

## PSOF-Exclusion Table (Unabridged) — JUXTAPOSED

The following table is a derivation (“visual enhancement”, for improved ease-of-readability) of our original PSOF-Exclusion Table (Unabridged, at PetWritCert ReqApx ¶86–90, already entered into evidence to the Judicial Council). This new, expanded, version of the table is obtained by inserting (and thereby *juxtaposing, in syzygy*) parallel verbatim excerpts<sup>†,‡</sup> from the three key documents in question:

- District Court’s Opinion (“**Op**”, Dkt №94), also adopted by the Appellate Court.
- Plaintiff’s Statement of Facts (“**PSOF**”, Dkt №83).
- Defendant’s Statement of Facts (“**DSOF**”, Dkt №74).

Thus, the *substantive content* of this version of the table is identical to that of the original (which already goes *above-and-beyond* the D.Mass. Local Rule LR 56.1, which incorporates *no provision/requirement* for “bilateral numbered page/section/paragraph PSOF ⇄ DSOF rebuttal/reference/comparison;” see also the *Ad Nauseam* section of PetWritCert, ¶36). But the present version has the “friendliness” advantage of **presenting that (same) content in a more direct/“visual” manner: proving “immediately” that the Opinion uniformly falsely lies/discredits/ignores PSOF, and falsely lies/credits DSOF — 180° the wrong way around, thereby falsifying all disputed issues of material fact — resulting in blatant/massive abridgment of Constitutional Rights (Due Process, Equal Protection), Judicial Misconduct, Obstruction of Justice and other Criminal Laws, etc.**

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† • Conventions: (i) Page references refer to original court-docketed documents (not to their reformatted versions at PetWritCert ReqApx ¶4–38,48–84). (ii) **Internal references/citations omitted.** (iii) Emphasis added. (iv) Annotations are indicated by curly parentheses/braces with wavy underlining “{“,”}” (square parentheses/brackets “[“,”]” occur in the original documents themselves). (v) Paragraph/page breaks are not indicated in the excerpts. (vi) Star-ellipsis “\*\*\*” indicates gaps, which may span paragraphs/pages (dot-ellipsis “...” occurs in the original documents). (vii) “☰{...}” (**I Ching hexagram, standstill/obstruction/decline/disorder**) indicates “false/misleading lie/half-lie/omission/‘spin’ {with comment}”.

‡ • The exercise of producing this enhanced/juxtaposed version of the table has unmasked the following (trivial, bookkeeping/typographical) errors in the original version (as predicted at PetWritCert ReqApx ¶86fα [and these corrections have now been incorporated into the latest versions of the original table]): (i) In ☉: cite PSOF ¶2; don’t cite PSOF ¶5. (ii) In ☉: cite PSOF ¶11,59. (iii) In ☉: don’t cite Op ¶4. (iv) In ☉: don’t cite PSOF ¶26. (v) In ☉: cite Op ¶4; cite PSOF ¶3¶9–10. (vi) In ☉: cite Op ¶3; don’t cite DSOF ¶6¶24–25. (vii) In ☉: cite PSOF ¶89. (viii) In ☉: don’t cite PSOF ¶8¶28; cite ¶15¶50; cite DSOF ¶24. (ix) In ☉: cite PSOF ¶15¶50. (x) In ☉: cite DSOF ¶6. (xi) In ☉: cite Op ¶10; cite DSOF ¶12¶55. (xii) In ☉: don’t cite PSOF ¶9¶31; cite PSOF ¶21–23. (xiii) In ☉: cite PSOF ¶47. (xiv) In ☉: cite DSOF ¶9. (xv) In ☉: cite Op ¶10; cite PSOF ¶56; cite DSOF ¶16¶73,¶17¶80–81. (xvi) In ☉: cite DSOF ¶80–81.



Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	<u>Op</u> Falsely <u>Discredit</u> <u>PSOF</u> (MUST Be Credited)	<u>Op</u> Falsely Credit <u>DSOF</u> (MUST Be <u>Discredited</u> )
<ul style="list-style-type: none"> <li>Ⓐ Knabe</li> <li>Ⓐ Excel</li> <li>Ⓐ graphics</li> <li>Ⓐ episode</li> </ul>		<p>identified as that he was working "too slowly."</p>	





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© Knabe © yelling © incident ©		filed a discrimination complaint nor declared a disability, was never disciplined for raising his voice at Mr. Tuvell.	









