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INTRODUCTION

This case involves the death of Sheharbano “Sheri” Sangji [hereinafter “victim Sangji”], who worked as a research associate in the Department of Chemistry and Biochemistry at the University of California at Los Angeles. Victim Sangji worked in an organic chemistry laboratory under the direct supervision of Dr. Patrick Harran [hereinafter “defendant Harran”]. Victim Sangji died of severe burns stemming from a fire that occurred on December 29, 2008 in defendant Harran’s laboratory.

On September 5, 2012, the People filed an Amended Felony Complaint alleging the following: Count 1, a violation of Labor Code § 6425(a), willful violation of a standard or order causing death to an employee, as to Patrick Harran, who willfully violated California Code of Regulations, Title 8, § 5191(f)(4) (failure to provide hazardous chemical safety training to employee); Count 2, a violation of Labor Code § 6425(a), willful violation of a standard or order causing death to an employee, as to Patrick Harran, who willfully violated California Code of Regulations, Title 8, § 3203(a)(6) (failure to establish, implement, and maintain an effective Injury and Illness Prevention Program); and Count 3, a violation of Labor Code § 6425(a), willful violation of a standard or order causing death to an employee, as to Patrick Harran, who willfully violated California Code of Regulations, Title 8, § 3383(b), (failure to require body protection for employees exposed to hazardous substances).

The Preliminary Hearing in this matter was held on November 16, 19, 20, and 21, 2012. The Preliminary Hearing continued on December 17, and 18, 2012. The facts adduced at the Preliminary Hearing are detailed below.

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STATEMENT OF FACTS

In October 2008, victim Sangji was hired by defendant Harran, Professor of Chemistry at UCLA. (Preliminary Hearing Transcript pp. 89:5-7, 90:13-18 [hereinafter “R.T.”].) Defendant

1 Harran hired victim Sangji as a research associate after having placed an ad for that position.
2 (R.T. p. 91:2-8.)

3 Prior to working in defendant Harran's lab, victim Sangji had earned a bachelor's degree
4 in chemistry from Pomona College. (R.T. p. 92:2-5.) Victim Sangji worked three summers in
5 Dr. Daniel O'Leary's laboratory while earning her degree. Dr. O'Leary served as the principal
6 advisor to victim Sangji's undergraduate senior thesis. In the summer of 2005, victim Sangji
7 performed analytical measurements. (Defense Exhibit D.) Essentially, victim Sangji was
8 performing analytical chemistry by taking measurement on compounds. (R.T. p. 389:15-17.)
9 Victim Sangji's analytical work was included in two collaborative papers. The first paper was a
10 collaboration with a group at Boston University and the second paper was with a group from
11 Irvine. (R.T. p. 390:16-24.) Victim Sangji spent the summers of 2006 and 2007 on a project that
12 explored the effects of chemically modifying short helical peptides. This work became the basis
13 of her undergraduate thesis work. (Defense Exhibit D.) Victim Sangji's senior thesis work did
14 not involve pyrophorics.¹ (R.T. p. 419:25-27.) None of victim Sangji's work with Dr. O'Leary
15 involved working with pyrophorics. Victim Sangji did not have any experience in his lab
16 working with something as "nasty as T-butyllithium."² (R.T. p. 391:1-19.) In fact, there were no
17 pyrophorics in the lab. (R.T. p. 393:11-12.)

18 After graduating from Pomona College, victim Sangji worked at Norac Pharma. While at
19 Norac Pharma, victim Sangji never used tert-Butyllithium or any pyrophorics. (R.T. p. 250: 1-
20 26.) While employed at Norac Pharma, victim Sangji was closely supervised by senior
21 personnel. She was not allowed to do anything on her own. (R.T. p. 251:2-4.)

22 Victim Sangji began working in defendant Harran's laboratory on October 13, 2008.
23 (R.T. p. 92:1.) Defendant Harran had been at UCLA since July of 2008. Prior to coming to
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25 ¹ Pyrophoric chemicals are those chemicals which spontaneously ignite upon exposure to air.

² T-Butyllithium, or tert-Butyllithium, is a type of pyrophoric chemical.

1 UCLA, defendant Harran had been a professor of biochemistry at the University of Texas,
2 Southwestern Medical Center since 1997. (R.T. p. 89:8-17.) Defendant Harran was a Principal
3 Investigator. As a Principal Investigator, defendant Harran had many responsibilities related to
4 running a lab. As a Principal Investigator, he was responsible for the overall operations of the
5 lab. He directed the research that was conducted in the lab. He was responsible for training of
6 personnel under his direction and control and specifically responsible for safety training as it
7 related to the handling of compounds that were within the realm of his research. (R.T. pp. 89:23-
8 28, 90:1-12.) Since generalized safety training was not available for victim Sangji, all safety
9 training was defendant Harran's responsibility. (R.T. p. 92:16-20.) Victim Sangji's primary job
10 in the laboratory was to handle the analytical instrumentation, specifically the LC/MS.³ (R.T. p.
11 92:6-12.) Due to victim Sangji's level of experience, defendant Harran would normally assign a
12 postdoctoral fellow to work with her. However, the postdoctoral fellow in the lab at the time,
13 Dr. Paul Hurley, was involved in other matters, so that no one was assigned to train Victim
14 Sangji. (R.T. pp. 92:25-28, 93:1-3.)

15 On October 14, 2008, victim Sangji performed a procedure which involved the transfer of
16 an air-sensitive reagent called Grubbs 2. This reagent is not pyrophoric, and is much less
17 hazardous than the reagent tert-Butyllithium. (R.T. p. 417:3-20.) [T]ert-Butyllithium is a
18 pyrophoric chemical which ignites upon contact with air. (R.T. p. 175:3-5.) Defendant Harran
19 observed Victim Sangji perform this procedure. (R.T. p. 341:14-16.) Victim Sangji performed
20 this work in an inert atmosphere chamber called a glove bag. (R.T. pp. 417:28, 418:1.) The
21 procedures that she used on this date were not the same as the procedures that she used on
22 December 29, 2008 when she was transferring tert-Butyllithium. (R.T. p. 418:11-20.)

23 On October 16, 2008, Victim Sangji sent an e-mail to Dr. Paul Hurley, the post-doctoral
24 fellow, requesting a protocol for an experiment that defendant Harran requested that she perform.

25 _____
³ Generally known as Liquid Chromatography/Mass Spectrometry.

1 This experiment required using a product generated from vinyl chloride and tert-Butyllithium.
2 (Defense Exhibit R; R.T. pp. 173:5-28, 174.) Dr. Hurley had no recollection if he gave victim
3 Sangji anything in response to her e-mail. (R.T. pp. 237:24-28, 238:1-2.) In fact, Dr. Hurley
4 never supervised victim Sangji when she was using tert-Butyllithium. (R.T. p. 238:12-17.)

5 On October 17, 2008, victim Sangji performed the experiment referred to in the e-mail
6 sent to Hurley the previous day. This experiment required the transfer of tert-Butyllithium.
7 (R.T. p. 173-174.) Since tert-Butyllithium immediately ignites upon contact with air, all the
8 work involving tert-Butyllithium must be done in an oxygen free atmosphere to prevent exposure
9 of tert-Butyllithium to oxygen which would result in a fire. (R.T. p. 175:3-20.) The three-page
10 entry in victim Sangji's notebook dated October 17, 2008, recorded the entire experimental
11 process used by victim Sangji, including reactant calculations as well as the steps carried out to
12 conduct the synthesis. (People's Exhibit 38, three-page entry dated 10/17/08.) Victim Sangji
13 detailed the overall chemistry that she planned to carry out, listing both the intermediate products
14 as well as the final product. (R.T. p. 173:13-19.) She recorded the quantities of the various
15 reactants she would need for the synthesis, as well as documenting a concentration determination
16 that she carried out. (R.T. p. 173:20-24.) In order to calculate the volume of one of the reactants
17 in the synthesis, i.e., tert-Butyllithium, victim Sangji first needed to determine the actual
18 concentration of that reactant. (R.T. pp. 173-174, 177-178.) To do this, victim Sangji first
19 performed a titration on the tert-Butyllithium in order to determine the reagent's actual
20 concentration. (R.T. p. 177.) Based on the results of the titrations, victim Sangji calculated that
21 she needed to add 53.79 milliliters of tert-Butyllithium to the reaction. (R.T. p. 178:1-18.)
22 Victim Sangji also determined that she needed three milliliters of vinyl bromide and 3.9
23 milliliters of 4 undecene in order to carry out the desired reaction. (R.T. p. 174:11-27.)

24 On December 29, 2008, victim Sangji was preparing to do a three-fold scale-up of the
25 same reaction or synthesis that she conducted on October 17, 2008. (R.T. pp. 170:19-28, 171,

1 172:1-15.) The first thing that she did that morning was to meet with defendant Harran and
2 discuss that she was going to do a scale-up of the October reaction. (R.T. pp.93:13-24, 169:24-
3 28, 170:1.) Defendant Harran told Victim Sangji to be careful, and told her nothing else. (R.T.
4 p. 93:25-26.)

5 In the one-page entry in the notebook dated December 29, 2008, victim Sangji partially
6 recorded some of the steps that she took in order to carry out this experiment. She again wrote
7 out the overall chemistry that she wanted to carry out, listing both the intermediate products and
8 the final product. (People's Exhibit 38, one-page entry dated 12/29/08.) Victim Sangji also
9 recorded the quantities of the various chemicals that she needed in order to do a three-fold scale-
10 up. The relationship between the volumes of the various reactants that she used on December
11 29, 2008 was three times the volumes that she used on October 17, 2008. (R.T. pp. 176:12-18,
12 183:3-28, 184:1-8, People's Exhibit 38, one-page entry dated 12/29/08.)

13 Victim Sangji also performed a titration to determine the concentration of tert-
14 Butyllithium. (R.T. p. 179:11-15.) As recorded in her lab notebook, victim Sangji performed
15 two titrations. Each titration recorded at the bottom of the notebook page represents a titration of
16 a single 100 milliliter bottle of tert-Butyllithium (two bottles of tert-Butyllithium titrated). (R.T.
17 p. 179:18-27, People's Exhibit 38, one-page entry dated 12/29/08.) Victim Sangji withdrew one
18 milliliter from each bottle of tert-Butyllithium to perform the titration. (R.T. p. 180:10-14.)
19 Victim Sangji noted in writing the date and concentration of the tert-Butyllithium on the label of
20 the tert-Butyllithium bottle. After the fire, this bottle was found damaged and lying on its side
21 inside the hood where victim Sangji had been working. (R.T. pp. 181:18-28, 182:1.) Based on
22 the results of the titration, victim Sangji determined that she needed 269.5 molecules of tert-
23 Butyllithium to conduct the experiment. Victim Sangji recorded this in her notebook. (People's
24 Exhibit 38, one page entry dated 12/29/08.) This is three time the number of molecules that she
25 used in the October experiment. (R.T. p. 185:13-15.) In order to generate three times as much

1 vinylithium product and starting with three times a much vinyl bromide, victim Sangji needed to
2 add three times the amount of tert-Butyllithium that she used in October. In October she used 54
3 milliliters of tert-Butyllithium, so in December she needed to use three times 54 or about 162
4 milliliters of tert-Butyllithium (R.T. pp. 185:16-28, 186:1-5.)

5 In the afternoon of December 29, 2008, victim Sangji began the transfer of the tert-
6 Butyllithium. (R.T. p. 186:22-28.) Victim Sangji attempted three syringe transfers of about 54
7 milliliters each of the tert-Butyllithium using a 60 milliliter syringe. (R.T. pp. 187:19-27, 190:4-
8 11.) Attached to the syringe was a very short needle, about a one and one half or two inches in
9 length. (R.T. p. 193:1-3.) Victim Sangji performed the first transfer by holding the bottle of tert-
10 Butyllithium and the barrel of the 60 milliliter syringe in one hand while pulling back the syringe
11 plunger with the other hand, the same way a doctor would draw a syringe full of a drug from a
12 vial. This was the only way victim Sangji could withdraw solution from a 4 ¼ inch high bottle
13 using a 1 ½ inch needle. (R.T. p. 193:6-22.) Victim Sangji attempted a second transfer, but this
14 is when something went wrong. (R.T. p. 194:25-28.) During the second transfer, the plunger
15 came out of the barrel and released the tert-Butyllithium which, upon contact with the air,
16 immediately initiated the fire. (R.T. p. 195:1-8.) As the fire burned in her one hand, victim
17 Sangji threw the released plunger in her other hand behind her. Her clothing and body ignited
18 and victim Sangji was badly burned. (R.T. p. 196:5-17.)

19 Dr. Wei Chen, a post-doctoral fellow, was also working in the lab at the time. He heard
20 victim Sangji screaming and saw that she was on fire. (R.T. pp. 127:17-18, 129:22-25.) Dr.
21 Chen attempted to extinguish the fire by taking off his lab coat and wrapping it around victim
22 Sangji. His lab coat caught on fire and began to burn so he then attempted to pour water on
23 Victim Sangji. (R.T. pp. 129:28, 130:1-5.) Dr. Chen saw that victim Sangji was not wearing a
24 lab coat. (R.T. p. 130:12-16.)
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1 Dr. Hui Ding, another post-doctoral fellow, was also working that day. Dr. Ding
2 however, was working in the office area adjacent to the laboratory in which victim Sangji and
3 Dr. Chen were working. (R.T. pp. 135:27-28, 136:1-2.) Dr. Ding heard a scream and went into
4 the lab and saw Victim Sangji on fire. He also saw a fire in the fume hood and a reagent bottle
5 tipped on its side in the fume hood. Dr. Ding also saw that Dr. Chen was using the lab coat to
6 attempt to extinguish the flames engulfing victim Sangji. (R.T. p. 136:9-13.) Dr. Ding next
7 went back to his office and called 911. He returned to the lab and then left to notify defendant
8 Harran who was in his fifth floor office. (R.T. p. 136:16-26.)

