



Kansas Bar Association Young Lawyers

Dear Mock Trial Teacher and Attorney Coaches:

The Young Lawyers of Kansas and Shook, Hardy & Bacon, L.L.P. welcome you and your team to the 2009 Kansas High School Mock Trial Tournament.

Please review all of the material carefully. If you have any questions about registration, administration of the program, questions about the case or the rules of evidence, please contact Daniel Back at 316-356-7741.

The Regional Tournaments will be held on March 7, 2009 at the Johnson County Courthouse, Olathe, and the Sedgwick County Courthouse, Wichita. The State Tournament will be held on April 11, 2009.

Case Materials

This year's case is a wrongful death lawsuit. The case is fictional, and any similarity or resemblance of any character to an actual person or entity is strictly unintentional and coincidental. The case materials were prepared by Dewain Fox, Pam Gates and Lance Broberg in association with the Arizona Foundation for Legal Services and Education. The article entitled "Enhancing Your Performance The Unnatural Way: A Look At the Banned Substance EPO" (Exhibit 10 in the case materials) was written by Chris Tull and is copyrighted by www.beginnertriathlete.com. The Kansas Bar Association, Young Lawyers section would like to thank the authors of the problem as well as Susan Nusall at the Arizona Foundation for Legal Services & Education and KidsVoting Arizona for their willingness to share such a great problem.

Program and Evidence Rules

All team members are expected to know the Mock Trial Rules of Evidence. Please be advised that the rules are same rules that will be used at the National Championship – they can be found on the Kansas Bar Association, mock trial website, <http://www.ksbar.org/public/mocktrial.shtml>.

Trials

This year's case materials include jury instructions to set forth the applicable law. The trial should be presented as a jury trial with the scoring judges serving as the jury. There should be one presiding judge sitting on the bench, and the remaining judge(s) should sit in the jury box. When single presiding/scoring judges are used, the trial should be presented as a bench trial using the same law and legal principles set forth in the jury instructions.

As you will see, the case materials contain a lot of information. As such, teams will have to make strategic decisions regarding what evidence they want to present within the allotted time. It is extremely unlikely that a team can present all evidence contained in the materials within the time constraints. Please be advised that the time rules will be strictly enforced

Score Sheet and Ratings

A score sheet and the criteria for scoring to be used by the judges at the Regional Tournaments and the State Tournament are included in the case materials. Your students should be aware of the scoring system that is used to rate their performance. We recommend using the scoring sheet when students engage in trial practice runs. **Remember that each side has only 35 minutes to present their case this year.** Please note, in accordance with Rule 4.7, the scoring judges have discretionary authority to discount points for exceeding time limits during any section.

Student Roster

The Student Roster form is the official form you are to use on Tournament Day. Please make certain that you have at least FIVE COPIES on hand the day of the tournament. The team is responsible for completing this form and presenting it to the judge/bailiff at the beginning of each round including the Finals Round.

National Mock Trial Tournament

The National Mock Trial Tournament will be held on May 6-10, 2009 in Atlanta, Georgia. The Young Lawyers Section of the KBA provides a grant to the state champion in order to participate in the National Mock Trial Competition. This project has been operated successfully for more than ten years. It has been funded through entrance fees paid by the schools, a gift from Shook, Hardy & Bacon LLP, an IOLTA grant from the Kansas Bar Foundation, and donations from local bar associations and other companies.

We hope you enjoy the problem. Have fun and good luck with your tournaments!

Summary of Case

Jordan Simon was a 17-year old senior in high school who unexpectedly died of a heart attack. Jordan began running as a youngster, and had real promise. Jordan joined Desert Willow High School's track team as a freshman, and quickly developed into a star sprinter. At the time of Jordan's death, Jordan was competing for a track scholarship to a Division I university.

The autopsy revealed that Jordan's bloodstream contained the steroid Erythropoietin (pronounced, ah-rith-ro-poy-tin, and abbreviated, EPO). EPO is used medically to treat certain forms of anemia. Athletes use EPO to improve performance, because it increases the oxygen carrying capacity of blood. EPO also increases the blood viscosity, which can cause the blood to sludge and clog capillaries, resulting in a heart attack.