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① <b>Feldman</b> ① <b>demotion</b> ① ① ① ① ① ① ① ① ①		<p>the demotion. The May 18 and June 8 incidents were <b>not the true reasons</b> for the June 10, 2011 demotion/transfer. Mr. Feldman failed to take action to resolve any alleged difficulties involving Knabe and Tuvell. For example, Mr. Feldman refused to investigate, {<u>re- fused multiple requests for three- way meetings with Mr. Knabe,</u>} and refused to respond to Mr. Tuvell's repeated inquiries for more detail concerning his alleged misconduct.</p>	

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<p><i>{ Went to HR — here's where things really "went south." }</i></p>			



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<p>           © Feldman            © "Dear Dr.            © Tuvell"            © email            ©            ©            ©            ©            ©         </p>		<p>           {and Feldman in turn told Tuvell            about his own history of suing (but            Tuvell did not take that as a threat            that Feldman/IBM might sue him)}            when you feel you've been wronged            in the office <b>{which is protected            activity, i.e., cannot be used for            retaliatory purposes}</b> and I see            no choice."         </p>	





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<p>Ⓢ <b>Feldman</b></p> <p>Ⓢ <b>transition</b></p> <p>Ⓢ <b>status</b></p> <p>Ⓢ <b>reports</b></p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p>		<p>placement by Ms. Mizar, a less qualified, younger, female individual, and Tuvell expresses his opinion Feldman's picky requirements reflect "blatant ... harassment/retaliation." *** On June 17, 2011, Mizar provides Feldman with a transition status update for the prior two days, demonstrating that <b>she missed</b> the previous day's update. However, Mizar was not disciplined or counselled for missing that update {as Tuvell had been — thus comprising differential/discriminatory <b>retaliation</b> by Feldman}.</p>	





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© Feldman © impossible © project © planning © © © ©		<p>was still on a learning curve with respect {to} the new projects, and has never {in his entire career} set a daily schedule for three weeks in the future, let alone for unfamiliar projects. Mr. Tuvell requests an example of such a schedule from Mr. Feldman, but none is forthcoming.</p>	



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<p>Ⓜ Due Ⓜ "sham" Ⓜ investiga- Ⓜ tion</p> <p>Ⓜ Ⓜ Ⓜ Ⓜ Ⓜ Ⓜ Ⓜ Ⓜ Ⓜ Ⓜ</p>		<p>who <b>instructed her to inform Plaintiff</b> that Ms. Due had <b>no reason</b> to conclude that Plaintiff had been mistreated. In addition to <b>never seriously investigating</b> Mr. Tuvell's complaints of discrimination, Ms. Due also <b>never investigated</b>, nor did she come to a determination, of whether Mr. Knabe engaged in discrimination, or engaged in any type of wrongdoing at all. <u>{All these lapses indicate that Due's "investigation" was nothing but a sham.}</u></p>	











