

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Lance Armstrong,

Plaintiff,

v.

United States Anti-Doping Agency, *et al.*,

Defendants.

Civ. Action No. 1-12-CV-00606

**AFFIDAVIT OF TIMOTHY J. HERMAN, ESQ. IN SUPPORT OF
PLAINTIFF LANCE ARMSTRONG'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

I, Timothy J. Herman, Esq., hereby declare and state as follows:

1. I am admitted to practice law before the Western District of Texas and represent the Plaintiff, Lance Armstrong, in the above captioned matter. Unless otherwise noted, I make this Affidavit based on my personal knowledge as counsel to Plaintiff, derived from my understanding and review of information, documents, and materials that are the subject of this proceeding.

I. Communications Between USADA and Mr. Armstrong.

2. Attached hereto as Exhibit 1 is a true and correct copy of a letter from USADA Testing Results Manager Lisa McCumber to Mr. Armstrong and the five other Respondents, dated June 12, 2012.

3. Attached hereto as Exhibit 2 is a true and correct copy of a letter from Robert Luskin, another attorney representing Mr. Armstrong, to USADA General Counsel William Bock, III, dated June 13, 2012.

4. Attached hereto as Exhibit 3 is a true and correct copy of a letter from Mr. Luskin to Mr. Bock, dated June 15, 2012.

5. Attached hereto as Exhibit 4 is a true and correct copy of a letter from Mr. Luskin to the USADA Anti-Doping Review Board (“Review Board”), care of Mr. Bock, dated June 15, 2012.

6. Attached hereto as Exhibit 5 is a true and correct copy of a letter from Mr. Bock to Mr. Luskin, dated June 15, 2012.

7. Attached hereto as Exhibit 6 is a true and correct copy of a letter from Mr. Luskin to Mr. Bock, dated June 16, 2012.

8. Attached hereto as Exhibit 7 is a true and correct copy of a letter from Mr. Bock to Mr. Luskin, dated June 18, 2012.

9. Attached hereto as Exhibit 8 is a true and correct copy of a letter from Mr. Luskin to the Review Board, care of Mr. Bock, dated June 22, 2012.

10. Attached hereto as Exhibit 9 is a true and correct copy of a letter from Mr. Luskin to Mr. Bock, dated June 24, 2012.

11. Attached hereto as Exhibit 10 is a true and correct copy of an electronic mail message to Mr. Luskin from Ms. McCumber, sent on June 26, 2012 at 2:43 pm/EST. Also attached to this document are the attachments that accompanied that electronic mail message: (i) a transcript of a May 22, 2011 segment of the television program “60 Minutes” involving Tyler Hamilton; and (ii) an electronic mail message from Steve Johnson, the CEO of USA Cycling, to Travis Tygart, the CEO of USADA, dated May 1, 2010, which forwards an electronic mail message from Floyd Landis to Mr. Johnson, dated April 30, 2010. USADA has

suggested that it “discovered” the alleged anti-doping violation by Mr. Armstrong when USADA was forwarded the electronic mail message of Mr. Landis to Mr. Johnson.

12. Attached hereto as Exhibit 11 is a true and correct copy of a letter from Mr. Luskin to the Review Board, care of Mr. Bock and Ms. McCumber, dated June 26, 2012.

13. Attached hereto as Exhibit 12 is a true and correct copy of a letter from Mr. Luskin to the Review Board care of Mr. Bock and Ms. McCumber, dated June 27, 2012.

14. Attached hereto as Exhibit 13 is a true and correct copy of a letter from Ms. McCumber to Mr. Armstrong and the five other Respondents, dated June 28, 2012. The letter attempted to set forth charges for alleged anti-doping rules violations.

15. Attached hereto as Exhibit 14 is a true and correct copy of a letter from Mr. Bock to Mr. Luskin, dated June 29, 2012.

16. Attached hereto as Exhibit 15 is a true and correct copy of a letter from Mr. Luskin to Mr. Bock dated July 5, 2012.

17. Attached hereto as Exhibit 16 is a true and correct copy of a letter from Mr. Bock to Mr. Luskin, dated July 6, 2012.

II. Media Reports.

18. Attached hereto as Exhibit 17 is a true and correct copy of an article as it appeared on the website of *RoadCyclingUK.com*, on or about March 6, 2004, under the headline “Armstrong hits back at WADA doping claims.”

19. Attached hereto as Exhibit 18 is a true and correct copy of the decision from the International Olympic Committee’s Ethics Commission concerning WADA Chairman Richard Pound, Case No. 03/2006, dated February 2, 2007.

20. Attached hereto as Exhibit 19 is a true and correct copy of an article as it appeared on the website of *The New York Times*, on or about February 12, 2007, under the headline “Ethics Rebuke for Doping Chief Reignites a Feud With Armstrong.” Pursuant to Federal Rule of Evidence 902(6), this document is self-authenticating.

21. Attached hereto as Exhibit 20 is a true and correct copy of pages 207–209 and 280 from the book *Positively False: The Real Story of How I Won the Tour de France* (Simon & Schuster 2007), written by Mr. Landis.

22. Attached hereto as Exhibit 21 is a true and correct copy of a newspaper article published in the November 17, 2010 edition of *The Seattle Times* and written by John Leicester, under the headline “AP Source: US Investigators Talk to French Police.” Pursuant to Federal Rule of Evidence 902(6), this document is self-authenticating.

23. Attached hereto as Exhibit 22 is a true and correct copy of a magazine article published in the November 17, 2010 edition of *Velonews* and written by Charles Pelkey, under the headline “U.S. Investigators in France to Review Doping Evidence Against Lance Armstrong.” Pursuant to Federal Rule of Evidence 902(6), this document is self-authenticating.

24. Attached hereto as Exhibit 23 is a true and correct copy of a magazine article published in the November 18, 2010 edition of *Velonews* and written by Samuel Morrison, under the headline “Armstrong Case: Investigators Meet with Italians.” Pursuant to Federal Rule of Evidence 902(6), this document is self-authenticating.

25. Attached hereto as Exhibit 24 is a true and correct copy of a newspaper article published in the February 4, 2012 edition of *The New York Times* and written by Ian Austen, under the headline “Federal Investigation of Armstrong Is Closed.” Pursuant to Federal Rule of Evidence 902(6), this document is self-authenticating.

26. Attached hereto as Exhibit 25 is a true and correct copy of a newspaper article published in the June 29, 2012 edition of *USA Today*, under the headline “USADA Files Formal Charges Against Lance Armstrong.” Pursuant to Federal Rule of Evidence 902(6), this document is self-authenticating.

27. Attached hereto as Exhibit 26 is a true and correct copy of a newspaper article published in the June 13, 2012 edition of *The Washington Post* and written by Amy Shipley, under the headline “Lance Armstrong Faces Fresh Doping Charges from USADA.” Pursuant to Federal Rule of Evidence 902(6), this document is self-authenticating.

28. Attached hereto as Exhibit 27 is a true and correct copy of a newspaper article published in the June 14, 2012 edition of *The Wall Street Journal* and written by Vanessa O’Connell and Reed Albergotti, under the headline “Armstrong to Face Doping Charges.” Pursuant to Federal Rule of Evidence 902(6), this document is self-authenticating.

29. Attached hereto as Exhibit 28 is a true and correct copy of an article as it appeared on the website of *ESPN* on or about June 13, 2012, and written by T.J. Quinn, under the headline “Lance Armstrong denies charges.” Pursuant to Federal Rule of Evidence 902(6), this document is self-authenticating.

30. Attached hereto as Exhibit 29 is a true and correct copy of an article as it appeared on the website of *Cycling News* on June 23, 2012, under the headline “Armstrong Attorneys Respond to USADA Charges.” Pursuant to Federal Rule of Evidence 902(6), this document is self-authenticating.

III. Legislative Materials.

31. Attached hereto as Exhibit 30 is a true and correct copy of the Lausanne Declaration on Doping in Sport, adopted by the World Conference on Doping in Sport, February 4, 1999.

32. Attached hereto as Exhibit 31 is a true and correct copy of the report titled “Effects of Performance Enhancing Drugs on the Health of Athletes and Athletic Competition: Hearing Before the Senate Committee on Commerce, Science, and Transportation,” 106th Cong. 95 (1999).

33. Attached hereto as Exhibit 32 is a true and correct copy of the executive order creating the White House Task Force on Drug Use in Sports in America, Exec. Order No. 13165 (Aug. 9, 2000).

34. Attached hereto as Exhibit 33 is a true and correct copy of the “White House Task Force on Drug Use in Sports, Proceedings: First Meeting of the White House Task Force on Drug Use in Sports,” dated December 7, 2000.

35. Attached hereto as Exhibit 34 is a true and correct copy of excerpts from the executive report from the International Convention Against Doping in Sport (“ICADIS”), dated June 27, 2008.

36. Attached hereto as Exhibit 35 is a true and correct copy of the ICADIS treaty.

37. Attached hereto as Exhibit 36 is a true and correct copy of the USADA Audit Report as of December 31, 2010 and 2009.

IV. Law Reviews Articles.

38. Attached hereto as Exhibit 37 is a true and correct copy of a law review article: Dionne L. Koller, "How the United States Government Sacrifices Athletes' Constitutional Rights in the Pursuit of National Prestige," 2008 B.Y.U. L. REV. 1465 (2008).

39. Attached hereto as Exhibit 38 is a true and correct copy of a law review article: Michael Straubel, "The International Convention Against Doping in Sport: Is It the Missing Link to USADA Being a State Action and WADC Coverage of U.S. Pro Athletes?" 19 MARQ. SPORTS L. REV. 63 (2009).

V. Relevant Rules and Licenses.

40. Attached hereto as Exhibit 39 is a true and correct copy of the United States Anti-Doping Agency's 2009 Protocol for Olympic and Paralympic Movement Testing, including Annex A (World Anti-Doping Code Articles); Annex B (A Laboratory Documentation Package); Annex C (B Laboratory Documentation Package); Annex D (American Arbitration Association Supplementary Procedures for the Arbitration Of Olympic Sport Doping Disputes); Annex E (Time Line); Annex F (Language to be set forth in USADA correspondence offering an athlete the opportunity to waive analysis of the athlete's B specimen); Annex G (Retirement Rules).

41. Attached hereto as Exhibit 40 is a true and correct copy of the 2012 Statutes of the Bodies Working for the Settlement of Sports-Related Disputes.

42. Attached hereto as Exhibit 41 is a true and correct copy of the current version of the Union Cycliste Internationale's Anti-Doping Rules ("UCI ADR") (2012).

43. Attached hereto as Exhibit 42 is a true and correct copy of the 2004 UCI ADR, effective August 13, 2004.

44. Attached hereto as Exhibit 43 is a true and correct copy of the 2001 UCI Antidoping Examination Regulations.

45. Attached hereto as Exhibit 44 is a true and correct copy of the 1999 UCI Antidoping Examination Regulations.

46. Attached hereto as Exhibit 45 is a true and correct copy of the UCI International License in effect in 2010.

47. Attached hereto as Exhibit 46 is a true and correct copy of the UCI International License in effect in 2004.

48. Attached hereto as Exhibit 47 is a true and correct copy of the UCI International License in effect in 2003.

49. Attached hereto as Exhibit 48 is a true and correct copy of the current version of the World Anti-Doping Code (“WADA Code”).

50. Attached hereto as Exhibit 49 is a true and correct copy of the WADA “Athlete Biological Passport Operating Guidelines,” Version 3.0, dated January 2012.

51. Attached hereto as Exhibit 50 is a true and correct copy of the WADA Code in effect in 2006.

VI. Mr. Armstrong’s Property Interests.

52. Mr. Armstrong derives significant personal and economic benefit from his cycling achievements, including from his status as a seven-time *Tour de France* winner.

53. Mr. Armstrong’s ability to obtain personal and economic benefit from his cycling achievements, including his seven *Tour de France* titles, will be harmed significantly if those achievements are stripped.

54. Mr. Armstrong derives significant personal and economic benefit from his ability to participate in competitive sporting events.

55. As an example, prior USADA's announcement of the charges against him, Mr. Armstrong had competed in several, and won two, events sponsored by the World Triathlon Corporation ("WTC"), with the ultimate goal of qualifying for the WTC-organized Ironman World Championship in October 2012.

56. As a result of Mr. Armstrong's participation in WTC-sanctioned events, the Lance Armstrong Foundation ("LAF") formed a partnership with the WTC's Ironman triathlon series to raise more than \$1 million for people battling cancer. In exchange for Mr. Armstrong's participation in certain events, he would also be entitled to certain compensation from WTC. As a result of USADA's decision to bring charges, Mr. Armstrong has not been able to compete in WTC events and has suffered economically as a result.

57. Once USADA filed proposed charges against Mr. Armstrong with the USADA Review Board, the WTC suspended Mr. Armstrong indefinitely from competing in WTC-sanctioned events, including a June 24, 2012 triathlon in France, pursuant to a WTC rule providing that an athlete is ineligible to compete in WTC events while the subject of an open investigation. As long as USADA's disciplinary investigation of Mr. Armstrong remains open, he is prevented from participating in any WTC-sanctioned competitions.

58. Mr. Armstrong's inability to compete in these events has had a negative, and substantial, economic effect on Mr. Armstrong.

VII. General Statements.

59. Mr. Armstrong is an accomplished cyclist, triathlete, and philanthropist.

60. During his cycling career, Mr. Armstrong won many international races, most notably winning the *Tour de France* a record seven times.

61. Prior to his retirement in 2011, Mr. Armstrong was a UCI license holder. Mr. Armstrong obtained a UCI international license every year he competed in the *Tour de France* or any other international cycling events that required such a license.

62. Mr. Armstrong has also founded a public charity, LAF. LAF is a leader in the global movement on behalf of 28 million people living with cancer. LAF has raised close to \$500 million for the fight against cancer. Mr. Armstrong is the foundation's largest individual contributor, having contributed more than \$6.5 million to it.

63. Mr. Armstrong has never been informed that any drug or urine test he has taken has come back positive.

64. USADA has not identified a single positive drug test for Mr. Armstrong, and it proceeds here on a "non-analytical finding," *e.g.*, on allegations unsupported by a positive drug test.

65. Mr. Armstrong officially retired from competitive cycling in February 2011.

66. It is my understanding that USADA's latest charges against Mr. Armstrong are a remnant of a joint investigation of alleged doping in cycling by USADA, the Federal Bureau of Investigation, the Department of Justice's Office of Criminal Investigation ("DOJ"), the Food and Drug Administration, and the United States Postal Service Office of Inspector General.

67. It is my understanding that these agencies jointly interviewed Martial Saugy, the Director of the Lausanne Anti-Doping Laboratory, and other witnesses, some of whom USADA

now claims—without identifying them—will testify at the USADA disciplinary proceeding against Mr. Armstrong.

68. In February 2012, DOJ announced that it had ended its investigation of Mr. Armstrong and would not bring criminal charges. Attached hereto as Exhibit 51 is a true and correct copy of the press release from the United States Attorney's Office for the Central District of California announcing the closing of the criminal investigation into Mr. Armstrong and others.

VIII. Irreparable Harm.

69. Mr. Armstrong would face irreparable harm if forced to accept USADA's choice of, on the one hand, agreeing to a prospective lifetime ban and the retroactive disqualification of his prior achievements or, on the other hand, electing to endure an arbitration process that USADA has unfairly stacked against him and will lead to the same sanctions.

70. USADA's actions threatened to harm Mr. Armstrong's reputation, thereby causing him irreparable harm. USADA's actions threatened to deprive Mr. Armstrong of his property rights in his cycling achievements, including his seven *Tour de France* titles, therefore causing him irreparable harm.

71. USADA's actions threaten to deprive Mr. Armstrong of his Constitutional and common law due process rights, thereby causing him irreparable harm.

* * * * *

I declare under penalty of perjury that the foregoing is true and correct to be best of my knowledge and belief.

Executed on July 9, 2012



Timothy J. Herman, Esq.

State of Texas §
 §
County of Travis §

SWORN AND SUBSCRIBED TO before me by Timothy J. Herman, Esq. on July 9, 2012.



Notary Public in and for
The State of Texas

Seal:

