which thereby justifies the award of restitution in an amount to be proven at trial, including but not limited to attorney fees and injunctive relief, enjoining Defendants from future unlawful or unfair business practice

#### **CLAIM TEN**

##### **Nuisance**

##### **(Against all Defendants)**

132. Plaintiff realleges and incorporates all prior allegations above as though fully set forth herein.

133. Plaintiff, by virtue of their rental of Feldman's Unit, had at all relevant times, a property interest in Feldman's Unit. Defendants' conduct in creating and maintaining a nuisance premises in the manner described herein, was injurious to Plaintiffs health, offensive to Plaintiffs senses, and interfered with their comfortable enjoyment of life, personal property, and their interest in Feldman's Unit.

134. Defendants created and maintained the deficient conditions in Feldman's Unit by failing

1 to correct or repair defective conditions. Defendants' conduct in maintaining Feldman's Unit in a  
2 hazardous, unhealthy and offensive state was grossly negligent and Defendants should have known that  
3 regular upkeep would be required to maintain the habitability of Feldman's Unit.

4 135. As a direct, legal and foreseeable result of the conduct of Defendants, as set forth above,  
5 Plaintiff suffered special and general damages as set forth herein.

6 136. The Defendant's conduct, as set forth herein, was grossly negligent and through  
7 reasonable and necessary inspections it would have been readily apparent that injury, discomfort, and  
8 annoyance would unavoidably result to Plaintiff Defendants therefore acted with willful and conscious  
9 disregard for the rights and safety of Plaintiff. Defendants' conduct was also oppressive and despicable,  
10 and said conduct constituted a cruel and unjust hardship upon Plaintiff Therefore, Plaintiff request  
11 substantial punitive damages to be proven at trial.

12  
13 **RELIEF SOUGHT**

14 Plaintiff FELDMAN seeks judgment against Defendant HOLMES and against DOES I through  
15 10 as follows:

- 16 1. For special damages, including but not limited to, past and future medical expenses;
  - 17 2. For general damages;
  - 18 3. Loss of future value of Rent Control Apartment;
  - 19 4. Improperly Collected Rent on uninhabitable unit;
  - 20 5. For pre-judgment interest, if warranted;
  - 21 6. For costs incurred in this litigation;
  - 22 7. Attorney's Fees;
  - 23 8. For punitive damages; and
  - 24 9. For all other relief that the court deems just and proper.
- 25  
26  
27  
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1  
2 DATED: July 28, 2021

3 Respectfully submitted,  
4 AUSTIN LAW GROUP  
5

6  
7  
8  
9 By:

Julien Swanson, Esq.  
Attorney for Plaintiff FELDMAN

10  
11  
12  
13 **JURY TRIAL DEMAND**  
14

15 PLAINTIFF hereby demands a trial by jury on all issues so triable in this action.  
16

17 DATED: July 28, 2021

18 Respectfully submitted,  
19 AUSTIN LAW GROUP  
20

21  
22 By:

Julien Swanson, Esq.  
Attorney for Plaintiff FELDMAN  
23  
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## EXHIBIT 2

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Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,

Plaintiff,

v.

LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,

Defendants.

Case No. CGC-21-594129

~~PROPOSED~~ ORDER GRANTING IN  
PART AND DENYING IN PART  
DEFENDANT'S MOTION FOR  
SUMMARY ADJUDICATION

Date: February 1, 2024

Time: 9:30 a.m.

Dept.: 501

Complaint filed: July 28, 2021

On February 1, 2024, Defendant LINDA STEINHOFF HOLMES's motion for summary adjudication came on regularly for hearing in Department 501 of the above-entitled Court. Having considered all papers submitted by the parties and good cause appearing, the Court adopts its tentative ruling as follows:

DEFENDANT LINDA STEINHOFF HOLMES' MOTION FOR SUMMARY ADJUDICATION is GRANTED in part and DENIED in part. Motion is granted as to issue 1 on the second cause of action. Moving party shifted its burden and the plaintiff failed to create a triable issue of material fact. Motion is denied as to issue 2 regarding the purported claim for

**FILED**  
San Francisco County Superior Court

MAR 11 2024

CLERK OF THE COURT

By: *Ramona J. [Signature]*  
Deputy Clerk



1 treble damages in the third cause of action. Motion for Summary Adjudication is framed by the  
2 pleadings. Moving party fails to point to any part of the third cause of action claiming treble  
3 damages by paragraph or page/line number. The Court took judicial notice of the Complaint and  
4 could not locate any request for treble damages within the third cause of action, pages 12:15-  
5 13:1.