Kelly Simon, Jordan's surviving parent, has filed a lawsuit against Desert Willow High School and Terry Swift, the track coach, claiming that Desert Willow and Terry were negligent in causing Jordan's death. Specifically, Kelly claims that Terry and the school's athletic department: (i) encouraged Jordan to use steroids; and (ii) should have known that Jordan was using steroids and taken steps to stop Jordan's steroid use. Terry and Desert Willow deny Kelly's claims, and contend that: (i) Jordan assumed the risk of using steroids; and (ii) Kelly was comparatively negligent in not (a) discovering that Jordan was using steroids, and (b) taking steps to stop Jordan's steroid use. This is a bifurcated trial on the issue of liability only; **damages are not at issue**.

The plaintiff's witnesses are: (i) Kelly Simon, Jordan's surviving parent; (ii) Morgan Pearce, another student on the track team and Jordan's close friend; and (iii) Lynn Roper, Ph.D., an expert on the effects of steroid abuse and the use of steroids by young athletes. The defendants' witnesses are: (i) Terry Swift, Desert Willow's track coach; (ii) Jamie Hagar, Ed.D, Desert Willow's assistant principal and athletic director; and (iii) Aubrey Brady, a consultant to coaches and athletic departments.

1 PARKER WALTERS, P.C.
Eduardo Chavez (No. 031079)
2 2727 North Central Avenue
Suite 905
3 Shocker, KS 85012
Telephone: (316) 555-1212

4 Attorneys for Plaintiff
5
6
7

8 SUPERIOR COURT OF KANSAS
9 JAYHAWK COUNTY

10 KELLY SIMON, an unmarried
individual,

No. CV2008-35789

11 Plaintiff,

COMPLAINT

12 v.

13 TERRY SWIFT, an unmarried
14 individual; DESERT WILLOW HIGH
SCHOOL,

15 Defendants.
16

17 Plaintiff alleges:

18 **COUNT ONE**

19 **(Negligence/Wrongful Death)**

20 1. Plaintiff is an unmarried individual who resides in Jayhawk County, Kansas.

21 2. Terry Swift ("Swift") is an unmarried individual who resides in Jayhawk County,
22 Kansas. At all relevant times, Swift was the track coach at Desert Willow High School
23 ("Desert Willow").

24 3. Desert Willow is a private high school with its principal place of business in
25 Jayhawk County, Kansas.

26 4. Jurisdiction and venue are proper in this Court.

27 5. Plaintiff is the surviving parent of Jordan Simon ("Jordan"), who died
28 unexpectedly of a heart attack on May 6, 2008.

1 6. Jordan began competitive sprinting in grade school. Jordan enrolled as a freshman
2 and joined the track team at Desert Willow during the 2004-05 school year. At the time of
3 Jordan's death, Jordan was: (i) a 17-year old senior at Desert Willow; and (ii) a star
4 sprinter on Desert Willow's track team.

5 7. An autopsy and laboratory tests confirmed that Jordan's bloodstream contained
6 extremely high levels of a steroid known as Erythropoietin ("EPO"). EPO is a steroid that
7 commonly is used without a doctor's prescription and supervision by sprinters and other
8 endurance athletes to improve their performance.

9 8. The EPO in Jordan's system caused Jordan's fatal heart attack.

10 9. Jordan never had a doctor's prescription for EPO.

11 10. Defendants had a duty to (among other things): (i) monitor Desert Willow's
12 student athletes for the use of illegal performance-enhancing drugs; (ii) warn Desert
13 Willow's student athletes regarding the dangers and risks associated with the use of illegal
14 performance-enhancing drugs; and (iii) discourage Desert Willow's student athletes from
15 using illegal performance-enhancing drugs (collectively, the "Duties").

16 11. Defendants breached their Duties to Jordan, by (among other things): (i) failing to
17 monitor Jordan for the use of illegal performance-enhancing drugs; (ii) failing to warn
18 Jordan regarding the dangers and risks associated with the use of illegal performance-
19 enhancing drugs; and (iii) expressly and/or implicitly encouraging Jordan to use illegal
20 performance-enhancing drugs.

21 12. Defendants' breach of the Duties proximately caused Jordan's death.

22 13. Plaintiff has suffered emotionally and physically as a result of Jordan's death and
23 Defendants' breach of the Duties.

24 WHEREFORE, plaintiff prays for judgment against Defendants for:

25 A. Damages in an amount to be proven at trial;

26 B. An award of taxable costs; and

27 C. Such other relief as the Court deems just and proper.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: August 27, 2008.

PARKER WALTERS, P.C.