9 After Dr. Ding notified defendant Harran, he (defendant Harran) went down to the fourth
10 floor laboratory to find out what happened. (R.T. p. 103:1-2.) Defendant Harran saw victim
11 Sangji sitting on the floor with her clothes burned and caked on to her body. (R.T. p. 103:5-7.)
12 Defendant Harran left the lab to direct the fire personnel to his laboratory to assist victim Sangji.
13 Victim Sangji was then transported to the hospital emergency room. (R.T. p. 103:21-24.)
14 Defendant Harran went to the emergency room, but returned to the laboratory in about 1 ½ hours
15 later. (R.T. p. 104:7-11.) Upon his return to the lab, defendant Harran noticed the melted
16 syringe in the fume hood. He also saw the intact plunger on the ground about six feet away from
17 the fume hood. There was also a bottle of tert-Butyllithium which was about 20% full lying on
18 its side inside the fume hood. (R.T. pp. 104:18-28, 105:1-16.)

19 On December 29, 2008, victim Sangji was transferred from UCLA Emergency Room to
20 Grossman Burn Center at Sherman Oaks Hospital. Dr. Peter Grossman assumed care of victim
21 Sangji. Upon initial evaluation of victim Sangji, Dr. Grossman noted burns on her neck, her
22 bilateral upper extremities, her hands, her anterior torso including her breasts and abdomen, her
23 posterior torso, the proximal thigh and her bilateral lower extremities. (R.T. pp. 24:26-28, 105:1-
24 3.) Victim Sangji was burned on 45 percent of her total body surface. (R.T. p. 25:4-8.) Victim
25 Sangji was immediately taken to the hydrotherapy room for a procedure called an escharotomy.

1 The purpose of this procedure is to make an incision through dead tissue to prevent further
2 damage of tissue. (R.T. p. 31:12-26.) Victim Sangji was taken to the operating room on
3 December 31, 2008, for the first of a series of debridements. The debridement procedure is a
4 scraping away of dead skin. After the dead skin is scraped away, a skin graft is placed on to the
5 wound area. (R.T. p. 35:11-28, 36.) Victim Sangji underwent a series of these debridement
6 procedures and skin grafting. On January 12, 2009, victim Sangji again was taken to the
7 operating room to undergo a debridement procedure. During that procedure, victim Sangji's
8 blood pressure dropped, and her heart stopped. Resuscitation efforts were undertaken to restart
9 her heart. Victim Sangji was then transferred to the Intensive Care Unit in critical condition.
10 (R.T. p. 50:1-24.) Over the next couple of days victim Sangji's condition worsened. Her brain
11 function was minimal and she was placed on life support. (R.T. p. 51:1-14.) On January 16,
12 2009, victim Sangji was taken off life support. Victim Sangji's death was determined to be due
13 to extensive burn injuries and the consequences of those burn injures including multiple organ
14 system failure. (R.T. p. 53:6-24.) Victim Sangji was 23 years old at the time of her death.

15 16 POINTS AND AUTHORITIES

17 I.

18 Brief Summary

19 Although the defense Motion to Dismiss [hereinafter "M.T.D."] is lengthy, the defense
20 essentially offers five arguments as to why the People have not met their burden at the
21 preliminary hearing. Distilled to its essence, the Motion to Dismiss claims: 1) The California
22 Code of Regulations sections charged do not apply to defendant Harran because they only apply
23 to an "employer"; 2) Defendant Harran did not "willfully" violate the law because he was
24 unaware of his duties; 3) Victim Sangji was trained by *someone* (the defense offers up Pomona
25 College, Norac Pharma, defendant Harran, and Dr. Paul Hurley as possible candidates); 4)

1 Defendant Harran was not responsible for devising an Illness and Injury Prevention Program (the
2 defense characterizes this charge as “nothing short of bizarre”); and 5) The use of lab coats was
3 “optional” at UCLA. Subsumed within these five arguments are various sub-arguments that will
4 be addressed to the extent necessary below.

5 The defense is incorrect on all counts. Specifically: 1) The California Code of
6 Regulations sections charged apply to both employers and employees in a supervisory role, and
7 additionally, defendant Harran was acting as an employer in his capacity as a Principal
8 Investigator; 2) Defendant Harran was well- aware of his duties to train victim Sangji, correct
9 unsafe conditions in his laboratory, and require the use of proper personal protective equipment;
10 3) Victim Sangji was not properly and sufficiently trained for the tasks she was asked to perform
11 in defendant Harran’s laboratory, and specifically was not trained in the hazards of tert-
12 Butyllithium and the measures she could take to protect herself from those hazards; 4) Defendant
13 Harran was required to implement and maintain an effective Injury and Illness Prevention
14 Program by correcting unsafe or unhealthy conditions, work practices and work procedures; and
15 5) Lab coats were not “optional” under California law or UCLA policy.

16 In the Motion to Dismiss, the defense also repeatedly cites portions of the preliminary
17 hearing transcript for propositions they do not support or that are misleading when read in
18 context, and also makes a number of claims that are unsupported by the evidence. As an
19 example, the defense motion states that “Dr. Langerman opined that Professor Harran reasonably
20 entrusted Dr. Hurley with the obligation to train Ms. Sangji . . .” (M.T.D. p. 33:23-25.) A
21 review of the testimony cited, however, reveals that Dr. Langerman offered no such opinion.
22 The defense motion also states that “Because she had performed the technique [transferring an
23 air sensitive or pyrophoric compound] “perfectly,” it was Professor Harran’s professional
24 judgment . . . that Ms. Sangji was prepared to employ the technique in connection with a transfer
25 of t-BuLi under the supervision of Dr. Hurley.” (M.T.D. p. 34:5-9.) There is absolutely no

1 evidence that the defendant Harran made any such judgment or that victim Sangji was supervised
2 by Dr. Hurley when she made the transfers. As a final example, the defense motion claims that
3 “[c]ontrary to the findings of the first Cal/OSHA investigation, Investigator Baudendistel
4 concluded that the University and Professor Harran willfully violated health and safety
5 regulations.” (M.T.D. p. 24:7-9.) Not only is there absolutely no evidence regarding the
6 findings of the first Cal/OSHA investigation, but the claim that the first Cal/OSHA investigation
7 found the violations were not willful is absolutely false.

8 The People will endeavor to note other inaccuracies as best they can. Neither this court
9 nor any reviewing court should assume, however, that the People agree with a defense argument
10 or claim simply because the People do not address the argument or claim in this motion.

11 In actuality, the evidence and reasonable inferences show that victim Sangji died because
12 UCLA, defendant Harran, and the academic community in general were of the opinion that
13 Cal/OSHA regulations directed towards laboratory safety did not apply to them to the same
14 extent that they applied to industrial laboratories. This belief fostered a culture in which rules
15 and regulations were routinely ignored, ultimately with tragic results.

17 II.

18 At a Preliminary Hearing, the People Need Only Establish 19 That There Exists Probable Cause to Believe That the 20 Defendant is Guilty of the Crimes Charged

21 This court is no doubt aware of the low standard of proof required to hold defendant
22 Harran over for trial. In *Rideout v. Superior Court* (1967) 67 Cal.2d 471, 474, the court stated:

23 Evidence that will justify a prosecution need not be sufficient to
24 support a conviction. (*Lorenson v. Superior Court*, 35 Cal.2d 49,
25 56; *People v. Willmirth*, 247 Cal.App.2d 513, 514; see *People v.*
McRae, 31 Cal.2d 184, 187.) “Probable cause is shown if a man
(sic) of ordinary caution or prudence would be led to believe and
conscientiously entertain a strong suspicion of the guilt of the
accused.” (*Jackson v. Superior Court*, 62 Cal.2d 521, 525;
Robison v. Superior Court, 49 Cal.2d 186, 188; *Lorenson v.*
Superior Court, supra, at p. 56.) An information will not be set

1 Investigator, defendant Harran was responsible for the overall operation of the lab and directed
2 the research that was conducted at that lab. (R.T. pp. 89:18-90:2.) Dr. Langerman explained that
3 Principal Investigators have primary responsibility for the activities of their staff, that they are
4 directly responsible for making sure that people who have tasks to perform do the work
5 correctly, and also noted that their responsibilities include preparing Standard Operating
6 Procedures. (R.T. pp. 492:2-493:9.)

7 Defendant Harran was responsible for the recruitment and hiring for his lab, conducted
8 the interviews to determine who would be hired for his lab, and the payment for individuals
9 employed in his lab came from his research funds and other funds he controlled. (R.T. p. 91:9-
10 22.) In 2008, defendant Harran was listed as “P.I.” or “co-P.I.” (Principal Investigator) on four
11 grants which provided research funding. (Defense Exhibit A.) In October 2008, defendant
12 Harran had seven individuals, including victim Sangji, who “were working for him in the lab . . .
13 .” In this manner, defendant Harran acted more as an employer than as a supervisory employee.
14 In either instance, Labor Code Section 6425(a) and the charged California Code of Regulations
15 sections charged clearly apply to defendant Harran.

16 In Count 1, the regulation violated was California Code of Regulations, Title 8, Section
17 5191(f)(4), which states in pertinent part:

18 (f) Employee information and training.

19 (1) The employer shall provide employees with information and
20 training to ensure that they are apprised of the hazards of
21 chemicals present in their work area. Information and training may
relate to an entire class of hazardous substances to the extent
appropriate.

22 (2) Such information shall be provided at the time of an employee's
23 initial assignment to a work area where hazardous chemicals are
24 present and prior to assignments involving new exposure
situations. The frequency of refresher information and training
shall be determined by the employer.

25 (3) Information. Employees shall be informed of:

(A) The contents of this regulation and its appendices which shall

1 be available to employees;

2 (B) The location and availability of the employer's Chemical
3 Hygiene Plan;

4 (C) The exposure limits for Cal/OSHA regulated substances or
5 recommended exposure limits for other hazardous chemicals
6 where there is no applicable Cal/OSHA regulation;

7 (D) Signs and symptoms associated with exposures to hazardous
8 chemicals used in the laboratory; and

9 (E) The location and availability of known reference material on
10 the hazards, safe handling, storage and disposal of hazardous
11 chemicals found in the laboratory including, but not limited to,
12 Material Safety Data Sheets received from the chemical supplier.

13 (4) Training.

14 (A) Employee training shall include;

15 1. Methods and observations that may be used to detect the
16 presence or release of a hazardous chemical (such as monitoring
17 conducted by the employer, continuous monitoring devices, visual
18 appearance or odor of hazardous chemicals when being released,
19 etc.);

20 2. The physical and health hazards of chemicals in the work area;
21 and

22 3. The measures employees can take to protect themselves from
23 these hazards, including specific procedures the employer has
24 implemented to protect employees from exposure to hazardous
25 chemicals, such as appropriate work practices, emergency
procedures, and personal protective equipment to be used.

(B) The employee shall be trained on the applicable details of the
employer's written Chemical Hygiene Plan.

21 In the instant case, defendant Harran was under a legal obligation to train victim Sangji
22 on the physical and health hazards of tert-Butyllithium, the measures victim Sangji could take to
23 protect herself from these hazards, including appropriate work practices, emergency procedures,
24 personal protective equipment she should use, and the details of the Laboratory Safety Manual,
25

1 which was designated by UCLA as the Chemical Hygiene Plan for the Department of Chemistry
2 and Biochemistry. Defendant Harran failed to fulfill these obligations.

3 In Count 2, the regulation violated was California Code of Regulations, Title 8, Section
4 3203(a)(6), which states in pertinent part:

5 (a) Effective July 1, 1991, every employer shall establish,
6 implement and maintain an effective Injury and Illness
7 Prevention Program (Program). The Program shall be in
8 writing and, shall, at a minimum:

9 (6) Include methods and/or procedures for correcting unsafe or
10 unhealthy conditions, work practices and work procedures in a
11 timely manner based on the severity of the hazard:

12 (A) When observed or discovered; and,

13 (B) When an imminent hazard exists which cannot be
14 immediately abated without endangering employee(s) and/or
15 property, remove all exposed personnel from the area except
16 those necessary to correct the existing condition. Employees
17 necessary to correct the hazardous condition shall be provided
18 the necessary safeguards.

19 In the instant case, defendant Harran violated his obligation to implement and maintain
20 an effective Injury and Illness Prevention Program. As part of the hiring process, defendant
21 Harran received a copy of the UCLA Environment, Health and Safety "Handbook for
22 Employees" for which he signed an "Employee Acknowledgment" on June 2, 2008. (People's
23 Exhibit 26; People's Exhibit 27.) UCLA's Injury and Illness Prevention Plan (IIPP), designed to
24 create and maintain a safe and healthful campus, is based on Cal/OSHA standards and other
25 federal, state and local regulations. (People's Exhibit 26, p. 6.) The Injury and Illness
Prevention Plan is encompassed by the Environment, Health and Safety Employee Handbook.
The handbook states that the key responsibility for health and safety at UCLA is assigned to
supervisors and area managers. (People's Exhibit 26, p. 11.) Among the many responsibilities
delegated to supervisors are the duties analyze work procedures to identify hazards and then
implement measures to eliminate or control those hazards and provide proper safety equipment

1 and personal protective equipment to employees. The UCLA Department of Environment,
2 Health and Safety conducts laboratory inspections as required by Cal/OSHA to document
3 compliance with laboratory safety requirements. One such inspection was conducted in
4 defendant Harran's laboratory on October 30, 2008. The laboratory safety report generated after
5 the inspection (People's Exhibit 25) documented a finding that personal protective equipment in
6 the laboratory was not utilized by laboratory personnel, i.e., laboratory coats were not worn by
7 laboratory personnel. (People's Exhibit 25, pp. 2 and 4.) Defendant Harran therefore violated
8 his obligation to implement and maintain an effective Injury and Illness Prevention Program
9 when he failed to take action to correct the deficiencies noted in the Laboratory Safety Inspection
10 Report dated November 5, 2008. (People's Exhibit 25.) Specifically, defendant Harran failed
11 implement the requirement that "lab coats . . . must be worn while conducting research and
12 handling hazardous material in the lab." The "hazard" of his personnel not wearing laboratory
13 coats was brought to defendant Harran's attention via the Laboratory Inspection Report.
14 (People's Exhibit 25.) As articulated in the Handbook for Employees, a supervisor must
15 "identify hazards and then implement measures to eliminate or control those hazards and provide
16 proper safety equipment and personal protective equipment to employees." (People's Exhibit 26
17 p. 11.) By failing to correct the noted deficiencies, defendant Harran failed to implement and
18 maintain the Injury and Illness Prevention Program.

