

CAUSE NO. GN404061

LUKE DAVID LLC and
LANCE ARMSTRONG

v.

MIKE ANDERSON

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§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT

PLAINTIFFS' MOTION FOR SANCTIONS

NOW COMES Luke David, LLC and Lance Armstrong, and asks the Court to impose appropriate sanctions against Defendant and Defendant's attorneys for filing:

- (a) a groundless counterclaim in violation of Texas Rule of Civil Procedure 13; and
- (b) frivolous counterclaim in violation of Texas Civil Practice & Remedies Code, Section 10.001; and
- (c) a groundless pleading in violation of Texas Civil Practice and Remedies Code, Section 9.012.

A. Introduction

1. Defendant and his attorneys have abused the judicial process by filing groundless and false pleadings in bad faith without reasonable inquiry. Defendant's efforts at extracting money under thinly veiled threats of publicly accusing Plaintiff falsely were repeatedly unsuccessful; Defendant then attacked Plaintiff with an egregious character assassination founded upon a demonstrably false string of sensational, untrue and fabricated allegations. In doing so, Defendant and his attorneys have diminished the civil justice system below the level of tabloid journalism; conduct which cries out for the imposition of sanctions commensurate with their violations of our rules, statutes and cases.

2. Plaintiffs are Luke David LLC and Lance Armstrong; Defendant is Mike Anderson. Plaintiffs sued Defendant under the Uniform Declaratory Judgments Act, asking the Court to declare the rights and duties under an alleged "contract" which Defendant claims exists between him and Plaintiffs.

3. Defendant's attorneys are Hal K. Gillespie of Gillespie, Rozen, Watsky, Motley & Jones, P.C., 3402 Oak Grove Avenue, Suite 200, Dallas, Texas 75204 and David M. Davis of Davis & Wilkerson, P.C., 1801 S. MoPac Expressway, Suite 300, Austin, Texas 78768-0614.

B. Facts

4. On January 5, 2005, Defendant filed his counterclaim. On January 7, 2005, Plaintiffs contacted Defendant and requested that he withdraw his groundless Defamation and Intentional Infliction of Severe Emotional Distress Claims. He refused. On February 14, 2005, Plaintiffs filed their Special Exceptions (Ex. "A") and set those for hearing on March 9, 2005. At that hearing, Judge Lowry struck the Defamation and Intentional Infliction of Severe Emotional Distress claims, but gave Defendant 21 days within which to allege other such claims. (Order attached as Ex. "B").

5. Unbeknownst to Plaintiff and without disclosing to the Court on March 9, 2005, Defendant filed his First Amended Counterclaim on the afternoon of March 8, 2005 containing essentially identical Defamation and IIED allegations. He now takes the position that the Court's order does not affect the allegations contained in the First Amended Counterclaim, despite the identity of allegations, since it was technically not the subject of the Special Exceptions hearing.

6. On March 30, 2005, the deposition of Defendant was taken. On that day, but without any disclosure to Plaintiff or their attorneys, his Third Amended Answer and Second Amended Counterclaim was filed. This pleading is frivolous; filed for the purpose of harassment; made in bad faith and groundless as set forth above.

C. Groundless Pleading Under Rule 13

7. The court can impose sanctions on a person who signed a pleading in violation of Texas Rules of Civil Procedure 13.

8. A pleading is sanctionable under Rule 13 if it contains claims which are groundless and were brought in bad faith or for the purpose of harassment. Tex.R.Civ.P. 13; *GTE Comm. Sys. Corp. v. Tanner*, 856 S.W.2d 725, 731 (Tex. 1993); see *Able Sup. Co. v. Moye*, 898 S.W.2d 766, 772 (Tex. 1995). A groundless pleading is one that has no basis in law or fact and is not warranted by a good faith argument for the extension, modification, or reversal of existing law. Tex.R.Civ.P. 13; *Tanner*, 856 S.W.2d 730; *Trimble v. Itz*, 898 S.W.2d 370, 373 (Tex. App. – San Antonio 1995), writ denied, 906 S.W.2d 481 (Tex. 1995).

9. The standard for reviewing whether a pleading is groundless is objective: Did the party and attorneys make a reasonable inquiry into the legal and factual basis of the claim? See *Tanner*, 856 S.W.2d at 730. The reasonableness of the inquiry is judged by the facts available and the circumstances present at the time the party filed the pleading. *Tarrant Cty. v. Chancey*, 942 S.W.2d 151, 155 (Tex. App. – Fort Worth) 1997, no writ); see *Griffin Indus. v. Grimes*, LEXIS 3439 (Tex. App.-San Antonio 2003, no pet.) (No. 04-02-00430-CV; 4-23-03).