By /s/ Eduardo Chavez

Eduardo Chavez
Attorneys for plaintiff

1 PARKER WALTERS, P.C. Eduardo Chavez (No. 031079) 2727 North Central Avenue Suite
905
2 Shocker, KS 85012
Telephone: (316) 555-1212

3 Attorneys for Plaintiff
4
5

6
7 SUPERIOR COURT OF KANSAS
8 JAYHAWK COUNTY

9 KELLY SIMON, an unmarried
individual,

No. CV2008-35789

10 DEMAND FOR TRIAL BY JURY

11 Plaintiff,

12 v.

13 TERRY SWIFT, an unmarried
individual; DESERT WILLOW HIGH
14 SCHOOL,

15 Defendants.

16 Pursuant to Rule 60-238(b), Kansas Rules of Civil Procedure, plaintiff demands a trial
17 by jury.

18 DATED: August 27, 2008.

19 PARKER WALTERS, P.C.

20
21 By /s/ Eduardo Chavez
22 Eduardo Chavez Attorneys for Plaintiff
23
24
25
26
27
28

1 FOSTER & COLLINS, LLP Sarah Cavanaugh (No. 035683) One North Central Avenue
Suite 1800
2 Wildcat, KS 85004
Telephone: (316) 555-1000

3 Attorneys for Defendants
4
5
6

7 SUPERIOR COURT OF KANSAS
8 JAYHAWK COUNTY

9 KELLY SIMON, an unmarried

10 Plaintiff,

11 v.

12 TERRY SWIFT, an unmarried
individual; DESERT WILLOW HIGH
13 SCHOOL,

14 Defendants.

No. CV2008-35789 individual,
ANSWER

15 Defendants answer plaintiff's Complaint as follows:

16 1. Defendants admit the allegations in paragraphs 1 through 4 and 8.

17 2. Defendants admit that (i) plaintiff is the surviving parent of Jordan Simon
18 ("Jordan"), and (ii) Jordan died on May 6, 2008; and are without sufficient information
19 and knowledge to admit or deny the remaining allegations in paragraph 5.

20 3. Defendants admit that (i) Jordan enrolled as a freshman and joined the track team
21 at Desert Willow High School ("Desert Willow") during the 2004-05 school year, and
22 (ii) at the time of Jordan's death, Jordan was a 17-year old senior and a star sprinter on
23 Desert Willow's track team; and are without sufficient information and knowledge to
24 admit or deny the remaining allegations in paragraph 6.

25 4. Defendants are without sufficient information and knowledge to admit or deny the
26 allegations in paragraphs 7 through 9.
27
28

1 5. Defendants deny the allegations in paragraphs 10 through 13.

2 6. Defendants deny all allegations that have not been admitted expressly in this
3 Answer.

4 **Affirmative Defenses**

5 1. Plaintiff's claims, if any, are barred by plaintiff's comparative negligence.

6 2. Plaintiff's claims, if any, are barred by Jordan's assumption of the risk.

7 3. Defendants may learn of additional affirmative defenses during the course of
8 discovery, and reserve the right to amend this Answer to assert such affirmative defenses.

9 WHEREFORE, defendants pray for:

10 A. Judgment dismissing plaintiff's claims with prejudice;

11 B. An award of their taxable costs; and

12 C. Such other relief as the Court deems just and proper.

13 DATED: September 12, 2008.

14 FOSTER & COLLINS, LLP

15
16 By /s/ Sarah Cavanaugh
17 Sarah Cavanaugh Attorneys for Defendants

18 Copy of the foregoing mailed on September 12, 2008, to:

19 Eduardo Chavez
20 PARKER WALTERS, P.C. 2727 North Central Avenue Suite 905
21 Shocker, KS 85012
22 Attorneys for Plaintiff

23
24
25
26
27 _____/s/ Ruth Smith
28

1 **AFFIDAVIT OF KELLY SIMON**

2 STATE OF KANSAS)

) ss.

3 County of JAYHAWK)

4 Kelly Simon, first duly sworn, under oath, states as follows:

5 1. I am the 34-year-old only surviving parent of Jordan Simon. Jordan is my only child
6 and died on May 6, 2008.

7 2. My former spouse, Keane, and I found out we were expecting Jordan when I was
8 only 16 years old. Keane and I were both in high school. We were both very successful
9 runners. Keane ran long distances and I was a sprinter. We were hoping to go to college
10 on track scholarships when we learned about the pregnancy.