19 Moreover, the UCLA Department of Chemistry and Biochemistry Laboratory Safety
20 Manual (People's Exhibit 28) states that, as a requirement of the Injury and Illness Prevention
21 Program, "[a]ll laboratory personnel must follow standard operating procedures, regulations and
22 university policy." Again, by failing to correct the noted deficiencies, defendant Harran failed to
23 implement and maintain the Injury and Illness Prevention Program.

24 In Count 3, the regulations violated were California Code of Regulations, Title 8,
25 Sections 3383(a) and (b), which state in pertinent part:

1 Body Protection

2 (a) Body protection may be required for employees whose work
3 exposes parts of their body, not otherwise protected as required by
4 other orders in this article, to hazardous or flying substances or
5 objects.

6 (b) Clothing appropriate for the work being done shall be worn.
7 Loose sleeves, tails, ties, lapels, cuffs, or other loose clothing
8 which can be entangled in moving machinery shall not be worn.

9 In the instant case, defendant Harran did not enforce the requirement that body protection
10 be worn by victim Sangji despite the fact that the work she was doing for defendant Harran
11 exposed parts of her body to tert-Butyllithium, a hazardous substance. When asked if there were
12 occasions when he would see people in the lab not wearing lab coats, defendant Harran stated
13 that there were times when his people did not wear lab coats and he did not say anything about
14 that to them. (R.T. p. 116:9-20.) Moreover, defendant Harran did not require victim Sangji to
15 wear clothing appropriate for her work transferring tert-Butyllithium, allowing her instead to
16 perform her work wearing a synthetic sweater that caught fire and contributed to the severity of
17 her burns. (R.T. pp. 462:26-463:10.)

18 IV.

19 **Defendant Harran Was Aware of His Duties to Train Victim Sangji,
20 Correct Unsafe Conditions in His Laboratory, and Require the
21 Use of Proper Personal Protective Equipment**

22 The defense claims that, because defendant Harran did not know of his duties to properly
23 train victim Sangji, defendant Harran did not act “willfully.” The defense is incorrect.

24 **A. Defendant Harran need not have had knowledge of his specific duties in order to
25 have acted “willfully.”**

Labor Code section 6425(e) defines “willfully” for purposes of these crimes as having
“the same definition as it has in Section 7 of the Penal Code.” Penal Code section 7 states, in
pertinent part: “The following words have in this code the signification attached to them in this

1 section, unless otherwise apparent from the context: 1. The word ‘willfully,’ when applied to the
2 intent with which an act is done or omitted, implies simply a purpose or willingness to commit
3 the act, or make the omission referred to. It does not require any intent to violate law, or to
4 injure another, or to acquire any advantage.”

5 In *People v. Atkins* (2001) 25 Cal.4th 76, 85, the court stated:

6 The terms “willful” or “willfully,” when applied in a penal statute,
7 require only that the illegal act or omission occur “intentionally,
8 without regard to motive or ignorance of the act’s prohibited
9 character.” (*Hale v. Morgan* (1978) 22 Cal. 3d 388, 396 and cases
10 cited therein.) “Willfully implies no evil intent; it implies that the
11 person knows what he is doing, intends to do what he is doing and
12 is a free agent.” [Citation.] (*People v. Bell* (1996) 45 Cal. App. 4th
13 1030, 1043; see also *In re Trombley* (1948) 31 Cal. 2d 801, 807.)
14 The use of the word “willfully” in a penal statute usually defines a
15 general criminal intent, absent other statutory language that
16 requires “an intent to do a further act or achieve a future
17 consequence.” (*People v. Bell, supra*, 45 Cal. App. 4th at p. 1043;
18 see also *People v. Sargent* (1999) 19 Cal. 4th 1206, 1215, 1219,
19 *People v. Colantuono* (1994) 7 Cal. 4th 206, 213-215.)

20 In the instant case, it is clear that defendant Harran was a free agent who knew he did not
21 train victim Sangji and did not intend to train her. In fact, defendant Harran would normally
22 have assigned a post-doctoral fellow to work with someone of victim Sangji’s level of
23 experience but did not do so because the post-doctoral fellow in the laboratory, Dr. Paul Hurley,
24 was involved in other matters. (R.T. p. 932:25- 93:3.) His actions were not accidental; he
25 voluntarily chose not to train victim Sangji. This state of mind is all that is required to establish
a violation of Labor Code section 6425(a).

26 The defense cites *People v. Garcia* (2001) 25 Cal.4th 744, 752 for the proposition that,
27 when a violation involves failure to perform a legally imposed duty, knowledge of that duty is
28 required. *Garcia*, however, involved a failure to register as a sex offender under Penal Code
29 section 290, and there is nothing to indicate that, absent specific knowledge that he was required
30 to register, defendant Garcia would have any clue that such a duty was imposed. The defense

1 has cited no authority for the proposition that such a knowledge requirement is present here, and
2 indeed, if the Legislature had wanted to require knowledge on the part of defendant Harran, it
3 could have imposed such a requirement in the statute. That the Legislature did not impose such a
4 requirement argues strongly against the defense position that knowledge of a duty to act is
5 required in order to prove a violation of Labor Code section 6425(a).

6 **B. Defendant Harran was aware of his duties to train victim Sangji, to correct**
7 **workplace violations, and to ensure that proper personal protective equipment**
8 **was used.**

9 Although the People are not conceding that knowledge of his specific duties under the
10 law is a prerequisite to holding defendant Harran to answer on the charges, defendant Harran
11 clearly knew of his duty to train victim Sangji, to correct workplace violations, and to ensure that
12 proper personal protective equipment was used. Defendant Harran admitted he knew of these
13 duties, he was provided with material from UCLA that advised him of these duties, and common
14 knowledge in the profession as well as common sense shows that he knew of his duties.

15 **1. Defendant Harran admitted that he knew of these duties.**

16 Defendant Harran was interviewed at length by Investigator Brian Baudendistel.
17 Defendant Harran admitted that he was responsible for training the personnel under his direction
18 and control and that he was specifically responsible for training with regard to safety items or
19 issues relative to the handling of compounds that were within the realm of his research. (R.T. p.
20 90:3-7.) He further stated that all safety training with regard to victim Sangji was his
21 responsibility, (R.T. p. 92:13-20) and, when asked who was specifically responsible for victim
22 Sangji's safety training, defendant Harran stated that he was the person responsible. (R.T. p.
23 401:6-9).

1 **2. Defendant Harran received materials from UCLA that advised him of his**
2 **duties to follow UCLA policies and applicable law.**

3 As noted above, as part of the hiring process for UCLA, defendant Harran was provided
4 with a “Handbook for Employees” by the Department of Environment, Health and Safety
5 (People’s Exhibit 26) and signed an “Employee Acknowledgement” (People’s Exhibit 27), dated
6 June 2, 2008, that he received this document. Moreover, Investigator Baudendistel discussed
7 People’s Exhibit 26 with defendant Harran. (R.T. pp. 112:19- 114:9.)

8 As briefly discussed earlier, UCLA’s Injury and Illness Prevention Plan (IIPP), is
9 designed to create and maintain a safe and healthful campus, and is based on Cal/OSHA
10 standards and other federal, state and local regulations. (People’s Exhibit 26.) Some of the
11 responsibilities of supervisors and managers are specified on page 11 of People’s Exhibit 26.
12 These responsibilities include, but are not limited to, analyzing work procedures to identify
13 hazards and then implement measures to eliminate or control those hazards, ensuring that
14 employees are trained to identify and mitigate potential hazards associated with their work
15 activities and that such training efforts are properly documented, establishing and enforcing safe
16 operating procedures for job tasks, and providing proper safety equipment and personal
17 protective equipment to employees.

18 Additionally, defendant Harran was provided with a UCLA Department of Chemistry and
19 Biology Laboratory Safety Manual (People’s Exhibit 28). Although the defense inaccurately
20 claims that “**The People failed to provide any evidence, however, that the Laboratory Safety**
21 **Manual was provided to Professor Harran prior to the lab accident,**” (M.T.D. pp. 11:24-
22 12:4, emphasis in original), the evidence clearly shows that defendant Harran received People’s
23 Exhibit 28 “sometime in November” of 2008 (R.T. p. 115:10-19) and that, after he received the
24 Manual, he discussed it with Andrew Roberts, a graduate student researcher in his lab. (R.T. p.
25

1 395:12-27.)⁴ Likewise, Michael Wheatley, the Chemical Safety Officer for the Department of
2 Chemistry at UCLA, stated that he believed he provided People’s Exhibit 28 to defendant Harran
3 “subsequent to his inspection. Probably sometime in November . . .” although he did not have a
4 “specific date.” (R.T. pp. 141:25-142:5.) This makes sense because, during his lab inspection
5 on October 30, 2008, Mr. Wheatley noted in his report that defendant Harran’s lab did not have a
6 lab safety manual and further noted that Mr. Wheatley would provide one. (People’s Exhibit 25,
7 2nd page.)

8 The Laboratory Safety Manual, People’s Exhibit 28, lists the various duties of a Principal
9 Investigator such as defendant Harran. Specifically, at pages 3-5, the Manual states that
10 Principal Investigators “have the primary responsibility for the activities of their staff and for
11 conditions in the rooms and areas under their control,” and further states that it is the
12 responsibility of the Principal Investigators to “continually educate all laboratory personnel on
13 the potential hazards associated with a specific task and the precautionary measures (laboratory
14 practices, engineering controls, and personal protective equipment) appropriate for the hazards;
15 monitor staff to ensure safe work practices are followed; determine the level of protective
16 apparel and equipment required to adequately protect lab personnel; and meet the legal
17 requirements of governmental legislation for occupational health and safety, and waste disposal
18 as advised by the Office of Environment, Health & Safety.”⁵

19 The Laboratory Safety Manual contains additional information informing defendant
20 Harran that Cal/OSHA requires each laboratory to have a written Chemical Hygiene Plan and
21 provides for the minimum requirements of that plan. The Laboratory Safety Manual defendant
22 Harran received around November 2008 further informed defendant Harran of his Cal/OSHA
23 mandated obligation to include laboratory specific Standard Operating Procedures (SOPs) for

24 _____
25 ⁴ Andrew Roberts was present with Michael Wheatley, the Chemical Safety Officer, when Mr. Wheatley conducted his inspection of the defendant Harran’s lab on October 30, 2008. (R.T. p. 222:17-21.)

⁵ This is only a partial list of the responsibilities of the Principal Investigator contained in the Manual.

1 hazardous substances and processes in his Chemical Hygiene Plan. Regarding Standard
2 Operating Procedures, the Manual states that “[s]ince research varies from lab to lab, each PI
3 [Principal Investigator] is responsible for his/her own procedures. (People’s Exhibit 28, p. 97.)

4 **3. Common knowledge and common sense show that defendant Harran was**
5 **aware of his duties.**

6 In addition to the fact that defendant Harran acknowledged he knew he was responsible
7 for victim Sangji’s safety training, and the fact that he received written notification from UCLA
8 of his duties, common knowledge in the profession and common sense dictate that defendant
9 Harran was aware of his duties. Defendant Harran was in charge of his lab, and he directed the
10 research that was conducted in his lab. (R.T. pp. 89:18-90:2.) He had been a Principal
11 Investigator since at least 1997. (R.T. p. 89:12-20.) He had primary responsibility for the
12 activities of his staff and, in the lab, was the “top of the chain of command” and was “therefore
13 directly responsible to make sure that the people that have tasks to do, he or she does the work
14 correctly.” (R.T. p. 492:2-25.) It would be inconceivable that such an esteemed individual as
15 defendant Harran would be ignorant of his responsibilities to the safety of his staff and his duties
16 to follow safety regulations.

17 **C. Defendant Harran need not have been aware that his conduct was unlawful.**

18 The defense, in its motion, claims that there was insufficient evidence adduced at the
19 preliminary hearing that defendant Harran “was aware of facts suggesting criminal liability.”
20 (M.T.D. p. 33:12-15.) This claim is without merit. At a minimum, it is clear that the term
21 “willfully” does not require any intent to violate the law. California Penal Code section 7(1).

22 As previously noted, in *People v. Atkins* (2001) 25 Cal.4th at 85, the court stated that
23 “[t]he terms ‘willful’ or ‘willfully,’ when applied in a penal statute, require only that the illegal
24 act or omission occur ‘intentionally, without regard to motive or ignorance of the act’s prohibited
25

1 character.’ (Citation omitted.) ‘Willfully implies no evil intent. . . .’ Thus defendant Harran
2 need not have known that his conduct was criminal in order to be guilty of the crimes charged.

