

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-000639-134

(Class Action)  
SUPERIOR COURT

---

**E. SABBAG**

*Petitioner*

-vs.-

**LANCE ARMSTRONG**, residing at 300  
West 6<sup>th</sup> Street, Suite 2150, City of  
Austin, State of Texas, 78701, U.S.A.

and

**PENGUIN GROUP (CANADA), INC.**,  
legal person duly constituted, having its  
principal place of business at 90 Eglinton  
Avenue East, Suite 700, City of Toronto,  
Province of Ontario, M4P 2Y3

and

**PENGUIN GROUP (USA) INC.**, legal  
person duly constituted, having its  
principal place of business at 375 Hudson  
Street, City of New York, State of New  
York, 10014, U.S.A.

and

**G.P. PUTNAM'S SONS**, legal person  
duly constituted, having its principal place  
of business at 375 Hudson Street, City of  
New York, State of New York, 10014,  
U.S.A.

and

**THE BERKLEY PUBLISHING GROUP**,  
legal person duly constituted, having its  
principal place of business at 375 Hudson  
Street, City of New York, State of New  
York, 10014, U.S.A.



and

**RANDOM HOUSE OF CANADA LIMITED**, legal person duly constituted, having its principal place of business at 2775 Matheson Boulevard East, City of Mississauga, Province of Ontario, L4W 4P7

and

**RANDOM HOUSE, INC.**, legal person duly constituted, having its principal place of business at 1745 Broadway, City of New York, State of New York, 10019, U.S.A.

and

**CROWN PUBLISHING GROUP**, legal person duly constituted, having its principal place of business at 1745 Broadway, City of New York, State of New York, 10019, U.S.A.

and

**BROADWAY BOOKS**, legal person duly constituted, having its principal place of business at 1745 Broadway, City of New York, State of New York, 10019, U.S.A.

*Respondents*

---

---

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
&  
TO ASCRIBE THE STATUS OF REPRESENTATIVE  
(Art. 1002 C.C.P. and following)**

---

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,  
SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER  
STATES AS FOLLOWS:



## I. GENERAL PRESENTATION

### A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

- all residents in Canada who have purchased the book, *It's Not About The Bike: My Journey Back To Life* from its initial publication date on May 22<sup>nd</sup> 2000 through to the present and/or who have purchased the book *Every Second Counts* from its initial publication date on January 1<sup>st</sup> 2003 through to the present (the "Class Periods"), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have purchased the book, *It's Not About The Bike: My Journey Back To Life* from its initial publication date on May 22<sup>nd</sup> 2000 through to the present and/or who have purchased the book *Every Second Counts* from its initial publication date on January 1<sup>st</sup> 2003 through to the present (the "Class Periods"), or any other group to be determined by the Court;
2. The present action involves Class Members having purchased the book *It's Not About The Bike: My Journey Back To Life* and/or the book *Every Second Counts* (the "Books") which were principally written by the Respondent Armstrong and which were falsely marketed as nonfiction by himself and by the Publishing and Distributing Respondents, as defined below, during the Class Periods;
3. During the Class Periods, the Respondent Armstrong concealed the truth about the fictional nature of the Books from the public, including the Petitioner and members of the Class. As outlined below, Class Members could not have discovered the truth about Armstrong's misrepresentations until, at the earliest, July 2012 or, at the latest, January 2013;
4. By reason of their actions and omissions, the Respondents induced consumers into purchasing the Books under the mistaken belief that they were purchasing nonfictional material, thereby causing Petitioner and the members of the class to suffer economic damages equal to the purchase price of the Books, which they are entitled to claim;

### B) The Respondents

#### **Respondent Armstrong**



5. Respondent Lance Armstrong is a resident of Austin, Texas who is the principal author of the Books. He knowingly, deliberately and deceptively marketed his Books to Class Members as nonfictional, biographical and autobiographical material;

### **Publishing and Distributing Respondents**

6. The Respondents named below, collectively referred to herein as the “Publishing and Distributing Respondents” produced, published, marketed and/or distributed Respondent Lance Armstrong’s Books as nonfiction;
7. Respondent Penguin Group (Canada), Inc. (“Penguin Group Canada”) is a Canadian company and is a division of Penguin Group, one of the largest English-language book publishers in the world. Penguin Canada produces and publishes books, both fiction and nonfiction in both hardcover and paperback;
8. Respondent Penguin Group (USA), Inc. (“Penguin Group USA”) is the United States affiliate of Penguin Group and it publishes under a large variety of imprints and trademarks including G.P. Putnam’s Sons (“Putnam”) and The Berkley Publishing Group (“Berkley Group”);
9. Respondent Putnam is an American company and is a major United States book publisher with its head office in New York. It is a wholly-owned subsidiary of Penguin Group;
10. Respondents Penguin Group Canada, Penguin Group USA and Putnam were the publishers and/or distributors of the hardcover edition of Respondent Armstrong’s book *It’s Not About The Bike: My Journey Back To Life* which was published in May 2000;
11. Respondent Berkley Group is an American company and is a major United States book publisher with its head office in New York. It is a wholly-owned subsidiary of Penguin Group;
12. Respondents Penguin Group Canada, Penguin Group USA and Berkley Group were the publishers and/or distributors of the paperback edition of Respondent Armstrong’s book *It’s Not About The Bike: My Journey Back To Life* in September 2001;
13. Respondent Random House of Canada Limited (“Random House Canada”) is the Canadian distributor of Random House, Inc. (“Random House”) and its head office is in Ontario. It publishes trade paperback books of fiction and nonfiction and conducts business throughout Canada, including within the Province of Quebec;



14. Respondent Random House is an American company with its head office in New York. It is the parent company of Random House Canada and it is the world's largest English-language general trade book publisher. It is also the parent company of many publishing groups including Crown Publishing Group ("Crown Group");
15. Respondent Crown Group is a publishing group that publishes under a wide variety of imprints and trademarks including that of Broadway Books ("Broadway").
16. Respondent Broadway is an imprint of Crown and is a major United States book publisher with its head office in New York;
17. Respondents Random House Canada, Random House, Crown Group and Broadway were the publishers and/or distributors of the hardcover edition of Respondent Armstrong's book *Every Second Counts* on January 1<sup>st</sup> 2003;
18. Respondents Random House Canada, Random House, Crown Group and Broadway were the publishers and/or distributors of the paperback edition of Respondent Armstrong's book *Every Second Counts* in June 2004;
19. All Respondents have either directly or indirectly produced, published, marketed, advertised, distributed and/or sold the Books throughout Canada, including within the Province of Quebec;
20. Given the close ties between the Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other;