11 3. Keane died when Jordan was only 2 years old. I worked two, and often three, jobs
12 to make sure that I could take care of Jordan. I wanted to make sure that Jordan had a
13 good life. I probably wasn't home enough, but I had to do what it took to get food on the
14 table and pay for insurance.

15 4. Insurance from Keane's death was set aside in a trust account for Jordan. Until
16 Jordan was 16 years old, I controlled the trust. I never took money out of the trust. At
17 times, I even worked 18 hours a day to make sure that we could get by without touching
18 Jordan's trust money. According to the terms of the trust, when Jordan turned 16 years
19 old, Jordan could access the money and withdraw funds without my consent.

20 5. I knew, even when Jordan was little, that Jordan had serious running talent.
21 Jordan ran a 2-mile race at only six years old and finished before a lot of adults. Jordan
22 and I often ran together on the weekends and early in the morning – it was our time
23 together. Jordan was a strong runner.

24 6. By 6th grade, Jordan could often beat me in sprints. Of course, I was not in great
25 shape, but Jordan was really fast, particularly in the 100 meters.

26 7. By 8th grade, Jordan met numerous high school track coaches. Terry Swift from
27 Desert Willow High School, one of the top track coaches in the state, was at Jordan's
28 middle school for a meeting during one of Jordan's track meets. Jordan was very excited

1 about meeting Terry. I wish Terry had been hit by a car on the way to the middle school;
2 then I wouldn't be walking past Jordan's empty room every night. I blame Terry and
3 Desert Willow for Jordan taking steroids.

4 8. In middle school, Jordan set numerous school records. A few kids at other schools
5 were faster, but Jordan was committed to track.

6 9. Terry made quite an impression on Jordan. After meeting Terry, Jordan talked all
7 the time about going to Desert Willow, because it had one of the best track programs in
8 the state. The problem was that Desert Willow is a fancy private school – a school we
9 couldn't afford without help, and Jordan's grades were not nearly good enough to qualify
10 for an academic scholarship. It's not that Jordan wasn't bright, but Jordan was more
11 interested in running than studying. Fortunately, Terry recommended Jordan for a
12 scholarship. Although Terry never said it, all Jordan had to do was stay on the track team
13 and keep doing really well, and Jordan would get to stay at Desert Willow.

14 10. I know I put a lot of pressure on Jordan. I wanted to make sure that Jordan stayed at
15 Desert Willow. It was a good school – one we couldn't afford. I also wanted Jordan to have
16 the life as a track star that Keane and I couldn't, because we made poor decisions when
17 we were young.

18 11. I remember when Jordan was 15, one day during our run, Jordan told me that
19 Terry was applying a lot of pressure for Jordan to take it to the next level. Jordan had
20 placed second in the last meet and Terry was angry. Jordan told me that Terry said that
21 college was on the line and so was next year's tuition at Desert Willow.

22 12. I told Jordan that Terry was right. I wanted Jordan to get into a good college. I
23 wanted to make sure that Jordan stayed at Desert Willow. I remember telling Jordan
24 about the extra training we were going to do together. Instead, I got a promotion at one of
25 my jobs to manager of the computer training division, and I ended up working a lot more. I
26 never got to do the extra training with Jordan. In fact, I ended up putting a lot more
27 responsibility on Jordan to manage the house. Jordan had to shop for groceries, do all the
28 laundry, run errands and make dinner. Jordan probably had less time to train after my

1 promotion than before.

2 13. When Jordan was 16, more college recruiters started coming to the track meets
3 and practices. Jordan was getting more and more nervous.

4 14. Jordan asked me a few times if funds from the trust account were available. I said at
5 16 the funds were available. I never even thought to check the balance after Jordan
6 turned 16.

7 15. In Jordan's senior year, things were coming together – or so it seemed – from a
8 track standpoint. Jordan won every race. Jordan's times were getting faster and faster.
9 At home, Jordan was more and more withdrawn. I figured it was adolescence. Jordan
10 never wanted to go on morning or weekend runs with me, saying, "they were unnecessary –
11 there were other types of training for great runners." Jordan's comments hurt my
12 feelings, but I figured Jordan was just angry about all the responsibilities that the other
13 kids didn't have.

14 16. During Jordan's senior year, Jordan was sick a lot. Jordan often stayed home with
15 cold and flu-like symptoms. It seemed like Jordan caught almost every bug that was
16 going around the school that year. Jordan also got lots and lots of nosebleeds. I asked if
17 we should go to the doctor, but I just got an ice-cold stare and Jordan said, "it's the price
18 of success." I had no idea what that meant.