3 In short, although the People do not concede that knowledge is required, defendant
4 Harran clearly knew of his duties to train, to correct deficiencies, and to require proper personal
5 protective equipment and chose to ignore those obligations.

6
7 V.

8 **Victim Sangji Was Not Properly and Sufficiently Trained**
9 **for the Tasks She Was Asked to Perform**
10 **in Defendant Harran’s Laboratory**

11 Defendant Harran was responsible for training victim Sangji in the hazards associated
12 with the transfer of tert-Butyllithium and the proper techniques to avoid those hazards. As noted
13 above, California Code of Regulations, Title 8, Section 5191(f)(4), states, in pertinent part, that
14 employee training shall include:

15 2. The physical and health hazards of chemicals in the work area;
16 and

17 3. The measures employees can take to protect themselves from
18 these hazards, including specific procedures the employer has
19 implemented to protect employees from exposure to hazardous
20 chemicals, such as appropriate work practices, emergency
21 procedures, and personal protective equipment to be used.

22 (B) The employee shall be trained on the applicable details of the
23 employer's written Chemical Hygiene Plan.

24 In the instant case, defendant Harran did not train victim Sangji regarding the hazards of
25 tert-Butyllithium nor did he train her on the measures she could take to protect herself from those
hazards. The evidence is clear that neither defendant Harran, nor anyone else at his direction,
provided proper and appropriate training to victim Sangji and, contrary to the defense arguments,
there is absolutely no evidence to suggest otherwise. Moreover, victim Sangji was never trained

1 in the details of the Chemical Hygiene Plan, and in fact it is clear that defendant Harran never
2 formulated a written Chemical Hygiene Plan.

3 The defense claims that 1) Victim Sangji was sufficiently trained because academic labs
4 used lower training standards than industry labs; 2) Defendant Harran believed that victim Sangji
5 had been trained on the dangers of tert-Butyllithium and the proper methods for transferring this
6 extremely hazardous chemical; 3) Defendant Harran trained victim Sangji himself; 4) Defendant
7 Harran delegated victim Sangji's training to Dr. Paul Hurley; and 5) Dr. Paul Hurley was
8 responsible for the training of victim Sangji. Each of the defense claims is incorrect.

9 **A. Defendant Harran was responsible for the proper training of victim Sangji.**

10 In addition to the legal requirements that defendant Harran properly train victim Sangji
11 noted above, materials provided to defendant Harran by UCLA also contained training
12 requirements. As previously noted, the Laboratory Safety Manual, People's Exhibit 28, lists the
13 various duties of a Principal Investigator such as defendant Harran. Specifically, at pages 3-5,
14 the Manual states that Principal Investigators "have the primary responsibility for the activities
15 of their staff and for conditions in the rooms and areas under their control," and further states that
16 it is the responsibility of the Principal Investigators to "continually educate all laboratory
17 personnel on the potential hazards associated with a specific task and the precautionary measures
18 (laboratory practices, engineering controls, and personal protective equipment) appropriate for
19 the hazards; monitor staff to ensure safe work practices are followed; [and] determine the level
20 of protective apparel and equipment required to adequately protect lab personnel."

21 Additionally, defendant Harran was provided with a Handbook for Employees, People's
22 Exhibit 26, which specified the responsibilities of supervisors and managers. These
23 responsibilities include, but are not limited to, analyzing work procedures to identify hazards and
24 then implementing measures to eliminate or control those hazards, ensuring that employees are
25 trained to identify and mitigate potential hazards associated with their work activities and that

1 such training efforts are properly documented, establishing and enforcing safe operating
2 procedures for job tasks, and providing proper safety equipment and personal protective
3 equipment to employees.

4 The evidence is clear that defendant Harran did not provide the training required by law
5 or by UCLA regulations and policies. Perhaps recognizing the absolute failure to train on the
6 part of defendant Harran, the defense attempts to circumvent this requirement by claiming that
7 subsection (f)(1) places the responsibility for training solely with UCLA. (M.T.D. p. 27:1-4.)
8 The defense is incorrect.

9 As previously noted, defendant Harran acted as an employer with regard to the hiring of
10 victim Sangji. Even assuming, however, that UCLA is the actual employer, the responsibility for
11 training victim Sangji fell squarely on defendant Harran. Defendant Harran admitted as much in
12 his interview with Investigator Baudendistel. (R.T. p. 90:3-7; p. 92:13-20; p. 401:6-9.)
13 Moreover, UCLA clearly advised defendant Harran that such training was his responsibility
14 through the Employee Handbook and Laboratory Safety Manual. Finally, common sense
15 dictates that individual Principal Investigators would need to train their employees on the
16 hazards and safety procedures of chemicals specific to their laboratories.

17 **B. The fact that academic laboratories in general had a lower standard of training**
18 **than industrial laboratories is not a defense.**

19 It is axiomatic that the law applies equally to everyone. In the instant case, the California
20 Labor Code and the applicable portions of Title 8 of the California Code of Regulations apply
21 equally to industrial laboratories and academic laboratories. If this basic premise of law needs
22 further amplification, Investigator Baudendistel testified that he did not agree with the premise
23 that the standards of care for safety in academic laboratories differ from the standards of care in
24 industrial laboratories (R.T. p. 255:5-8), and Dr. Langerman also testified that, in his expert
25

1 opinion, the standard of care between an academic laboratory and an industrial laboratory were
2 not different. (R.T. p. 428:8-24.)

3 Both Investigator Baudendistel and Dr. Langerman do agree, however, that the level of
4 training and maintenance of safety standards in industrial laboratories is much higher than that in
5 academic laboratories. Moreover, Investigator Baudendistel testified that he believes there is
6 less compliance with applicable regulations in the university setting than there is in industry.
7 (R.T. pp. 255:15-256:2; pp. 428:25-429:9.)

8 The defense, in its motion, argues that defendant Harran's actions were consistent with
9 then-existing standards of care in the academic community. (M.T.D. p.33:14-15.) There is no
10 evidence, however, to support this claim. The defense then argues that, because academic
11 laboratories in general train to a lower standard of safety, the law as it applies to academic
12 laboratories must therefore be less-stringent than the law as it applies to industrial laboratories.
13 (M.T.D. p. 35:5-6; p. 36:3-12.) Not surprisingly, the defense cites no authority for this novel
14 interpretation of the law. This argument is completely without merit and is akin to claiming that,
15 if my peers do not follow the law, I am not required to follow the law either. The lives and
16 welfare of workers in academic laboratories are no less important than their peers who work in
17 industrial laboratories, and the laws, rules and regulations of Cal/OSHA provide them with the
18 same level of protection.

19 **C. There is no evidence that defendant Harran reasonably believed that Victim**
20 **Sangji had been properly trained in the dangers and use of tert-Butyllithium.**

21 The defense next claims that defendant Harran reasonably believed that victim Sangji had
22 been properly trained prior to beginning work in his laboratory. (M.T.D. pp. 14:1-16:18; p. 39:1-
23 15.) As support for this claim, the defense cites defendant Harran's self-serving statement to
24 Investigator Baudendistel that he believed victim Sangji was "an experienced chemist." The
25 defense also claims that "Dr. Langerman opined that Professor Harran believed that Ms. Sangji

1 was (1) familiar with handling air-sensitive compounds” even though the cited portion of the
2 transcript contains no such testimony. (M.T.D. p. 32:8-10.)

3 Although, as noted below, there is no evidence to support defendant Harran’s “belief,”
4 the defense fails to address the threshold issue that defendant Harran’s “belief” is not a defense
5 to the crimes with which he is charged. The defense has cited no authority for the claim that,
6 even if defendant Harran believed that victim Sangji was an “experienced chemist,” this would
7 somehow relieve him of his duty to train her in the physical and health hazards of tert-
8 Butyllithium and the measures she could take to protect herself from these hazards. Moreover,
9 there is absolutely no evidence that victim Sangji was trained regarding these hazards or was
10 trained in the measures she could take to protect herself from these hazards as required by law.

11 It is also clear that defendant Harran knew that victim Sangji required training to perform
12 safely in his laboratory. Defendant Harran told Investigator Baudendistel that, “because of her
13 level of experience, he would normally have assigned a postdoc [post-doctoral researcher] to
14 work with her initially.” (R.T. p. 92:21-27.) This statement shows that defendant Harran was
15 well aware that victim Sangji needed training to safely handle her work in his laboratory due to
16 her lack of experience.

17 The defense, in its motion, also repeatedly cites testimony that does not support its
18 position on this issue. For example, the defense repeatedly cites the fact that victim Sangji “had
19 been published in peer-reviewed journals” for the proposition that this somehow constitutes
20 evidence of her training in the proper handling of pyrophorics. (M.T.D. p. 14:125-16.) The
21 defense fails to mention that victim Sangji’s contribution to these articles consisted of taking
22 measurements and did not involve bench work in the chemistry laboratory at all. (R.T. pp.
23 389:6-24- 390:24.)
24
25

1 **1. Nothing in victim Sangji’s resume or application suggest that she was**
2 **familiar with the hazards of and procedures related to tert-Butyllithium.**

3 The defense cites victim Sangji’s resume (M.T.D. p. 14:5-7) and the fact that she applied
4 for the position in defendant Harran’s laboratory (M.T.D. pp. 15:22-16:14) as evidence that
5 defendant Harran reasonably believed that she had already been properly trained as required by
6 law. The defense also cites victim Sangji’s PowerPoint attachment to her resume for the
7 proposition that she “had experience with the transfer of . . . (a pyrophoric reagent.) (M.T.D.
8 p.15:4-6.) The citation to victim Sangji’s PowerPoint is inapposite and misleading, however,
9 because there is nothing to suggest any similarity between the procedure mentioned in the
10 PowerPoint attachment and the procedure that killed victim Sangji. It is impossible to ascertain
11 victim Sangji’s contribution to the PowerPoint, as the PowerPoint reflects a collaboration among
12 three laboratories. (Defense Exhibit D.) There is nothing to suggest that victim Sangji had
13 actually transferred a pyrophoric reagent, and nothing whatsoever in victim Sangji’s resume,
14 application, or PowerPoint presentation to suggest that she was familiar with tert-Butyllithium or
15 the procedures involved in its transfer.

16 Moreover, victim Sangji was hired by defendant Harran to handle instrumentation in
17 defendant Harran’s laboratory. (R.T. p. 92:6-12.) This is consistent with the experience victim
18 Sangji had obtained in her lab work at Pomona College, as outlined in her resume and
19 PowerPoint presentation. Defendant Harran, as a “Nationally-Renowned Synthetic Organic
20 Chemist,” having received victim Sangji’s resume and application, and knowing that victim
21 Sangji had graduated from college a mere five months before she was hired by him, would have
22 been familiar with her limitations, would have been well aware that she did not have any training
23 in the use of pyrophorics, and would have known that she did not have the training and skill to
24 work with tert-Butyllithium. (R.T. pp. 421:28-422:8.)

1 2. There is nothing to suggest victim Sangji received training at Pomona
2 College regarding the hazards of or procedures related to tert-
3 Butyllithium.

4 The defense also claims that victim Sangji “gained experience with transferring
5 hazardous and air sensitive chemicals” during college, that she worked with organic solvents and
6 that flammable solvents were present in the lab, and that victim Sangji was “instructed in lab
7 safety training every summer.” (M.T.D. p. 14:18-22.) Once again, the cited testimony is
8 misleading.

9 Initially, it is clear that working with “organic solvents” or in a laboratory where
10 “flammable solvents” are present is hardly relevant with regard to proper training related to the
11 transfer of tert-Butyllithium. For example, acetone is both an “organic solvent” and a
12 “flammable solvent” and is the main chemical ingredient found in nail polish remover.
13 Chemicals such as ethanol (alcoholic beverages) and propanol (common rubbing alcohol) are
14 common chemicals found on the shelves in every organic chemistry laboratory across the
15 country. To suggest that experience with these “flammable organic solvents” is equivalent to
16 something as “nasty as t-Butyllithium” is ludicrous. Moreover, there is nothing to suggest that
17 victim Sangji attended lab safety training “every summer” (R.T. pp. 289:18-290:5) or that the lab
18 safety training related in any way to issues relevant to the instant case. In fact, Dr. O’Leary,
19 stated that this “safety training” related to fume hood operation, a staged dorm fire, and anger
20 management issues in the workplace, *did not* involve “safety training relative to specific
21 compounds or reagents,” and that “pyrophorics were not covered in that safety training.” (R.T.
22 p. 392:4-18.)

23 Dr. O’Leary also stated that victim Sangji’s contribution to the two “published
24 manuscripts” involved taking measurements on compounds and did not involve bench chemistry
25 (R.T. p. 389:6-24), that none of her work involved pyrophorics, and that victim Sangji “wouldn’t

1 have had any experience in his lab working with something as nasty as t[ert]-Butyllithium.”

2 (R.T. pp. 390:25-391:19.) Finally, Dr. Langerman stated that, after reviewing victim Sangji’s
3 Pomona College transcripts, resume, and research articles, in his expert opinion victim Sangji did
4 not have the training and skill to work with t[ert]-Butyllithium from her undergraduate
5 experience. (R.T. pp. 421:28-422:8.)

6 **3. There is nothing to suggest victim Sangji received training at Norac**
7 **Pharma regarding the hazards of or procedures related to tert-**
8 **Butyllithium.**

9 The defense next claims that victim Sangji had “top notch safety training in an industrial
10 lab, particularly with respect to PPE [Personal Protective Equipment] use.” (M.T.D. p.15:8-9.)

11 There is nothing to suggest, however, that this training related in any way to the hazards
12 associated with tert-Butyllithium. The defense cites training at Norac Pharma in the use of toxic
13 chemicals and how to avoid “grave mistakes,” yet nothing in the evidence suggests the actual
14 content of these classes or that the training involved anything of relevance to the instant case.

