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*^{†,‡} 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/require-ment* for "bilateral numbered page/section/paragraph PSOF \(\sigma \) DSOF rebuttal/reference/comparison;" see also the *Ad Nauseam* section of PetWritCert, \(\phi \) 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.**

- the 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) "\(\begin{array}{c} \frac{1}{2} \ldots \frac{1}{2} \rdots \frac{1}{2} \rdots
- ‡ · 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 \$\infty866\pia\$ [and these corrections have now been incorporated into the latest versions of the original table]): (i) In ③: cite PSOF ¶2; don't cite PSOF ¶5. (ii) In ④: cite PSOF ¶11,59. (iii) In ⑨: don't cite Op \$\infty4. (iv) In ③: cite PSOF ¶26. (v) In ①: cite Op \$\infty4; cite PSOF \$\infty3\quad \text{9-10.} (vi) In ④: cite Op \$\infty3\$; don't cite DSOF \$\infty6\quad \text{9-15}\quad \text{9-10.} (vi) In ④: cite DSOF \$\infty8\quad \text{9-15}\quad \text{9-15}\quad \text{9-15}\quad \text{9-15}\quad \text{9-15}\quad \text{9-15}\quad \text{0.5}\quad \text{1.5}\quad \text{0.5}\quad \text{0.5}\quad \text{9-15}\quad \text{9-15}\quad \text{0.5}\quad \text{0.5}\q

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
A	<u>Op β3:</u>	PSOF <i>β</i> 1-2¶1-4:	<u>DSOF</u> ₆ ⁄2¶7:
 & Knabe & Excel & graphics & episode & &	On May 18, 2011, Feldman	On or about May 18, 2011, Mr. Knabe {falsely} asserted to Mr. Feldman, in Mr. Tuvell's absence, that Mr. Tuvell had failed to produce that day certain Microsoft Excel graphics as instructed. These assertions were entirely false. In fact, Mr. Knabe had not instructed Mr. Tuvell to produce any work at all that day, much less produce any Excel graphics. IBM has taken the position that the May 18, 2011 incident was one of the justifications for the demotion/reassignment of June 10, 2011 {see @} . The assertion that Plaintiff was even asked to produce Excel graphics is patently pretextual , given that both Mr. Feldman and Mr. Knabe knew that Mr. Tuvell did not even use or have a copy of Excel or the Microsoft operating system, but instead he used different more advanced software {Linux-based} tools for all his work at IBM. Defendant's assertions of what happened on May 18, 2011 are inconsistent , and therefore pretextual , as on other occasions, Plaintiff's alleged misconduct was	On or about May 18, 2011, Mr. Knabe [[falsely]] advised Mr. Feldman that Plaintiff had failed to complete a work assignment in a timely fashion. Mr. Feldman [[falsely]] relayed Mr. Knabe's concern to Plaintiff, who [[correctly and properly]]] described Mr. Knabe as a "liar."

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
& Knabe& Excel& graphics& episode		identified as that he was working "too slowly."	

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B	<u>Op β3:</u>	PSOF &2,5,18¶5-6,17,59:	DSOF $\wp2$:
 ® Feldman ® refuse ® three-way ® meeting ® % ** **<!--</th--><td>■{silent}</td><td>In response to Mr. Knabe's May 18, 2011 complaints {\alpha}, Plaintiff denied any wrongdoing, sought more detail concerning his alleged misconduct, and requested a three-way meeting amongst the three individuals, multiple times, to establish what exactly happened and to clear the air. Mr. Feldman repeatedly denied Plaintiff's requests to have a three-way meeting {to clear the air}, refused to investigate the false assertion about Plaintiff's work performance, and refused to respond to the requests for more information. While Mr. Feldman claims he rejected the option of a three-way meeting for the reason that it would create an unhealthy "habit," he had in fact conducted just such a three-way meeting shortly before, in March 2011, concerning a different issue. *** Finally {in the June 12, 2011, email mentioned in @}, Tuvell noted that his multiple requests for three-way meetings with {Feldman and} Knabe have been refused.</td><td>■{silent}</td>	■{silent}	In response to Mr. Knabe's May 18, 2011 complaints {\alpha}, Plaintiff denied any wrongdoing, sought more detail concerning his alleged misconduct, and requested a three-way meeting amongst the three individuals, multiple times, to establish what exactly happened and to clear the air. Mr. Feldman repeatedly denied Plaintiff's requests to have a three-way meeting {to clear the air}, refused to investigate the false assertion about Plaintiff's work performance, and refused to respond to the requests for more information. While Mr. Feldman claims he rejected the option of a three-way meeting for the reason that it would create an unhealthy "habit," he had in fact conducted just such a three-way meeting shortly before, in March 2011, concerning a different issue. *** Finally {in the June 12, 2011, email mentioned in @}, Tuvell noted that his multiple requests for three-way meetings with {Feldman and} Knabe have been refused.	■{silent}

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©	<u>Op β3:</u>	PSOF <i>β</i> 2-3,5,15-16¶7,17,50:	<u>DSOF</u> <i>℘</i> 2–3¶8:
© Knabe © yelling © incident © © © © © © © © © © © © © © © © © © ©	Then, on June 8, 2011, Knabe asked Tuvell [falsely } about an outstanding assignment in front of several other employees. During this conversation, both Tuvell [in self-defense } and Knabe [offensively attacking Tuvell } were heard to raise their voices.	On June 8, 2011, Mr. Knabe {offensively attacked/}yelled loudly at Mr. Tuvell in front of co-workers, {falsely} asserting that Mr. Tuvell failed to produce certain specified work items that day as ordered. These assertions were entirely false. In fact, Mr. Knabe had ordered Mr. Tuvell to produce certain different specified work items that day, and Mr. Tuvell had indeed produced these latter work items that day, as Mr. Knabe was already fully aware. On June 10, 2011, Mr. Knabe acknowledged in writing that he had indeed raised his voice at Mr. Tuvell. *** On June 12, 2011, Tuvell complains to Feldman in his weekly report about Mr. Knabe's "harassment and yelling," an "'illegal' adverse job action (in the IBM sense, and perhaps even in the civil sense)." Tuvell further complained about the "public humiliation of unilateral removal from the most excellent high-profile position on Wahoo to what seems a highly symbolic deportation to Siberia." *** Mr. Knabe, who had not	On June 8, 2011, Mr. Knabe asked Plaintiff \(\frac{1}{2} \) falsely\(\} about an outstanding work assignment in front of other employees and, according to Plaintiff's colleague Steve Lubars, who witnessed the incident, in the ensuing discussion voices were raised by both Plaintiff \(\frac{1}{2} \) {in self-defense} and Mr. Knabe \(\frac{1}{2} \) {offensively attacking Plaintiff}.

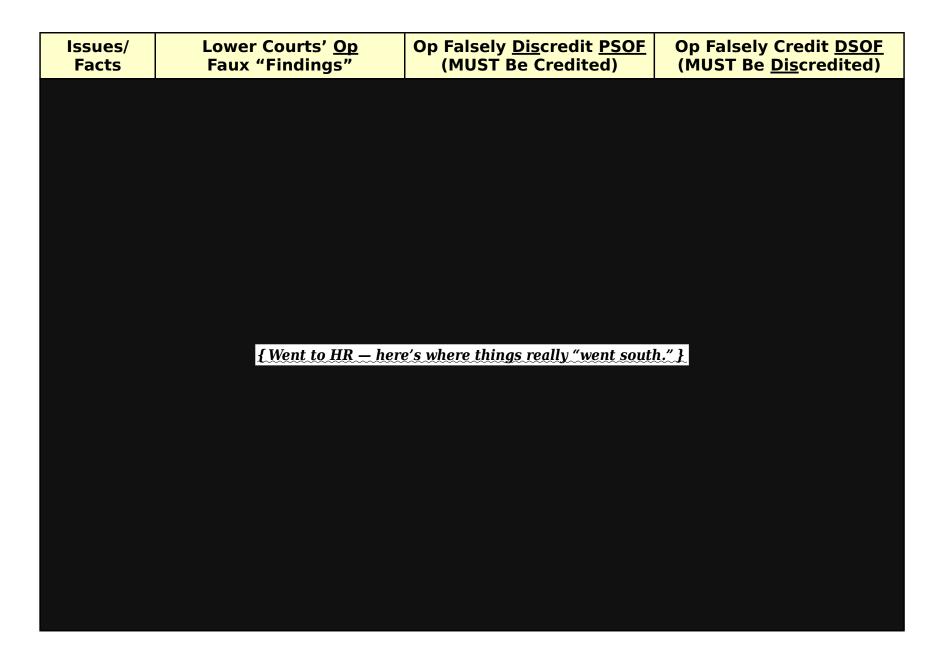
Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
	Faux "Findings"	filed a discrimination complaint nor declared a disability, was never disciplined for raising his voice at Mr. Tuvell.	(MUST Be <u>Dis</u> credited)

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
(D)	<u>Op <i>℘</i>3:</u>	PSOF \$\rho 3-5,18 8,11-16,58-59:	DSOF ℘3-4¶9-13:
 Feldman demotion 0 	he did not believe that Knabe and Tuvell could continue to work together effectively \(\begin{align*} \	Plaintiff was qualified for the role of Performance Architect at IBM, in that he had a BS from MIT, a PhD in Mathematics from the University of Chicago, he had been formally evaluated positively in that role by Mr. Feldman, and IBM acknowledges a lack of performance issues prior to May 18, 2011. Mr. Feldman regarded Plaintiff's work in the Pergarder	
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	Tuvell to a different { undesirable} project and, in turn, assigned another employee, Sujatha Mizar, who is Asian, female and younger than Tuvell, to work with Knabe. This transfer { actually, "demotion"} did not result in any change to Tuvell's pay or his { "formal," "band-level"} rank within the company { though it did measurably diminish his role/position}. Nevertheless, Tuvell contends { reasonably} that Knabe's conversation with Feldman on May 18, 2011 { actually, Tuvell was referring to the whole sequence of events, constituted discrimination based on		the Wahoo project. The switch did not result in any change in Plaintiff's pay or rank. Plaintiff claims that Mr. Knabe's decision to complain to Mr. Feldman about Plaintiff's work on May 18, 2011, {were false and} constituted discrimination against Plaintiff based on his age, sex, and race because he believes {knows} Mr. Knabe was lying about Plaintiff's work,
0	age, sex and race <u>≣{based to its</u> whole-cloth falsity/pretextuality}.	low-level work role of Ms. Sujatha Mizar, a less qualified female of	which meant <u>■{by reasonable be</u> lief based on pretextuality} that

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Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© Feldman		was well under forty, and he had decades more relevant experience for the position. Ms. Mizar had no PhD, while Plaintiff had one in Mathematics. Plaintiff was being	and "it had to be illegal" [there being no alternative viable reason, especially in view of Feldman/Knabe's adamant refusals of threeway meeting to work things out. Plaintiff claims that Mr. Feldman's decision to have him and Ms. Mizar switch project responsibilities constituted discrimination based on Plaintiff's disability, age, sex, and race because Plaintiff believes [knows, objectively] that Ms. Mizar, who is Asian, female, and younger than Plaintiff, is "far less qualified" than him. At the time, Plaintiff contended that [if Feldman really needed to be replaced at all (which Plaintiff did not concede), he instead should have been replaced with a colleague (Ashish Deb), who was male, over 40, and Asian [and had a PhD, so