C) The Situation

**A. The Publication and Promotion of Respondent Armstrong's Books**

21. On or about May 22<sup>nd</sup> 2000, Respondent Putnam, a member of Respondent Penguin Group USA, published the hardcover edition of Respondent Armstrong's book entitled *It's Not About The Bike: My Journey Back To Life*. In September 2001, Respondent Berkley Group, a division of Respondent Penguin Group USA, published the paperback edition of this same book;
22. On or about January 1<sup>st</sup> 2003, Respondent Broadway, a member of Respondents Random House and Crown Group, published Respondent Armstrong's book entitled *Every Second Counts*. On or about June 2004, these same Respondents filed the paperback edition of this same book;
23. Since the dates of publication, throughout the Class Periods and continuing to the present date, Respondents Armstrong, Penguin Group Canada, Penguin Group USA, Putnam and Berkley Group have publicly and repeatedly



represented Respondent Armstrong's book entitled *It's Not About The Bike: My Journey Back To Life* as a "Biography and Autobiography", the whole as appears more fully from a copy of the back cover of the paperback edition of the book and a copy of an excerpt from Respondent Penguin Canada's website [www.penguin.ca](http://www.penguin.ca), produced herein *en liasse* as **Exhibit R-1**;

24. Since the date of publication, throughout the Class Periods and continuing to the present date, Respondents Armstrong, Random House Canada, Random House, Crown Group and Broadway have publicly and repeatedly represented Respondent Armstrong's book entitled *Every Second Counts* as a "Biography and Autobiography", the whole as appears more fully from a copy of an extract from Respondent Random House Canada's website [www.randomhouse.ca](http://www.randomhouse.ca) and a copy of an extract from Respondent Random House's website [www.randomhouse.com](http://www.randomhouse.com), produced herein *en liasse* as **Exhibit R-2**;
25. Throughout the Class Periods, Respondents have advertised, marketed and sold the Books as a works of nonfiction. Such false and misleading representations were made in the books, on the books' cover, on the books' jackets and fly leaves, in media press kits, during television and newspaper interviews, on Internet websites and at personal appearances made by Respondent Armstrong. Respondents' misrepresentations to consumers located throughout Canada and within the Province of Quebec continue to the present day, long after the time that Respondents Armstrong and the Publishing and Distributing Respondents knew or should have known that such statements were and are false and misleading;
26. The book, *It's Not About The Bike: My Journey Back To Life*, is the supposed life story of Respondent Armstrong, the world-famous cyclist and his fight against cancer and comeback to win his first Tour de France race title. In the book, he shares his journey through triumph, tragedy, transformation and transcendence. It is the story of one of the most talked-about and inspirational sports figures of all time, a world-famous cyclist and his fight against cancer and the will to succeed despite overwhelming odds. Armstrong was named as Sports Illustrated magazine's 2002 Sportsman of the Year and, after his record-shattering string of Tour de France race victories, some proclaimed him as the greatest athlete of all time, the whole as appears more fully from a copy of the Sports Illustrated cover page dated December 16<sup>th</sup> 2002, produced herein as **Exhibit R-3**;
27. Respondents Armstrong, Penguin Group Canada, Penguin Group USA, Putnam and Berkley Group have profited considerably from the publication of both the hardcover and paperback editions of *It's Not About The Bike: My Journey Back To Life* realizing millions of dollars in sales and profits;
28. Respondent Armstrong used the success of *It's Not About The Bike: My Journey Back To Life* into a subsequent book deal, which led to the



publication in January 2003 by Respondents Random House, Crown Group and Broadway of the book *Every Second Counts*. This book was advertised by these Respondents as the follow-up story to the bestselling book *It's Not About The Bike: My Journey Back To Life*;

29. The book *Every Second Counts* was advertised by Respondents Random House Canada, Random House, Crown Group and Broadway as addressing the equally formidable challenge of living in the aftermath of winning the Tour de France race after surviving cancer, of Armstrong's sensitive relationship with the French media and of the ultimately disproved accusations of doping within his Tour de France cycling team;

### **B. Misrepresentations Contained In Respondent Armstrong's Books**

30. In his book, *It's Not About The Bike: My Journey Back To Life*, Respondent Armstrong addresses the use of performance-enhancing drugs that were and are banned by the Union Cycliste Internationale ("UCI"), the governing body for sports cycling which oversees international cycling events, their widespread use in the world of professional cycling as well as the widespread suspicion that Respondent Armstrong's success was due to his use of banned substances and practices such as blood transfusions. Throughout the book, Respondent Armstrong repeatedly denies that he ever used banned substances before or during his professional cycling career. Addressing the use of drugs in cycling, Armstrong wrote in *It's Not About The Bike: My Journey Back To Life*:

Doping is an unfortunate fact of life in cycling, or any other endurance sport for that matter. Inevitably, some teams and riders feel it's like nuclear weapons that they have to do it to stay competitive within the peloton. I never felt that way, and certainly after chemo the idea of putting anything foreign in my body was especially repulsive. Overall, I had extremely mixed feelings about the 1998 Tour [de France race]: I sympathized with the riders caught in the firestorm, some of whom I knew well, but I also felt the Tour [de France race] would be a more fair event from then on.

31. Knowing that the mere claim that his success was due to superior physical training, proper diet and an extraordinary spirit and drive to succeed was not enough to quell suspicions and rumors that he doped, Respondent Armstrong wrote lengthy passages in *It's Not About The Bike: My Journey Back To Life* that were clearly intended to convince readers, including the Petitioner and the members of the Class that the rumours of Respondent Armstrong's doping were unfair and false because of the extensive drug-testing regime used by the UCI and the organizers of the Tour de France. As appears in Chapter nine (9) of the book:



I was making enemies in the Alps. My newly acquired climbing prowess aroused suspicion in the French press, still sniffing for blood after the scandal of the previous summer. A whispering campaign began: "Armstrong must be on something." Stories in L'Equipe and Le Monde insinuated, without saying it outright, that my comeback was a little too miraculous.

I knew there would be consequences for Sestriere- it was almost a tradition that any rider who wore the yellow jersey was subject to drug speculation. But I was taken aback by the improbable nature of the charges in the French press: some reporters actually suggest that chemotherapy had been beneficial to my racing. They speculated that I had been given some mysterious drug during the treatments that was performance-enhancing. Any oncologist in the world, regardless of nationality, had to laugh himself silly at the suggestion.

I didn't understand it. How could anybody think for a second that somehow the cancer treatments had helped me? Maybe no one but a cancer patient understands the severity of the treatment. For three straight months I was given some of the most toxic substances known to man, poisons that ravaged my body daily. I still felt poisoned- and even now, three years after the fact, I feel that my body isn't quite rid of it yet.