6 Accordingly, IT IS HEREBY ORDERED that judgment be entered in favor of  
7 Defendant HOLMES on Plaintiff's second cause of action for damages pursuant to the San  
8 Francisco Residential Rent Stabilization and Arbitration Ordinance.

9  
10 DATED: 3/11/24

11   
12 JUDGE OF THE SUPERIOR COURT

13 RONALD E. QUIDACHAY  
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## EXHIBIT 3

## USAO ATTORNEY'S FEES MATRIX — 2015-2021

*Revised Methodology starting with 2015-2016 Year*

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
31+ years	568	581	602	613	637	665
21-30 years	530	543	563	572	595	621
16-20 years	504	516	536	544	566	591
11-15 years	455	465	483	491	510	532
8-10 years	386	395	410	417	433	452
6-7 years	332	339	352	358	372	388
4-5 years	325	332	346	351	365	380
2-3 years	315	322	334	340	353	369
Less than 2 years	284	291	302	307	319	333
Paralegals & Law Clerks	154	157	164	166	173	180

### *Explanatory Notes*

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.* 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. The USAO rates for years prior to and including 2014-15 remains the same as previously published on the USAO's public website.
5. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (*i.e.*, at the beginning of the third year following law school). *See Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. *See, e.g., EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56, 60-61 (D.D.C. 2013) (same). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.
6. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (*i.e.*, \$150 for 2014-15) updated with the PPI-OL index. The formula is \$150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
7. The attorney's fees matrices issued by the United States Attorney's Office are intended to facilitate the settlement of attorney's fees claims in actions in which the United States may be liable to pay attorney's fees to the prevailing party and the United States Attorney's Office is handling the matter. The United States Attorney's Office is presently working to develop a revised rate schedule, based upon current, realized rates paid to attorneys handling complex federal litigation in the District of Columbia federal courts. This effort is motivated in part by the D.C. Circuit's urging the development of "a reliable assessment of fees charged for complex federal litigation in the District." *D.L. v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). This new matrix should address the issues identified by the majority in *D.L.*, but it is expected that it will be some time before a new matrix can be prepared. In the interim, for matters in which a prevailing party agrees to payment pursuant to the matrices issued by the United States Attorney's Office, the United States Attorney's Office will not demand that a prevailing party offer the additional evidence that the law otherwise requires. *See Eley*, 793 F.3d at 104 (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995)) (requiring "evidence that [the] 'requested rates are in line with those prevailing in the community for similar services'").

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Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,  
Plaintiff,  
v.  
LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,  
Defendants.

) Case No. CGC-21-594129  
)  
) **Assigned for All Purposes to Dept. 206**  
)  
) **DECLARATION OF NOLAN**  
) **ARMSTRONG IN SUPPORT OF**  
) **DEFENDANT LINDA HOLMES'S**  
) **MOTION FOR AWARD OF**  
) **ATTORNEY'S FEES AND COSTS**  
) **PURSUANT TO SFAC §37.9(f)**  
)  
) **Date: May 24, 2024**  
) **Time: 9:30 a.m.**  
) **Dept: 501**

1. I am an attorney at law duly admitted and licensed to practice before all the courts of the State of California. I am a partner with the law firm of McNamara, Ambacher, Wheeler, Hirsig & Gray, counsel of record for the Defendant Linda Steinhoff Holmes in the above-captioned action. I have personal knowledge of the matters stated herein and would so testify.

2. Throughout the pendency of this litigation, Defendant has been defended by two liability insurance carriers; Allstate and CSAA. Those carriers retained separate counsel because they had different times on the risk. Both carriers are defending subject to a reservation of rights.