15 Likewise, the defense claims that victim Sangji received training in “gowning” without
16 mentioning that “gowning” involves donning a complete body covering in a manufacturing lab
17 to avoid contaminating the product being manufactured and has nothing to do with safety. (R.T.
18 p. 442:19-24.)

19 When victim Sangji worked for four months at Norac Pharma, she was employed as a
20 junior level research chemist who did not do any independent work and was only allowed to
21 work at a lab bench in the presence of a senior chemist. (R.T. pp. 439:21-440:3.) She did not
22 use pyrophorics at Norac, never used tert-Butyllithium, was closely supervised by senior
23 personnel and was never allowed to do anything on her own. (R.T. pp. 250:15-251:4.) The
24 training she received at Norac Pharma clearly did not prepare her for her work with tert-
25 Butyllithium in defendant Harran’s laboratory.

1 4. There is nothing to suggest that defendant Harran's observations on
2 October 14, 2008, evidenced victim Sangji's familiarity with the hazards
3 of and procedures related to tert-Butyllithium.

4 Finally, the defense suggests that because defendant Harran observed victim Sangji
5 transfer an air-sensitive reagent on one occasion, he determined that she was competent to work
6 with tert-Butyllithium. (M.T.D. p. 19:13-15.) This suggestion is inaccurate.

7 As noted repeatedly, the law requires that defendant Harran train victim Sangji in the
8 hazards of tert-Butyllithium and the measures she could take to protect herself from those
9 hazards, including but not limited to appropriate work practices. The defense fails to show how
10 a single observation of a different procedure involving a different, benign reagent suggests that
11 this responsibility was fulfilled.

12 The defense repeatedly claims that the "technique" for transferring air-sensitive reagents
13 and pyrophorics is exactly the same (M.T.D. p. 16:24-27) and from that concludes that, because
14 defendant Harran observed victim Sangji transfer an air-sensitive reagent on October 14, 2008,
15 he fulfilled his training obligations. This claim is without merit.

16 Initially, it is perfectly clear from the evidence that the hazards posed by pyrophoric
17 chemicals differ significantly from the hazards posed by air-sensitive reagents. (R.T. p.
18 417:18:20; p. 343:11-18.) Nothing that occurred on October 14, 2008, suggests that victim
19 Sangji was familiar with the physical and health hazards of tert-Butyllithium.

20 Moreover, the evidence shows that the procedure observed by defendant Harran on
21 October 14, 2008, differed significantly from the procedure victim Sangji was attempting on
22 December 29, 2008. In addition to the difference in hazard, on October 14, 2008, victim Sangji
23 was working in a "glove bag," which is a self-contained inert atmosphere chamber designed to
24 preclude contact with oxygen. The volumes were also significantly different; on October 14,
25 2008, victim Sangji was working with five milliliters of solvent, while on December 29, 2008,

1 victim Sangji was working with total volumes of tert-Butyllithium in the area of 160 milliliters.
2 (R.T. pp. 418:11-419:16.) This difference in volume, combined with victim Sangji's lack of
3 familiarity with the hazards of tert-Butyllithium and the proper methods for transferring such a
4 large quantity, contributed directly to the incident that caused her death.

5 **D. Defendant Harran did not properly train victim Sangji.**

6 The defense suggests that defendant Harran did in fact train victim Sangji because he
7 observed her perform a single transfer of an air-sensitive reagent, Grubbs 2, on October 14,
8 2008. The defense argues that such an observation constitutes sufficient "training" under the
9 Cal/OSHA guidelines. (M.T.D. pp. 18:22-19:6.) This claim is without merit.

10 **1. Ineffective training does not satisfy defendant Harran's legal obligation**
11 **to train victim Sangji.**

12 Initially, the defense attempts to claim that nothing in the Cal/OSHA regulations requires
13 that the training provided be "effective." (M.T.D. p. 37:11-15.) While creative, this argument
14 defies common sense as well as the evidence adduced at the preliminary hearing.

15 While the defense is correct that the law does not specify the exact nature of the training
16 required, Section 5191(f)(4) requires that employees be trained in the physical and health hazards
17 of chemicals in the work area and the measures employees can take to protect themselves from
18 these hazards. Moreover, when questioned as to whether Cal/OSHA required "effective
19 training," Dr. Langerman testified that it did, stating: "The training regulation uses language
20 close to 'sufficient for the employee to do the required work safely.' That to me implies
21 effective training." Dr. Langerman further stated that the employer was required to demonstrate
22 "that training was given which set the employee up for safe work practices," (R.T. pp. 469:28-
23 470:16) and that Cal/OSHA regulations required that employees be "trained to perform their
24 required tasks." (R.T. p.465:9-14.) The law obviously requires that employees not only be
25 trained, but be effectively trained.

1 **2. Even though he admitted that he was responsible for victim Sangji's**
2 **safety training, there is no evidence that defendant Harran provided any**
3 **training to victim Sangji.**

4 There is absolutely no evidence that defendant Harran provided victim Sangji with any
5 type of training whatsoever. At best, the evidence suggests that defendant Harran “discussed his
6 expectations with victim Sangji,” told her “to seek out other personnel who had experience with
7 the questions that she had, that were working in the lab, and to go through them for guidance,”
8 and told her on December 29, 2008, to “be careful, and that was it.” (R.T. p. 93:4-26.)

9 Defendant Harran did not discuss AL-134 (People’s Exhibit 22, the Aldrich training
10 bulletin regarding handling air-sensitive reagents) with victim Sangji, he was not aware if anyone
11 in his lab had discussed AL-134 with victim Sangji, he was not aware if victim Sangji had
12 received AL-164 (People’s 23, the Aldrich training bulletin regarding handling pyrophoric
13 reagents), he did not keep the Material Safety Data Sheet (“MSDS”) for tert-Butyllithium
14 (People’s Exhibit 24) on file in his lab,⁶ he did not discuss the MSDS for tert-Butyllithium with
15 victim Sangji, he was not aware if Dr. Hurley had discussed the MSDS for tert-Butyllithium with
16 victim Sangji, he never discussed the nature or characteristics of tert-Butyllithium with victim
17 Sangji, he was not aware if anyone in his laboratory had discussed the nature or characteristics of
18 tert-Butyllithium with victim Sangji, he was not aware if anyone had given victim Sangji any
19 specific instructions regarding the handling of tert-Butyllithium, and he never indicated that
20 anyone was supervising victim Sangji on December 29, 2008. (R.T. pp. 97:15-101:27.)

21 Defendant Harran did not have a written Chemical Hygiene Plan⁷, nor did he have a “Standard
22 Operating Procedure” for the use of tert-Butyllithium. (R.T. p. 95:17-26.) The Principal

23 _____
24 ⁶ The UCLA Employee’s Handbook required supervisors to ensure that MSDSs were present for chemicals to be
used in the department and to make MSDSs readily available to employees. (People’s Exhibit 26, p. 11.)

25 ⁷ The UCLA Laboratory Safety Manual advised that Cal/OSHA required each laboratory to have a written Chemical
Hygiene Plan that must contain standard operating procedures relevant to safety and health considerations to be
followed when laboratory work involved the use of hazardous chemicals. (People’s Exhibit 28, p. 4.)

1 Investigator of a lab is responsible for meeting the requirement that laboratories provide
2 Standard Operating Procedures, and references to bulletins online are not sufficient Standard
3 Operating Procedures. (R.T. p. 492:26-493:9; p. 486:12-21.) Moreover, on December 29, 2008,
4 defendant Harran was aware that victim Sangji was going to attempt to “scale up” the procedure
5 she had done on October 17, 2008, but he never bothered to inquire as to the level of the scale-
6 up. (R.T. p. 94:13-19.)

7 **3. Defendant Harran’s conduct did not constitute “training” for purposes of**
8 **California Code of Regulations, Title 8, Section 5191(f)(4).**

9 Finally, the defense argues that defendant Harran’s conduct did constitute sufficient
10 training because he observed victim Sangji conduct a transfer of an air-sensitive reagent on
11 October 14, 2008. (M.T.D. pp. 17:21-19:6.) As noted above in Section VI(C)(4), the procedure
12 defendant Harran observed on October 14, 2008, was not the same procedure that victim Sangji
13 was attempting to perform on December 29, 2008. Moreover, even if it was the same, this single
14 observation is not sufficient “training” to satisfy defendant Harran’s legal obligations.

15 As previously noted, Section 5191(f)(4) requires that employees be trained in the
16 physical and health hazards of chemicals in the work area and the measures employees can take
17 to protect themselves from these hazards. Dr. Mark Poyten, the Research and Development
18 scientist from Sigma-Aldrich, stated that, with regard to handling pyrophorics: “Well, I can say
19 here at Aldrich we do do *extensive training* on how to use these techniques [transfer
20 pyrophorics], since many of the people, the operators here that simply have a chemistry degree
21 and not a graduate chemistry degree, we spend time doing it in multiple stages, that is, they
22 watch me do the transfer, and then I watch them do the transfer, and once they are comfortable
23 enough then to be able to proceed with the transfer by themselves. That’s the stepwise fashion
24 we do training here.” (R.T. p. 407:18-27, emphasis added.)

1 Likewise, Dr. Langerman testified: “While the exact training procedure for a new person
2 to learn to safely handle a pyrophoric chemical will vary by laboratory, it must include a
3 demonstration of how to properly perform the procedure, one or more practice sessions with an
4 inert liquid, and then a number of observed uses of the reagent, until the person demonstrates
5 sufficient knowledge and skill to safely handle the chemical and procedure without direct
6 supervision.” (R.T. pp. 473:27-474:11.) Additionally, Dr. Langerman testified that the
7 procedure observed by defendant Harran on October 14, 2008, would not constitute “a practice
8 session with an inert liquid.” (R.T. pp. 474:12-475:13.) Therefore, according to Dr. Langerman,
9 the procedure observed by defendant Harran on October 14, 2008, would not even constitute a
10 step in the training process.

11 It is also clear that the defense claim that victim Sangji was properly trained because she
12 could have read the warning label on the bottle of tert-Butyllithium (M.T.D. p. 24:21-22) is
13 without merit. Likewise, advising victim Sangji “to seek out other personnel who had
14 experience with the questions that she had, that were working in the lab, and to go through them
15 for guidance,” and to “be careful” is not training in any sense of the word.

16 **E. Defendant Harran did not delegate his duty to train victim Sangji to Dr. Paul**
17 **Hurley or to anyone else.**

18 In its motion, the defense repeatedly claims that defendant Harran fulfilled his duty to
19 train victim Sangji because he delegated his duty to train victim Sangji to Dr. Paul Hurley. (E.g.
20 M.T.D. p. 38:11-28.) There is absolutely no evidence to support this claim.

21 **1. There is no evidence that defendant Harran delegated his duty to train**
22 **victim Sangji to Dr. Paul Hurley.**

23 The defense claims that it would have been reasonable for defendant Harran to delegate
24 his duty to train victim Sangji to Dr. Paul Hurley because Dr. Hurley was the “go to” person in
25 the laboratory (M.T.D. p. 19:19-23) and because Dr. Hurley was published in the field of

1 pyrophorics. (M.T.D. p. 38:17-25.) Regardless of whether or not it would have been reasonable
2 to do so, there is absolutely no evidence that defendant Harran did in fact delegate his training
3 duties to Dr. Hurley.

4 As noted above, defendant Harran told Investigator Baudendistel that, “because of her
5 [victim Sangji] level of experience, he would normally have assigned a postdoc [post-doctoral
6 researcher] to work with her initially.” (R.T. p. 92:21-27.) Defendant Harran continued: “He
7 [defendant Harran] mentioned Dr. Paul Hurley, who was a postdoc in the lab, but indicated that
8 Dr. Hurley was involved in other matters, *so that she was not assigned to anyone to train her.*”
9 (R.T. pp. 92:27-93:3, emphasis added.) It is therefore abundantly clear, from defendant Harran’s
10 own admission, that he did not delegate victim Sangji’s training to Dr. Hurley.

11 Moreover, defendant Harran stated that he told victim Sangji to seek out other personnel
12 in the lab if she had questions. (R.T. p. 93:7-12.) If defendant Harran had delegated his training
13 responsibilities to Dr. Hurley, he would not have needed to advise victim Sangji to ask “other
14 personnel” if she had questions; he would have simply told her to ask Dr. Hurley. Additionally,
15 when he was asked who specifically was responsible for victim Sangji’s safety training,
16 defendant Harran answered “he was.” (R.T. p. 401:6-9.) If defendant Harran had delegated the
17 responsibility for victim Sangji’s safety training to Dr. Hurley, he would have said so in response
18 to this question.

19 Finally, Dr. Hurley indicated that he never directly supervised anyone in the lab at UCLA
20 (R.T. p. 237:2-7) and that he did not recall ever supervising victim Sangji’s activities when she
21 was using tert-Butyllithium. (R.T. p. 238:12-17.) Defendant Harran never indicated that, on
22 December 29, 2008, victim Sangji was being supervised (R.T. p. 101:23-27), and on December
23 29, 2008, Dr. Hurley no longer worked in defendant Harran’s laboratory, having left in late
24 November 2008, to take a job in Canada. (R.T. p. 232:12-17.)
25

1 **2. Even if defendant Harran had delegated his duty to train victim Sangji to**
2 **Dr. Paul Hurley, this would not constitute a defense to the crimes**
3 **charged.**

4 The defense has cited no authority for its claim that defendant Harran’s purported
5 delegation of his duty to train victim Sangji to Dr. Hurley would constitute a defense to the
6 charged crimes. This is not surprising as no such authority appears to exist. At a minimum,
7 before he could delegate his legal responsibility to train victim Sangji to Dr. Hurley, defendant
8 Harran would need to ascertain that Dr. Hurley would train victim Sangji properly.