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Feldman		assigned lower level work. The	
® demotion		reassignment to a lower position	
D		meant lesser job opportunities in	
D		future, and also by its {the demo-	
		tion's high visibility reflected what	
(D)		Plaintiff considered to be public	
(D)		humiliation. IBM's own policies	
(D)		considers an "undesirable reassign-	
(D)		ment" to be a tangible adverse	
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0		employment action. The June 10,	
(D)		2011 reassignment meant change	
(D)		of assigned work office from Cam-	
(D)		bridge to Marlborough, resulting in	
(D)		a much longer commute (15 miles	
(D)		vs. 45 miles), and which Tuvell re-	
(D)		garded as a less preferable loca-	
(D)		tion. *** Before the Massachu-	
100		setts Commission Against Discrimi-	
D		nation, Defendant took the position	
(D)		that Plaintiff's June 10, 2011 trans-	
D		fer/demotion, in which Tuvell was	
D		taken away from the oversight of	
D		Knabe, was an effort to "accommo-	
D		date [Tuvell's] unhappiness with	
D		working with Mr. Knabe." How-	
10		ever, that is shown to be pretex-	
10		tual by IBM's assertion that "IBM	
(D)		policy is pretty clear that supervi-	
10		sors aren't changed because an em-	
10		ployee's not getting along with	
10		their current supervisor." ***	
0		Moreover, Plaintiff actively opposed	

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Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© Feldman © demotion © © © © © © © © © © © © © © © © © © ©		the demotion. The May 18 and June 8 incidents were not the true reasons 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, {refused multiple requests for threeway meetings with Mr. Knabe,} and refused to respond to Mr. Tuvell's repeated inquiries for more detail concerning his alleged misconduct.	



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E	Ор ℘3:	PSOF <i>φ</i> 5,16¶18,51:	<u>DSOF</u> <i>⊗</i> 4:
© Feldman © "Dear Dr. © Tuvell" © email © © © © © © © © © © © © © © © © © © ©	<pre> \$\fill\{\silent\} </pre>	On June 12, 2011, Feldman responded by email to Tuvell's June 12, 2011 email {see B,C}. After months of addressing Mr. Tuvell as the familiar "Walt" {solely}, Mr. Feldman addresses his June 12, 2011 e-mail with stiff formality {indicating retaliation} to "Dr. Tuvell." In that June 12, 2011 email, Mr. Feldman requires that all of Mr. Tuvell's further written and verbal communications with him must be made in the presence of, or copied to, Human Resources representatives {"hyper-scrutiny", which is retaliatory}. Mr. Feldman {falsely} states, "I go down this path regretfully. You have twice {false: Tuvell told him once, but then it was Feldman who proactively "quizzed him down" about it a second time} now made clear to me your history of suing {only by way of telling Feldman, as Feldman well knew, that "Tuvell knew what he was talking about," not "threatening to sue you and/IBM in any manner" (though even such a threat is protected by the ADA)	<pre> \$\fill\{\silent\} </pre>

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Facts	Faux "Findings"		(MUST Be <u>Dis</u> credited)
© Feldman © "Dear Dr. © Tuvell" © email © © © ©		{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 {which is protected activity, i.e., cannot be used for retaliatory purposes} and I see no choice."	

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E	<u>Op β3:</u>	PSOF <i>φ</i> 5-8¶19-23,26:	DSOF <i>⊗</i> 4¶14−16:
© Feldman © transition © status © reports © © © © © © © © © © © © © © © © © © ©	On June 14, 2011, Feldman sent Mizar and Tuvell an email asking for daily status reports detailing the transition tasks completed and raising any issues with regard to the shift in responsibilities. Mizar replied to the email with a brief status update, copying Tuvell and adding that Tuvell should "feel free to add anything" that Mizar "might have forgotten." The next day, Feldman clarified [falsely] that he expected [false/misleading: Feldman said he "asked you to provide [individually]," but that was false} a separate status report from both Tuvell and Mizar.	On June 14, 2011, Feldman wrote to Tuvell and Mizar {jointly, not individually}, asking that they {jointly, not individually} provide Feldman with a brief email at the end of every business day detailing the transition of tasks between them that have been completed and providing alerts of any problem. On June 14, 2011, Mizar provided to Feldman a brief but complete status update of the transition, which was copied to Tuvell: 1) Finished transition of the Block IO tracing project. (Sujatha to Walter) 2) Finished transition of the WaltBar performance tool (Walter to Sujatha) Mizar's email further stated, "Walt—please feel free to add anything I might have forgotten.{"} {Tuvell, having nothing to add (because Mizar's report was accurate and complete, hence sufficient for all legitimate management oversight purposes), added nothing.} Despite the fact that the email from Mizar purported to {and did} de-	On June 14, 2011, Mr. Feldman sent both Plaintiff and Ms. Mizar an email asking that they submit a daily report on their transition work. While Ms. Mizar submitted a transition report to Mr. Feldman that day, Plaintiff did not. The next day, June 15, 2011, Mr. Feldman sent Plaintiff an email \$\overline{\text{lefore}}\$ the beginning of the work day} reiterating his request for a daily report and clarifying \$\overline{\text{false}}\$ falsely} that he required \$\overline{\text{false}}\$ falsely that he required \$\overline{\text{false}}\$ falsed you to provide \$\overline{\text{individually}}\$ a report from both Plaintiff and Ms. Mizar. In response, on June 15, 2011, \$\overline{\text{fin addition}}\$ to sending the requested (regurgitated) report to Feldman, \$\overline{\text{Plaintiff}}\$ sent several emails to Mr. Feldman, and Human Resources Specialists Kelli-ann McCabe and Diane Adams, complaining that Mr. Feldman's request that Plaintiff file a daily report constituted "blatant" and "snide harassment/retaliation," even though Mr. Feldman was also requiring Ms. Mizar to complete such a report

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Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© Feldman © transition © status © reports © © © © © © © © © © © © © © © © © © ©		scribe the transition status from the point of view of both Tuvell and Mizar, and despite the fact that Feldman had not specified that both Mizar and Tuvell were to each {individually} submit a separate (identical) report, Feldman {falsely} asserted that he had concluded that Plaintiff's failure to provide him a separate report regurgitating the same information found in Mizar's report to be inappropriate. On June 15, 2011, prior to the beginning of the day's normal work hours {such urgency not being supported by anything happening at work} , Mr. Feldman emailed a demand to Mr. Tuvell to submit a separate individual transition report, falsely stating that he had previously "asked you to provide a report from each of you daily". On June 15, 2011, Tuvell replied to Feldman, and copied Ms. McCabe and Ms. Adams, stating that he did not provide a separate report because it would have been redundant, as he knew Mizar's report already contained everything that he would have reported. In this email, Tuvell complains of age and sex discrimination with respect to his re-	

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Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© Feldman © transition © status © reports © © © © © © © © © © © © © © © © © © ©		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 she missed the previous day's update. However, Mizar was not disciplined or counselled for missing that update {as Tuvell had been—thus comprising differential/discriminatory retaliation by Feldman}.	

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©	<u>Οp φ4:</u>	PSOF ρ7-8¶24-25:	DSOF <i>β</i> 4¶16:
© Feldman © impossible © project © planning © © © © © © © © © © © © © © © © © © ©	≣{silent}	On June 16, 2011, at 10:25 am, Feldman emailed Tuvell, asking by the next day {harassingly} a "detailed (one-day granularity) schedule for your work on the assigned projects between now and the beginning of your medical leave." Tuvell's medical {surgical} leave was scheduled to begin July 7, 2011, three weeks in the future. Mr. Tuvell reports that it "turns my stomach (literally, not figuratively) to contemplate working with him." On June 17, 2011, Mr. Tuvell complains of continuing harassment to Mr. Feldman, Ms. McCabe and Ms. Adams. Tuvell complained, among other things {all of which taken together amounted to an "impossible"/retaliatory task}, that Tuvell was being required to establish an independent {without consulting others about new projects he was unfamiliar with} daily schedule for the next three weeks on all four projects he was taking over from Mizer, based solely on her short one-line descriptions of her projects. Tuvell complained that he	■{silent}

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© Feldman © impossible © project © planning © © ©	raux "Findings"	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.	(MOST BE <u>DIS</u> Credited)

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
H	<u>Ор 64:</u>	PSOF <i>β</i> 25-26¶82-84:	DSOF <i>φ</i> 4–5¶17–19:
 ® Due ® "sham" ® investiga- ® tion ® ** 	That same day {June 16, 2011}, Adams forwarded Tuvell's email regarding Feldman to a Senior Case Manager in IBM's Human Resources Department, Lisa Due. Due then conducted an \$\existsim \{\}\{\}\{\}\{\}\{\}\{\}\{\}\{\}\{\}\{\	Lisa Due conducted the initial investigation of Plaintiff's discrimination allegations in June 2011. When conducting that investigation, Ms. Due knew Plaintiff to be alleging that Mr. Feldman and/or Mr. Knabe to have discriminated against him on the basis of age and/or gender when he was required to switch job functions with Ms. Mizar {②}. Ms. Due considered these allegations of age and sex discrimination to be part of her investigation. As part of her investigation, Ms. Due {contrary to industry standard best practices for discrimination investigations} did not explore the qualifications of Ms. Mizar as part of her investigation, nor did she explore whether Mr. Feldman or Mr. Knabe had a history of engaging in sexist or ageist behavior or comments in the workplace. Ms. Due did nothing to inquire of Tuvell's PTSD, or to speak with Feldman about his attitudes towards Plaintiff's PTSD. Prior to {} Ms. Due's completion of the investigation, she met with Mr. Mandel,	On June 16, 2011, Ms. Adams forwarded an email from Plaintiff stating that he could not work with Mr. Feldman to Lisa Due, a Senior Case Manager in IBM's Human Resources Department. Ms. Due conducted an investigation by interviewing five individuals, including Plaintiff, who described his experience with Mr. Feldman and Mr. Knabe as the flysychological, not physical equivalent of "torture" and "rape". After completing her falsely concluded that Plaintiff's concerns were unsupported. Based on Ms. Due's findings, IBM falsely determined that moving Plaintiff to another supervisor was not warranted. On June 29, 2011, Ms. Due sent Plaintiff an email informing him of the results of her investigation, and advised him of his appeal rights if he was dissatisfied with Ms. Due's findings.