I had absolutely nothing to hide, and the drug tests proved it. It was no coincidence that every time Tour [de France] officials chose a rider from our team for random drug testing, I was their man. Drug testing was the most demeaning aspect of the Tour [de France]: right after I finished a stage I was whisked to an open tent, where I sat in a chair while a doctor wrapped a piece of rubber tubing around my arm, jabbed me with a needle, and drew blood. As I lay there, a battery of photographers flashed their cameras at me. We called the doctors the Vampires. 'Here come the Vampires.' We'd say. But the drug tests became my best friend, because they proved I was clean. I had been tested and checked, and retested.

In front of the media, I said, "My life and my illness and my career are open." As far as I was concerned, that should have been the end of it. There was nothing mysterious about my ride at Sestriere: I had worked for it. I was lean, motivated and prepared. Sestriere was a good climb for me. The gradient suited me, and so did the conditions- cold, wet, and rainy. If there was something unusual in my performance that day, it was the sense of out-of-body effortlessness I rode with- and that I attributed to sheer exultation in



being alive to make the climb. But the press didn't back off, and I decided to take a couple of days off from talking to them.

My fellow riders tested me on the bike every single day. I was tested off the bike, too, as the scrutiny I underwent in the press intensified.

I decided to address the charges outright, and held a press conference in Saint-Gaudens. "I have been on my deathbed, and I am not stupid," I said. Everyone knew that use of EPO and steroids by healthy people can cause blood disorders and strokes. What's more, I told the press, it wasn't so shocking that I won Sestriere; I was an established former world champion.

"I can emphatically say I am not on drugs," I said. "I thought a rider with my history and my health situation wouldn't be such a surprise. I'm not a new rider. I know there's been looking, and prying, and digging, but you've not going to find anything. There's nothing to find ... and once everyone has done their due diligence and realizes they need to be professional and can't print a lot of crap, they'll realize they're dealing with a clean guy."

...

Not long after I cross the finish line, a French TV journalist confronted me: there were reports that I had tested positive for a banned substance. The report was wrong, of course. I returned to the team hotel, and pushed through a throng of clamoring media, and called another press conference. All I could do was assert my innocence each time there was a new wave of speculation in the papers - and there was one every three or four days.

Le Monde had published a story stating that a drug test had turned up minute traces of corticosteroid in my urine. I was using a cortisone cream to treat a case of saddle sore - and I had cleared the cream with the Tour [de France] authorities before the race ever started. Immediately, Tour [de France] authorities issued a statement affirming my innocence. "Le Monde was looking for a drug story, and they got one on skin cream," I said.

I was hurt and demoralized by the constant barrage from the press. I put forth such effort, and had paid such a high price to tide again, and now that effort was being devalued. I tried to deal with the reports honestly and straightforwardly, but it didn't seem to do any good.



I began to notice something. The people who whispered and wrote that I was using drugs were the very same ones who, when I was sick, had said, "He's finished. He'll never race again." They were the same ones who, when I wanted to come back, said, "No, we don't want to give him a chance. He'll never amount to anything."

Now that I was in the lead of the Tour de France, wearing the yellow jersey, and looking more and more like the eventual winner, the very same people sent the very same message. "It's not possible," they said. "Can't be done. He can't do it. What's going on here? There must be another explanation, something suspicious." They were consistent, the naysayers.

It's a good thing I didn't listen to them when I was sick.

It hurt me, too, that the French journalists in the particular were so suspicious of me. I live in France, and I loved the country. After the previous year's problems during the Tour [de France], a number of top riders had stayed away from France in '99, but not me. While other riders were afraid of being harassed by the police or investigated by the governmental authorities, I trained there every day. France was the most severe place in the world to be caught using a performance enhancer, but I did all of my springtime racing in France, and conducted my entire Tour [de France] preparation there. Under French law, the local police could have raided my house whenever they wanted. They didn't have to ask, or know. They could have sorted through my drawers, rifled my pockets, search my car, whatever they wanted, without a warrant or any sort of notice.

I said to the press, "I live in France. I spent the entire months of May and June in France, racing and training. If I was trying to hide something, I'd have been in another country."

But they didn't write that, or print that.

...

I cycled through the stage finish and dismounted, thoroughly exhausted but please to have protected my lead. But after five hours on the bike, I now had to face another two-hour press conference. I was beginning to feel that the press was trying to break me mentally, because the other riders couldn't do it physically. The media had become as much of an obstacle as the terrain itself.



That day, the International Cycling Union released all of my drug tests, which were, in fact, clean. What's more, I had received a wonderful vote of confidence from the race organizer, Jean-Marie Leblanc. "Armstrong beating his illness is a sign that the Tour [de France] can beat its own illness," he said.

Somehow, we had fended off all the attacks, both on the bike and off, and kept the yellow jersey on my back.

...

I wanted to win the time trial. I wanted to make a final statement on the bike, to show the press and cycling rumormongers that I didn't care what they said about me. I was through with press conferences (although not with drug tests; I was random-tested again after stage 17).

...

I was near the end of the journey. But there had been two journeys, really: the journey to get to the Tour [de France], and then the journey of the Tour [de France] itself. In the beginning there was the Prologue and the emotional high, and that first week, uneventful but safe. Then there were the strange out-of-body experiences at Metz and Sestriere, followed by the demoralizing attacks by the press. Now to finish with a victory gave me a sweet sense of justification. I was going to Paris wearing the maillot jaune.

32. In his follow-up book, *Every Second Counts*, Respondent Armstrong again confronts reporters who suspect that he used banned substances. Again, Respondent Armstrong repeatedly denied every doping accusation and repeatedly claimed that because he never tested positive for a banned substance during his racing career, he raced "clean" and that the attacks on his character were baseless and without merit. Armstrong again wrote at length about the doping investigation in the 2000-2001 racing season, devoting almost the entire third chapter of this book to the topic, including the following passages intended to impress the reader with his "clean" history and the legitimacy of his victories:

That year saw the beginning of a long, hard defense of my character. I'm surely the most drug-tested man on the planet. I'm tested anywhere from 30 to 40 times a year, both in and out of competition, and I welcome it, because frankly, it's the only proof I have of my innocence.

...



I've never once failed a test. Not one. Nor do I intend to, ever. You know why? Because the only thing you'll find evidence of is hard work, and there's no test for that.

But no matter how many tests I took, there were still those who considered me guilty, a dooper-mastermind who outwitted scientific communities across the globe, and the suspicion reach a height in 2000-2001.

...

On Thanksgiving Day of 2000, shortly after I got back from the Olympics, French authorities announced I was under criminal investigation for doping.