9 The defense has no authority for the claim that, if defendant Harran had delegated his
10 responsibility to train victim Sangji to Dr. Hurley, defendant Harran would therefore be relieved
11 of any legal responsibility if Dr. Hurley incorrectly trained victim Sangji. Regardless of any
12 purported delegation of duties, defendant Harran remained ultimately responsible for the training
13 of victim Sangji. As Dr. Langerman testified, although it may have been reasonable for
14 defendant Harran to rely on Dr. Hurley to train victim Sangji, “that doesn’t relieve the
15 requirement to make sure the training is – that’s being given is appropriate.” (R.T. pp. 480:24-
16 481:8.)

17 **F. There is no evidence that Dr. Paul Hurley trained victim Sangji.**

18 The defense, in its motion, also repeatedly claims that Dr. Paul Hurley trained victim
19 Sangji in the transfer of tert-Butyllithium. (M.T.D. pp. 19:19-20:20; p. 40:22-24.) There is,
20 however, no evidence that Dr. Hurley actually trained victim Sangji regarding the hazards of tert-
21 Butyllithium or the methods of transfer.

22 **1. Dr. Paul Hurley has no recollection of training victim Sangji.**

23 Dr. Paul Hurley was not the supervisor in defendant Harran’s laboratory who was
24 responsible for training, and in fact Dr. Hurley indicated that he never directly supervised anyone
25

1 at UCLA. (R.T. p. 237:2-7.) More specifically, Dr. Hurley had no recollection of ever
2 supervising victim Sangji's activities when she was using tert-Butyllithium. (R.T. p. 238:12-17.)

3 Dr. Hurley's work at UCLA did not involve pyrophorics, he had no specific procedure
4 that he followed when transferring pyrophorics, he had no specific recollection of AL-134, he
5 did not follow AL-134 as his Standard Operating Procedure, he did not recall discussing
6 establishing a protocol for the use of tert-Butyllithium with defendant Harran, he did not recall
7 having any conversation with defendant Harran about tert-Butyllithium, and he did not recall
8 ever developing a specific written protocol for handling tert-Butyllithium in defendant Harran's
9 laboratory. (R.T. pp. 232:1-237:2.)

10 Although the defense attempted to establish through Andrew Roberts that Dr. Hurley
11 conducted informal safety training in defendant Harran's laboratory, in reality Dr. Hurley only
12 provided "training" depending on what questions were asked. Dr. Hurley held no training
13 classes. (R.T. pp. 401:22-402:21.) This is consistent with Dr. Hurley's explanation that he
14 would answer general questions that other researchers or graduate students would have that
15 applied to their daily activities and that he would be "more than happy" to answer a question if
16 he could. (R.T. p. 329:18-23.)

17 Dr. Hurley was also specifically asked about his interaction with victim Sangji. Dr.
18 Hurley stated that he did not recall ever discussing the hazards of tert-Butyllithium with victim
19 Sangji, that he did not know if victim Sangji was aware of the hazards associated with tert-
20 Butyllithium, and that he did not recall whether he ever instructed victim Sangji on how to
21 transfer tert-Butyllithium from a reagent bottle. (R.T. pp. 238:23-241:18.)

22 **2. There is no evidence that Dr. Hurley provided victim Sangji with a**
23 **protocol for the transfer of tert-Butyllithium.**

24 The defense also attempts to show that Dr. Hurley provided victim Sangji with a protocol
25 for the transfer of tert-Butyllithium. There is, however, no evidence to support this claim.

1 It is uncontested that victim Sangji requested a protocol involving tert-Butyllithium from
2 Dr. Hurley. It is unclear, however, if Dr. Hurley responded to that request and, if so, what was
3 his response. Dr. Hurley indicated that he did not specifically recall responding to victim
4 Sangji's request, that he had no recollection if he gave her anything in response to her request,
5 and that he had no recollection of doing anything in response to her request. (R.T. pp. 237:8-
6 238:11.) At best, Dr. Hurley indicated that he "might have" given victim Sangji a protocol in
7 response to her request or that he might have pulled something from the Internet. No protocol
8 was ever recovered. (R.T. pp. 338:8-339:8.)

9 Finally, even if Dr. Hurley had provided victim Sangji with a protocol for the transfer of
10 tert-Butyllithium (and there is no evidence that he did), this would not constitute sufficient
11 "training" according to Dr. Poyten and Dr. Langerman.

12 **3. There is no evidence that Dr. Hurley instructed or assisted victim Sangji**
13 **during her use of tert-Butyllithium on October 17, 2008.**

14 The defense also claims that Dr. Hurley instructed and assisted victim Sangji during her
15 use of tert-Butyllithium on October 17, 2008. Once again, there is no evidence to support this
16 claim.

17 At best, the evidence shows that Dr. Hurley and victim Sangji had contact on October 17,
18 2008, near her fume hood. Dr. Ding stated that he observed Dr. Hurley and victim Sangji setting
19 up a reaction in victim Sangji's hood involving tert-butyllithium but did not specify a date. (R.T.
20 p. 337:4-7.) He also stated that, on October 17, 2008, he saw Dr. Hurley and victim Sangji near
21 victim Sangji's fume hood having a discussion, but there is no indication that Dr. Hurley was
22 providing any instruction to victim Sangji. (R.T. p. 340:17-24.) Based on the observations of
23 the witnesses, Dr. Langerman stated that he could not develop an opinion as to what, if anything,
24 Dr. Hurley actually told victim Sangji, that he doesn't believe there is evidence that other
25 witnesses observed Dr. Hurley training victim Sangji, and that he is not sure what Dr. Hurley and

1 victim Sangji were doing on October 17, 2008. (R.T. 478:23-479:17.) Additionally, Dr.
2 Langerman testified that “the testimony is at best muddled on what training Ms. Sangji may have
3 been given.” (R.T. p. 457:17-25.) Finally, as previously noted, Dr. Hurley had no recollection
4 of ever supervising victim Sangji’s activities when she was using tert-Butyllithium. (R.T. p.
5 238:12-17.)

6 **4. If Dr. Hurley instructed victim Sangji on the procedures for the transfer**
7 **of tert-Butyllithium, he instructed her incorrectly.**

8 Finally, the defense argues that, because of the similarities in the procedures used by Dr.
9 Hurley and victim Sangji in transferring tert-Butyllithium, Dr. Hurley must have instructed
10 victim Sangji. While this argument may have superficial appeal, it is not supported by any
11 evidence. There is nothing to suggest that victim Sangji learned her incorrect methods of
12 transferring tert-Butyllithium from Dr. Hurley as opposed to someone else who did not know the
13 proper methods. Indeed, if Dr. Hurley had provided victim Sangji with a “protocol” as the
14 defense claims, victim Sangji would have been using proper transfer methods.

15 Of greater significance to this argument, however, is the fact that, if Dr. Hurley
16 improperly trained victim Sangji, defendant Harran is ultimately responsible. Defendant Harran,
17 not Dr. Hurley, had the legal responsibility to properly train victim Sangji. Defendant Harran
18 cannot escape legal liability for his actions by delegating his duties to someone who performs
19 them improperly. As Dr. Langerman testified, although it may have been reasonable for
20 defendant Harran to rely on Dr. Hurley to train victim Sangji, “that doesn’t relieve the
21 requirement to make sure the training is – that’s being given is appropriate.” (R.T. pp. 480:24-
22 481:8.)

1 **5. There is no evidence that Dr. Hurley instructed victim Sangji on the**
2 **scale-up procedures she was attempting on December 29, 2008.**

3 Even assuming Dr. Hurley instructed victim Sangji on the proper procedures for
4 transferring tert-Butyllithium on October 17, 2008 (and there is no evidence that he did), on
5 December 29, 2008, victim Sangji was attempting to “scale-up” by three times the experiment
6 that she performed on October 17, 2008. (R.T. p. 455:7-13.) Defendant Harran was aware that
7 victim Sangji was attempting this scale-up but did not inquire as to the level of the scale-up.
8 (R.T. p. 94:7-21.) Defendant Harran would also necessarily be aware that Dr. Hurley could not
9 have instructed victim Sangji on the proper procedure for the scaled-up transfer as Dr. Hurley
10 had been gone from UCLA for over one month. (R.T. p. 232:12-17.) Nonetheless, there is
11 nothing to suggest that defendant Harran provided any instruction to victim Sangji regarding this
12 “scale-up” on December 29, 2008, except to “be careful.”

13 **G. Victim Sangji was not trained in the Chemical Hygiene Plan for defendant**
14 **Harran’s laboratory.**

15 California Code of Regulations, Title 8, Section 5191(f)(4)(B) requires that “[t]he
16 employee shall be trained on the applicable details of the employer’s written Chemical Hygiene
17 Plan. The UCLA Laboratory Safety Manual advises that Cal/OSHA requires each laboratory to
18 have a written Chemical Hygiene Plan that must contain, in pertinent part: **1.** Standard operating
19 procedures relevant to safety and health considerations to be followed when laboratory work
20 involved the use of hazardous chemicals; **2.** Criteria that the employer will use to determine and
21 implement control measures to reduce employee exposure to hazardous chemicals (i.e.
22 engineering controls, personal protective equipment, and personal hygiene practices); and **4.**
23 Information and training shall be provided to employees to ensure that they are apprised of the
24 hazards of chemicals present in their work area . . . (People’s Exhibit 28, p. 4.) There is
25

1 absolutely no evidence that defendant Harran had prepared a written Chemical Hygiene Plan for
2 his laboratory or that victim Sangji was trained in such a plan.

3 The lack of training on the part of defendant Harran directly resulted in the death of
4 victim Sangji. As Dr. Langerman testified, “if Ms. Sangji had been properly trained on the
5 handling of t[ert] Butyllithium and made familiar with AL-134, the chain of events which led to
6 this fire would not have -- the chain of events would have been broken and the fire would not
7 have occurred.” (R.T. p. 218:3-11.) It is abundantly clear that, at a minimum, victim Sangji did
8 not know that she should clamp down the bottle of tert-Butyllithium, that she should use a
9 syringe at least twice the size of the proposed transfer, that the syringe should be equipped with a
10 six to eight inch needle, that she should not reuse a plastic syringe for multiple transfers, and that
11 she should not continue to exert greater pressure on a plastic syringe if it was sticking.

12 The bottom line with regard to the lack of training provided by defendant Harran is that,
13 if victim Sangji had been properly trained as required by law in the physical and health hazards
14 of tert-Butyllithium, and if victim Sangji had been trained in the measures she could have taken
15 to protect herself from these hazards, including specific procedures defendant Harran had
16 implemented to protect her from exposure to hazardous chemicals, such as appropriate work
17 practices, emergency procedures, and personal protective equipment to be used, this incident
18 would never have occurred, and victim Sangji would be alive today.

19
20 VI.

21 **Defendant Harran Failed to Implement and Maintain an Effective**
22 **Injury and Illness Prevention Program Because He Failed**
23 **To Require His Personnel to Wear Lab Coats After**
Being Notified that Their Use Was Required

24 As noted above, California Code of Regulations, Title 8, Section 3203(a)(6), states in
25 pertinent part:

1 (a) Effective July 1, 1991, every employer shall establish,
2 implement and maintain an effective Injury and Illness Prevention
3 Program (Program). The Program shall be in writing and, shall, at
4 a minimum:

5 (6) Include methods and/or procedures for correcting unsafe or
6 unhealthy conditions, work practices and work procedures in a
7 timely manner based on the severity of the hazard:

8 (A) When observed or discovered; and,

9 (B) When an imminent hazard exists which cannot be immediately
10 abated without endangering employee(s) and/or property, remove
11 all exposed personnel from the area except those necessary to
12 correct the existing condition. Employees necessary to correct the
13 hazardous condition shall be provided the necessary safeguards.

14 In the instant case, defendant Harran violated his obligation to implement and maintain
15 an effective Injury and Illness Prevention Program when he failed to take action to correct the
16 deficiencies noted in the Laboratory Safety Inspection Report dated November 5, 2008 and when
17 he failed to implement the requirement that all laboratory personnel follow standard operating
18 procedures, regulations and university policy.

19 **A. Defendant Harran did not correct the violations noted in the Laboratory Safety**
20 **Inspection conducted on October 30, 2008.**

21 Michael Wheatley, the Chemical Safety Officer for the Department of Chemistry at
22 UCLA, conducted an inspection of defendant Harran's laboratory on October 30, 2008, and
23 prepared a report dated November 5, 2008 (People's Exhibit 25). In addition to office space,
24 defendant Harran occupied two separate laboratories in the Molecular Sciences building at the
25 time of the inspection. The laboratories were designated room 4211 and room 4221. Mr.
Wheatley inspected both laboratories. During his inspection, Mr. Wheatley was accompanied by
Andrew Roberts, the safety liaison for the lab group. (R.T. pp. 140:28-141:4.) Numerous
violations were found in both laboratories under defendant Harran's control, including the fact
that personal protective equipment was not fully used by laboratory personnel. This included the

1 failure to wear lab coats. Mr. Wheatley noted the violations in each laboratory in separate
2 sections of his inspection report. (People’s Exhibit 25, 2nd and 4th pages.) Mr. Wheatley also
3 advised Andrew Roberts that “lab personnel had to wear lab coats in the lab” and further stated
4 that Andrew Roberts “understood his comment and agreed.” (R.T. p. 141:17-24.) Mr. Wheatley
5 also provided a copy of the laboratory inspection report to defendant Harran, who indicated that
6 he read the inspection report and discussed it with Andrew Roberts. (R.T. pp. 221:28-222:24.)