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<p>① "Bad" ① emails; ① e.g., "ad ① hominem" ① and esp. ① "lazy" ① letter</p>	<p>ment. Tuvell told Adams and Mc-Cabe {on June 16, 2011} that he believed it was "infeasible" for him to work with Feldman. *** In July 2011, Tuvell took medical leave for elective ¶{that is, non-emergency} surgery {which was performed on July 7, 2011} followed by vacation. Before taking leave, Tuvell sent an email to Feldman and another colleague notifying them that he had completed an assignment regarding a wiki page. In the email {dated July 6, 2011}, Tuvell explained that the update could be found by searching the wiki but he also attached the link, adding ¶{entirely familiarly/colloquially/innocently, implying no lack of energy or defect of personality} "if you're lazy you can just click this link." {In an email dated July 11, 2011,} Feldman thanked Tuvell for the work but ¶{falsely, harassingly} informed Tuvell that his communication style was "the sort of thing that you want to avoid." Tuvell ¶{who was still on medical leaving, having had surgery just days before, and too weak/confused to "stand up to" Feldman, meekly} apologized ¶{immediately, of his</p>	<p>able accommodation, repeatedly asserted {<b>falsely, discriminatorily</b>} that Tuvell complained "too much", as if the length of his {substantive, useful (for IBM's investigations), and detailed} complaints disqualified their content, and dismissed Tuvell's initial complaint as a "diatribe." {Another example, of Feldman's <b>falsely</b> accusing Plaintiff of writing <i>ad hominem</i> comments disparaging another employee, was inadvertently omitted from the PSOF.} In explaining reasons why Plaintiff{} performed in an unsatisfactory manner, IBM has {<b>falsely</b>} asserted that his focus, "beginning June 13, 2011 was more on pursuing his claims and less on performing any actual work for IBM." Yet, IBM has <b>never {truthfully} identified any job task that Plaintiff neglected</b> as the result of lodging his internal, protected complaints {or otherwise}. *** On August 3, 2011, Plaintiff was {<b>falsely</b>} given a formal discipline {Formal Warning Letter (®)}, with threat of termination, for {the <i>sole</i> cited reason of} innocently writing, "if you're lazy you can just click this link;" {also cited in ®} *** Mr. Mandel</p>	<p>cause he had ¶{correctly} concluded that "no apology was necessary" for the July 6, 2011 email.</p>

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<p>① "Bad" ① emails; ① e.g., "ad ① hominem" ① and esp. ① "lazy" ① letter</p>	<p>own initiative, in an email also dated July 11, 2011 } for his use of the word "lazy" and said that he would "search harder for less ambiguous/offensive wording." On July 20, 2011, ¶{his strength returning to the extent of enabling him to analyze Feldman's false "lazy" letter scandal. } Tuvell sent a second email explaining ¶{correctly, as a byword well-known throughout the software engineering community, famously promulgated by Larry Wall, inventor of the Perl programming language, since 1991 } that "laziness is lauded as a prime virtue of programmers," concluding ¶{correctly} that "[o]bviously no apology was necessary." Tuvell then {in the July 20, 2011 email} apologized for the apology ¶{properly, explaining that no apology had been needed in the first place, this way: "I just now happened to trip upon the attached old email of mine [in which Tuvell said of himself, in the context of asking for help from coworkers: 'You guys are always helpful of course, and it's not rocket science, but the laziest path is always the best!']. It shows that I myself value</p>	<p>testified that he, too, {transparently <b>falsely</b>} found the "lazy" comment to be inappropriate. *** In response to one of Tuvell's {protected} complaints of harassment, Feldman stated <b>{threateningly, retaliatorily}</b>, "assertions of bad faith ... are inconsistent with success." After Tuvell reasonably complained of harassment on June 30, 2011, <b>Feldman urged HR to discipline him based on that {reasonable and protected} complaint.</b></p>	

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<ul style="list-style-type: none"> <li>① "Bad"</li> <li>① emails;</li> <li>① e.g., "ad</li> <li>① hominem"</li> <li>① and esp.</li> <li>① "lazy"</li> <li>① letter</li> </ul>	<p>"laziness" as a virtue under the right circumstances (e.g., when it doesn't interfere with advancement of skills, etc.)."</p>		













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<ul style="list-style-type: none"> <li>ⓧ Mandel</li> <li>ⓧ C&amp;A;</li> <li>ⓧ Open Door</li> <li>ⓧ complaints;</li> <li>ⓧ "sham"</li> <li>ⓧ investiga-</li> <li>ⓧ tion</li> <li>ⓧ</li> <li>ⓧ</li> <li>ⓧ</li> <li>ⓧ</li> <li>ⓧ</li> <li>ⓧ</li> <li>ⓧ</li> </ul>		<p>Plaintiff a requested transfer on January 6, 2012, <b>based on handi-cap discrimination, availment of reasonable accommodation, denial of the obligation to reasonably accommodate and/or retaliation{.}</b> Mr. Mandel <b>{falsely}</b> assigned himself the investigation of this Complaint, however, in performing these duties, Mr. Mandel <b>admitted never investigating whether rejection was based on retaliation or was in violation of IBM's duty to reasonably accommodate the Plaintiff.</b></p>	