10. The Court has already determined Defendant's defamation and IIED claims to have been without foundation. Yet, Defendant filed his Second Amended Counterclaim without any substantive change and with the knowledge that it was and would be groundless. Thus, his pleading has been, by definition, made in bad faith and for the purpose of harassment. Therefore, Defendant is subject to sanctions. See *Tanner*, 856 S.W.2d at 730. Specifically, Defendant, with no investigation and in contradiction to his sworn testimony, asserts a variety of scurrilous, sensational and unfounded accusations. Examples are:

a. In Paragraph 27, he accuses Mr. Armstrong of winning the Tour de France by "cheating for profit, with the use of banned substances" and that Armstrong engaged in an "evil, oppressive and dishonest scheme that equals the greatest scandal in sports history";

b. he states that he was fired because "Anderson would not support and approve of Lance Armstrong's use of illegal, banned substances" and that Armstrong tried to silence him so that he would not tell "the public about his knowledge of Lance Armstrong's illegal drug use and Armstrong's effort to avoid random testing for drug use";

c. he describes finding a box allegedly containing an androgen substance named Androstenin or something very close to that. He claims that he was "alarmed and worried" and that he was "disappointed, disillusioned and afraid". In Paragraph 20, he states that "although he was disillusioned with Armstrong, he continued to perform all his duties as requested in an exemplary manner."

The amended counterclaim does not alter in any material manner the defamation or IIED allegations which have been stricken. The allegations which were stricken consisted of Anderson's making a "discovery" which led him to believe "Armstrong may have engaged in wrong-doing" (see Counterclaim, par. 16) and that Armstrong, sensing that

Anderson had made such a discovery, waited 9 ½ months, then fired him and attempted to “hush” him; and that “Armstrong made a statement to Anderson that bothered and further disillusioned Anderson” (see Counterclaim, par. 19).

11. Defendant’s amended allegations are essentially the same, but with the false, misleading, sensational and bad faith allegations of drug use, cheating and an evil scheme constituting the “greatest scandal in the history of sports”. Those allegations are false, made without inquiry, contrary to the sworn testimony of Anderson himself and have been made in bad faith for the sole purposes of injuring and harassing Armstrong.

12. The Second Amended Counterclaim was composed and filed without reasonable inquiry and was brought in bad faith and for the purpose of harassment.

13. The Second Amended Counterclaim contains allegations that Armstrong attempted to avoid a random drug test in July, 2004 after he won his sixth Tour de France. Defendant implicated at least two others in that allegation, Derek Russey and John Koriath, neither of whom were ever contacted by Defendant or any of his attorneys and both of whom have executed affidavits attached hereto as Exhibits “C” and “D”, respectively, wherein they categorically and unequivocally repudiate the allegations contained in Paragraphs 22, 23 and 38 of the pleading.

14. Anderson’s unequivocal accusations of drug use, cheating and evil schemes are diametrically opposed to statements made to Rebecca Dunlap, whose affidavit is attached as Ex. “E”. His unequivocal statements are contrary to the sworn testimony of Anderson made the *same day* his pleading was filed. For example, he stated that “I didn’t have any intention of repeating that stuff because, again, it was only things that I had seen throughout the course of my employment. If I had seen him taking

something I knew was wrong, that would be different, but *it was only a hunch, and I left it at that.*" (Anderson depo. At 214). When asked if he took the position that Mr. Armstrong had committed any illegal act, he responded that "I have an opinion. I have suspicions. But beyond that, that's -- that's all I can say about it." (Anderson Depo. At 198) He denies he was terminated for reporting any illegal activity; he confirms he was never asked to do anything illegal; he that *he is not saying that Mr. Armstrong has ever ingested any prohibited substance.* (Anderson Depo. At 199).

15. Despite his claim that he was shunned by Armstrong after his "discovery" and that he was "disillusioned, disappointed and afraid", he later professes to Armstrong that they have the "two best jobs in the world" and that he was "proud to know (Armstrong) and eternally grateful for everything (Armstrong) had done for his family". (Ex. "F")

16. The further details and allegations regarding Armstrong contained in Paragraphs 14-23 and 27 are included for no purpose relevant to any viable claim and are included for the sole purpose of harming Plaintiff and causing the precise harm reflected in the media over the last two days. Defendant's bad faith, bitterness, insecurity and obsession with retaliating for his well-deserved termination of employment are reflected in these bogus claims. The bad faith and purpose of harassment which permeate Defendant's amended counterclaim are not veiled, even thinly.

17. Defendant has already been sanctioned by this Court twice for his attorneys' abuses of the discovery process. (Ex. "G" and "H"). Their disregard for the lawful orders of this Court are well documented and the filing of the Second Amended

Counterclaim is nothing more than a demonstration of their petulance with this Court's dismissal of Defendant's patently frivolous and unfounded claims. See Ex. "I."