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

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
(I)	<u>Op φ4,8:</u>	PSOF &3,19-20,23-24¶9-10,61-62,64,75:	DSOF <i>⊗</i> 7¶30−31:
① separate ① Tuvell from ① Feldman ② (many ① times) ② ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ①	Based upon Due's \$\exists\{sham\}\{\text{falsely}\}\{\text{IBM decided not to transfer Tuvell to another supervisor.} *** In early November, while Tuvell was out on medical leave, his counsel wrote to Mandel identifying PTSD \$\exists\{sham\}\{shince May 26, 2011\}\}\{\text{as a disability and requesting a reasonable accommodation.}\{\text{Specifically, Tuvell's counsel requested that Tuvell no longer be required to report to Feldman. IBM subsequently informed Tuvell that it \$\exists\{\text{falsely}\}\{\text{did not consider reassignment to another management team to be a reasonable accommodation \$\exists\{\text{even though reassignment is }\text{resort''}\}\}\{\text{but indicated that it was receptive to other proposals for possible \$\exists\{\text{false, inadequate}\}\}\{\text{accommodations. IBM also noted that Tuvell was free to look for open positions using IBM's Global Opportunity Marketplace ("GOM") \$\exists\{\text{which was no accommodation at }\exists\{\text{which was no accommodation at }\text{which was no accommodation at }\exists\{\text{which was no accommodation at }\exists\{\text{which was no accommodation at }which was no accommodatio	Plaintiff suffers from Post Traumatic Stress Disorder. Mr. Feldman was aware of Plaintiff's PTSD {a disability recognized/protected by the ADA (Americas with Disabilities Act)} at least as early as May 26, 2011. *** On June 24 and June 28, 2011, Plaintiff requested job modification that he no longer interact with Mr. Feldman {because Feldman's harassment, beginning with the Excel graphics episode (③), was strongly triggering/exacerbating his PTSD}, as a reasonable accommodation {in the sense of the ADA} to his disability. Plaintiff notes that such accommodation would be a {"infinitely"} preferable reasonable accommodation to the grant of disability leave {which was a faux/temporary accommodation not a "real"/permanent accommodation}. On October 17, 2011, Mr. Tuvell asserted that he was not medically capable {because of his PTSD} of continuing to work with Mr. Feldman {solely because of Feldman's false abuse/	During Plaintiff's medical leave, on or around November 9, 2011, Plaintiff's counsel wrote Mr. Mandel a letter identifying Plaintiff's PTSD \[\frac{1}{2} \] which had been known to IBM since May 26, 2011\] as a disability and requesting, as a reasonable accommodation, that Plaintiff report to a supervisor other than Mr. Feldman. On November 23, 2011, IBM informed Plaintiff that it \[\frac{1}{2} \] falsely\] did not consider changing his management team to be a reasonable accommodation, but that it was receptive to hearing Plaintiff's proposals about restructuring his work as a possible \[\frac{1}{2} \] false, inadequate\] accommodation and, further, that he was free to look for vacant positions using IBM's Global Opportunity Marketplace ("GOM") \[\frac{1}{2} \] which was no accommodation at all, because all other employees were also free to look for open positions using GOM\].

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
Facts ① Refusal to ② separate ② Tuvell from ③ Feldman ③ (many ③ times) ③ ③ ③ ③ ③ ⑤ ⑤ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥		(MUST Be Credited)	
① ① ① ①		him to another position away from Mr. Feldman, including on October 10, 2011, November 23, 2011, Jan- uary 6, 2012, January 16, 2012, Jan-	

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
① Refusal to ① separate ① Tuvell from ① Feldman ① (many ① times) ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ①		uary 24, 2012. *** In this case {i.e., the case at bar}, change of reporting relationship to a different supervisor is entirely reasonable under these facts. IBM's own policies embrace {and ADA guidelines actually require, as a "last resort"} the notion of transferring a supervisor in cases of the supervisor's harassment and misconduct. Plaintiff had amply reported that Feldman had been harassing Plaintiff, and consequently a change of supervisor is reasonable as it is absolutely consistent with IBM's written policy. IBM takes the {inconsistent (indicating pretextuality)} position that Tuvell's June 10, 2011 transfer/demotion, in which Tuvell was taken away from being under the oversight of Knabe, was an effort to "accommodate [Tuvell's] unhappiness with working with Mr. Knabe."	

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
(J)	<u>Op ℘3–5:</u>	PSOF & 14-16¶46,50,52:	DSOF &5¶22−23:
9 emails; 9 e.g., "ad 9 hominem" 9 and esp. 9 "lazy" 9 letter 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9	In response [to Feldman's harassment involving transition status reports, see], Tuvell sent an email {on June 15, 2011} to Feldman, copying Human Resources Specialists Kelli-ann McCabe and Diane Adams, complaining that the request to provide separate status reports [false: Tuvell was complaining, not about the requirement of providing reports, but about the falsity of Feldman's "clarification" he'd asked for separate reports was "blatant" and "snide harassment/retaliation." Tuvell further complained {in that June 15, 2011, email} that Feldman had "unilaterally forced an adverse job action upon [Tuvell]" and that the transition constituted "a prima facie case (and even stronger) for discrimination on the grounds of both age and sex, and perhaps even race." On June 16, 2011, Tuvell sent additional emails to Adams and McCabe complaining of harassment by Feldman based on Feldman's [lies and other harassment, and his } decision to switch Tuvell's assign-	Defendant, on numerous occasions, expressed {discriminatory, retaliatory} animus based on Plaintiff's protected complaints of discrimination and harassment. Lisa Due, an IBM Senior Case manager, who {sham-}investigated some of Plaintiff's internal complaints of discrimination {@} {falsely} claimed that the following {protected} passage provided by Tuvell in support of one such complaint, was "inappropriate" {though in fact it was correct and relevant (in addition to being protected)}: [H]as done so by replacing me with an employee whose qualifications are far inferior to mine. I have a PhD, she does not, and my work experience is much more extensive and relevant than hers who is of a different sex than me (I am male, she is female), who is much younger than me. Dr. Snyder, who interacted with Feldman and others in connection with Tuvell's requests for reason-	In early July of 2010, Plaintiff went on medical leave for an elective cosmetic all [and the medical leave for an elective cosmetic and the medically recommended] surgery on his eye-lids, and then took a vacation before returning to work in early August of 2011. On July 11, 2011, all [while Tuvell was out on medical leave following his surgery.] Mr. Feldman all [falsely harassingly] informed Plaintiff that Plaintiff's communication style in a July 6, 2011 email {the "lazy" letter} to Mr. Feldman and another colleague, Garth Dickie, was "the sort of thing you want to avoid." Initially all [confused and dazed in his post-surgical recovery state], Plaintiff sent all [of his own initiative] an email to Mr. Feldman and Mr. Dickie apologizing for his use of language that could have been interpreted as offensive all [by one intent on abuse/harassment]. On July 20, 2011, Plaintiff sent Mr. Feldman and Mr. Dickie another email, retracting all [it was not a "retraction," it was an "apology-forapology"} his earlier apology be-

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
① "Bad"	ment. Tuvell told Adams and Mc-	able accommodation, repeatedly as-	cause he had <u>≣{correctly}</u> con-
① emails;	Cabe <u>{on June 16, 2011}</u> that he	serted {falsely, discriminatorily}	cluded that "no apology was neces-
① e.g., "ad	believed it was "infeasible" for him		sary" for the July 6, 2011 email.
① hominem"	to work with Feldman. *** In July	as if the length of his {substantive,	
3 and esp.	2011, Tuvell took medical leave for	useful (for IBM's investigations).	
① "lazy"	elective <u>≣{that is, non-emergency}</u>	and detailed} complaints disquali-	
① letter	surgery {which was performed on	fied their content, and dismissed	
①	July 7, 2011} followed by vacation.	Tuvell's initial complaint as a "dia-	
①	Before taking leave, Tuvell sent an	tribe." {Another example, of Feld-	
①	email to Feldman and another col-	man's falsely accusing Plaintiff of	
①	league notifying them that he had	writing ad hominem comments dis-	
①	completed an assignment regarding		
① ① ② ②	a wiki page. In the email {dated	advertently omitted from the	
①	July 6, 2011}, Tuvell explained that	PSOF.} In explaining reasons why	
① ①	the update could be found by	Plaintiff() performed in an unsatis-	
①	searching the wiki but he also at-	factory manner, IBM has {falsely}	
(J)	tached the link, adding <u>■{entirely</u>	asserted that his focus, "beginning	
(J)	familiarly/colloquially/innocently,	June 13, 2011 was more on pursu-	
(J)	implying no lack of energy or defect	ing his claims and less on perform-	
①	of personality} "if you're lazy you	ing any actual work for IBM." Yet,	
①	can just click this link." {In an	IBM has never {truthfully} iden-	
①	email dated July 11, 2011,} Feld-	tified any job task that Plaintiff	
①	man thanked Tuvell for the work	neglected as the result of lodging	
①	but <u>≣{falsely harassingly}</u> in-	his internal, protected complaints	
①	formed Tuvell that his communica-	{or otherwise}. *** On August 3,	
0 0 0 0 0 0	tion style was "the sort of thing	2011, Plaintiff was {falsely} given	
	that you want to avoid." Tuvell	a formal discipline {Formal Warn-	
(J)	≣ {who was still on medical leav-	ing Letter (1901), with threat of ter-	
①	ing, having had surgery just days	mination, for {the sole cited reason	
①	before, and too weak/confused to	of} innocently writing, "if you're	
(J)	"stand up to" Feldman, meekly}	lazy you can just click this link;"	
(J)	apologized <u>≣{immediately, of his</u>	{also cited in @} *** Mr. Mandel	

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"		(MUST Be <u>Dis</u> credited)
① "Bad" ② emails; ③ e.g., "ad ③ hominem" ③ and esp. ④ "lazy" ⑤ letter ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥ ⑥	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, \$\overline{\text{l}}\$ {his strength returning to the extent of enabling him to analyze Feldman's false "lazy" letter scandal,} Tuvell sent a second email explaining \$\overline{\text{l}}\$ {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 \$\overline{\text{l}}\$ {correctly} that "[o]bviously no apology was necessary." Tuvell then {in the July 20, 2011 email} apologized for the apology \$\overline{\text{l}}\$ 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!' I. It shows that I myself value	testified that he, too, {transparently falsely} found the "lazy" comment to be inappropriate. *** In response to one of Tuvell's {protected} complaints of harassment, Feldman stated {threateningly, retaliatorily}, "assertions of bad faith are inconsistent with success." After Tuvell reasonably complained of harassment on June 30, 2011, Feldman urged HR to discipline him based on that {reasonable and protected} complaint.	

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
① "Bad" ① emails; ① e.g., "ad ② hominem" ① and esp. ① "lazy" ② letter	"laziness" as a virtue under the right circumstances (e.g., when it doesn't interfere with advancement of skills, etc.)."}.		