7 Although there was no reason defendant Harran could not have immediately corrected the
8 violation regarding the failure to wear lab coats, there is absolutely no evidence that he ever did
9 so. The defense, in its motion, claims that “many of the issues were resolved during the
10 inspection itself” and implies that the other issues identified “could not be remedied until
11 Professor Harran moved into his permanent lab space because the temporary lab had lesser
12 storage capacity.” (M.T.D p. 21-25.) The defense fails to mention or explain, however, why the
13 violations regarding the failure to wear lab coats and other personal protective equipment were
14 never corrected. Something as simple as correcting the failure of his laboratory personnel to
15 wear laboratory coats could have been rectified immediately. Neither Andrew Roberts nor any
16 other individual interviewed by Investigator Baudendistel indicated that the violations noted in
17 the laboratory safety inspection regarding failure to wear personal protective equipment were
18 ever corrected (R.T. p. 409:10-24), and of course victim Sangji was not wearing a lab coat on
19 December 29, 2008, during the lab incident that ultimately killed her.

20 **B. Defendant Harran failed to implement the requirement that all laboratory**
21 **personnel follow Standard Operating Procedures, regulations and university**
22 **policy.**

23 The Laboratory Safety Manual for the Department of Chemistry and Biochemistry at
24 UCLA discusses the Injury and Illness Prevention Plan for the departments. Specifically, the
25 Manual notes that the Injury and Illness Prevention Plan is a Cal/OSHA requirement and that one

1 of the requirements of the Injury and Illness Prevention Plan is: “5. Compliance. All laboratory
2 personnel must follow standard operating procedures, regulations and university policy.”

3 (People’s Exhibit 28, p. 6.)

4 In the instant case, defendant Harran failed to implement and maintain an effective Injury
5 and Illness Prevention Program because he failed to follow standard operating procedures,
6 regulations and university policy and he did not enforce the requirement that all laboratory
7 personnel must follow standard operating procedures, regulations and university policy.

8 Specifically, defendant Harran failed to fulfill his duties as a Principal Investigator as required by
9 the Handbook for Employees (People’s Exhibit 26) and the Laboratory Safety Manual (People’s
10 Exhibit 28). Defendant Harran, as the Principal Investigator of his laboratory, was required by
11 the Injury and Illness Prevention Program to both follow standard operating procedures,
12 regulations and university policy and ensure that all of his laboratory personnel do so as well.
13 By failing to do either, defendant Harran failed to implement and maintain an effective Injury
14 and Illness Prevention Program.

15
16 **VII.**

17 **Defendant Harran Failed to Enforce the Requirement that Laboratory**
18 **Personnel Wear Appropriate Body Protection**

19 As noted above, California Code of Regulations, Title 8, Sections 3383(a) & (b), state in
20 pertinent part:

21 **Body Protection**

22 (a) Body protection may be required for employees whose work
23 exposes parts of their body, not otherwise protected as required by
other orders in this article, to hazardous or flying substances or
objects.

24 (b) Clothing appropriate for the work being done shall be worn.
25 Loose sleeves, tails, ties, lapels, cuffs, or other loose clothing
which can be entangled in moving machinery shall not be worn.

1 In the instant case, defendant Harran did not enforce the requirement that victim Sangji
2 wear body protection despite the fact that the work she was doing for defendant Harran exposed
3 parts of her body to tert-Butyllithium, a hazardous substance. Moreover, defendant Harran did
4 not require victim Sangji to wear clothing appropriate for her work transferring tert-Butyllithium,
5 allowing her instead to perform her work wearing a synthetic sweater that caught fire and
6 contributed to the severity of her burns.

7 **A. Defendant Harran was aware that his laboratory personnel were working in his**
8 **laboratory without wearing lab coats.**

9 It is uncontested that defendant Harran was aware that his laboratory personnel were
10 working in his laboratory without wearing proper personal protective equipment, including lab
11 coats. Although the defense motion inaccurately claims that “[m]embers of Professor Harran’s
12 laboratory group generally wore lab coats” (M.T.D. p. 43:8-9), virtually all of defendant
13 Harran’s lab personnel stated that the use of coats was sporadic at best. In fact, defendant Harran
14 admitted that there were occasions when he would see people in the lab without lab coats and he
15 would not say anything to them about it. (R.T. p. 116:9-20.) As discussed above, defendant
16 Harran was also provided with a copy of Mr. Wheatley’s laboratory safety inspection report in
17 which the failure to wear lab coats was noted.

18 In addition to defendant Harran, numerous other witnesses stated that laboratory
19 personnel routinely did not wear lab coats. Dr. Chen, stated that he and Dr. Ding routinely wore
20 lab coats but that the rest of the members of the lab did not frequently wear their lab coats. (R.T.
21 p. 128:16-210.) Dr. Chen also indicated that, on the day of the incident, victim Sangji was not
22 wearing a lab coat and that it was her routine not to wear a lab coat. (R.T. p. 130:12-21.) Dr.
23 Ding stated that most people did not wear lab coats in the lab and that he was not aware of any
24 enforcement action or rule requiring the wearing of the lab coat. He also indicated that he had
25 seen victim Sangji working at her fume hood without wearing a lab coat. (R.T. pp 133:24-

1 134:25.) Andrew Roberts stated that his practice was that he “pretty much all the time” did not
2 wear a lab coat, that most other lab personnel did not wear lab coats, that victim Sangji
3 “generally did not wear a lab coat,” that he observed defendant Harran in the lab on occasions
4 when lab personnel were not wearing lab coats, and that defendant Harran said nothing to the
5 individuals not wearing lab coats. (R.T. pp. 144:-145:24.) Dr. Paul Hurley stated that, while he
6 thought people had lab coats, they may not have all worn them all the time, and that sometimes
7 victim Sangji wore a lab coat and sometimes she did not. He also stated that he never saw
8 defendant Harran instruct anyone to wear a lab coat and that he was not aware that the use of a
9 lab coat was enforced in defendant Harran’s lab. (R.T. pp. 239:17-242:4.)

10 Additionally, Dr. James Gibson, the Director of the Environment Health and Safety
11 Department at UCLA, stated that there was a continuing issue at UCLA with lab personnel not
12 wearing personal protective equipment in the labs, that it was a known problem, and that it
13 required a shift in the culture of the lab community in order to get change to occur. (R.T. p.
14 225:5-15.) William Peck, the former manager of the Environment Health and Safety Department
15 at UCLA, stated that lab personnel routinely did not wear eye protection or lab coats, that
16 convincing professors that they needed to have people wear lab coats was difficult, and that if the
17 professors were not going to enforce it, it wasn’t going to be enforced in the lab. (R.T. pp.
18 227:22-228:12.)

19 **B. Defendant Harran failed to require that his laboratory personnel wear lab coats.**

20 As noted above, defendant Harran was well aware that his laboratory personnel were not
21 wearing lab coats yet he did nothing to require them to do so. Defendant Harran admitted as
22 much when he was interviewed by Investigator Baudendistel. (R.T. 116:9-20.) Dr. Chen was not
23 even issued a lab coat when he started working for defendant Harran (R.T. p. 128:7-15), Dr.
24 Ding was not aware of any enforcement action or rule requiring the wearing of the lab coat (R.T.
25 134:3-9), Andrew Roberts observed defendant Harran in the lab on occasions when lab personnel

1 were not wearing lab coats and defendant Harran said nothing to the individuals not wearing lab
2 coats (R.T. p. 145:9-24), and Dr. Paul Hurley never saw defendant Harran instruct anyone to
3 wear a lab coat and was not aware that the use of a lab coat was enforced in defendant Harran's
4 lab. (R.T. p. 240:2-13.) Moreover, despite reviewing and discussing the laboratory safety report
5 documenting the failure of lab personnel to wear lab coats, there is nothing to suggest that
6 defendant Harran ever instructed his laboratory personnel to wear proper personal protective
7 equipment.

8 Although defendant Harran was responsible for issuing lab coats to his lab personnel
9 (R.T. pp. 139:26-140:7), there is no documentation prior to the December 29th incident that he
10 did so. Dr. Chen stated that he had not even been issued a lab coat; he happened to find a lab
11 coat in a drawer and started using it around November of 2008. (R.T. p. 128:12-15.) Neither is
12 there documentation that victim Sangji was ever even issued a lab coat. (R.T. p. 386:18-26.)
13 Moreover, it appears that Dr. Chen and victim Sangji were not the only individuals working in
14 defendant Harran's lab that were not issued lab coats. Within ten days of the lab incident that
15 resulted in victim Sangji's death, three lab coats were requested from the stockroom on
16 defendant Harran's account. (R.T. pp. 387:20-388:17.)

17 The defense, in its motion, notes that victim Sangji was trained to wear personal
18 protective equipment at Norac Pharma (M.T.D. 15:14-19) and that, when she first performed
19 bench work in defendant Harran's lab on October 14, 2008, she wore a lab coat. (M.T.D. p.
20 19:5-6.) While this is accurate, it is also clear that, during the time she worked in defendant
21 Harran's laboratory, she stopped wearing a lab coat. The reasonable explanation for this change
22 is that the requirement that lab coats be worn was not enforced in defendant Harran's lab.

23 The defense, in its motion, also claims that there is no evidence that defendant Harran
24 observed his laboratory personnel working with hazardous substances without wearing a lab
25 coat. Initially, according to Mr. Wheatley's lab report and conversation with Andrew Roberts,

1 lab personnel were observed by Mr. Wheatley without lab coats when they should have been
2 worn. Moreover, Andrew Roberts stated that defendant Harran was in the lab “one to two times
3 a day” (R.T. p. 144:6-8), and it is clear that defendant Harran was frequently in his laboratory. It
4 is highly unlikely that the only time defendant Harran visited his laboratory was at times during
5 which his laboratory personnel were working with benign materials or experiments. In other
6 words, given the amount of time defendant Harran spent in his laboratory, it is clear that he was
7 in his laboratory at times when his personnel were working with hazardous substances without
8 lab coats. Finally, defendant Harran was in his laboratory and met with victim Sangji on
9 December 29, 2008, prior to her conducting the “scale up” with the hazardous chemical tert-
10 Butyllithium that ultimately caused her death. There is no evidence that victim Sangji was
11 wearing a lab coat at that time and nothing to suggest that defendant Harran told victim Sangji to
12 don a lab coat before she began her procedure. Instead, defendant Harran simply told victim
13 Sangji to “be careful, and that was it.” (R.T. p. 93:13-26.)

14 **C. The use of lab coats was not “optional.”**

15 The defense, in its motion, repeatedly claims that the use of lab coats at UCLA was
16 “optional” at the time of victim Sangji’s death. (E.g. M.T.D. pp. 12:19-13:5.) Indeed, there is
17 evidence that Michael Wheatley, the Chemical Safety Officer, told Investigator Baudendistel that
18 the use of lab coats was “discretionary.” (R.T. p. 372:12-19.) Interestingly, however, Mr.
19 Wheatley never stated that lab coats were discretionary until his second interview with
20 Investigator Baudendistel, an interview immediately following the interview with Andrew
21 Roberts in which it was first claimed that the use of lab coats was “a recommendation.” (R.T.
22 pp. 410:24-413:8.)

23 Moreover, in Mr. Wheatley’s first interview, he told Investigator Baudendistel that he
24 advised Mr. Roberts that personnel in the lab had to wear a lab coat and that Mr. Roberts agreed.
25 Mr. Wheatley never indicated in his first interview that he told Mr. Roberts that the wearing of

1 lab coats was discretionary, nor did he tell Investigator Baudendistel during that interview that
2 the use of lab coats was discretionary or at the discretion of the Principal Investigator. (R.T. p.
3 411:11-28.) Prior to the second interview, Mr. Wheatley had never indicated that the use of lab
4 coats was discretionary at UCLA. Additionally, the laboratory safety report never mentioned
5 that the use of lab coats was discretionary. (R.T. p. 412:4-26.) This change in testimony
6 between the first and second interviews of Mr. Wheatley is, to put it generously, quite
7 suspicious.

8 **D. The fact that fire-resistant lab coats were not supplied by UCLA is not a defense**
9 **to the failure by defendant Harran to require that appropriate clothing be worn**
10 **for the work being done in his lab.**

11 As noted above, the law requires that “[b]ody protection may be required for employees
12 whose work exposes parts of their body . . . to hazardous . . . substances.” The law also requires
13 that “[c]lothing appropriate for the work being done shall be worn.” The UCLA Laboratory
14 Safety Manual requires that all Principal Investigators “determine the level of protective apparel
15 and equipment required to adequately protect lab personnel” and “continually educate all
16 laboratory personnel on the potential hazards associated with a specific task and the
17 precautionary measures (laboratory practices, engineering controls, and personal protective
18 equipment) appropriate for the hazards.” (People’s Exhibit 28, p. 4.) The UCLA Environment,
19 Health and Safety Handbook for Employees requires that supervisors “provide proper safety
20 equipment and personal protective equipment to employees.” (People’s Exhibit 26, p. 11.)

21 Dr. Mark Poyten, the research and development scientist employed by Sigma Aldrich, the
22 maker tert-Butyllithium, stated that in transferring tert-Butyllithium, the *minimum* level of
23 protection would be a fire-resistant lab coat. (R.T. pp. 248:22:-249:5, emphasis added.)
24 Likewise, Dr. Langerman stated that, in working with tert-Butyllithium, fire-retardant clothing
25 was necessary (R.T. p. 482:21-28) and that, given the amount of the transfer of tert-Butyllithium

1 that victim Sangji was attempting on December 29, 2008, “her hands and body should have been
2 protected with fire retardant covering. Fire retardant gloves, fire retardant lab coat or fire
3 retardant garment of some sort.” (R.T. p. 216:7-14.)