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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**04/24/2024**  
**Clerk of the Court**  
BY: SANDRA SCHIRO  
Deputy Clerk

3. My firm has been retained by CSAA to defend Ms. Holmes. We have been co-defending with counsel retained by Allstate; first with the Rankin|Stock|Haeberlin|O'Neal firm from January 2022 until the end of August 2023, and thereafter with the Haapala, Thompson & Abern firm.

4. My former partner, Lisa Roberts, and I have been the primary handling attorneys for this litigation in our firm. Additional work was performed by my former associate, Dominique Marangoni-Simonsen. before she left the firm in August 2022.

5. I have been the sole handling attorney since Ms. Roberts retired in February 2023. I was admitted to the bar in 2005. In my 17 years of litigation experience, I have defended well over 100 landlord-tenant matters. Pursuant to the Laffy Matrix, the reasonable hourly rate for my work is \$591.

6. Ms. Roberts was admitted to the bar in 1989. According to the Laffy Matrix, the reasonable hourly rate for attorneys with 23 years of experience is \$621.

6. Ms. Marangoni-Simonsen was admitted to the bar in 2021. According to the Laffy Matrix, the reasonable hourly rate for attorneys with less than 2 years experience is \$333.

6. I have reviewed my firm's billing transaction history and have determined that I spent 40.9 hours working on the case on behalf of Defendant Holmes as of February 2024. At an hourly rate of \$591, the reasonable value of the time I spent defending the matter was \$24,171.90.

8. Prior to her retirement, Ms. Roberts spent 58.9 hours working on the defense of this case. At an hourly rate of \$621, the reasonable value of the time she spent defending the matter was \$36,576.90.

9. Prior to leaving the firm, Ms. Marangoni-Simonsen spent 22.4 hours working on the defense of the case. At an hourly rate of \$333, the reasonable value of the time she spent defending the matter was \$7,459.20.

10. I therefore calculate the reasonable attorney's fees for my firm's work on the litigation to be \$68,208.

11. The number of hours billed by my firm was reasonable. Plaintiff has produced in

discovery many hundreds of pages of documents and several lengthy videos. Those all had to be reviewed and analyzed. During his six-and-a-half-year tenancy, Plaintiff complained to the Department of Building Inspection at least 21 times. Those all had to be reviewed and analyzed. Plaintiff has dubiously alleged that the apartment was infested with mold and that Defendant somehow contrived, in conspiracy with other tenants in the building, to taint the water supply to his apartment which resulted in his hospitalization and contributed to the death of his domestic partner. He has alleged that Defendant conspired with Department of Building Inspection officials, the police and other public officials to obtain impunity. He has alleged that Defendant and her counsel conspired with others to set him up to be arrested for assault with a deadly weapon. Those claims all had to be reviewed and analyzed. In short, Plaintiff has presented an extraordinarily complex and idiosyncratic claim which has caused defense counsel to spend more time than is usual to mount a defense. Most of that time implicates the defense of the SFAC §37.9 claim.

11. The risks faced by a Defendant who is sued under Section 37.9 are unique insofar as they include the risk of an award of treble damages in addition to an award of attorney's fees and costs. CSAA, which company retained my firm, has been providing a defense subject to a reservation of rights. Accordingly, my firm made the defense of the Section 37.9 claim the primary focus of our efforts because that claim was the only claim that carried such an onerous risk and because it implicated damages for which coverage was disputed. I estimate that Ms. Roberts and I expended at least 50% of the time billed by our firm on the case to defending the Section 37.9 claim.

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

Dated: April 9, 2024



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Attorneys for Defendant  
LINDA STEINHOFF HOLMES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

DANIEL FELDMAN, Ph.D.,  
  
Plaintiff,  
  
v.  
  
LINDA STEINHOFF HOLMES, an  
individual; and DOES 1-10, inclusive,  
  
Defendants.