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<p>Ⓛ</p> <p>Ⓛ <b>Pseudo-</b></p> <p>Ⓛ <b>yelling;</b></p> <p>Ⓛ <b>Feldman</b></p> <p>Ⓛ <b>forbid</b></p> <p>Ⓛ <b>work-time</b></p> <p>Ⓛ <b>for</b></p> <p>Ⓛ <b>complaint</b></p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p> <p>Ⓛ</p>	<p><u>Op p4:</u></p> <p>Ⓛ</p> <p>Ⓛ <i>{silent}</i></p>	<p><u>PSOF p8,15¶27,49:</u></p> <p>Ⓛ</p> <p>{On August 3, 2011,} <b>for-</b> <b>bids</b> Tuvell from spending an <b>ear-</b> <b>lier agreed-upon</b> reasonable working time on his internal com- plaint of harassment, and then <b>threatened</b> Tuvell with termina- tion{ <b>falsely accusing Tuvell of</b> <b>"pseudo"-yelling,</b>} when Tuvell responded by {meekly} saying, {in reactive response to the cancella- tion of the previously agreed-upon time to work on the internal com- plaint,} "Now wait a minute, Dan." *** On August 3, 2011, Plaintiff was prohibited from using a previ- ously agreed-upon reasonable amount of his workday to draft his internal complaints of discrimina- tion, and Feldman threatened Plain- tiff for making this request { <b>falsely accusing him of</b> <b>"pseudo"-yelling</b>}.</p>	<p><u>DSOF p5:</u></p> <p>Ⓛ</p> <p>Ⓛ <i>{silent}</i></p>



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<p>Ⓝ</p> <p>Ⓝ <b>Fainting</b></p> <p>Ⓝ</p> <p>Ⓝ</p> <p>Ⓝ</p> <p>Ⓝ</p> <p>Ⓝ</p> <p>Ⓝ</p> <p>Ⓝ</p> <p>Ⓝ</p> <p>Ⓝ</p>	<p><u>Op p5:</u></p> <p>≡{<i>silent</i>}</p>	<p><u>PSOF p8,15,22¶28,50,68:</u></p> <p>Based on the <b>harassment</b> that Plaintiff experienced, and the <b>severe PTSD symptoms that resulted, including a fainting episode</b> {at the Formal Warning Letter meeting, on August 3, 2011; see also Ⓝ,Ⓜ} *** Mr. Tuvell's diagnosis is based on a variety of symptoms, *** He has suffered flashbacks and has <b>fainted</b> {see also Ⓞ} ***</p>	<p><u>DSOF p6¶25:</u></p> <p>≡{<i>silent</i>}</p>

































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<p>© MTRs; false © interpreta- © tions</p> <p>© © © © © © ©</p>			<p>ability benefits from MetLife, specifically writing that Plaintiff's "symptoms would return if [he] had to drive near the facility <del>to</del> {to which he was assigned to work, absent the reasonable accommodation of cessation of harassment}, and he would have to pull over and manage intense anxiety symptoms and emotional overwhelm."</p>



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® Rescind ® physical & ® electronic ® access ® ® ® ® ® ® ®		<p><u>{falsely}</u> based expressly on the fact that he had forwarded his <b>protected complaints of discrimination and harassment to others <u>{which is protected activity}</u></b>. On March 13, 2012, Mr. Tuvell was <b>threatened with termination</b> for forwarding <u>{by email}</u> his complaints of discrimination and retaliation to agents of IBM, which, again is <b>protected conduct</b>.</p>	

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<p>Ⓢ</p> <p>Ⓢ <b>Feldman</b></p> <p>Ⓢ <b>misclassify</b></p> <p>Ⓢ <b>work-at-</b></p> <p>Ⓢ <b>home days</b></p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p>	<p><u>Op p7:</u></p> <p>≡{<i>silent</i>}</p>	<p><u>PSOF p8-9¶30:</u></p> <p>On or about October 19 and 20, 2011, Mr. Tuvell objects to Mr. Feldman <b>falsely</b> {<i>i.e., harassingly, retaliatorily</i>} characterizing work at home days as sick days, asks for citation to the policy {<i>which does not exist</i>} that supports the practice, and notes that it is inconsistent with his work-at-home days pre-June 30, 2011 {<i>none of his many work-at-home days during that period had ever been classified as "sick days"</i>}. On November 2, 2011, Mr. Feldman made {<i>further</i>} <b>knowingly false</b> statement mischaracterizing Mr. Tuvell's work situation with respect to sick days — casting work-at-home days as refusal to work in the office days.</p>	<p><u>DSOF p9:</u></p> <p>≡{<i>silent</i>}</p>

