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
K	<u>Οp β6:</u>	PSOF <i>β</i> 8-10,14-17,24-27¶28-29,32,55-56,76,78-81,85,87-89:	DSOF &6-7¶27-29:
© Mandel © C&A © Open Door © complaints; © "sham" © investiga- © tion © © © © © © © © © © © © © © © © © © ©	that IBM had not finalized its investigation of his Open Door Complaint false: Tuvell merely complained that IBM had not even acknowledged receipt of his Open Door Complaint, and later that they	Based on the harassment that Plaintiff experienced, and the severe PTSD symptoms that resulted, including a fainting episode {at the Formal Warning Letter meeting, on August 3, 2011; see also @,@}, Plaintiff went out on sick leave on August 11, 2011. Mr. Tuvell reported to IBM's Russell Mandel that: "The very REASON I'm on STD leave, and will continue to remain so, is due DI-RECTLY AND SOLELY to the psychological abuse being heaped upon me by Dan Feldman, and yourself The ONLY way for me to recover sufficient {ly} to return to work from STD is to settle this case. Properly and correctly." Instead, Mandel initially refused to progress the investigation during the leave {due to the leave itself, which is direct proof of retaliation against Tuvell for availing himself of the STD (reasonable accommodation) itself}. Though Plaintiff objected, Mandel	first Open Door complaint. On or around September 15, 2011, Mr. Mandel issued ≣{false/misleading: the report was "issued"/delivered
®	refused to progress it during his medical leave. On September 15,	{continued stalling, and} didn't complete his "investigation" until	to nobody} a 19-page report based on his interviews of nine people, in-

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© Mandel © C&A © Open Door © complaints; © "sham" © investiga- © tion © © © © © © © © © © © © © © © © © © ©	2011, the Program Director for IBM's Concerns and Appeals, Russell Mandel, completed a version	four and a half months after initial Plaintiff's request {much longer than such an investigation should have taken}. *** Plaintiff requested Mr. Mandel to conduct an investigation into his allegations of discrimination, retaliation and harassment on or about June 29, 2011. The harassment Plaintiff experienced caused him to be sick from PTSD symptoms, and Plaintiff was unable to return to work, as of August 11, 2011, to work under Mr. Feldman. During the time of his medical leave, Plaintiff was hoping {and expressed to IBM} that Mr. Mandel's investigation of his complaint would progress, such that he could resolve Plaintiff's workplace difficulties, and permit Plaintiff, medical condition and all, to return back to work. Instead, Mr. Mandel did not inform Plaintiff of the conclusion of his investigation until November 17, 2011, and the results were {falsely} disfavorable {to Tuvell}. *** On May 8, 2012, Plaintiff submits his Fourth Open Door Complaint alleging unlawful discrimination and retaliation. On May 14, 2012, Plaintiff likewise complained	cluding Plaintiff. The report

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
® Mandel		of unlawful harassment and retalia-	
® C&A		tion. *** Also, on May 8, 2012,	
® Open Door		Tuvell files another formal com-	
® complaints;		plaint, with IBM, complaining of re-	
® "sham"		taliation and discriminatory harass-	
® investiga-		ment. *** Plaintiff provided to	
® tion		IBM protected complaints of dis-	
(K)		crimination, retaliation and re-	
(K)		quests for reasonable accommoda-	
(K)		tion on October 5, 2011, October	
(K)		10, 2011, October 17, 2011, Octo-	
(K)		ber 19, 2011, November 9, 2011,	
(K)		November 28, 2011, December 6,	
(K)		2011. *** On or about August 28,	
(K)		2011, Plaintiff submitted Adden-	
K		dum I to his Corporate Open Door	
K		filing, in which he accused Mr.	
(K)		Mandel <u>{himself}</u> , based on delays	
(K)		in the investigation to be contribut-	
(K)		ing to a hostile work environment	
K		and engaging in handicap discrimi-	
K		nation. Mr. Mandel (who should	
K		have recused himself, being one	
K		of he accused parties} reviewed	
®		the complaints during the inves-	
®		tigation. IBM policy requires that	
(K)		investigators "must not have been	
®		involved in the issue being investi-	
®		gated" On November 23, 2011,	
(K)		Mr. Tuvell requested a written re-	
(K) (K)		sponse to his internal complaint,	
®		pursuant to Section 2.8 of the Con-	

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
® Mandel		cerns and Appeals Program. Mr.	
® C&A		Mandel replies with a non-sub-	
® Open Door		stantive {sham} answer, saying	
® complaints;		only that after investigation, Mr.	
® "sham"		Mandel concluded that "manage-	
® investiga-		ment treated you fairly regarding	
® tion		the change in your work assign-	
(K)		ment, disciplinary actions, project	
(K)		plan request and day-to-day inter-	
(K)		actions with you." On March 2,	
(K)		2012, Plaintiff filed a third Corpo-	
(K)		rate Open Door Complaint, alleging	
(K)		that Mr. Mandel {himself} engaged	
(K)		in discrimination and retaliation,	
(K)		and continued refusal to reasonably	
(K)		accommodate him. Mr. Mandel	
(K)		{falsely} never opened up an in-	
®		vestigation to respond to this Com-	
K		plaint, and there was no formal re-	
®		sponse. Plaintiff was advised of his	
K		rights to appeal the conclusion of	
(K)		the {Due's (@)} investigation,	
(K)		which he did, to Mr. Russell Man-	
®		del. However, Mr. Mandel was bi-	
(K)		ased as an appeal investigator	
®		{due to his participation in Due's	
®		investigation, instructing her to re-	
(K)		ject Tuvell's complaint (@)}, ren-	
®		dering him a patently inappropri-	
(K)		ate choice to take a fresh look at	
K		the complaint. Moreover, Mr. Man-	
®		del was an inappropriate investiga-	

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
® Mandel		tor, under IBM's own conflict-of-in-	
® C&A		terest policy, as he, personally, had	
® Open Door		been accused by Plaintiff of wrong-	
® complaints;		doing and discrimination, based on	
® "sham"		his failure to advance the investi-	
® investiga-		gation {supra, this item ®}, and	
® tion		false assertions about IBM's prac-	
(K)		tice of investigating third party	
(K)		complaints {@}. Mr. Mandel {def-	
K		erentially, discriminatorily} ac-	
K		corded Mr. Knabe and Mr. Feldman	
K		the opportunity to review his draft	
®		report and make suggestions about	
(K)		his version of events, but Mr. Man-	
(K)		del did not accord Plaintiff with the	
K		same courtesy, demonstrating the	
K		one-sided {biased} nature of the	
®		investigation. While Mr. Mandel	
K		understood that Plaintiff's com-	
®		plaint included the allegations that	
(K)		his demotion/transfer in June 2011	
®		was discriminatory and/or retalia-	
®		tory, he never investigated	
®		whether that demotion/transfer was	
®		appropriate, and he failed to in-	
®		quire as to whether Mr. Feldman	
®		exhibited any animus in the work-	
®		place based on handicap and/or re-	
(K)		taliation. On January 22, 2012, Mr.	
(K)		Tuvell initiated a second Corporate	
(K)		Open Door Complaint, which al-	
®		leged that IBM {illegally} denied	

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© Mandel © C&A © Open Door © complaints; © "sham" © investiga- © tion © © © © © © © © © © © © © © © © © © ©		Plaintiff a requested transfer on January 6, 2012, based on handicap discrimination, availment of reasonable accommodation, denial of the obligation to reasonably accommodate and/or retaliation{.} Mr. Mandel {falsely} assigned himself the investigation of this Complaint, however, in performing these duties, Mr. Mandel admitted never investigating whether rejection was based on retaliation or was in violation of IBM's duty to reasonably accommodate the Plaintiff.	

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
(L)	<u>Op β4:</u>	PSOF <i>β</i> 8,15¶27,49:	DSOF <i>℘</i> 5:
© Pseudo- © yelling; © Feldman © forbid © work-time © for © complaint © © © © © © © © © © © © © © © © © © ©	■{silent}	{On August 3, 2011,} Feldman forbids Tuvell from spending an earlier agreed-upon reasonable working time on his internal complaint of harassment, and then threatened Tuvell with termination {, falsely accusing Tuvell of "pseudo"-yelling,} when Tuvell responded by {meekly} saying, {in reactive response to the cancellation of the previously agreed-upon time to work on the internal complaint,} "Now wait a minute, Dan." *** On August 3, 2011, Plaintiff was prohibited from using a previously agreed-upon reasonable amount of his workday to draft his internal complaints of discrimination, and Feldman threatened Plaintiff for making this request {, falsely accusing him of "pseudo"-yelling}.	#{silent}

Facts Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
When Tuvell returned from leave on August 3, 2011, Feldman met with him to discuss pending and future projects. At this meeting, Feldman also [Feldman also [Feldman also [Feldman also [Feldman also [Feldman also [Feldman also [Feldman	(MUST Be Credited) PSOF \$\pi\15\\$50: On August 3, 2011, Plaintiff was {falsely} given a formal discipline {Formal Warning Letter}, with threat of termination {this trauma caused Tuvell to faint; see also \(\& \infty \)}, for {the sole cited transparently false reason of} innocently writing, "if you're lazy you can just click this link;" {also cited in 0} ***	

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
\bigcirc	<u>Op β5:</u>	PSOF <i>β</i> 8,15,22¶28,50,68:	<u>DSOF</u> <i>℘</i> 6¶25:
 Fainting S 	■{silent}	Based on the harassment that Plaintiff experienced, and the severe PTSD symptoms that resulted, including a fainting episode {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 fainted {see also @} ***	■ {silent}

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
0	<u>Op β6:</u>	PSOF _β 24¶77:	DSOF ℘6:
© "Raison © d'être" (no © third-party © complaints) © © © © © © © © © © © © © © © © © © ©	■{silent}	On August 5, 2011, Plaintiff communicated to IBM indicating that a disrespectful statement was made to a non-Caucasian coworker {stating that coworker's very reason for existence (raison d'être) was merely to test/debug programs, as against any "human qualities" (such disrespect being contrary to IBM/BCG guidelines, and encouraged to be reported to IBM)}, and indicating that the coworker could be the subject of discrimination. On August 5, 2011, Mr. Mandel replied, {falsely} stating that IBM does not accept third party complaints, and that if the coworker is offended, he would have to file a complaint himself. Mr. Mandel's statement to Plaintiff was false {hence discriminatory, harassing}, as IBM would investigate third party complaints, and IBM documents encourage employees to bring third party complaints {as does the law}.	■{silent}