4 It is undisputed that defendant Harran did not provide fire-resistant or fire-retardant
5 clothing for his laboratory personnel. The defense claims that, at the time of the “incident,”
6 UCLA did not provide fire-retardant lab coats and further states that “[t]he Court must consider
7 the state of affairs in academia at the time of the Incident.” (M.T.D. p. 43:14-18.) The People
8 respectfully suggest that this court need do no such thing. The minimum level of proper personal
9 protective equipment for transferring tert-Butyllithium was fire-resistant clothing. Defendant
10 Harran controlled the funding for his laboratory (R.T. p. 91:20-22) and could have purchased
11 fire-resistant clothing. Moreover, defendant Harran could have requested or insisted that UCLA
12 provide a proper level of personal protective equipment. Instead, defendant Harran chose to do
13 nothing, and victim Sangji paid with her life.

14 VIII.

15 **The Felony Charges Against Defendant Harran Should Not Be Reduced to Misdemeanors** 16 **by this Court Pursuant to Penal Code Section 17(b)**

17 A magistrate’s powers at any felony preliminary hearing are mandated by statute.
18 Among the limited powers of the magistrate at a preliminary hearing is the power to reduce the
19 offense to a misdemeanor if the offense is a “wobbler.” (*People v. Feinstein* (1994) 29 Cal.
20 App.4th 323, 328 [citations omitted]; see also Penal Code section 17, subd. (b)(5).) Penal Code
21 section 17(b) provides in relevant part:

22 (b)When a crime is punishable, in the discretion of the court, either by
23 imprisonment in the state prison, or imprisonment in a county jail under the
24 provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the
25 county jail, it is a misdemeanor for all purposes under the following
circumstances: . . .

(5) When, at or before the preliminary examination or prior to filing an order
pursuant to Section 872, the magistrate determines that the offense is a

1 misdemeanor, in which event the case shall proceed as if the defendant had been
2 arraigned on a misdemeanor complaint.

3 Penal Code section 17(b)(5).

4 In determining the magistrate's power to reduce a "wobbler" to a misdemeanor, the cases
5 dealing with the trial courts' power to reduce pursuant to Penal Code sections 17(b)(1) and
6 17(b)(3) are instructive. Penal Code section 17(b) outlines the procedural mechanism by which a
7 trial court may classify an offense as a misdemeanor and the sentencing discretion derives from
8 the various charging statutes. For convenience, the court generically refers to the exercise of
9 "section 17(b) discretion" when discussing general principles. (*People v. Alvarez* (1997) 14
10 Cal.4th 968, 975 [citations omitted].) In the instance case, defendant Harran's blatant disregard
11 of his duties and responsibilities as the Principal Investigator resulting in the tragic loss of life,
12 warrant maintaining the charges as felonies.

13 **A. Substantial justice demands that this Court deny Defendant Harran's motion to**
14 **reduce felony charges to misdemeanors.**

15 Trial courts have broad authority in ruling on motions to reduce a crime to a
16 misdemeanor. (*People v. Hawkins* (App. 6 Dist. 2002) 98 Cal. App.4th 1428.) When read in
17 conjunction with the relevant charging statute, Penal Code section 17(b), rests the decision of
18 whether to reduce a wobbler in the discretion of the court; the statute sets a broad generic
19 standard. (*People v. Alvarez* (1997) 14 Cal.4th 968, 977; See also *In re Anderson* (1968) 69
20 Cal.2d 613, 626-627.) The meaning of "in the discretion of the court" is delineated further by
21 the Court in *People v. Alvarez* (1997) 14 Cal.4th 968, 977:

22 "This discretion . . . is neither arbitrary nor capricious, but is an impartial
23 discretion, guided and controlled by fixed legal principles, to be exercised in
24 conformity with the spirit of the law, and in manner to subserve and not to impede
25 or defeat the ends of substantial justice. [Citations.]" (*People v. Warner* (1978)
20 Cal.3d 678, 683.) "Obviously the term is a broad and elastic one [citation]
which we have equated with 'the sound judgment of the court, to be exercised
according to the rules of law.' [Citation.]" (*People v. Russel* (1968) 69 Cal.2d.
187, 194.) Thus, "[t]he courts have never ascribed to judicial discretion a
potential without restraint." (*Ibid.*) "Discretion is compatible only with decisions

1 'controlled by sound principles of law, . . . free from partiality, not swayed by
2 sympathy or warped by prejudice . . . ' [Citation..]" (*People v. Bolton* (1979) 23
3 Cal.3d 208, 216.) "[A]ll exercises of legal discretion must be grounded in
4 reasoned judgment and guided by legal principles and policies appropriate to the
5 particular matter at issue." (*People v. Russel, supra*, at p. 195.)

6 In the instant case, it would defeat the ends of substantial justice if this court were to
7 reduce the felony charges filed against defendant Harran to misdemeanors. Victim Sangji
8 worked for defendant Harran as a research associate in his organic chemistry laboratory. Victim
9 Sangji graduated from Pomona College just a few months before beginning her work in
10 defendant Harran's laboratory. Although having worked in a chemistry laboratory as an
11 undergraduate, much of that work consisted of analytical chemistry where she was responsible
12 for taking measurement. Victim Sangji was not an experienced organic chemist and thus
13 required training, especially handling something as "nasty as t-butyllithium." The evidence is
14 overwhelming that she did not receive this training. Defendant Harran failed victim Sangji;
15 defendant Harran's choice to blatantly ignore his mandated legal duties as well as his
16 responsibilities as the Principal Investigator cost victim Sangji her life. The preliminary hearing
17 transcript is replete with evidence of defendant Harran's utter disregard of his legal
18 responsibilities and responsibilities as the Principal Investigator and has been previously
19 discussed at great length. Defendant Harran was legally responsible for ensuring that victim
20 Sangji was trained about the hazards of tert-Butyllithium and how to protect herself from these
21 hazards; he failed to do so. Defendant Harran was legally responsible for ensuring that the
22 people who performed tasks in his laboratory were trained and performed those tasks correctly;
23 he failed to do so. Defendant Harran was legally responsible for enforcing the requirement that
24 victim Sangji wear body protection, i.e., a laboratory coat when working in the laboratory; he
25 failed to do so. Defendant Harran displayed a "roll the dice" attitude towards safety in his
laboratory. This attitude is apparent by his failure to correct something as simple as requiring his
personnel to wear laboratory coats. No explanation could ever possibly excuse this failure. The
only rational explanation is defendant Harran's extreme indifference to complying with legally

1 mandated safety requirements. Victim Sangji was untrained and ill-equipped to be performing a
2 “scale-up” experiment using tert-Butyllithium. Defendant Harran sent victim Sangji into harms
3 way by failing to properly train her about the hazards of tert-Butyllithium or requiring her to
4 wear a laboratory coat and making certain that she did so.

5 Again, the ends of substantial justice will be defeated if this court grants the defense
6 motion to reduce the felony charges against defendant Harran to misdemeanors. The choice
7 between felony and misdemeanor under Penal Code section 17 is “dependent on a determination
8 by the official who, at the particular time possesses knowledge of the special facts of the
9 individual case and may, therefore, intelligently exercise the legislatively granted discretion.”
10 (*People v. Clark* (1971) 17 Cal.App.3d 890, 898.) This court heard the testimony that was
11 elicited during the six day presentation of the evidence. This court possesses the knowledge of
12 the special facts of this case. Victim Sangji was horribly burned in the lab fire that occurred on
13 December 29, 2008. Once can only imagine the excruciating pain and suffering that she endured
14 for 18 days before succumbing to her injuries. Defense refers to the fire as a “tragic accident.”
15 Indeed, it was a tragedy because victim Sangji lost her life. But, the fire was clearly preventable.
16 Had victim Sangji been properly trained on the handling of tert-Butyllithium, the chain of events
17 which led to the fire would have been broken and the fire would not have occurred. (R.T. p.
18 218:3-11.) Had defendant Harran fulfilled his legal duty, the fatal fire would not have occurred
19 and victim Sangji would be alive today.

20 **B. Consideration of Defendant Harran’s background and the nature of the present**
21 **offenses militate against reducing the charges to misdemeanors.**

22 In *People v. Alvarez* (1997) 14 Cal.4th 968, 978, the court stated that “[w]e find scant
23 judicial authority explicating any criteria that inform the exercise of section 17(b) discretion.”
24 The court further states that “since all discretionary authority is contextual, those factors that
25 direct similar sentencing decisions are relevant, including ‘the nature and circumstances of the

1 offense, the defendant’s appreciation of and attitude toward the offense, or his traits of character
2 as evidenced by his behavior and demeanor at trial.” (*Ibid* [citations omitted].) The *Alvarez*
3 court suggests that “when appropriate” judges should consider the general sentencing objectives
4 as articulated in the California Rules of Court. (*Ibid.*; see Cal. Rules of Court, Rule 4.410.) The
5 court cautions however, that the broad authority conferred by Penal Code section 17(b) must be
6 exercised by “individualized consideration of the offense, the offender, and the public interest. . .
7 .” (*Ibid.*)

8 Rule 4.410, provides in relevant part:

9 (a) General objectives of sentencing include:

- 10 (1) Protecting society;
11 (2) Punishing the defendant;
12 (3) Encouraging the defendant to lead a law-abiding life in the future and
13 deterring him or her from future offenses;
14 (4) Deterring others from criminal conduct by demonstrating its consequences;
15 (5) Preventing the defendant from committing new crimes by isolating him or her
16 for the period of incarceration;
17 (6) Securing restitution for the victims of crime; and
18 (7) Achieving uniformity in sentencing.

19 Cal. Rules of Court, Rule 4.410.

20 Obviously, not all the objectives apply to the instant case. The court must consider which
21 objectives are of primary importance in the case and be guided by statutory statements of policy,
22 the criteria in these rules, and the facts and circumstances of the case. (Cal. Rules of Court, Rule
23 4.410.) Defense, in its motion, claims that holding defendant Harran to answer on felony
24 charges will not protect society in any way. (E.g. M.T.D. p. 46:11-12.) This assertion could not
25 be any father from the truth. The broad implications of holding defendant Harran to answer on
26 felony charges will deter him and others in the scientific academic community from committing
27 similar Labor Code violations. It took the tragedy of victim Sangji’s death to wake up the
28 academic scientific community to their rampant indifference to complying with mandated
29 laboratory safety standards. Holding defendant Harran to answer on felony changes will keep
30 this community on notice that this indifference will not be tolerated and failure to comply with

1 safety standards will have serious consequences. When tragedy strikes, the natural response is to
2 frenetically evaluate the situation and seek to correct those deficiencies that caused the tragedy.
3 Positive changes are often made shortly after the tragic events. Here for example, within ten
4 days of the lab incident that resulted in victim Sangji's death, three lab coats were requested
5 from the stockroom on defendant Harran's account. (R.T. pp. 387:20-388:17.) Other positive
6 changes related to laboratory safety have been mandated by UCLA. By holding defendant
7 Harran to answer on felony charges, this will ensure continued compliance with all safety
8 provisions as mandated by federal and state law as well as the safety policies and provisions
9 promulgated by UCLA, not just in the short term, but in the long term as well.

10 There is no dispute as to the nature of the charges filed against defendant Harran. He is
11 charged with three violations of the California Labor Code. He is not charged with committing a
12 violent felony. The People agree that defendant Harran is a successful organic chemist. His
13 Curriculum Vitae speaks to his accomplishments. (Defense Exhibit A.) This is precisely why
14 the current offenses cannot be considered in a vacuum and the record should reflect a thoughtful
15 and conscientious assessment of all relevant factors. (*People v. Alvarez* (1997) 14 Cal.4th 968,
16 979.) This court should consider defendant Harran's expertise in organic chemistry as militating
17 against reduction of the charges to misdemeanors. Defendant Harran had about 18 years of
18 organic chemistry experience at the time he hired victim Sangji to work in his laboratory. One
19 can assume those years of experience working in the laboratory translate into a wealth of
20 knowledge regarding the potential hazards of working in an organic chemistry laboratory as well
21 as the hazards of certain organic reagents such as tert-Butyllithium. Furthermore, as a Principal
22 Investigator since at least 1997, he had primary responsibility for the activities of his staff and, in
23 the lab, was the "top of the chain of command." Defendant Harran had a duty to share his vast
24 knowledge and train victim Sangji. Ambition and success cannot justify ignoring the duty to
25 comply with mandated safety regulations. And, in this case, defendant Harran failed to do so by

1 failing to train victim Victim Sangji on the proper method of handling tert-Butyllithium as well
2 failing to ensure that she wear a lab coat.

3 **IX.**

4 **Conclusion**

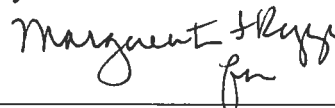
5 The California Code of Regulations sections charged apply to defendant Harran as well
6 as to UCLA. Defendant Harran committed willful violations of the law because he need not
7 have been aware of his duties under the law and, in any event, the evidence overwhelmingly
8 shows that he was aware of his duties. Victim Sangji was never properly trained by defendant
9 Harran or anyone else in his laboratory regarding the physical and health hazards of tert-
10 Butyllithium and the measures she could take to protect herself from those hazards. Defendant
11 Harran was responsible for implementing and maintaining an Illness and Injury Prevention
12 Program by enforcing its requirements. The use of lab coats was not optional at UCLA. For all
13 the foregoing reasons, the People respectfully request that this honorable court deny the defense
14 Motion to Dismiss or Reduce the Felony Charges to Misdemeanors.

15
16 DATED: April 1, 2013

17 Respectfully submitted,

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20 By:

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24 
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