I was dumfounded. I wasn't just being called a cheat, I was being called a felon, under formal investigation.

...

What happened was this: during the Tour [de France], someone surreptitiously videotaped two of our medical staff as they threw away a couple of trash bags. The tape was sent anonymously to a government prosecutor, as well as to the France 3 television station. Now the station was airing the tape while sensationally reporting our "suspicious behavior" as we disposed of "medical waste."

French authorities had responded by launching a full-scale judicial inquiry.

...

The "medical waste consisted of some wrappers and cotton swabs and empty boxes, nothing more.

...

I immediately issued an angry denial through our [U.S. Postal Service cycling team] spokesman, Dan Osipow. Our team had "zero tolerance" for any form of doping, we said. It sounded like a cliched statement, but we meant it. We were absolutely innocent.

At first, I tried not to take it personally, and to understand the motives behind the investigation. When an athlete doped, the competitors, spectators, and journalists were defrauded.



International cycling had recently been through a drug scandal, and the French were protective of the integrity of the Tour [de France], which was more than just a race, it was a national symbol, and they didn't want it junked up by needles and vials. But I didn't like being accused on no evidence.

...

Suspicion was the permanent state of affairs in the sport, and with reason. Unfortunately, cycling had a long history of doping. It had happened time and again: athletes had lied, had cheated, had stolen. In the 1998 Tour [de France], which I missed while recovering from illness, a drug scandal resulted in multiple arrests and suspensions when a team car was found to be carrying large amounts of the blood-doping agent erythropoietin (EPO). Since then, Tour [de France] officials had worked with the International Cycling Union to develop new drug tests, and to restore public confidence in the race.

Drug inspectors arrived at each team hotel between 7 and 9 A.M. on the day that the Tour [de France] started and drew blood from the crooks of our arms. After that, there were surprise drug tests-you never knew when someone would bang on your hotel-room door and ask for blood. There were also daily urine tests in a mobile trailer after each stage ....

Even out of season, I was, and am, tested by the United States Anti-Doping Agency. It's a moment of wearying familiarity: I'm sitting in my kitchen early one Texas morning in the off-season, sipping coffee and whispering so as not to wake assorted children, when there's a loud ringing at the doorbell. Standing on the front step of my home is a representative from US ADA, coming on like John Wayne, holding out a piece of paper like a warrant and telling me to take a drug test, or risk being banned from my sport.

The drug testers in Austin were the same people every time, a husband and wife. I didn't know their names, and wasn't especially cordial with them, because they were never cordial with me. They would ring the bell, I'd open the door, and they would announce, "Random drug control." And hand me a piece of paper instructing me on my rights. Or lack thereof: if I declined the test it was considered an automatic positive, and I would be banned.

...



The head of the French Sports Ministry, Marie-George Buffet, announced that all of our [U.S. Postal Service cycling] team's urine samples from the 2000 Tour would be turned over to the French judicial investigators and submitted to forensic testing by law enforcement, and so would the garbage that we had thrown away during the 2000 Tour [de France].

That was actually good news. I wanted all the tests, because I knew they would come back pure. They were my only means of vindication. "It's the best news in a long time," I said. "Because I know I'm clean."

More good news came when the International Cycling Union announced it would conduct its own tests. The ICU had quietly decided to preserve 91 frozen urine samples taken from the 2000 race, without the cyclists' knowledge, in the hopes of eventually submitting them to a brand-new test for EPO.

...

Anyone who thought I would go through four cycles of chemo just to risk my life by taking EPO was crazy. It was one thing to seek to maximize performance, or explore a pharmacological gray zone. It was another to court death.

I practiced another, more natural way to oxygenate my blood, and that was to train or live at altitude. I stressed altitude training-it was a big part of my regimen, and it was safe, but it was no fun. It was lung-searing, and dizzying, and inconvenient, but it was legal and it worked.

...

Meanwhile, the investigation threatened to seriously mess with my reputation.

...

We wrote in anti-drug out-clause in our contracts: if I tested positive, I'd give the money back.

...

Finally, April came, and with it, what seemed to be good news. We heard via a reporter from Reuters that all of our tests were clean-exactly as we had insisted all along.



In Chapter 7 of this book, Respondent Armstrong wrote:

Here are just a few things that happened after the summer of 2002. On September 2, 2002, the French doping investigation was finally, officially closed .... After 21 months of inquiry, investigators admitted they'd found not a shred of proof, and they issued just a small discourteous announcement from the prosecutor's office. The case was dropped for lack of evidence.

33. Despite Respondent Armstrong's, Penguin Group Canada's, Penguin Group USA's, Putnam's and Berkley Group's repeated public representations that Respondent Armstrong's cycling comeback and successes were due to his innate talent and athletic gifts, training, diet and his extraordinary will to succeed, and not due to banned performance-enhancing drugs, as detailed in *It's Not About The Bike: My Journey Back To Life*, and despite Random House Canada's, Random House's, Crown Group's, and Broadway's repeated public representations that Respondent Armstrong's cycling comeback and successes were due to his innate talent and athletic gifts, training, diet and his extraordinary will to succeed and not due to banned performance-enhancing drugs, as detailed in *Every Second Counts*, both books have now been exposed as frauds. In fact, as Respondent Armstrong now admits, he and his entire United States Postal Service ("USPS") cycling team used banned substances;

**C. The Revelation Of Certain Facts Concerning Respondent Armstrong's Wrongdoing Bring Forth His Steadfast Denials, Attacks Upon Others And Repeated Attempts To Hide The Truth**

34. Suspicions that Respondent Armstrong used banned performance-enhancing drugs in the Tour de France, which were first mentioned by the French media in 1999, re-emerged in June 2004 with the appearance, right before the start of the Tour de France race, of a book entitled "L.A. Confidential: Les secrets de Lance Armstrong" (L.A. Confidential: Lance Armstrong's Secrets), co-authored by David Walsh and Pierre Ballester ("Walsh and Ballester"). In this book, which was only published in the French language, Walsh and Ballester reported that when Respondent Armstrong met with his doctors after being diagnosed with testicular cancer, he admitted that he had previously taken banned performance-enhancing drugs. This book also revealed that one of Respondent Armstrong's former assistants was asked to remove several used syringes and that Respondent Armstrong had asked to borrow her makeup in order to cover up needle marks on his skin. During this time, Respondent Armstrong fervently denied any charges of doping. Later that summer, Respondent Armstrong won his sixth (6<sup>th</sup>) Tour de France cycling race;