) Case No. CGC-21-594129  
)  
) **Assigned for All Purposes to Dept. 206**  
)  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **DEFENDANT LINDA HOLMES'S**  
) **MOTION FOR AWARD OF**  
) **ATTORNEY'S FEES AND COSTS**  
) **PURSUANT TO SFAC §37.9(f)**  
)  
)  
) **Date: May 24, 2025**  
) **Time: 9:30 a.m.**  
) **Dept: 501**

**I. INTRODUCTION**

Defendant LINDA STEINHOFF HOLMES seeks an award of reasonable attorneys' fees and costs on the ground that she is the prevailing party on Plaintiff's Second Cause of Action for violation of the San Francisco Residential Rent Stabilization and Arbitration Ordinance pursuant to the Court's granting of Defendant's Motion for Summary Adjudication of that cause of action on February 1, 2024.

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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**04/24/2024**  
**Clerk of the Court**  
BY: SANDRA SCHIRO  
Deputy Clerk



Defendant requests that she be awarded 50% of all her attorneys' fees and costs incurred in defending the lawsuit because her defense of the action has been primarily focused on defeating the claim under SFAC 37.9(a), which claim uniquely exposed her to potential liability to Plaintiff for treble damages and attorney's fees.

## **II. RELEVANT FACTS**

Plaintiff Daniel Feldman PhD filed his Complaint in this action on July 28, 2021 [Exhibit 1]. His Complaint asserted the following 11 causes of action: (1) Constructive Eviction; (2) Retaliatory Eviction (based on SFAC §37.9); (3) Negligence Per Se; (4) Negligence/Personal Injury; (5) Breach of the Implied Warranty of Habitability; (6) Breach of the Covenant of Quiet Enjoyment; (7) Defamation; (8) Intentional Infliction of Emotional Distress; (9) Negligent Infliction of Emotional Distress; (10) Unfair Competition Law (B&P Code §17200 et seq.); and (11) Nuisance.

On February 1, 2024, Hon. Charles Haines granted Defendant's Motion for Summary Adjudication as to Plaintiff's Second Cause of Action for Retaliatory Eviction (based on SFAC §37.9). A true and correct copy of the Order is attached to the accompanying Declaration of Steven Sheriff Abern ["Abern Dec"] as **Exhibit 2**.

## **III. ARGUMENT**

### **A. Defendant is Entitled to a Mandatory Award of Attorneys' Fees and Costs Pursuant to SF Rent Ordinance Section 37.9.**

Plaintiff's Second Cause of Action asserted a claim for violation Sections 37.9 et seq. of the San Francisco Residential Rent Stabilization and Arbitration Ordinance. On February 1, 2024, the Court granted Defendant's Motion for Summary Adjudication of that cause of action.

SFAC Section 37.9(f) provides for remedies available under Sections 37.9 et seq. It states, in pertinent part:

**The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.** The remedy available under this Section 37.9(f) shall be in addition to any other existing remedies which may be available to the tenant or the Board. [San Francisco Rent Ordinance, section 37.9(f) (emphasis added).]

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As a result of the Court’s March 11, 2024 Order granting summary adjudication of Plaintiff’s Second Cause of Action in favor of Defendant Holmes, Defendant is the prevailing party on that claim. Pursuant to SFAC §37.9(f), Defendant is entitled to a *mandatory* award of reasonable attorney’s fees and costs incurred in defending the claim.

A Defendant who is sued under Section 37.9 faces the unique risk of an award of *treble* damages in addition to an award of attorney’s fees and costs. Accordingly, Defendant’s counsel made the defense of Plaintiff’s Section 37.9 claim the primary focus of their efforts. According to the declaration of all three attorneys who have represented Defendant during the course of the litigation, counsel reasonably expended at least 50% of their time billed on the case defending the Section 37.9 claim. *See Declaration of Steven Sheriff Abern, Declaration of David Stock, and Declaration of Nolan Armstrong.*

**B. The Lodestar Method Is Generally Accepted in California as the Method by Which the Court is to Determine Reasonable Attorneys’ Fees.**

**1. The Lodestar Method.**

The generally accepted means for determining reasonable amount of recoverable attorney’s fees is the “Lodestar-Adjustment” method. The primacy of the Lodestar-Adjustment method was prescribed in *Serrano v. Priest (Serrano III)* (1977) 20 Cal.App.3d 25, 48 fn.23, which holds that determining the lodestar is the “starting point” of every fee award. As the court explained, the “objectivity” necessitated by calculation of the Lodestar figure is “vital” (quoting *City of Detroit v. Grinnell Corp.* (2d Cir 1974) 495 F2d 448,470):

The starting point of every fee award, once it is recognized that the court's role in equity is to provide just compensation for the attorney, must be a calculation of the attorney's services in terms of the time he has expended on the case. Anchoring the analysis to this concept is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.