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
P	<u>Op β5,10:</u>	PSOF <i>β</i> 8,12-14,16,26-27¶28,41,45,53,86:	<u>DSOF</u> <i>℘</i> 6,8,12¶26,34,55:
® STD leave; ® Mandel ® refusal to ® investigate ® ® ® ® ® ® ® ® ® ® ® ® ®	On August 11, 2011, Tuvell told Kathleen Dean, a nurse in IBM's Medical Department, that he wanted to apply for Short Term Disability ("STD") because of a "sudden condition \(\frac{1}{2} \) {\(\text{namely, the sudden re-triggering/exacerbation of his PTSD, due to Knabe/Feldman's abusive harassment \}." Dean provided Tuvell with information on how to apply for STD leave and, on August 15, 2011, Tuvell notified Feldman that he would be taking sick days until his STD request was processed. *** On January 25, 2012, Tuvell exhausted his STD benefits but remained on unpaid medical leave. \[\frac{1}{2} \) {\(\text{silence regarding Mandel's refusal to investigate based on Tuvell's STD reasonable accommodation status \} \]	Based on the harassment that Plaintiff experienced, and the severe PTSD symptoms that resulted, including a fainting episode {at the Formal Warning Letter meeting, on August 3, 2011; see also @ @ }, Plaintiff went out on sick leave on August 11, 2011. Mr. Tuvell reported to IBM's Russell Mandel {correctly} that: "The very REASON I'm on STD leave, and will continue to remain so, is due DIRECTLY AND SOLELY to the psychological abuse being heaped upon me by Dan Feldman, and yourself The ONLY way for me to recover sufficient {ly} to return to work from STD is to settle this case. Properly and correctly." {also cited in @} *** Plaintiff went out on Short Term Disability effective on or about August 11, 2011. After 13 weeks on STD, or sometime in November 2011, Plaintiff's benefits were reduced to 66% of his usual salary. On or about January 25, 2012, Mr. Tuvell exhausted his STD benefits, and is transitioned to unpaid leave. ***	On August 11, 2011, Plaintiff advised Kathleen Dean, a nurse in IBM's Medical Department, that he wanted to apply for Short Term Disability ("STD") leave due to a "sudden condition \(\overline{\text{leave}} \) ("amely, the sudden re-triggering/exacerbation of his PTSD, due to Knabe/Feldman's abusive harassment, especially the Formal Warning Letter}" and Ms. Dean responded by providing him with information concerning how to apply for STD leave. On August 15, Plaintiff informed Mr. Feldman that he was taking sick days until his request for short term disability was acted on. *** On or about August 17, 2011, IBM approved Plaintiff's STD leave as a reasonable accommodation. *** Plaintiff exhausted his STD leave on January 25, 2012, at which time he remained out of work on an approved, unpaid medical leave. \[\frac{\text{silence regarding Mandel's refusal to investigate based on Tuvell's STD reasonable accommodation status} \]

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
® STD leave; ® Mandel ® refusal to ® investigate ® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ®		There was yet additional evidence of handicap animus, as Defendant expressly *** refused to advance or otherwise delayed finalization of its investigation of Plaintiff's complaints of discrimination and retaliation, based {illegally} on Plaintiff's {protected} availment of the reasonable accommodation of disability leave. *** On August 25, 2011, IBM refused to advance Plaintiff's internal complaints of discrimination and retaliation while he was on short term disability, stating, "I do not plan on discussing your concerns directly with you until you return from Short Term Disability." *** On January 25, 2012, after exhausting all of his STD benefits, and with no indication that he would ever be provided with reasonable accommodation, IBM transitioned Tuvell to unpaid leave, where he is kept until his termination on May 17, 2012. *** On August 30, 2011, Mr. Mandel wrote Plaintiff, stating, "I am simply not going to discuss with you the concerns raised while you are out on STD."	

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Q	<u>Op β5-9:</u>	PSOF ₆ 21-23¶66-72:	DSOF ρ7-11¶32-33,35-52:
© MTRs; false © interpreta- © tions © © © © © © © © © © © © © © © © © © ©	Tuvell simultaneously {with notifying Feldman on August 15, 2011, that he would be taking sick days, see (a) submitted a Medical Treatment Report ("MTR"), indicating that he was suffering from a "sleep disorder and stress reaction." Tuvell represented that due to his medical condition he was not "able to function at his job responsibilities." The MTR further indicated that {\overline{\overlin	Mr. Tuvell has seen Stephanie Ross, LICSW, professionally since 1993. Ms. Ross has a Masters degree in social work from the University of Pennsylvania, and was licensed to practice social work (LICSW) in Massachusetts continuously since about 1984. Ms. Ross is qualified to diagnose and treat PTSD. Ms. Ross formally diagnosed Mr. Tuvell as suffering from PTSD in or about 2001, but understood Mr. Tuvell to be suffering from PTSD for some time before that. Over 10% of Ross' patients in {the} last 24-25 years she has diagnosed with PTSD. Mr. Tuvell's diagnosis is based on a variety of symptoms {typical of PTSD, during his PTSD's "active" (non-dormant, exacerbated) periods, only}, including lost weight, trouble sleeping, difficulty	On or about August 15, 2011, Plaintiff provided a Medical Treatment Report ("MTR") to Ms. Dean, which indicated that Plaintiff suffered from a sleep disorder and stress reaction and that he was totally impaired for work \(\overline{\ove
	attention, concentrate on a specific task and complete it in a timely manner, set realistic goals, and have good autonomous judgment." IBM approved Tuvell's STD leave on August 17, 2011. *** Tuvell submitted a second MTR on Sep-	eating, triggered state, and every symptom of stress, including anxiety and depression. He has experienced hyper-vigilance, and has obsessive, recurrent, intrusive thoughts. He has suffered flashbacks and has fainted {see ®}, has	by group members (Knabe and Feldman)}, and that ∭{in the unhealthy/abusive/hostile work environment in which he found himself.} Plaintiff suffered serious impairment in his ability to maintain attention, concentrate on a

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
		experienced prolonged psychological distress, has experienced an altered sense of surroundings and self, and has engaged in strong efforts to avoid distressing feelings and reminders. In Ms. Ross' {sessions}, he has wept uncontrollably when describing his experiences. Mr. Tuvell is subject to irritability	·
	as his condition was a direct result of Feldman's "direct abusive psychological attack." Dean agreed to accept the MTR completed by his physician for one month. Dean was subsequently informed by Dr. Stewart Snyder, the Physician Program Manager of IBM's Integrated Health Services, that for psycholog-	"spousal abuse" or anything like that). On October 19, 2011, Kathleen Dean of IBM spoke with Ms. Ross about Mr. Tuvell, and Ms. Dean's notes accurately reflect the conversation {proving that IBM was well-apprised of Mr. Tuvell PTSD, a disability well-recognized by the (ADA)}. On January 23,	ist { only because Ms. Dean's language was unfamiliar and confusing to him, but his resistance disappeared immediately upon the miscommunication being cleared up}. Ms. Dean { then backed off her stance, and} informed Plaintiff that she would accept the September MTR by his { non-specialist}

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-	ical disorders IBM policy required the MTR forms to be completed by a psychiatrist if the employee is out for more than six weeks "because if a person is ill enough that they can't work for that long then they have exceeded the expertise level of a family physician to deal with their mental illness." Dean contacted Tuvell and told him "that in the interest of ensuring that he was receiving proper care, IBM required a psychiatrist to complete his MTR" if he remained out for another month. Tuvell responded [correctly] that there was nothing that a psychiatrist could do to "help" him because there was nothing "wrong" with him and emphasized [correctly] that the only reason that he was out on STD was		physician for one month while she consulted with IBM's physician about Plaintiff's questions. Ms. Dean subsequently contacted Dr. Stewart Snyder, the Physician Program Manager of IBM's Integrated Health Services, who explained that IBM's process for psychological disorders required an MTR form to be completed by a psychiatrist if an employee is out for 6-8 weeks "because if a person is ill enough that they can't work for that long then they have exceeded the expertise level of a family physician to deal with their mental illness" [[Stotally ignoring Plaintiff's complaints that the problems were entirely due to Feldman/IBM's continuing abuse/harassment]. Ms. Dean conveyed Dr. Snyder's explanation
	because of the abuse he faced at work. Tuvell added that IBM's handling of his complaints was "intentionally psychologically abusive." Dean subsequently informed Tuvell that IBM would accept a MTR from his Licensed Social Worker, Stephanie Ross, who was providing him psychotherapy. Tuvell then provided IBM with MTRs completed by Ross for October and No-	Mr. Tuvell could function quite well and attend his work." Ms. Ross testified that she believed that Mr. Tuvell could return to work, productively, at IBM, if provided reasonable accommodations. She reported that Mr. Tuvell was very positive when interviewing for a new position at IBM, and that his experience with Feldman, the harassing supervisor, did	to Plaintiff and informed him [stalsely, still ignoring Plaintiff's complaints about abuse, state in the interest of ensuring that he was receiving proper care, IBM required a psychiatrist to complete his MTR if he was not able to return to work in the next month. Plaintiff responded to Ms. Dean's request for proper medical certification by insisting [started] [correctly]

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•		not taint the prospect of a new position at IBM. {Note particularly that IBM's false arguments concerning Plaintiff's "inability to do any work at all" (false interpretations of MTRs, ②) are incontrovertably inconsistent/pretextual with its fake offer (not	
9 0 0 0 0 0	building "triggered" a "blow up." Ross's November MTR listed, for the first time, Tuvell's diagnosis as PTSD ≣{this was the "first time" Ross mentioned PTSD in her MTRs, though she had of course diagnosed the condition in Tuvell more than		templation of reasonable accommodation in the sense of ADA}. The October MTR completed by Ms. Ross indicated that Plaintiff suffered from "ongoing acute stress symptoms especially regarding the perception {**[and reality]} of retali-

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_			
	from work, any discussion about work, going anywhere near the work facility \(\frac{1}{2} \){it was of course not the 'facility' itself that was at issue, but the harassment Tuvell was receiving at the hands of Feldman and others in that facility\) at that time was a circumstance in which [Tuvell] was triggered into a state that involved hyper-reactivity, hy-		crazy" because he was "triggered by being that close to [IBM] and that gas station." The MTR completed by Ms. Ross in November identified for the first time PTSD [this was the first time Ross mentioned it in her MTRs, though she had of course first diagnosed Tuvell's PTSD more than a decade earlier (and, caretakers are re-

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
MTRs; falseinterpreta-	per-arousal" and that Tuvell "had a significant amount of obsessive		quired to wait a period of time be- fore re-diagnosing a recurrence of
© tions	thinking <u>≣{which is typical of</u>		\underbrace{PTSD} as Plaintiff's purported
©	PTSD patients undergoing retrig-		≣ {actually, long well-established}
©	gering of their PTSD}." Ross fur-		diagnosis, and indicated that Plain-
©	ther noted that Tuvell would be-		tiff was still totally impaired for
©	come "extremely upset," "had trou-		work <u>≣{under the abusive circum</u> -
©	ble speaking" and would cry and		stances, absent reasonable accom-
@	shake when talking about work.		<u>modation</u> }. The MTR also indi-
@	Ross was concerned for Tuvell's		cated that <u>{under the same abu-</u>
©	"mental health stability and be-		sive unaccommodated circum-
©	lieved that just going into the build-		<pre>stances,} Plaintiff continued to</pre>
©	ing where he worked and seeing []		have serious impairment with re-
©	Feldman or [] Knabe could trigger		spect to getting along well with oth-
@	his obsessive thoughts, depression,		ers without behavioral extremes,
©	or other strong reactions." *** In		initiating social contacts, negotia-
©	December 2011, Tuvell submitted		tion and compromise, and interac-
©	another MTR completed by Ross,		tion and active participation in
©	which indicated that he was "un-		group activities, and continued to
©	able to return to previous setting		have serious impairment as well
©	with [his] current supervisor and		with respect to managing conflict
©	setting <u>≣{that is, absent reason-</u>		with others, negotiating, compro-
©	<u>able accommodation</u> } — PTSD		mise, setting realistic goals, and
©	symptoms exacerbate immediately."		having good autonomous judgment.
©	Ross indicated that Tuvell had seri-		Ms. Ross testified during her depo-
©	ous impairment "getting along well		sition that, at the time she com-
©	with <u>≣{that is, under the abusive</u>		pleted the MTR, in November 2011,
©	<u>harassment of</u> } others without be-		"any contact with <u>≣{the abusive}</u>
©	havioral extremes, initiating social		people from work, any discussion
©	contacts, negotiating and compro-		about work, going anywhere near
©	mising, interacting and actively		the work facility <u>≣{in which the</u>
©	participating in group activities,		abusers were present} at that time