35. As detailed in Respondent Armstrong's book, *Every Second Counts*, one (1) month after winning his first Tour de France race, he was accused of testing positive for erythropoietin ("EPO") by L'Equipe, the French sports publication. This French paper reported that there was indisputable evidence of Respondent Armstrong's guilt from drug tests performed on six (6) urine samples taken, and later frozen was later testing, during the 1999 Tour de France race. On his Internet website, Respondent Armstrong denied that he had ever taken performance enhancing drugs. Television network CNN reported that Armstrong had been "dogged by a whispering campaign that his remarkable cycling achievements were aided by drugs despite never failing a doping test";
36. Respondent Armstrong sued the authors of "L.A. Confidential: Les secrets de Lance Armstrong" and The Sunday Times of London for £1,000,000 after the newspaper reprinted claims from the book that he took performance-enhancing drugs. Also named in Respondent Armstrong's suit was Emma O'Reilly ("O'Reilly"), his former masseuse and a major source of information for the authors of "L.A. Confidential: Les secrets de Lance Armstrong". The Sunday Times of London settled the case in 2006, paying Respondent Armstrong £300,000. O'Reilly settled with Respondent Armstrong after enduring two years and six months of litigation. Respondent Armstrong reportedly went on a litigation spree against his critics and those who sought to uncover the truth about his doping, boasting in 2006: "I think we're 10-0 in lawsuits right now", the whole as appears more fully from a copy of the USA Today article entitled "Armstrong drops defamation lawsuits in France" dated June 7<sup>th</sup> 2006 and from a copy of the Winnipeg Free Press article entitled "Lance Armstrong drops defamation lawsuits in France after other legal wins" dated June 7<sup>th</sup> 2006, produced herein *en liasse* as **Exhibit R-4**;
37. In April 2009, after being accused by France's anti-doping agency of not cooperating with a drug tester, Respondent Armstrong again denied any wrongdoing. Nevertheless, Armstrong was subsequently cited for not remaining "under the direct and permanent observation" of those administering the drug test, pursuant to the established rules. A twenty (20) minute delay in administering the drug test occurred when Armstrong declared that he had been given permission to shower following a race. While he was showering, his assistants checked the credentials of the drug tester;
38. In June 2009, Walsh and Ballester wrote a second book entitled "le sale tour". They have stated that they intentionally did not put the title in capital letters because of their disgust with what had happened with the sport of cycling. When asked why he was always "after" Armstrong, Walsh explained, "If he doped to win the Tour de France, which I believe he did, he's not a genuine champion";



39. On May 20<sup>th</sup> 2010, The New York Times reported that Respondent Armstrong and other team members of the USPS cycling team were accused of using performance-enhancing drugs by former team player Floyd Landis. Landis sent this information via email to cycling officials. This was a huge turnaround, as Landis had spent the previous four (4) years denying these very charges. Landis revealed that his own doping began in 2002, the first year he became a teammate of Respondent Armstrong. Armstrong strongly denied these allegations, the whole as appears more fully from a copy of the New York Times article entitled “After Doping Allegations, a Race for Details” dated May 21<sup>st</sup> 2010, produced herein as **Exhibit R-5**;
40. On September 10<sup>th</sup> 2010, Betsy Andreu (“Andreu”), the wife of Respondent Armstrong’s former teammate, Frankie Andreu, advised that she spoke to federal agents regarding the illicit use of banned performance-enhancing drugs in professional cycling. She stated that while Armstrong was battling cancer, he told her that he had used performance-enhancing drugs, including EPO, human growth hormone, steroids and testosterone. She told them that he was in his hospital room when he made this revelation. The next day, on September 11<sup>th</sup> 2010, Andreu revealed that she had received several threatening voicemail messages by an “Armstrong friend” and those recordings would be used as evidence in a federal investigation;
41. On January 24<sup>th</sup> 2011, Sports Illustrated reported that in 1995 Respondent Armstrong’s cycling teammate Stephen Swart called Armstrong “the instigator” and that Armstrong encouraged others to use EPO, which is a banned performance-enhancing drug. Respondent Armstrong’s lawyer denied these accusations. This article explains and elaborates on all of the above accusations made against Respondent Armstrong. More importantly, Sports Illustrated points out that because the team was sponsored by the USPS and thus, the government, a federal investigation into such wrongdoing would be required, the whole as appears more fully from a copy of the Sports Illustrated article entitled “The Case Against Lance Armstrong” dated January 24<sup>th</sup> 2011, produced herein as **Exhibit R-6**;
42. On May 23<sup>rd</sup> 2011, the CBS television network aired the show “60 Minutes” which investigated the allegations surrounding Respondent Armstrong. The show included an interview with former Armstrong teammate Tyler Hamilton. Hamilton asserted that they he and Armstrong had taken EPO during 1999-2001. The television show also revealed that two (2) other teammates observed Armstrong abusing EPO. Unlike a few years earlier, there was now several teammates coming forth and confirming that he was in fact doping;

**D. The USADA Brings Charges Against Armstrong and Publishes its Report Detailing Respondent Armstrong’s Wrongdoing**



43. On June 12<sup>th</sup> 2012, Respondent Armstrong was charged with doping and the trafficking of drugs by the United States Anti-Doping Agency (“USADA”). At the same time, Armstrong was suspended from competing in any cycling-related events. The 15-page letter sent to Armstrong by the USADA alleged that his blood samples from 2009 and 2010 were “fully consistent with blood manipulation, including EPO use and/or blood transfusions”, the whole as appears more fully from a copy of the Washington Post article entitled “Lance Armstrong faces fresh doping charges from USADA” dated June 13<sup>th</sup> 2012, produced herein as **Exhibit R-7**;
44. On July 9<sup>th</sup> 2012, Respondent Armstrong responded to the USADA’s letter by filing a lawsuit against the USADA and its Chief Executive Officer, Travis Tygart, in the U.S. District Court for the Western District of Texas. The same day, Judge Sam Sparks issued an order dismissing both the lawsuit and the motion for a temporary restraining order against the USADA. In the Order, Judge Sparks stated that “[t]his Court is not inclined to indulge Armstrong’s desire for publicity, self-aggrandizement, or vilification of [the USADA]”, the whole as appears more fully from a copy of the Complaint and Order, produced herein *en liasse* as **Exhibit R-8**;
45. On July 10<sup>th</sup> 2012, Respondent Armstrong responded to Judge Sparks’ Order by filing an Amended Complaint. In his filings, Armstrong asserted that the USADA did not have the ability to file charges against him because his contracts were with the UCI. The lawsuit was dismissed on August 20<sup>th</sup> 2012, the whole as appears more fully from a copy of the Amended Complaint and Order, produced herein *en liasse* as **Exhibit R-9**;
46. According to the USADA rules, Respondent Armstrong had the option to arbitrate the USADA charges; however on August 23<sup>rd</sup> 2012, Respondent Armstrong publicly declined arbitration. According to Sports Illustrated, Armstrong stated “There comes a point in every man’s life when he has to say, ‘Enough is enough’. For me, that time is now.....I am finished with this nonsense”, the whole as appears more fully from a copy of the Sports Illustrated article entitled “USADA to ban Armstrong for life, strip all 7 Tour de France titles” dated August 23<sup>rd</sup> 2012, produced herein as **Exhibit R-10**;
47. Despite evidence to the contrary, Respondent Armstrong continued to publicly deny any doping charges, claiming that he was weary of dealing with such accusations. By avoiding USADA arbitration, Armstrong knew he would be banned for life from the sport of cycling and stripped of all of his race wins;
48. On August 24<sup>th</sup> 2012, the USADA imposed a lifetime ban on Respondent Armstrong and stripped him of all of his Tour de France medals, thereby eliminating all of Armstrong’s achievements from the record books. The USADA has stated that Armstrong was engaged in “the most sophisticated, professionalized and successful doping program that sport has ever seen”, the