(See also *Press v. Lucky Stores, Inc.* (1983) 34 Cal.App.3d 311, 322; *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102, 111 [“favorable public perception and the prestige of the legal profession and our system of justice requires a formula for computation which can be objectively measured.”].)

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To employ this method, a Lodestar figure must first be calculated by multiplying the number of hours reasonably spent by each billing professional (i.e., attorney, paralegal, law clerk, legal assistant) multiplied by the reasonable hourly rate for each biller. (*Serrano III supra*, 20 Cal.App.3d at 48.)

Most courts start their determination of the Lodestar figure by determining the number of hours reasonably spent by each biller. (*Serrano III, supra*, 20 Cal.App.3d at 48.) In *Serrano v. Unruh (Serrano IV)* (1982) 32 Cal.App.3d 621, 639, the court held that prevailing counsel are entitled to compensation for all hours reasonably spent: “[A]bsent circumstances rendering the award unjust, fees recoverable under [CCP § 1021.5] ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim.” Generally speaking, hours are reasonable if they were “reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client for all time reasonably expended on a matter.” (*Hensley v. Eckerhart* (1983) 461 US 424, 431.)

## **2. The Court May Rely on the Laffey Matrix of Attorneys’ Fees and Costs**

To determine reasonable market value, courts must determine whether the requested rates are “within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work.” (*Children’s Hosp. & Med. Ctr. v Banta* (2002) 97 Cal.App.4th 740, 783.) “There is no requirement that the reasonable market rate mirror the actual rate billed.” (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th at 701; *Children’s Hosp. & Med. Ctr. V Banta* (2002) 97 Cal.App.4th 740, 783 [“To determine reasonable market value, courts must determine whether the requested rates are ‘within the range of reasonable rates charged by judicially awarded comparable attorneys for comparable work.’”].) The courts have held that the determination of a reasonable hourly rate “is not made by reference to the rates actually charged the prevailing party.” (*Welch v. Metropolitan Life Ins. Co.* (9th Cir. 2007) 480 F.3d 942, 946; *Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1260; and *Syers Properties III, Inc. v Rankin, supra* at 700-701.) This is true “regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market or discounted rates, represent the

client on a straight contingent fee basis, or are in-house counsel.” (*Syers Properties III, Inc. v. Rankin, supra* at 701.)

The Laffey Matrix is an official source of attorney rates based in the District of Columbia area, which can be adjusted to the San Francisco Bay Area by using the Locality Pay Tables. This Matrix has been approved as a basis (although a court is not required to follow it) which a Court may look to in determining reasonable market rate. (See *Syers Properties III, Inc. v. Rankin, supra* at 695.)

According to the Civil Division of the United States Attorney's Office for the District of Columbia (USAO), in its Laffey Matrix, the reasonable hourly rate from June 2020 through May 2021 for attorneys with 30+ years of experience was \$665. The reasonable hourly rate for attorneys with 21 to 30 years was \$621. The reasonable hourly rate for attorneys with 16 to 20 years of experience was \$591. The reasonable hourly for attorneys with 11 to 15 years of experience was \$532. The reasonable hourly for attorneys with eight to 10 years of experience was \$452. The reasonable hourly for attorneys with six to seven years of experience was \$388. The reasonable hourly rate for attorneys with less than two years of experience is \$333. (See **Exhibit 3** to Abern Dec.)

**3. Defendant Has, During the Pendency of This Litigation, Been Defended by Three Firms Who Have Spent a Combined 340.5 Hours Working on Her Behalf.**

Throughout the pendency of this litigation, Defendant has been defended by two liability insurance carriers; Allstate and CSAA. Those carriers retained separate counsel because they had different times on the risk. Both carriers are defending subject to a reservation of rights.