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"		(MUST Be <u>Dis</u> credited)
© MTRs; false © interpreta- © tions © © © © © © © © © © © © © © © © © © ©	managing conflicts with <code>[][][][][][][][][][][][][][][][][][][]</code>		was a circumstance in which [Plaintiff] was triggered into a state that involved { the usual PTSD symptoms of } hyper-reactivity, hyperarousal. He was in a state of very difficult insomnia. He was pressured in his communication style. He had a significant amount of obsessive thinking. He was flooded." Ms. Ross further testified that, at the time { under the prevailing conditions of abuse, absent reasonable accommodation }, she was concerned for his mental health stability and believed that just going into the building where he worked and seeing Mr. Feldman or Mr. Knabe could trigger his obsessive thoughts, depression, or other strong reactions. Plaintiff provided another MTR on December 16, 2011, again completed by Ms. Ross, which stated that Plaintiff was "unable to return to previous setting with current supervisor and setting — PTSD symptoms exacerbate immediately" and continued to rate him "totally impaired for work," adding "for current job assignment { under the hostile work environment fostered by Feldman and others}." In the Decem-

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
Facts			ber 16 MTR, Ms. Ross indicated that \(\begin{align*}{\text{ beta MTR, Ms. Ross indicated} \) that \(\beta \) {\text{ under the same abusive conditions, absent reasonable accommodation} \) Plaintiff had serious impairment with respect to getting along well with others without behavioral extremes, initiating social contacts, negotiating and compromising, interacting and actively participating in group activities, managing conflicts with others, and setting realistic goals and having good autonomous judgment. Ms. Ross did not affirmatively check off the section of the MTR that asked if the employee could work with temporary modifications \(\beta \) {\text{ because she was prohibited from doing so under the technical conditions printed on the face of the MTR itself,} but did \(\beta \) {\text{ the next best thing she was unprohibited from doing, namely} write that "only modification that would be possible is a
© © ©			change of supervisor and setting." This was the first time Plaintiff submitted forms from a health care
© © ©			provider specifically requesting a change in supervisor as an accommodation ∰{but noting that these MTRs were all in the service of ob-
©			taining (non-ADA) medical leave, to

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
MTRs; falseinterpreta-tions			separate Tuvell from Feldman and others; Tuvell was never advised by anyone that the MTRs could/should/would be used for the purpose of
© © ©			obtaining reasonable accommodation in the sense of ADA)}. Ms. Ross testified that it was only "possible" ≣{which is the appropriate/
© © ©			approved legal standard (for obviously, no medical professional can "guarantee" success of any patient); the MetLife Advisory Report
© © ©			dated March 5/7, 2012, states: "Ms. Ross noted that at the time [January 31, 2012], with removal from the work environment, the claimant
© © ©			[Tuvell] was experiencing a significant decrease of symptoms and was likely to function well in the absence of trauma related stimuli
© © ©			The medical information, including verbal information obtained from the therapist, does not support psychiatric functional limitations in-
© © ©			cluding any reduction in the ability to work full-time beyond August 11, 2011, and forward. In Ms. Ross's opinion, the claimant was able to
© © ©			do the job with another manager. During the telephonic exchange. Stephanie Ross reiterated her opinion that the claimant was capable

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
MTRs; falseinterpreta-			of functioning if assigned to a dif- ferent environment In her doc-
© tions			umentation, the claimant's thera-
©			pist opined that the only limitation
0			is related to the work environment,
0			specifically to the claimant's con-
©			flicts with a manager."} that a new
©			supervisor and setting would en-
©			able Plaintiff's return to work. For
©			his part, Plaintiff could not and did
©			not identify anyone who could serve
©			as his manager in place of Mr. Feld-
©			man ≣ {because Plaintiff was unfa-
©			miliar of IBM's promotional prac-
©			tices, or who was available/inter-
0			ested/qualified to be a manager,
0			etc. (Plaintiff was never asked "who
©			he could work for," to which his an-
©			swer was always "anyone who is
0			non-abusive")}. In or around that
0			time, Ms. Ross explained that Plain-
0			tiff was "unable to drive within a 50
©			mile radius — 20 mile radius of
©			where he worked for a period of
0			time without becoming hysterical,"
©			≣ {Ross's mention of "50 miles"
0			was obviously a mere tongue-stum-
0			ble, immediately corrected to "20
©			miles," but recorded verbatim by
©			the deposition reporter} a descrip-
©			tion she included in Plaintiff's ap-
©			peal of the denial of long term dis-

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© MTRs; false © interpreta- © tions © © © © © © © © © © © © © © © © © © ©			ability benefits from MetLife, specifically writing that Plaintiff's "symptoms would return if [he] had to drive near the facility {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."

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
R	<u>Op β6:</u>	PSOF <i>ω</i> 13-15¶45,47-48:	DSOF №12¶53-54:
® Rescind ® physical & ® electronic ® access ® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ®	While Tuvell was out on medical leave, IBM restricted his access to the company's internet and facilities.	There was yet additional evidence of handicap animus, as Defendant expressly curtailed Plaintiff's access to its computer systems, and IBM facilities *** based on Plaintiff's {protected} availment of the reasonable accommodation of disability leave. IBM {falsely} curtailed Plaintiff's access to Lotus Notes (the IBM email system), given that "you are on a LOA [leave of absence] awaiting a determination of your LTD [long term disability] application." *** On September 15, 2011, Plaintiff's badge access to IBM buildings was {falsely} curtailed, because, as he was told, "you don't need access to IBM facilities since you aren't working [because of STD]. It is easy to return access once you return from STD." *** As a direct response to Plaintiff's March 2, 2012 {protected} Complaints of discrimination, retaliation and failure to accommodate, which he circulated to a number of people at IBM, IBM curtailed Plaintiff's access to IBM email systems,	While Plaintiff was on medical leave, IBM \(\frac{1}{2} \) falsely\ restricted Plaintiff's VPN access to IBM's internet and Plaintiff's access to IBM facilities for the pendency of his leave given IBM's \(\frac{1}{2} \) false\ position that because Plaintiff was on STD leave and not working, there was no need for access to those systems. During this time, Plaintiff also \(\frac{1}{2} \) forpoerly, according to IBM guidelines, and protected by ADA law\ continued emailing complaints using IBM's Lotus Notes to Human Resources and other IBM employees and executives, including the CEO of IBM \(\frac{1}{2} \) (as specifically authorized by IBM's Corporate Open Door process, of which Tuvell was availing himself\(\} . IBM subsequently restricted Plaintiff's access to Lotus Notes and IBM's internal corporate network based on his misuse of those systems \(\frac{1}{2} \) (falsely: Tuvell was using those systems strictly within the guidelines authorized/protected by IBM and law\).

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
® Rescind ® physical & ® electronic ® access ® ® ® ® ® ® ® ® ®		{falsely} based expressly on the fact that he had forwarded his protected complaints of discrimination and harassment to others {which is protected activity}. On March 13, 2012, Mr. Tuvell was threatened with termination for forwarding {by email} his complaints of discrimination and retaliation to agents of IBM, which, again is protected conduct.	

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S	<u>Op β7:</u>	PSOF <i>β</i> 8–9¶30:	DSOF ℘9:
© Feldman © misclassify © work-at- © home days © © © © © © © © © © © © © © © © © © ©	■ {silent}	On or about October 19 and 20, 2011, Mr. Tuvell objects to Mr. Feldman falsely {i.e., harassingly, retaliatorily} characterizing work at home days as sick days, asks for citation to the policy {which does not exist} that supports the practice, and notes that it is inconsistent with his work-at-home days pre-June 30, 2011 {none of his many work-at-home days during that period had ever been classified as "sick days"}. On November 2, 2011, Mr. Feldman made {further} knowingly false 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.	<pre> \$\fill\{\silent\} </pre>

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T	<u>Op &9-10:</u>	PSOF <i>β</i> 9-13,16,23¶31,33-40,42-44,54,73-74:	DSOF &12-15¶57-66,68,70:
① Feldman & ① Kime ① sabotage ① transfer ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ①	On December 8, 2011, Tuvell interviewed for an open position in another IBM facility. Despite having submitted MTRs indicating that he was "totally disabled \$\exists \{\}absent accommodation\}," Tuvell told the interviewer, Christopher Kime, that he had a "completely clean bill of health \$\exists \{\}because removal from Feldman's harassment would provide the needed accommodation, and his PTSD symptoms would disappear; see \$\oints\{\}\]." On January 6, 2012, Kime emailed Tuvell and told him that he would not be offering him the open position. Kime explained that he had "underestimated the difficulty of moving forward with bringing [Tuvell] to the team" and that he could not "move forward with taking [Tuvell] directly from being on short term disability." Kime added that "[g]iven the current needs of our group" there was "concern about the work being to [Tuvell's] liking and keeping [Tuvell] as a productive and sat-	On January 6, 2012, Chris Kime sent Plaintiff an email explaining the following was the primary reason for rejecting Plaintiff's application for transfer {in all, IBM proffered "something like" eight different/incompatible "pseudo-reasons" (not all mentioned in the PSOF; it's difficult to count them all, and unnecessary to enumerate them all at Summary Judgment proceedings) for rejecting Plaintiff's transfer} to a Software Developer position under Kime: "I underestimated the difficulty of moving forward with bringing you to the team. We cannot move forward with taking you directly from being on short term disability — this will receive very close scrutiny from the operations people in the organization." Kime acknowledged that Feldman's input {"cat's-paw" theory} was significant in the decision, and acknowledged that Tuvell's candidacy ended upon	On December 8, 2011, Plaintiff was interviewed for an open position he had applied for through IBM's Global Opportunity Marketplace ("GOM") with Christopher Kime, one of the decisionmakers tasked with filling the position. Prior to the interview, Plaintiff advised Mr. Kime that he had a "completely clean bill of health" and was "symptom free," \[\frac{1}{2} \] {absent abusive/harassing/hostile workplace} notwithstanding the fact that Ms. Ross submitted MTRs which described him as "totally impaired" for work \[\frac{1}{2} \] {when subjected abuse/harassment/hostility} in both November and December of 2011. Mr. Kime, for his part, \[\frac{1}{2} \] {claims without proof he} had no knowledge of Plaintiff's medical condition nor did he make any inquiry into the circumstances surrounding Plaintiff's STD leave. After the interview, Mr. Kime informed Plaintiff that he had to discuss the interview with his management team and that he
① ① ①	isfied member of the team." *** {O}n January 23, 2012, Tuvell's	Kime's communication with Feldman. *** SWG-0436579 was a	would keep Plaintiff posted on any developments. While considering