whole as appears more fully from a copy of the CBC article entitled “Lance Armstrong loses his 7 Tour de France titles” dated October 22<sup>nd</sup> 2012, produced herein as **Exhibit R-11**;

49. On October 12<sup>th</sup> 2012, the USADA forwarded to the UCI, the World Anti-Doping Agency (WADA) and the World Triathlon Corporation (WTC) its 202-page edited version of a report entitled “Reasoned Decision of the United States Anti-Doping Agency on Disqualification and Ineligibility” (the “USADA Report”). The USADA Report concluded that Respondent Armstrong had engaged in a sophisticated doping conspiracy “designed in large part to benefit Armstrong”, and that Armstrong took various performance-enhancing drugs during all of his Tour de France race victories, the whole as appears more fully from a copy of the Report dated October 10<sup>th</sup> 2012, produced herein as **Exhibit R-12**;
50. The USADA Report provided a year-by-year breakdown of Respondent Armstrong’s doping, beginning in 1998, in a race in Spain where Armstrong’s teammate, Jonathan Vaughters (“Vaughters”), alleged that Armstrong injected himself with EPO in front of him and was open about his performance-enhancing drug use. According to the USADA Report, seven (7) witnesses (including four (4) riders and a team employee) testified about performance-enhancing drug use on Armstrong’s USPS cycling team, including the use of EPO, testosterone, human growth hormone and cortisone;
51. According to the USADA Report, in 1999, Respondent Armstrong’s USPS cycling team ousted the team doctor, Pedro Celaya, because he “had not been aggressive enough for Armstrong in providing banned products”. That same year, according to the USADA Report, Armstrong “got serious” with Italian doping doctor Michele Ferrari (“Dr. Ferrari”). In one instance, according to Andreu (the wife of USPS cycling team rider Frankie Andreu), she, Armstrong and Armstrong’s then-wife met Dr. Ferrari on the side of the road outside Milan, Italy, and that on that occasion, Armstrong met alone with Dr. Ferrari for an hour. Hamilton, Armstrong’s training partner in 1999, told the USADA that Dr. Ferrari had injected him with EPO that year. During the 1999 Tour de France race, Armstrong tested positive for a cortisone that he did not have medical authorization to use. A cover-up allegedly ensued; as per the words of the USADA report:

Emma O'Reilly was in the room giving Armstrong a massage when Armstrong and team officials fabricated a story to cover the positive test. Armstrong and the team officials agreed to have Dr. del Moral backdate a prescription for cortisone cream for Armstrong which they would claim had been prescribed in advance of the Tour to treat a saddle sore. O'Reilly understood from Armstrong, however, that the positive had not come from a topical cream but had really come about from a cortisone injection Armstrong received around



the time of the Route du Sud a few weeks earlier. After the meeting between Armstrong and the team officials concluded, Armstrong told O'Reilly, 'Now, Emma, you know enough to bring me down'.

52. The USADA Report alleges that the USPS cycling team was delivered EPO during the 1999 Tour de France race by a skilled, drug-smuggling motorcyclist that the team members called "Motoman". Hamilton states that riders also took testosterone in 1999 via an olive oil based solution that was sprayed in their mouths. However, as Respondent Armstrong alleges in his Books, he attributed the above-referenced positive drug test to an approved cortisone skin cream typically used for saddle soreness;
53. In 2000, when the organizers of the Tour de France race started testing for EPO, Hamilton asserts that the USPS cycling team moved on to blood doping. Hamilton states that he, Armstrong and teammate Livingston went to Valencia, Spain and had blood extracted and later re-infused to boost their performance. Another Armstrong teammate, George Hincapie ("Hincapie"), asserts that Armstrong also used testosterone in 2000, and that Armstrong dropped out of a cycling race in Spain after Hincapie warned him that there would be drug testing. Hamilton states that USPS cycling team riders were re-infused with blood during the 2000 Tour de France race at a hotel room and that they joked about whose body was absorbing the blood the fastest;
54. Hincapie states that Dr. Ferrari visited the USPS team training camp at the beginning of 2001 and his services were offered to any rider who wanted them for \$15,000. Also in 2001, Vaughters reports that he went out on a bike ride with Armstrong where Armstrong "demonstrated a detailed knowledge of the EPO test", and told him how to skirt a positive drug test. Armstrong told Vaughters that he had sources in the testing world who told him how it works;
55. During the 2001 Tour du Suisse race, Respondent Armstrong informed his teammates that he had tested positive for EPO; however, after having a conversation with UCI officials, Armstrong told his teammates "everything was going to be okay". Cycling teammate Landis stated that Armstrong told him that he (Armstrong) had made a "financial agreement" with UCI officials to keep the results from the positive drug test hidden;
56. The USADA Report states that during 2002 Armstrong became good friends and training partners with cycling teammate Landis, who asserts that he and Armstrong shared doping advice and drugs. The USADA Report also states that the agency has evidence that \$150,000 was paid by Armstrong to Dr. Ferrari during 2002, even though Dr. Ferrari was then under investigation for doping;