**Counsel Retained by Allstate:** From January 2022 through August 2023, Defendant was represented by Allstate through the Rankin,|Stock|Haeberlin|O’Neal firm. The handling attorney was Stephanie Davin who was admitted to the bar in 2015. Ms. Davin billed 147.9 hours on the matter between January 2022 through August 2023. According to the Laffey Matrix, as an attorney with seven years of experience, her reasonable hourly rate was \$388. The reasonable rate for work by the Rankin firm was accordingly \$57,385.20. (Stock Dec.)

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The Rankin firm ceased its operations in 2023. On August 29, 2023, Allstate reassigned Ms. Holmes's defense to the Haapala, Thompson & Abern firm. From September 2023 through the present, Steven Abern has been the primary handling attorney at the Haapala firm. Mr. Abern was admitted to the bar in 1990 and has 33 years of litigation experience during this case. As indicated in the attached declaration, Mr. Abern has handled well over 300 landlord-tenant litigation matters, more than a third of which were venued in San Francisco, and more than 90% of which were venued in jurisdictions having rent and eviction control ordinances; e.g., San Francisco, Oakland, Berkeley, Richmond and San Jose. Mr. Abern has acted as a mediator in tens of landlord-tenant matters and represented clients well over 1,500 litigation matters involving issues other than landlord-tenants. Based on the foregoing calculation and the Laffy Matrix, the reasonable hourly rate for Mr. Abern's work is \$665.00. (Abern Dec.)

Mr. Abern's partner, Jody Struck, also worked on the matter, particularly on preparing the Motion for Summary Adjudication. She was admitted to the bar in 1985. Accordingly, as an attorney with 38 years of experience, her reasonable hourly rate is also \$665.00. (Abern Dec.)

Mr. Abern and Ms. Struck spent a combined 70.4 hours working to defend Ms. Holmes between August 29, 2023 and January 31, 2024 (the eve of the hearing on Defendant's Motion for Summary Adjudication). The reasonable rate for work by the Haapala firm was accordingly \$46,816.

**Counsel Retained by CSAA:** From January 2022 through the present, Defendant was also represented by CSAA through the McNamara, Ambacher, Wheeler, Hirsig & Gray firm. The handling attorneys have been Nolan Armstrong and Lisa Roberts (until her retirement in February 2023). Associate Dominique Marangoni-Simonsen also worked on this matter before leaving the McNamara firm in August 2022. Mr. Armstrong, a partner in the firm, was admitted to the bar in 2005 and had 17 years of litigation experience during this case. He has defended well over 100 landlord-tenant matters. According to the Laffy Matrix, the reasonable hourly rate for an attorney with 17 years of experience is \$591. Mr. Armstrong has spent 40.9 hours working on the defense of this case as of February 2024. At an hourly rate of \$591, his reasonable fees are \$24,171.90. (Armstrong Dec.)

Ms. Roberts was admitted to the bar in 1989. Prior to her retirement, Ms. Roberts spent 58.9 hours working on the defense of this case. At an hourly rate of \$621 per the Laffy Matrix, the reasonable value of the time she spent defending the matter was \$36,576.90.

Prior to leaving the firm, Ms. Marangoni-Simonsen spent 22.4 hours working on the defense of the case. At an hourly rate of \$333 per the Laffy Matrix, the reasonable value of the time she spent defending the matter was \$7,459.20.

According to the declaration of all three attorneys who have represented Defendant during the course of the litigation, counsel expended at least 50% of their time billed on the case defending the Section 37.9 claim. (*See Abern, Stock, and Armstrong Decs.*) Their combined reasonable rates for defending the matter was \$175,409.20 for 340.5 hours of work.

#### **IV. CONCLUSION**

Based on the foregoing facts and legal authority, Defendant respectfully requests that this Court award her **\$87,704.60** in attorneys' fees, which amount is *half* the amount she has incurred in the defense of the litigation.

Dated: April 24, 2024

HAAPALA, THOMPSON & ABERN, LLP

By: \_\_\_\_\_



STEVEN SHERIFF ABERN  
Attorneys for Defendant  
LINDA STEINHOFF HOLMES