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© Feldman & ① Kime ② sabotage ① transfer ② ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ①	counsel requested as a reasonable accommodation that IBM transfer Tuvell to Kime's open position, which had been reposted after the posting had expired. IBM denied Tuvell's request for reassignment. *** Tuvell reapplied {on January 21, 2012} for the reposted Kime position, but was not considered for the position.	position, including [1] a Bachelor's	ternal website and therefore reached out to Mr. Feldman, who explained that Plaintiff's leave had prevented Mr. Feldman from providing Plaintiff with a performance review. When Mr. Kime asked him about Plaintiff's performance, Mr. Feldman informed him that Plaintiff had the technical skills for his position but [falsely misleadingly ("cat's-paw", failing to mention that Plaintiff's difficulties stemmed solely from Feldman himself and others) had difficulties working with other people in his group and had been moved from one team to another and still had not found a role that appeared to work for him and the team. Mr. Kime testified that at no point dur-

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© Feldman & ① Kime ① sabotage ① transfer ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ①	Faux "Findings"	such experience. Finally, Tuvell met the required qualification that he be fluent in English. Moreover, Tuvell possessed the vast majority of the "preferred" qualifications sought. Christopher Kime, as of 2010, was Development and Solutions Manager, and he acted as Hiring Manager for the SWG-0436579 position. Kime drafted the posting himself, including what he regarded to be the minimum qualifications. Kime reviewed Tuvell's resume and other documentation, and concluded he had "little doubt that you [Tuvell] have technical skills that we could use on the project." On or about December 1, 2011, Kime interviewed Tuvell by phone, which touched upon Tuvell's background and qualifications. At the interview, Kime concluded that Tuvell "had strong technical skills and that with those skills he could potentially be a contributing member of the team. {"} As a result of the interview, Kime asked his support lead, and also the next most senior member of the Littleton team, to interview Tuvell. Tuvell was inter-	things from Feldman at some other time, because of the December 15, 2011, messaging session the two engaged in, where Kime wrote: "I do not envy you having to deal with HR and lawyers {concerning Tuvell's complaints of discrimination/retaliation} at this point."}. Mr. Kime was not aware at the onset of the interviewing process {\begin{align*}{3} \] {\begin{align*}{3} \} {
① ①		viewed by these other individuals	accommodation, as IBM calls it)

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
Facts ① Feldman & ① Kime ① sabotage ② transfer ① ① ① ① ① ① ① ① ① ① ① ② ① ① ② ① ② ② ② ② ② ② ③ ③ ③ ③	Faux "Findings"	on or about December 8, 2011, and Kime reported that "the conversations were very positive." Kime acknowledged that the interviews with the management team did not exclude Tuvell as a candidate. Kime reported that he and his subordinates were "excited by Walt's evident technical skills." Kime considered Tuvell's technical knowledge and ability to be a strength. As late as December 12, 2011, Kime considered Tuvell to be an eligible candidate for the position. Kime believed Tuvell had "deep technical skills and ability to produce solid documentation." Mr. Tuvell's December 9, 2011 email to Kime and the other interviewers states, "You gave me quite a good picture of what you're doing, and it feels very much like what I'd like/want to be doing." The posting for the SWG-0436579 position calls for a "Software Developer," and was described as entailing "software development activities," for the purpose of "develop[ing] the next major release for this platform." IBM now asserts {falsely, pretextu-	that was the stumbling block. Mr. Kime also explained {\subseteq} {\text{without}} foundation, contrary to what Plaintiff had himself explicitly expressed} to Plaintiff that "[g]iven the current needs of our group there is also concern about the work being to your liking and keeping you as a productive and satisfied member of the team." Mr. Kime testified that he concluded that Plaintiff was not an appropriate candidate for the position because Plaintiff appeared to be interested in development work {\subseteq} {\text{which is exactly what the advertised job called for}, while the position involved software maintenance for a mature product {\subseteq} {\text{as was explained by the interviewers during the interview process, and Tuvell was "fine" with that} and involved working in a very small team environment and Mr. Kime was concerned about Plaintiff's ability to succeed in such an environment
T		ally } that Plaintiff was rejected for	Mr. Kime concluded that Plaintiff

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
Facts ① Feldman & ① Kime ① sabotage ① transfer ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ①	Faux "Findings"	the position because he had demonstrated difficulty working with team members, based on the input of Mr. Feldman. On or about December 13, 2011, Kime communicated with Feldman, who {falsely ("cat's-paw" theory)} recommended against Kime's hiring of Tuvell, based on the fact that "it isn't working out in this group, with these responsibilities and this set of relationships." Feldman {falsely} verbally rated Tuvell a "3", which represents a low ranking, but above those facing termination. On December 13, 2011, Feldman reported {falsely} to Kime that Tuvell "had had difficulties working with other people in the group." As of {Feldman's false "cat's-paw" report to Kime on} December 13, 2011, Kime no longer considered hiring Tuvell for the position. On January 6, 2012, Kime formally rejected Tuvell for the position, stating as reasons primarily the difficulties inherent in "taking you directly from being on short term disability, {which is protected}" and secondarily "{false} concern about the	would not be a good fit for the position. On January 11, 2012, Plaintiff emailed Mr. Feldman and accused him of retaliation based on his failure to receive an offer for the position with Mr. Kime in Littleton and asked Mr. Feldman to provide him with other ideas for a reasonable accommodation. Plaintiff rejected all of Mr. Feldman's proposed accommodations {which were false, because none of them (see ③) involved cessation of the abuse Feldman/IBM were heaping upon him} and, on January 23, 2012, Plaintiff's counsel requested as a reasonable accommodation that IBM transfer Plaintiff to the position in Littleton with Mr. Kime, for which he had previously applied and been {falsely} rejected, and which had been reposted after the first posting for the position ex-
① ①		work being to your liking." *** After Plaintiff was rejected for the	

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
Facts ① Feldman & ① Kime ① sabotage ① transfer ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ① ①	Faux "Findings"	Software Developer position, the position remained open, and IBM continued to seek applicants. After Kime decided to not hire Tuvell, and after the posting lapsed, Kime re-posted the identical position for the new year to seek new candidates, this time with the identifying number SWG-0456125. The reposted position also lapsed without being filled. While Kime explained to Plaintiff, on January 6, 2012, that his application for the Software Developer position was due to the inability to take him directly "from being on short term disability," after the fact {now.pretextually}, IBM takes the position that this was a false reason, and that indeed, Kime was counselled for identifying a false reason for the rejection. There is sufficient evidence upon which a jury could infer{, and hence this court must accept/credit,} that Mr. Kime knew {from Feldman's "cat's-paw"} of Plaintiff's {protected} internal complaints of handicap discrimination and retaliation as of the time of the January 6, 2012 rejection. For, on	(MUST Be <u>Dis</u> credited)
① ①		or about December 15, 2011, Mr. Kime and Mr. Feldman were mes-	

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
Facts ① Feldman & ② Kime ① sabotage ① transfer ① ② ① ① ① ① ① ① ① ① ② ① ② ② ② ② ② ③ ③ ③ ③			
0 0 0 0 0		his efforts to obtain a new position, and the interview process attending it. Mr. Tuvell reported no psychological difficulty in returning to that IBM building for an interview. Tuvell conducted himself profes-	

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
① Feldman & ① Kime ① sabotage ① transfer ① ① ① ① ① ① ① ① ① ① ① ①		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."	

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
Ū	<u>Op β9-10:</u>	PSOF <i>β</i> 18-21¶60,63,65:	DSOF <i>№</i> 14-15¶67,69,71-72:
© Fake offer © of © accommo- © dation © (Metzger) © © © © © © © © © © © © © © © © © © ©	Tuvell subsequently {on January 11, 2012} emailed Feldman accusing IBM of retaliation based upon his failure to receive an offer for the open position. Feldman {{alsely} responded {on January 20, 2012} offering Tuvell a {{alsely} responded to Be responded to Tuvell a {{alsely} respond to Be responded	In order to remain a productive employee of IBM, Plaintiff required {the reasonable accommodation of} either a new supervisor, or a transfer to a new department, so that he would not have to interact with Mr. Feldman. Medical documentation provided to IBM in December 2011 attested that "the only modification that would be possible [to return Tuvell to work] is a change of supervisor and setting." Plaintiff, on a variety of occasions informed IBM that he could no longer work in any capacity with Mr. Feldman, for medical reasons, and requested that Plaintiff be accorded a new supervisor, or a transfer to a different position. On June 23, 2011, Plaintiff wrote that the continuing harassment he experienced exacerbated his medical symptoms, and that he was then	Mr. Feldman { and all others at IBM, after stonewalling Plaintiff's many for many months, reluctantly finally, falsely} responded to Plaintiff's request by offering a { very small} variety of { completely inadequate { because they all still required Plaintiff to report to his main abuser/harasser, Feldman} accommodations, including having someone other than Mr. Feldman { namely, Feldman's boss, Metzger} provide Plaintiff with performance feedback, allowing Plaintiff to leave work as necessary to attend any doctor's appointments { which was no accommodation at all, since Tuvell (and others) were already doing that anyway}, and ongoing access to GOM to look for open positions under a different supervisor { again not an accommodation, because already available to Tuvell and others}. IBM subse-
0 0 0	proposal that Tuvell receive all feedback from a different manager. *** On February 15, 2012, Feld- man's supervisor, John Metzger, contacted Tuvell directly and	nearly incapacitated by PTSD symptoms. Mr. Tuvell informed IBM, "I am nearly incapacitated now by recurrence of PTSD I've started seeing my psychological	quently ≣{false/misleading: not only "subsequently." rather, this was their stance from the very beginning} denied Plaintiff's request for reassignment, stating its

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© Fake offer © of © accommo- © dation © (Metzger) © © © © © © © © © © © © © © © © © © ©		health-care professionals again about this problem, including medication." Continuing at this point, and many times thereafter, Plaintiff expressly requested the reasonable accommodation of either a new supervisor, or transfer to a new department entirely. *** On January 18, 2012, Plaintiff informed IBM, "Based on my handicap of PTSD, and the symptoms I am experiencing when I contemplate returning to my position, I just do not see a way in which I can medically continue to work with, or under [Mr. Feldman]." On January 27, 2012, IBM was again informed that Plaintiff was medically incapable of continuing to work under Mr. Feldman. Plaintiff necessarily rejected IBM's faux proposal of his returning to work under Mr. Feldman, precisely pointing out that it was contrary to Plaintiff's medical limitations as documented by his health care provider, and was contrary to his own reports about what triggers his medical condition. When Tuvell expressly declined IBM's proposal for this reason,	Interpretation in the same inadequate false accommodation in greedback from a different manager. On February 15, 2012, John Metzger, Mr. Feldman's supervisor, wrote to Plaintiff directly and falsely offered him as an from Mr. Feldman's president falsely offered him as an from Mr. Metzger directly, instead of Mr. Feldman. The next day, February 16, 2012, Plaintiff rejected Mr. Metzger's proposed false accommodation, claiming feldsely accommodation, claiming from Mr. Metzger directly, instead of Mr. Feldman. The next day, February 16, 2012, Plaintiff rejected Mr. Metzger's proposed false accommodation, claiming form Mr. Metzger's proposed incorrectly, as had Ms. Ross that he was medically incapable of returning to work under Mr. Feldman and opting fithis wasn't an "option," it was the only medically acceptable avenue available instead to remain out on medical leave.