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① <b>Feldman &amp;</b> ① <b>Kime</b> ① <b>sabotage</b> ① <b>transfer</b> ① ① ① ① ① ① ①		<p>sionally at the December 1, 2011 interview with Kime. Tuvell was interviewed by two other individuals on or about December 8, 2011 {at the Littleton site}, and Kime reported that "the conversations were very positive" and their interactions were congenial. Tuvell's many communications with Mr. Kime concerning the position were "cordial and professional."</p>	















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<ul style="list-style-type: none"> <li>Ⓟ LinkedIn;</li> <li>Ⓟ EMC</li> <li>Ⓟ</li> <li>Ⓟ</li> <li>Ⓟ</li> <li>Ⓟ</li> <li>Ⓟ</li> <li>Ⓟ</li> <li>Ⓟ</li> </ul>			<p>from IBM. When Ms. Adams responded <u>≡{falsely}</u> to Plaintiff that IBM's Personal Leave of Absence Policy required him to tell IBM if he was working while on leave, Plaintiff accused Ms. Adams <u>≡{cor-rectly}</u> of retaliation and harassment and continued to refuse to provide the name of his new employer.</p>



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<p>Ⓢ <b>Imprivata</b></p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p> <p>Ⓢ</p>	<p>are engaged in competitive employment <u>≡{even though Tuvell had assured them he was not}</u>" and that "IBM employees may not work for a competitor in any capacity without obtaining consent <u>≡{though Tuvell was not working for a competitor}</u>." Tuvell refused to provide IBM with his work information <u>≡{out of fear, as Tuvell told Adams, that IBM would sabotage his position with his new company (without identifying Imprivata)}</u>.</p>	<p><b>concerns and neutralized all asserted reasons to threaten his employment,</b> Tuvell was <b>{falsely}</b> terminated on May 17, 2014. *** Since May 12, 2012, Plaintiff has been working at Imprivata, in a high level, technical capacity. He is <b>able to perform these functions, despite his PTSD,</b> because he is not being harassed. <b>It is denied that Plaintiff's current employer is a competitor of IBM.</b> In fact <u>{the opposite is true, namely}</u>, Imprivata is part of a "strategic provisioning partnership" with IBM, such that its product is integrated with IBM's corresponding product.</p>	<p><u>identifying Imprivata)}</u> *** IBM later learned that Plaintiff interviewed for a job with Imprivata, which develops and sells software products, in January of 2012, received an offer of employment on February 28, 2012, and began working for Imprivata on March 12, 2012, while still on medical leave from IBM. Plaintiff's salary at Imprivata is <u>≡{very slightly}</u> greater than what he was earning at IBM.</p>

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	<u>Op</u> <b>Falsely Discredit PSOF</b> (MUST Be Credited)	<u>Op</u> <b>Falsely Credit DSOF</b> (MUST Be <u>Discredited</u> )
<p>ⓧ <b>Termination</b></p> <p>ⓧ</p> <p>ⓧ</p> <p>ⓧ</p> <p>ⓧ</p> <p>ⓧ</p>	<p><u>Op</u> p11:</p> <p>On May 17, 2012, IBM <del>was</del> terminated Tuvell.</p>	<p><u>PSOF</u> p17-18¶57:</p> <p>The <b>{false}</b> termination occurred within days after Tuvell engaged in <b>protected conduct</b>. <u>{See @; such temporal proximity raises suspicion of retaliation, especially in the context of all the other events of this case.}</u></p>	<p><u>DSOF</u> p17¶79:</p> <p>{Q}n May 17, 2012, Plaintiff's employment from IBM was <del>was</del> terminated based on his refusal to advise IBM of where he was working, despite repeated requests that he do so.</p>