18. Judge Lowry has held any statement made in the course of a judicial proceeding to be *absolutely privileged*. Thus, no statement made by Plaintiffs in their Original Petition may serve as the basis of an action for defamation under any circumstances. *Reagan v. Guardian Life Insurance Co.*, 166 S.W.2d 909, 912 (Tex. 1942).

19. Defendant also asserts that the allegations set forth in the petition were "published" by providing a copy of said petition to the press. First, that allegation is untrue. Further, even if that occurred, when a communication is preliminary or in conjunction with a proposed judicial proceeding (as was the only new allegation consisting of the undersigned's interview with Celebrity Justice), those too are protected by the doctrines of absolute privilege and judicial immunity. *Daystar Residential, Inc. v. Collmer*, LEXIS 2531 (Tex.App.-Houston [1st Dist.] 2004, no pet.).

20. The IIED claims, already rejected by the Court, are also substantively unchanged and are likewise contemptuous as refiled.

D. Frivolous or Groundless Pleadings Under Tex. Civ. Prac. & Rem. Code

21. The court may impose sanctions on the attorney or the party represented by the attorney who signed a pleading, motion, or other paper in violation of Texas Civil Practice & Remedies Code Section 10.001. Tex. Civ. Prac. & Rem. Code §10.004(a).

22. A pleading is frivolous when presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Tex. Civ. Prac. & Rem. Code §10.001(1). Defendant's pleading is frivolous because as stated

above, there is no factual nor legal basis for the defamation and intentional infliction of emotional distress claims and many of claims therein are patently false.

23. A pleading is frivolous unless each claim, defense, or other legal contention is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. Tex. Civ. Prac. & Rem. Code §10.001(2). Defendant's pleading is clearly frivolous under those well established standards. Therefore Defendant is subject to sanctions.

24. A pleading is frivolous unless each allegation or factual contention has evidentiary support or, for each specifically identified allegation or factual contention, there is likely to be evidentiary support after a reasonable opportunity for further investigation or discovery. Tex. Civ. Prac. & Rem. Code §10.001(3).

25. The court may sanction a party for filing pleadings that are (1) groundless and (2) brought in bad faith, brought for the purposes of harassment, or interposed for any improper purpose (e.g. to cause delay or needless increase in cost of litigation). *Elkins v. Stotts-Brown*, 103 S.W.3d 664, 668 (Tex. App.- Dallas 2003, no pet); *Herrmann & Andreas Ins. Agency, Inc. v. Appling*, 800 S.W.2d 312, 320 (Tex. App.- Corpus Christ 1990, no writ. No pleading better meets those tests than the one at issue.

E. Sanctions

26. Plaintiffs ask the court to impose the following sanctions on Defendant and his attorneys as follows:

- a. An order refusing to permit Defendant to support his claims of defamation and intentional infliction of emotional distress. Tex. R. Civ. P. 215.2(b)(4).

- b. An order striking those parts of Defendant's counterclaim relating to defamation and intentional infliction of emotional distress. Tex.R.Civ.P. 215.2(b)(5) and all allegations contained in Paragraphs 14-23 and 27.
- c. Monetary sanctions commensurate with the severity of Defendant having engaged in a most egregious, abusive and contemptuous pleading of facts and details which have no relationship to the alleged injury and which are virtually all patently false and without any evidentiary support.

27. The sanctions requested bear a direct relationship to the offensive conduct and are not excessive. *Spohn Hosp. v. Mayer*, 104 S.W.3d 878,882 (Tex. 2003).

F. Costs & Attorney Fees

28. It was necessary for Plaintiffs to hire attorneys, Herman Howry & Breen, to prepare this motion for sanctions. Plaintiffs have incurred other expenses in the filing of this motion. The court should award Plaintiffs reasonable attorney fees in the amount of at least \$25,000.00.

29. When the party against whom sanctions are sought cannot show due diligence, a court may award the party seeking sanctions all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the litigation. Tex. Civ. Prac. & Rem. Code §10.002(c). Defendant did not exercise due diligence, and because he did not, the court should award Plaintiffs all costs for inconvenience, harassment, and out-of-pocket expenses caused by this litigation in an amount not less than \$100,000.00.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on counsel on this 1st day of April, 2005.

Hal K. Gillespie
Gillespie, Rozen, Watsky, Motley & Jones, P.C.
3402 Oak Grove Avenue, Ste. 200
Dallas, Texas 75204

VIA CM/RRR

David M. Davis
Davis & Wilkerson, P.C.
1801 S. MoPac Expressway, Suite 300
Austin, Texas 78768-2283

VIA CM/RRR



Timothy J. Herman
Sean E. Breen

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2-14-03

CAUSE NO. GN404061

LUKE DAVID LLC and
LANCE ARMSTRONG

v.