57. After the 2002 Tour de France race, USPS team member Christan Vande Velde (“Vande Velde”) states that Respondent Armstrong threatened to kick him off the team if he did not step up his doping program; as the USADA report states: “Armstrong told Vande Velde that if he wanted to continue to ride for the [USPS cycling] team he ‘would have to use what Dr. Ferrari had been telling [Vande Velde] to use and would have to follow Dr. Ferrari’s program to the letter’”. According to the USADA Report, Vande Velde stated that “the conversation left me with no question that I was in the doghouse and that the only way forward with Armstrong’s team was to get fully on Dr. Ferrari’s doping program”. Vande Velde subsequently acquiesced to Armstrong’s demand;
58. According to records uncovered by the USADA, during 2003, Respondent Armstrong paid Dr. Ferrari the sum of \$475,000. Cycling teammate Landis was hurt during 2003, but when Armstrong went out of town he asked Landis to stay at his apartment and keep an eye on his blood-doping equipment. “Landis agreed to babysit the blood”, the USADA Report states. Both Landis and Hincapie state that Armstrong blood-doped in 2003 as well as during every other Tour de France race held from 2001 to 2005. Landis states that Armstrong gave him a box of six (6) pre-measured syringes of EPO after he (Armstrong) got two (2) liters of blood extracted in 2003;
59. In 2004, Respondent Armstrong continued to work with Dr. Ferrari and, on the day before the 2004 Tour de France race, Armstrong wire transferred \$100,000 to Dr. Ferrari. Cycling teammate Landis states that he saw Armstrong on a massage table with a testosterone patch on his shoulder. During the 2004 Tour de France race, both Landis and Hincapie assert that the entire USPS cycling team got blood transfusions on the team bus after a stage of the race. In late 2004, Dr. Ferrari was convicted of sporting fraud for advising a group of Italian riders about EPO and other drugs. According to the USADA report, it was only at that point that Armstrong publicly broke off his relationship with Dr. Ferrari;
60. In 2005, Hincapie asserts that Respondent Armstrong gave him EPO following the latter’s seventh-straight Tour de France race win. Also in 2005, the USADA Report states that Armstrong’s supposedly-finished relationship with Dr. Ferrari was “business as usual”. Armstrong and Dr. Ferrari met in Italy and Armstrong wire transferred \$100,000 to Dr. Ferrari;
61. During 2009, the USADA Report states that Respondent Armstrong retained a professional relationship with Dr. Ferrari by soliciting advice from him through Dr. Ferrari’s son, Stefano. Here is an example of an e-mail exchange between Armstrong, Dr. Ferrari and Stefano (“Schumi” is Ferrari): On November 4, 2009, Stefano inquires: “Schumi asks if you’d



like [t]o continue the cooperation for next year too - if so, then it [w]ould be good to start thinking about some specifics already (gym+ [s]ome bike)". On November 15<sup>th</sup> 2009, when Armstrong is looking ahead to the following year's Tour de France race, he writes: "Yes, let's continue ... what we have started. I'm curious to know what Schumi [t]hinks for 2010 and what we need to do differently in terms of training ...." Stefano responds, "Great! Schumi says it's obviously a [T]our for light climbers ...." The USADA Report states that the chances that Armstrong's blood levels during the 2009 Tour de France occurred naturally were "less than one in a million";

62. According to the USADA Report, Respondent Armstrong avoided positive drug test results by engaging in a variety of deceptive activities, including:

(a) Avoiding the testers during the window of detection

Cycling teammate Hamilton states that they would take the EPO injections at night and never answer the door when the testers came by. Teams commonly had lookouts to inform a rider when a tester was approaching. The USADA Report states that the USPS cycling team also seemed to have inside information on when the tests would come;

(b) Using undetectable substances and methods

From 1998-2005, cycling authorities could not yet test for blood doping or HGH. In addition, EPO is hard to test for and was not even testable until 2000. Testosterone is notoriously hard to detect as well;

(c) Understanding limitations to the testing methods – Next-level methods

The USADA Report states that the USPS cycling team had an understanding of how testing worked and that team members used methods that would result in negative tests. These included methods like testosterone patches and injecting EPO directly into the vein. The USADA report states that the team "literally smuggled" saline solution into camp in 1998 to water down test results;

63. The USADA Report concluded: "The evidence is overwhelming that Lance Armstrong did not just use performance-enhancing drugs, he supplied them to his teammates. He did not merely go alone to Dr. Michele Ferrari for doping advice, he expected that others would follow. It was not enough that his teammates give maximum effort on the bike, he also required that they adhere to the doping program outlined for them or be replaced. He was not just a part of the doping culture on his team, he enforced and re-enforced it. Armstrong's use of drugs was extensive, and the doping program on his team, designed in large part to benefit Armstrong, was massive and pervasive";



### **E. Respondent Armstrong's Admissions During His Televised Interview With Oprah Winfrey**

64. On January 17<sup>th</sup> 2013, Respondent Armstrong admitted to well-known television personality Oprah Winfrey ("Winfrey"), in an interview which was broadcast nationwide on The Oprah Network, that he began using banned performance-enhancing drugs in the mid-1990's, before he was diagnosed with cancer and that he used them throughout his cycling career, including during each of his seven (7) Tour de France race victories. Armstrong admitted to Winfrey that his story "was so perfect for so long", that the "myth" of his perfect story was "not true", and that "a lot of people helped paint that (untrue) picture";
65. During the interview, Respondent Armstrong admitted that his cocktail of banned performance-enhancing drugs and procedures consisted of "EPO, transfusions and testosterone", and that he was not afraid of getting caught despite the testing program because of the testing protocols and because the UCI did not test for EPO until 2006. Armstrong stated that until 2005, cyclists were tested only at or during the races at which time the banned performance-enhancing drugs were no longer detectable because most of the use of banned performance-enhancing drugs occurred during the off-competition training season. Armstrong admitted to Winfrey that he was a "ruthless, relentless, 'win-at-all-costs' bully" who hid the truth in order to "perpetuate the story" and in order to win;
66. Respondent Armstrong admitted in his televised interview with Winfrey that the positive EPO tests from samples of his 1999 blood were, in fact, accurate, despite his prior denials, which had been repeatedly stated both publicly and in his Books. Armstrong also admitted that in 1999 he had convinced a doctor to back-date a prescription for a cortisone cream in order to explain his positive test result for steroids. During the interview, Armstrong admitted that the "Motoman" story (Paragraph 52) was true;
67. Throughout the Class Periods, Respondent Armstrong fraudulently represented his books *It's Not About The Bike: My Journey Back To Life* and *Every Second Counts*, to be true and honest works of nonfiction during personal appearances, in print, on the Internet and on television;
68. From May 2000 to the present, Respondents Armstrong, Penguin Group Canada, Penguin Group USA, Putnam and Berkley Group fraudulently and/or negligently represented and promoted the book, *It's Not About The Bike: My Journey Back To Life*, to be a true and honest work of nonfiction, on the book's front and back covers, on the flyleaves, through press kits, promotions, press releases and communications made via various other media channels including, but not limited to, The New York Times, USA Today, Amazon, Indigo and Chapters. Such promotional and marketing efforts continued after