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
Fake offer		IBM failed to return with any	
© of		other dialog for accommoda-	
[®] accommo-		tion. *** Even after IBM repeat-	
© dation		edly rejected Plaintiff's requests for	
(Metzger)		reasonable accommodation, Plain-	
0		tiff continued to seek interac-	
0		tive dialogue for reasonable ac-	
0		commodation. On January 11,	
		2012, after Plaintiff's application	
0		for transfer was rejected, he wrote	
0		"Is there any other option, any	
0		other positions, any other reporting	
0		structures, that you can think of	
0		that would help me return to IBM	
0		as a productive employee?" On	
0		January 18, 2012, Plaintiff said, "I	
0		am at a loss as to what I can sug-	
0		gest by way of reasonable accom-	
0		modation that would permit me to	
0		work under you. Do you have any	
0		ideas?" IBM did not respond	
0		with anything of substance; it	
0		was IBM who shut down the in-	
0		teractive process, and not Plain-	
0		tiff. {Note particularly that	
0		IBM's fake offer (not "offers")	
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0		of accommodation (®) is incon-	
0		trovertably inconsistent/pretex-	
0		tual with its false arguments	
0		concerning Plaintiff's "inability	
(0) (0) (0)		to do any work at all" (false in-	
0		terpretations of MTRs, @).}	

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
(V)	<u>Op _β10-11:</u>	PSOF <i>℘</i> 17¶56:	DSOF №16¶74-77:
© LinkedIn; © EMC ©	In May 2012, Human Resources Specialist Adams became	that "stale" information is very	On May 7, 2012, while Plaintiff was still out on leave, Ms. Adams wrote Plaintiff asking him to confirm that he was not working for EMC Corporation while are medical leave from
© © © © ©	dormant (not updated) for years, incorrectly} listed another company, EMC, as his current employer { which was the case when last updated" years earlier, not cur-	common on "social networking" sites such as LinkedIn; falsely (ii) IBM had no requirement concern- ing employees' usage of Internet social networking sites (at least not	ration while on medical leave from his employment with IBM.
(O) (O) (O) (O)	rently ("stale" data like this being a well-known staple of the Internet)}. Adams {falsely, without mentioning LinkedIn,} wrote Tuvell asking him	in the innocuous matter of posting work history information); falsely (iii) IBM didn't check other em- ployees' LinkedIn sites as a matter	IBM. IBM believes that you currently are or have been during the course of your employment in violation of one of IBM's Business Con-
© © © © ©	to confirm that he was not working for EMC. Adams <code>[falsely]</code> notified Tuvell that working for EMC would be a violation of IBM guidelines and that, if true, he would be	of course, but secret single-out Tuvell specifically for this retalia- tory treatment; falsely (iv) if IBM had a legitimate (as opposed to re- taliatory) reason to inquire of	duct Guidelines. Specifically, it appears that you currently are or have been during the course of your employment with IBM working for EMC Corporation in some ca-
© © © © ©	terminated. <u>■{But that accusation</u> was false, so} Tuvell then <u>■{properly}</u> accused IBM of defamation, arguing that he was not violating any guidelines <u>■{because he was</u>	Tuvell's relationship with EMC, it should/would have asked about it in a value-neutral way, rather than aggressively attacking with a false proclamation concerning violation	pacity, such as an employee, consultant or contractor." That was was false, so} Plaintiff responded by accusing IBM of defamation and asking for evidence that he was violat-
(a) (b) (c) (c) (c) (c) (c) (c) (c) (c) (c) (c	not . Adams finally responded falsely that Tuvell's LinkedIn page listed EMC and asked him again to confirm that he was not working for EMC. Tuvell indicated that he was not working for EMC	of BCG and threatening his "employment with IBM" that it believed Plaintiff to be working for EMC, a competitor, and threatening termination. On May 8, 2012, Tuvell responds, and {truthfully}	ing IBM's Guidelines. IBM's Business Conduct Guidelines require employees on leave to inform IBM if they begin working for another company so IBM can run a conflict check and ensure that the company

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© LinkedIn;	and that continuing to ask him if he was working for them was harassment and defamation.	denies working for EMC.	is not a competitor \begin{align*}{\text{fno}, \text{ the BCG}} only mentions working for competitors (which Imprivata wasn't), and it says nothing about "running conflict checks" on outside employment: and in any case IBM knew Tuvell took outside employment solely because he was forced to do so, because of IBM's unremitting abuse/harassment without reasonable accommodation}. In response, Ms. Adams wrote to Plaintiff that his LinkedIn page listed EMC as his current employer and asked him to confirm that he was not currently working for EMC. Plaintiff responded by informing Ms. Adams that he was not employed by EMC, and that by continuing to ask him if he was, Ms. Adams was harassing and defaming him. Ms. Adams responded by thanking Plaintiff for his response and asked Plaintiff to advise where he has been working during his leave. Plaintiff responded to Ms. Adams's request by telling her \begin{align*}{\text{Ecorrectly, per the}} \end{align*} BCG\end{align*} that he was in compliance with his contractual obligations and refusing to provide her with the name of the company he began working for while on unpaid leave

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
© LinkedIn; © EMC © © © © © © © © © ©			from IBM. When Ms. Adams responded <code>[{falsely}]</code> 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 <code>[{correctly}]</code> of retaliation and harassment and continued to refuse to provide the name of his new employer.

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
W	<u>Op _β10-11:</u>	PSOF <i>β</i> 17,27-28¶56-57,90-91:	DSOF <i>β</i> 16,17¶73,78-81:
™ Imprivata	Around this time, unbeknownst to	{On May 10, 2012,} Tuvell explains	
(W)	IBM, <u>≣{(i)</u> forced by IBM's insis-	that he does not wish to inform IBM	
w	tence that he continue work under	where he is working, as he fears a	about potential accommodations
(W)	Feldman's unhealthy/abusive con-	retaliatory response. *** On	{see @}, Plaintiff was also inter-
W	trol and desperate to escape it; as	May 11, 2012, IBM demands to	viewing for a full-time job with Im-
(W)	well as (ii) to secure a source of in-	know where Tuvell is working,	privata <u>■{out of economic neces-</u>
(W)	come} Tuvell was interviewing for	{falsely} citing an inapplicable	sity, and his disability leave was
(W)	a full time position with another	policy, and its need to confirm that	nearing its end, and IBM continued
W	company, Imprivata, which devel-	Tuvell is not working for a competi-	refusing him reasonable accommo-
W	ops and sells software products	tor. On May 15, 2011, IBM de-	dation}, from whom he received an
W	≣{though those products were	manded to know Tuvell's new em-	offer of employment on February
W	non-competitive with IBM}. On	ployer, based on its duty to confirm	28, 2012, and for whom he began
W	February 28, 2012, Imprivata made	that Tuvell is not working for a	working on March 12, 2012, while
W	an offer to Tuvell and, on March 12,	J 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	still on medical leave from IBM.
W	2012, Tuvell started working for	vided information to demonstrate	Plaintiff did not disclose this to IBM
W	the software company while still on	that he was not working for a com-	and he was under no obligation
W	medical leave from IBM. Tuvell's	petitor, provided authorization to	to do so (per the BCG)}. *** On
W	salary at Imprivata is <u>■{very</u>	IBM to contact EMC to confirm his	May 15, 2012, Ms. Adams informed
W	slightly} higher than his salary at	status as a (non)employee there,	Plaintiff that he had to identify the
W	IBM. *** Tuvell refused to re-	and he suggested that {due to his	company he was working for by
W	spond to further inquiries about	fear of retaliation by IBM against	5:00 PM the following day or IBM
W	where he had been working during	his new employment situation (at	would be forced to terminate his
W	his leave. On May 15, 2012, Adams	<pre>Imprivata)} he be permitted to sub-</pre>	employment. Plaintiff continued to
W	wrote to Tuvell that he should "ad-	mit the information about his alter-	refuse to provide IBM with the
w	vise IBM where you are currently	nate employment, to a confidential,	name of the company he was work-
W	working by 5pm tomorrow." Adams		ing for while on medical leave
w	explained that "IBM ha[d] been at-	firm to IBM that there was no com-	≣{out of fear, as Tuvell told Adams,
(W) (W)	tempting for approximately the past two weeks to find out if you	petition. Despite the fact that Tuvell responded to all of IBM's	that IBM would sabotage his position with his new company (without

Issues/	Lower Courts' <u>Op</u>	Op Falsely <u>Dis</u> credit <u>PSOF</u>	Op Falsely Credit <u>DSOF</u>
Facts	Faux "Findings"	(MUST Be Credited)	(MUST Be <u>Dis</u> credited)
(W) Imprivata (W)	are engaged in competitive employment { even though Tuvell had assured them he was not} " and that "IBM employees may not work for a competitor in any capacity without obtaining consent { though Tuvell was not working for a competitor}." Tuvell refused to provide IBM with his work information { out of fear, as Tuvell told Adams, that IBM would sabotage his position with his new company (without identifying Imprivata)}.	Since May 12, 2012, Plaintiff has been working at Imprivata, in a high level, technical capacity. He is able to perform these functions, despite his PTSD, because he is not being harassed. It is denied that Plaintiff's current employer	identifying Imprivata) *** 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 {very slightly} greater than what he was earning at IBM.

Issues/ Facts	Lower Courts' <u>Op</u> Faux "Findings"	Op Falsely <u>Dis</u> credit <u>PSOF</u> (MUST Be Credited)	Op Falsely Credit <u>DSOF</u> (MUST Be <u>Dis</u> credited)
(X)	<u>Οp φ11:</u>	PSOF <i>β</i> 17-18¶57:	DSOF <i>№</i> 17¶79:
® Termina- ® tion ® ® ® ® ® ®	On May 17, 2012, IBM [falsely] terminated Tuvell.	The {false} termination occurred within days after Tuvell engaged in protected conduct. {See ®; such temporal proximity raises suspicion of retaliation , especially in the context of all the other events of this case.}	{O}n May 17, 2012, Plaintiff's employment from IBM was <u>a</u> {falsely} terminated based on his refusal to advise IBM of where he was working, despite repeated requests that he do so.