MIKE ANDERSON

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT

PLAINTIFFS' SPECIAL EXCEPTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Luke David, LLC and Lance Armstrong, Plaintiffs in the above-styled and numbered cause, and file their Special Exceptions to Defendant's First Amended Answer and Original Counterclaim, and in support thereof would respectfully show the Court as follows:

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Ammani Rodriguez-Sanchez

DISTRICT CLERK
TRAVIS COUNTY, TEXAS

I.

Plaintiffs' specially except to cause of action number one (1) in the counterclaim, "Intentional Infliction of Severe Mental Distress", because it fails to state a cause of action and the alleged facts setout in the counterclaim affirmatively show that the circumstances do not support the cause of action urged in the counterclaim. Without conceding that the facts alleged in the Intentional Infliction of Severe Mental Distress claim are true (they are denied), the alleged conduct was not so extreme and outrageous in character and extreme in degree as to go beyond all possible bounds of decency and be regarded as atrocious and utterly intolerable in a civilized community. Additionally, Anderson's claims for intentional infliction of severe mental distress relating to the alleged defamation also fail as a matter of law. The alleged defamatory statements were absolutely privileged. This privilege extends to causes of action other than defamation if the essence of the claim is damages that flow from communications made in the course of a judicial proceeding. Anderson attempts to make a claim for emotional distress that flows from communications made in the course of a judicial proceeding. Those are improper allegations, they fail to state a cause of action and they are barred as a matter of law. For these reasons, this

EXHIBIT
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special exception should be sustained and the allegations of intentional infliction of severe mental distress should be stricken.

II.

Plaintiffs' specially except to cause of action number two (2), "Defamation", in Anderson's counterclaim because it fails to state a cause of action and the claims fail as a matter of law. The counterclaim attempts to assert a cause of action for defamation based upon Plaintiffs' Original Petition, a public document filed with the court in this judicial proceeding. Moreover, Anderson has sued Plaintiffs for defamation based upon statements relating to the proceeding that were published in the newspaper, as alleged in paragraph 48 to the counterclaim (and Anderson may amend to complain of statements made to a television reporter). Anderson alleges the statements in Plaintiffs' Original Petition and in the newspaper (and potentially the television report) constitute defamation and defamation *per se*. In reality, the facts pleaded by Anderson in the counterclaim affirmatively show that the circumstances alleged do not support the cause of action for defamation. Any statement made in the course of a judicial proceeding is absolutely privileged. Such statements may not serve as the basis of an action for defamation, regardless of their alleged falsity or any alleged malice with which the statements were made and published. This privilege extends to any statements made by the judge, jurors, counsel, parties or witnesses, and attaches to all aspects of the proceeding, including statements made in open court, pre-trial hearings, depositions, affidavits or any of the pleadings or other papers filed in the case. Statements made during the course of settlement negotiations are also within the absolute privilege for statements made in the course of a judicial proceeding. The privilege applies even to statements made to parties who are not involved in the judicial proceedings if the statements bear some relation to the proceedings. Finally, remarks to a reporter, be it television or newspaper reporter, are also protected by the doctrine of absolute privilege of judicial immunity, even if they are alleged to have been made before the filing of the lawsuit. Thus, the facts

pleaded by Anderson in his counterclaim alleging defamation affirmatively show that the circumstances do not support the cause of action urged in the petition. The law does not support the pleadings. Moreover, there is no good argument for the extension, modification, or reversal of the applicable existing law that applies to bar absolutely these type of allegations. This special exception should be sustained and the improper allegations for defamation should be stricken.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request this court grant all the relief requested herein, strike the allegations of intentional infliction of severe mental distress and defamation contained in the counterclaim against Plaintiffs, and grant Plaintiffs all such other and further relief, both at law and in equity, to which they show themselves entitled and for which they now request.

Respectfully submitted,

HERMAN, HOWRY & BREEN, L.L.P.



Timothy J. Herman
State Bar No. 09513700
Sean E. Breen
State Bar No. 00783715
1900 Pearl Street
Austin, Texas 78705-5408
(512) 474-7300
(512) 474-8557 FAX
ATTORNEYS FOR PLAINTIFFS
LUKE DAVID, LLC and LANCE
ARMSTRONG

NOTICE OF HEARING

Plaintiffs' Special Exceptions is set for hearing on the 7th day of March, 2005 at 2:00 p.m. in the 200th Judicial District Court, Travis County, Texas.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served via certified mail/return receipt requested and/or facsimile on counsel on this 14th day of February, 2005.

Hal K. Gillespie
Gillespie, Rozen, Watsky, Motley & Jones, P.C.
3402 Oak Grove Avenue, Ste. 200
Dallas, Texas 75204

David M. Davis
Davis & Wilkerson, P.C.
1801 S. MoPac Expressway, Suite 300
Austin, Texas 78768-2283

A handwritten signature in black ink, appearing to read "Sean E. Breen", written over a horizontal line.