January 2011, by which point Respondents Penguin Group USA, Putnam and Berkley Group knew or should have known that Armstrong's book was not an honest work of nonfiction;

69. From January 2003 to the present, Respondents Armstrong, Random House Canada, Random House, Broadway and Crown Group fraudulently and/or negligently represented and promoted the book, *Every Second Counts*, to be a true and honest work of nonfiction, on the book's front and back covers, on the flyleaves, through press kits, promotions, press releases and communications made via various other media channels including, but not limited to, The New York Times, USA Today, Amazon, Indigo and Chapters. Such promotional and marketing efforts continued after January 2011, by which point Respondents Penguin Group USA, Putnam and Berkley Group knew or should have known that Armstrong's book was not an honest work of nonfiction;
70. Throughout the Class Periods, Respondent Armstrong actively and unfairly concealed the material fact that he used banned performance-enhancing drugs in his cycling career. Armstrong carried out this concealment and deception by various means, including holding press conferences to declare that he had never failed a drug test and by suing his detractors;
71. Due to the Respondents failure to inform consumers of the truth regarding the fictional nature of the Books, consumers have been and are continuing to unknowingly spend considerable money on a product that does not deliver as promised;
72. Given that a significant factor in a consumer's decision to purchase a nonfiction book is that it actually contain factual narratives, accounts and/or communications, the fact that in this case, the Books contained false information, the Respondents' misrepresentations and omissions of material fact induced consumers to purchase the product under a fundamental misapprehension;
73. The marketing, advertisements and representations made by the Respondents as set forth herein were, and are, false or misleading. The acts and practices of the Respondents as alleged herein constitute unfair or deceptive acts or practices and the making of false advertisements;
74. The Respondents' false and misleading representations allowed it to reap millions of dollars of profit at the expense of the consumers it has misled into believing that the Books were biographical and autobiographical when they were in fact deceptively fictional;

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**



75. Petitioner purchased the book *It's Not About The Bike: My Journey Back To Life* and the book *Every Second Counts* within the past 2 years from Chapters at 1171 Sainte-Catherine St. West, in Montreal, Quebec for approximately \$17.50 and \$20.00, respectively, plus taxes;
76. Petitioner believed, from the marketing and advertising of these books, that they were biographical and autobiographical material;
77. Petitioner purchased and read both books on the premise that they were works of nonfiction that might help him to improve his knowledge and he believed them to be true accounts;
78. Petitioner has since discovered, towards the end of 2012, when Respondent Armstrong was stripped of all seven (7) of his Tour de France race titles, that the two (2) books were not biographical and autobiographical and instead contained falsehoods;
79. When Respondent Armstrong confessed to doping to Winfrey during the interview broadcast on television on January 17-18, 2013, Petitioner felt deceived, betrayed and cheated;
80. Petitioner also discovered, while researching online, that a class action was filed in the United States for these Books due to the false advertising relating to their biographical and autobiographical character, the whole as appears more fully from a copy of said Class Action Complaint, produced herein as **Exhibit R-13**;
81. In consequence, Petitioner feels that he has been misled by the Respondents and that had he known the true facts, the Petitioner would not have purchased the Books;
82. Petitioner's damages are a direct and proximate result of the Respondents' conduct and the companies' false and misleading marketing and advertising;
83. In consequence of the foregoing, Petitioner is justified in claiming damages;

### **III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

84. Every member of the class has purchased at least one of the Respondents' Books (*It's Not About The Bike: My Journey Back To Life* and/or *Every Second Counts*) believing that it was biographical and autobiographical material;



85. The class members were, therefore, induced into error by the Respondents' false and misleading advertising;
86. Had the Respondents disclosed the truth about the Books, that they were not biographical and autobiographical, but in fact works of fiction, reasonable consumers would not have purchased the products;
87. Each member of the class is justified in claiming at least one or more of the following as damages:
- a. The purchase price of the products;
  - b. Punitive damages;
88. Respondents engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from class members;
89. All of these damages to the class members are a direct and proximate result of the Respondents' conduct and their false and misleading advertising;

#### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

- A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical
90. Petitioner is unaware of the specific number of persons who purchased the Books; however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
91. Class members are numerous and are scattered across the entire province and country;
92. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;
93. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the class;



94. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;
95. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action
96. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
97. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
98. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Did the Respondents engage in unfair, false, misleading, or deceptive acts or practices regarding the truthfulness of the books *It's Not About The Bike: My Journey Back To Life* and/or *Every Second Counts*?
  - b) Are the Respondents liable to the class members for reimbursement of the purchase price of the Books as a result of their misconduct?
  - c) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
  - d) Are the Respondents responsible to pay compensatory and/or punitive damages to class members and in what amount?
99. The interests of justice favour that this motion be granted in accordance with its conclusions;

## **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

100. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages and an injunctive remedy;



101. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that he be attributed the status of representative of the Class

102. Petitioner is a member of the class;

103. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary



for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with his attorneys;

104. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

105. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

106. Petitioner, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

107. Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondent's conduct;

108. Petitioner understands the nature of the action;

109. Petitioner's interests are not antagonistic to those of other members of the class;

B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

110. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

111. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

112. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages and for injunctive relief;

**ASCRIBE** the Petitioner the status of representative of the persons included in the class herein described as:



- all residents in Canada who have purchased the book, *It's Not About The Bike: My Journey Back To Life* from its initial publication date on May 22<sup>nd</sup> 2000 through to the present and/or who have purchased the book *Every Second Counts* from its initial publication date on January 1<sup>st</sup> 2003 through to the present (the "Class Periods"), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have purchased the book, *It's Not About The Bike: My Journey Back To Life* from its initial publication date on May 22<sup>nd</sup> 2000 through to the present and/or who have purchased the book *Every Second Counts* from its initial publication date on January 1<sup>st</sup> 2003 through to the present (the "Class Periods"), or any other group to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Did the Respondents engage in unfair, false, misleading, or deceptive acts or practices regarding the truthfulness of the books *It's Not About The Bike: My Journey Back To Life* and/or *Every Second Counts*?
- b) Are the Respondents liable to the class members for reimbursement of the purchase price of the Books as a result of their misconduct?
- c) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
- d) Are the Respondents responsible to pay compensatory and/or punitive damages to class members and in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;



CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**DECLARE** that all members of the class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE, the GLOBE & MAIL, and the NATIONAL POST;

**ORDER** that said notice be available on the Respondent's website with a link stating "Notice to purchasers of Lance Armstrong's books *It's Not About The Bike: My Journey Back To Life* and/or *Every Second Counts*";

**RENDER** any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**THE WHOLE** with costs, including all publications fees.



Montreal, February 4, 2013

(s) Jeff Orenstein

---

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner