

From: [William Bock, III](#)
To: [Tim Herman](#)
Bcc: ["Rychener, Brent"](#); [Young, Richard](#); [Powers, Matt](#); [Travis T. Tygart](#); [Onye Ikwuakor](#)
Subject: RE:
Date: Monday, August 06, 2012 4:21:00 PM

Tim,

I would like to be able to get back to you by COB in response to your inquiry about any opposition from USADA regarding the timing of Plaintiff's proposed new affidavit. However, there are a few issues we need to work through.

First, please note that there are some mis-statements in the affidavit which I bring to your attention in paragraphs 1 -3 below (and in part in paragraph 4). In the interest of the Court not having to wade through a document that is clearly factually erroneous we need to agree to either strike certain paragraphs of the affidavit or otherwise advise the court of the factual errors in the affidavit.

Second, USADA obviously has some objections to some of the conclusory statements and out and out legal conclusions set forth in the affidavit. Given the tardiness of the affidavit I have concerns about how these defects, set forth in paragraph 5 below can be addressed without prejudicing USADA – therefore with respect to these questions I need your response to my inquiries in paragraph 4-5 below.

1. Why doesn't the second affidavit of Shawn Farrell attach the license received by Mr. Armstrong from USA Cycling that Plaintiff produced to USADA *after the filing of USADA's motion to dismiss* and why doesn't the affidavit attach the signed license applications (signed by Mr. Armstrong and Bill Stapleton on Mr. Armstrong's behalf) that USA Cycling produced to both USADA and Mr. Armstrong *after the filing of USADA's motion to dismiss*?
 - a. I was told by USA Cycling's counsel that we did not get copies of some or all of these license applications before we filed our motion to dismiss because Mr. Levinstein called USA Cycling and objected to the production of any license applications to USADA on the ground that they contained "personal information."
 - b. Now, that Plaintiff is proposing a second affidavit from Mr. Farrell referencing license applications I do not understand why Plaintiff would not attach to that affidavit the signed license applications that USA Cycling has produced.
 - c. The absence of the documents identified above render Mr. Farrell's affidavit inaccurate as described below.
2. As noted above, USA Cycling has produced to counsel for both parties some signed license applications. Therefore, Mr. Farrell's statements in paragraph 9 of the affidavit about documents in USA Cycling's possession are not accurate. Is Plaintiff willing to strike the inaccurate statement contained in paragraph 9 of the second affidavit?

3. Mr. Farrell's statements in paragraph 9 are further inaccurate in that there were no attachments to his original affidavit filed with the Court. Are you willing to correct this aspect of his affidavit before filing?
4. The best way to handle the problems with Mr. Farrell's second affidavit would be to agree to strike paragraph 9 and for USADA and Plaintiff to enter a stipulation submitting to the Court the license and the signed license applications that have been exchanged in discovery. Will Plaintiff agree to a stipulation submitting these documents to the Court? In any case, will Plaintiff have any objection on timing grounds to USADA providing to the Court the license received by Mr. Armstrong from USA Cycling that you produced to USADA after the filing of USADA's motion to dismiss and the signed license applications (signed by Mr. Armstrong and Bill Stapleton on Mr. Armstrong's behalf) that USA Cycling produced to both USADA and Mr. Armstrong after the filing of USADA's motion to dismiss?
5. I realize that Plaintiff's counsel drafted the second Farrell affidavit and it therefore contains many legal conclusions USADA believes to be erroneous and inconsistent with the applicable rules. Are you willing to specifically note in your filing that USADA objects to the affidavit (1) to the extent that it purports to draw legal conclusions and opinions that Mr. Farrell is not qualified to render, (2) on the grounds of hearsay to the extent that the affidavit goes beyond identifying documents, and (3) on the grounds of lack of personal knowledge to the extent the affidavit goes beyond identifying rules, regulations, bylaws, constitutions and charters?

If you could kindly respond to me on these questions by 4:00 p.m. CDT I would be grateful.

Kind regards,

Bill



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*Preserving the integrity of competition.
Inspiring true sport.
Protecting the rights of athletes.*

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sender by telephone or return e-mail and delete the original transmission and its attachments without reading or saving in any manner. Thank you.

From: Tim Herman [REDACTED]
Sent: Monday, August 06, 2012 3:23 PM
To: William Bock, III
Subject:

Bill

Attached is an affidavit from Shawn Farrell of USA Cycling. We received this affidavit around noon today. USA Cycling wanted to insure complete accuracy and Mr. Farrell only today returned the executed affidavit. We propose to file this affidavit today as supplementary evidence to our response filed Friday. As you know, Mr. Farrell provided USADA an affidavit which was appended to your Motion to Dismiss. The matters contained in the affidavit are simply corroborative of many of the matters contained in my affidavit of Friday. We write to confer to see if you oppose on the grounds of timing the filing of this affidavit via a notice of supplemental affidavit in support of Armstrong's response. We are not asking you to make substantive objections, if any, at this time. Please let us know by 4 pm central today so we may reflect it in our certificate. Thank you for your consideration.

Tim

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