Sean E. Breen

LUKE DAVID LLC and
LANCE ARMSTRONG

v.

MIKE ANDERSON

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFFS' SPECIAL EXCEPTIONS

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Monica Rodriguez-Humey
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

On March 9, 2005, this Court held a hearing on Plaintiffs' Special Exceptions. The Special Exceptions asserted that the allegations pleaded in Defendant's First Amended Answer and Original Counterclaim against Luke David LLC and Armstrong alleging Intentional Infliction of Emotional Distress and Defamation failed as a matter of law and as pled did not constitute viable causes of action or claims permitted by law and Plaintiffs requested the allegations be stricken. The parties appeared by and through their respective counsel. Having heard the arguments of counsel, having reviewed the pleadings in question, and having considered the authority presented, this court has concluded and finds that the special exceptions should be sustained, that Anderson's Causes of Action E(1) and E(2) of Defendant's First Amended Answer and Original Counterclaim are therefore struck, and Defendant should be permitted the opportunity to replead and adequate time to do so.

IT IS, THEREFORE, ORDERED that the special exceptions made by Plaintiffs' Luke David LLC and Lance Armstrong are sustained and that Anderson's Causes of Action E(1) and E(2) of Defendant's First Amended Answer and Original Counterclaim are therefore struck. IT IS FURTHER ORDERED that Anderson may amend his pleadings within twenty-one (21) days. All further relief requested but not herein granted is denied.

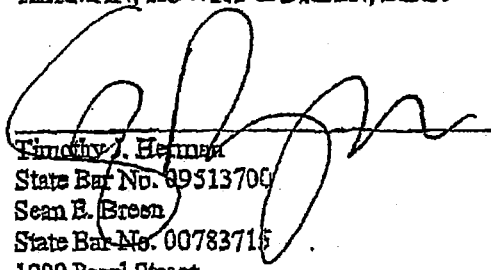
Signed and entered this 17 day of March, 2005

[Signature]
JUDGE PRESIDING

EXHIBIT
B

APPROVED AS TO FOI ONLY:

HERMAN, HOWRY & BREEN, L.L.P.



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ATTORNEYS FOR PLAINTIFFS

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ATTORNEYS FOR DEFENDANT

AFFIDAVIT OF DEREK RUSSEY

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, this day personally appeared, **Derek Russey**, who, upon his oath, stated as follows:

1. “My name is Derek Russey. I am over eighteen years of age and fully competent to make this Affidavit. The matters set forth herein are within my personal knowledge and are true and correct.
2. I have been an independent landscape specialist and have been acquainted with Michael J. Anderson since late 2002 or early 2003. In October, 2004, I sold my business and am now employed by Elements, with headquarters on Bee Caves Road in Austin. I have performed many landscape and clearing duties on the premises of ranch property in the vicinity of Dripping Springs owned by Lance Armstrong. In connection with those services, I have had the occasion to interact with Mr. Anderson who was occasionally on the property performing duties for Mr. Armstrong, also. I have known Mr. Anderson for some time and actually took Mr. Armstrong’s bicycles into the Bicycle Sport Shop when Mr. Anderson worked there. I have always had a cordial relationship with Mr. Anderson. In fact, Mr. Anderson’s mother-in-law was a nanny for my baby who was born six months after Mr. Anderson’s.
3. I have been provided and reviewed a copy of a document entitled “Defendant’s Third Amended Answer and Second Amended Counterclaim” which I understand was filed by Mr. Anderson in a lawsuit existing between Mr. Anderson and Mr. Armstrong.
4. I have read Paragraph 22 of the document which contains Mr. Anderson’s statement that in July, 2004 he “concluded Armstrong was trying to avoid taking a random drug test”. Mr. Anderson states that he “received a telephone call from Derek Russey, who was frantically trying to locate Lance Armstrong. Russey told Anderson that inspectors from WADA/USADA had



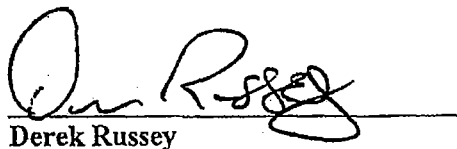
come to Lance Armstrong's house in Dripping Springs to administer a random test...Russey told Anderson that Lance Armstrong was required to notify the inspectors before traveling and that failure to do so would result in an automatic positive drug test."

5. I never frantically called Mr. Anderson, in July, 2004, or any other time, trying to locate Mr. Armstrong. I have no idea what the WADA/USADA is and I never encountered anyone at Mr. Armstrong's property who indicated they were there to administer a drug test. I have no idea whether Mr. Armstrong is supposed to notify anyone before traveling, much less what the consequences would be for not doing so. I literally have no idea to what Mr. Anderson is referring in Paragraph 22.
6. In Paragraph 23, Mr. Anderson states that I told the WADA/USADA inspectors to leave the property. I never met any inspectors and I certainly never asked any to leave the property, although from time to time I have asked trespassers to leave the property if I encountered them while doing my landscape work. Mr. Anderson states that he told me he had passed the inspectors in a white SUV while they were leaving. He never made any such statement to me and I have no recollection of the incident Mr. Anderson describes in the document.
7. I have reviewed Paragraph 38 in which Mr. Anderson states that, on December 7, 2004, "Lance Armstrong had a mutual friend pass on Armstrong's threats to Anderson. Derek Russey ("Russey") is a friend of Anderson's and does all of the landscaping work for Lance Armstrong. At the end of the day on December 7, 2004, when Anderson was driving home, Russey called Anderson on his cell phone. Russey told Anderson: 'I just wanted to tell you that I was over at Lance's meeting with him about the plans for the Foothill Terrace when Stapleton called. He got real quiet and red in the face, then stood up and started yelling about you suing him. I don't know what's going on between you two, but can't you just sit down and work things out?' Anderson replied, 'that's what we are trying to do'. Russey said, 'He told me that if I was any kind of friend to you, that I'd call you and tell you to

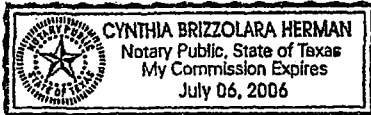
cut this s*** out before they start World War III, and that you should drop it if you care about your family or ever want to work in the bike business' Russey also told Anderson, 'don't you realize that all he has to do is make a phone call and you won't be able to work in the bike business ever again? Don't you want to keep working in the industry?' "

8. I was at Lance Armstrong's house, as I recall, when Mr. Stapleton called. I was not a party to their conversation, so I have no idea what was said, although I did understand that it had something to do with a possible lawsuit to be brought by Mr. Anderson. While it was apparent that Mr. Armstrong was not pleased by whatever Mr. Stapleton told him, he did not get "red in the face" nor did he stand up or start "yelling about you suing him".
9. Mr. Armstrong never asked nor suggested that I contact Mr. Anderson. He never said that Mr. Anderson should drop it if he cared about his family or ever wanted to work in the bike business, much less ask me to pass that message along to Mr. Anderson for him.
10. Neither Mr. Anderson nor any of his lawyers have ever contacted me to inquire or confirm any of the comments or actions attributed to me in the document. Had they done so, I would have told them that the comments and actions attributed to me were either untrue or inaccurate.
11. I specifically recall calling Mr. Anderson after the telephone call to Mr. Armstrong from Mr. Stapleton. I encouraged Mr. Anderson to work out any problems and to avoid a conflict, if possible. I do not recall specifically what I may have said, but I certainly was anxious to see both Mr. Armstrong and Mr. Anderson avoid a confrontation, as I consider both of them to be personal friends. During our conversation, I recall Allison Anderson, Mr. Anderson's wife, in the background encouraging him to calm down.

Further Affiant sayeth not.


Derek Russey

SWORN AND SUBSCRIBED to before me on this 1ST day of April, 2005.



Cynthia Brizzolara Herman
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

Herman Howry & Breen

LLP.

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Timothy J. Herman

Direct Dial: (512) 474-9483

E-MAIL: therman@hermanhowry.com

March 9, 2005

Via Facsimile

Hal K. Gillespie

Gillespie, Rozen, Watsky & Motley, P.C.

3402 Oak Grove Avenue, Suite 200

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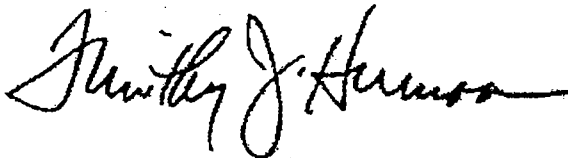
RE: Cause No. GN404061; *Luke David LLC and Lance Armstrong v. Mike Anderson*;
In the 200th Judicial District Court, Travis County, Texas

Dear Mr. Gillespie:

In January, we requested you dismiss the defamation and intentional infliction of emotional distress claims as they were neither viable nor permitted by law. You declined. Today, Judge Lowry granted our special exceptions on your pleading of those two causes of action, agreeing with us that they were neither viable nor permitted by law. While the rules called for Judge Lowry to give you an opportunity to replead, we are reiterating our request that the defamation and intentional infliction claims be dropped or not replead for all the reasons set out in our previous letter, our special exceptions and our brief in support. There is no basis in law or fact for those claims and no basis for the extension, modification or reversal of the existing law that led to the claims being struck today.

We hope you will consider this additional request.

Very truly yours,



Timothy J. Herman

TJH/jkm

cc: David Davis

Via Facsimile



AFFIDAVIT OF JOHN KORIOTH

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, this day personally appeared, **John Koriath**, who, upon his oath, stated as follows:


1. “My name is John Koriath. I am over eighteen years of age and fully competent to make this Affidavit. The matters set forth herein are within my personal knowledge and are true and correct.
2. I am a resident of Travis County, Texas and have been acquainted with Lance Armstrong for several years. I have accompanied Mr. Armstrong on training rides and have visited in his home. On numerous of those occasions, I have had the occasion to interact with Mr. Anderson who was on Mr. Armstrong’s property performing duties for Mr. Armstrong or driving a support or trail car on the ride. To my knowledge, I have always had a cordial relationship with Mr. Anderson, although I do not consider him a close personal friend like Mr. Armstrong.
3. I have been provided and reviewed a copy of a document entitled “Defendant’s Third Amended Answer and Second Amended Counterclaim” which I am told was filed by Mr. Anderson in a lawsuit existing between Mr. Anderson and Mr. Armstrong.
4. In Paragraph 23, Mr. Anderson states that after Mr. Armstrong won the Tour de France in July, 2004, I was “supposed to go retrieve Lance’s Suburban from the airport and drive past the inspectors, who were then waiting at the edge of Lance Armstrong’s property after being told to leave by Derek Russey”. This statement was in connection with Mr. Anderson’s conclusion that Mr. Armstrong was trying to avoid taking a random drug test. I was never involved in any incident bearing any resemblance to the incident Mr. Anderson describes in Paragraphs 22 and 23 of the document.

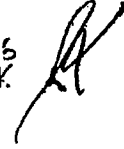


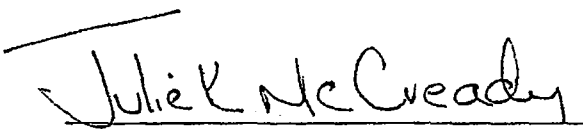
5. I was never requested to pick up Mr. Armstrong's suburban at the airport nor was I ever advised that there were WADA/USADA inspectors on or near Mr. Armstrong's property at any time. While I know generally what WADA/USADA is and that they are agencies involved with testing, I am not informed as to how it is done and where it is done. I am also aware generally that Mr. Armstrong has been repeatedly tested, randomly and otherwise, in connection with his cycling activities. I have never been advised that any inspectors of any kind have ever been to Mr. Armstrong's home or ranch. Neither Mr. Anderson nor Mr. Russey, with whom I am also acquainted, ever mentioned any such incident involving any inspectors. I was not involved, directly or indirectly, in any incident involving inspectors of any kind related to Mr. Armstrong or his property.
6. I have reviewed pages 106 through 112 of a document entitled "Oral and Videotaped Deposition of Michael Joseph Anderson March 30, 2005". On pages 107 and 113, Mr. Anderson testifies that I was "often" involved in conversations between Messrs. Armstrong and Anderson about the bicycle shop which Mr. Anderson alleges Mr. Armstrong had promised to fund. Mr. Anderson states that we often would have running conversations about features of the bicycle shop while Mr. Armstrong and I were riding bicycles and Mr. Anderson was driving the car. Conversations through the car window occasionally occurred, but never involving or about the concept or other particulars of a bicycle shop to be opened or funded by, or for, Mr. Anderson. In fact, I never heard anything about such a promise by Mr. Armstrong until after Mr. Anderson had made a demand on Mr. Armstrong to pay him \$300,000 and his lawyers \$200,000 and provide other items such as an autographed jersey and personal appearance at, and endorsement of, whatever bike shop Mr. Anderson opened.
7. Neither Mr. Armstrong nor Mr. Anderson at any time ever mentioned to me the existence of an agreement or promise by Mr. Armstrong to invest money, lend money or give money to Mr. Anderson for the purpose of opening a bike shop.

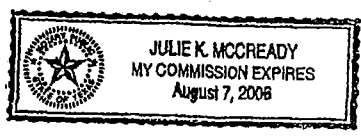
8. Neither Mr. Anderson nor any of his lawyers have ever contacted me to inquire or confirm any of the comments or actions in which I have allegedly been involved. Had they done so, I would have told them that such conversations never occurred in my presence and that there was no such incident as described in Paragraphs 22 and 23 of the document.

Further Affiant sayeth not.


John Koriath

SWORN AND SUBSCRIBED to before me on this 1st day of ^{April} ~~March~~, 2004. 


NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS



AFFIDAVIT OF REBECCA DUNLAP

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, this day personally appeared, **Rebecca Dunlap**, who, upon her oath, stated as follows:

1. “My name is Rebecca Dunlap. I am over eighteen years of age and fully competent to make this Affidavit. The matters set forth herein are within my personal knowledge and are true and correct.
2. I am a resident of Travis County, Texas and have been acquainted with Lance Armstrong for several years going back to before he won the first Tour de France in 1999. I was at one time employed as a nanny by Mr. Armstrong and Kristin Armstrong, his former wife. I continued to act as nanny to their children for both of them after their divorce in 2003.
3. I was on maternity leave for the birth of my son, Benjamin, during the summer of 2004, and went back to work exclusively for Mr. Armstrong to act as his personal assistant and nanny during the numerous periods when Mr. Armstrong’s children are spending time with him. On several occasions, I have had the occasion to interact with Mr. Anderson who was on Mr. Armstrong’s property or accompanying Mr. Armstrong at other locations performing duties for Mr. Armstrong. I have always had a cordial relationship with Mr. Anderson and his wife, Allison, and have had several lengthy and in-depth conversations with him.
4. I have been provided and reviewed a copy of a document entitled “Defendant’s Third Amended Answer and Second Amended Counterclaim” which I understand was filed by Mr. Anderson in a lawsuit existing between Mr. Anderson and Mr. Armstrong.
5. In Paragraph 14, Mr. Anderson states that after Johan Museeuw was “caught using steroids” and before Mr. Armstrong won the Tour de France in July,



2004, Mr. Armstrong "looked directly into Mr. Anderson's eyes and told him 'everyone does it.' "

6. In Paragraph 17, he describes finding a box allegedly containing an androgen substance named Androstenin or something very close to that. He claims that he was "alarmed and worried" and that he was "disappointed, disillusioned and afraid". In Paragraph 20, he states that "although he was disillusioned with Armstrong, he continued to perform all his duties as requested in an exemplary manner."
7. In Paragraph 27, he accuses Mr. Armstrong of winning the Tour de France by "cheating for profit, with the use of banned substances" and that Armstrong engaged in an "evil, oppressive and dishonest scheme that equals the greatest scandal in sports history"
8. In the same Paragraph he states that he was fired because "Anderson would not support and approve of Lance Armstrong's use of illegal, banned substances" and that Armstrong tried to silence him so that he would not tell "the public about his knowledge of Lance Armstrong's illegal drug use and Armstrong's effort to avoid random testing for drug use."
9. From the time I returned after my maternity leave in approximately September, 2004, Mr. Anderson and I had several conversations about Lance Armstrong and the stories from Europe generated by the French publication of David Walsh's book, "LA Confidential". Our discussions occurred when Mr. Armstrong was with his children playing and I had free time. I recall conversations at Mr. Armstrong's residence on Jarratt Drive in Austin, where I would encounter Mr. Anderson almost every Thursday when he would deposit the trash.
10. I related to Mr. Anderson that I had witnessed Mr. Armstrong in a variety of roles in his life, including a father, husband, professional athlete, employer and friend. I asked Mr. Anderson if he had any reason to believe the rumors about drugs. Mr. Anderson told me unequivocally not once, but several times, once in the presence of his wife, Allison, that he had no doubt that Armstrong had never used drugs or any other illegal performance enhancing assistance in

his career. He told me that Armstrong would not have been capable of drug use because of his character.

11. Anderson also told me that he would not, and could not, ever work for someone who had used drugs or other illegal performance enhancers.
12. My baby was about a year older than Mr. and Ms. Anderson's son Soren, so we talked about this topic in connection with the effect on children, of whom Mr. Armstrong is the father of three. Both Mr. Anderson and I commented that disclosures, founded or unfounded, would be catastrophic to the children and that Mr. Armstrong would never subject his children to that kind of risk.
13. Both Mr. Anderson and I were close to Kristin Armstrong, and we discussed her views on drug use of any kind. We both commented that Kristin would never have allowed any use of banned substances, particularly in view of the potential effects on their children.
14. Mr. Anderson and I discussed and agreed about the disadvantages of being Lance Armstrong and having to defend yourself against unfounded and untrue charges of drug use, particularly when Mr. Armstrong had been the most extensively tested athlete in history.
15. I awoke this morning and read the story in the Austin paper authored by Suzanne Halliburton. I was flabbergasted. Virtually everything in that article which referred to allegations by Mike Anderson contradicted what he had told me on numerous occasions before he was fired. I was upset and wanted to let someone know how untruthful his charges were and that is how I came to sign this affidavit.
16. Neither Mr. Anderson nor any of his lawyers have ever contacted me to inquire or confirm any of the comments or actions in which I have allegedly been involved. Had they done so, I would have told them that such conversations never occurred in my presence and that there was no such incident as described in Paragraphs 22 and 23 of the document.

Further Affiant sayeth not.

Rebecca Dunlap
Rebecca Dunlap

SWORN AND SUBSCRIBED to before me on this 1st day of April, 2005.

Julie K McCready
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