19 17. I also was worried about Jordan's acne. Jordan always had perfect skin, but all of a
20 sudden Jordan's back was covered with acne. I figured it was hormonal and Jordan was
21 already angry all the time – I didn't want to bring up the issue.

22 18. In April 2008, I decided to buy Jordan a car as an early graduation gift. I had been
23 saving as much as I could. I thought about asking Jordan to pay for car insurance from
24 the trust. I decided to check the balance on the account. I saw the account balance was
25 down from around \$50,000 to about \$25,000. I blew my top. First, I called the bank and
26 freaked out that money was fraudulently taken out of Jordan's trust. The bank e-mailed
27 me the records showing Jordan's withdrawals, which are marked as Exhibit 9. I couldn't
28 believe my eyes.

1 19. I went to Jordan's track practice and in front of Terry I started yelling at Jordan. I
2 showed Jordan the bank records and demanded an explanation. Jordan looked at both of
3 us and said, "You both know where the money is going. You might as well buy it for me.
4 How am I getting so good? Not from doing dishes. Not from doing laundry." Jordan
5 looked right at Terry and said, "You know – you explain it." Jordan ran off and didn't talk
6 to me for a couple of weeks. I asked Terry what Jordan meant and Terry said, "I'll take
7 care of it."

8 20. I monitored the account and the money kept getting withdrawn, but I couldn't do
9 anything to stop it. I wish I had done something – I don't know what – but I wish I had
10 done something.

11 21. On the morning of May 6, 2008, Jordan's school called and asked why Jordan
12 wasn't there. Jordan had a big track meet that day – Jordan always went to school on days of
13 track meets, because you could only participate if you attended school. I called home, but
14 there was no answer. I knew something was wrong, so I drove home as fast as I
15 could. When I got home I found Jordan. Jordan was lying in bed, eyes closed. I touched
16 Jordan, and I felt my life was over. Jordan's body was cold. I screamed. I called 911.

17 22. I've taken leave from work. I can't function. I'm heavily medicated most of the
18 time. My life is gone. Everything I loved is gone. Jordan was my baby. I wanted Jordan to
19 have the life I never had – now Jordan is dead at 17 years old.

20 23. About a month ago, I found the strength to go through some of Jordan's stuff. In a
21 shoebox in the back of Jordan's closet I found a bunch of syringes and small bottles
22 containing a clear liquid. I'm sure it was the steroids. I threw the box against the wall.
23 Eventually, I gathered everything up and tossed it in the trash.

24 24. Most days I sit in Jordan's room or lie on the bed and stare at the track trophies and
25 medals. I crave one more day with Jordan. One more run. One more breakfast. One more
26 conversation. I don't know how I can get through the rest of my life. For now, I'm just
27 trying to get through each minute with the pain and loss of losing my child to steroids.

28 /s/ Kelly Simon

1 **AFFIDAVIT OF MORGAN PEARCE**

2 STATE OF KANSAS)

) ss.

3 County of JAYHAWK)

4 Morgan Pearce, first duly sworn, under oath, states as follows:

5 1. I am 18 years old and live in Bluefield, Kansas with my parents. I am a freshman at
6 Glendale Community College where I am a member of the track team. I graduated
7 from Desert Willow High School, where I also was on the track team.

8 2. I have been running track since my freshman year at Desert Willow. I was first
9 introduced to track in my physical education class. My P.E. teacher was Coach Swift, the
10 track coach. Coach suggested that I try out for the team because I was the fastest person
11 in my class. Coach also told me that I might qualify to get a scholarship to cover some, if
12 not all, of the tuition for attending Desert Willow.

13 3. On the first day of tryouts, Coach told us about the school's drug policy. Coach
14 said that drugs were strictly prohibited. If we were caught with marijuana, cocaine,
15 heroin, methamphetamine or any other narcotic, we would be kicked off the team and the
16 police would be called. Then Coach gave us some KIA form to sign saying we wouldn't
17 use drugs. We went through the same process every year. Coach never said anything
18 about steroids.

19 4. I never saw any posters or any other material about steroids in the locker room.

20 5. I first met Jordan Simon during tryouts. Jordan also was a freshman and had been
21 running track for several years. Both of us ran the 100 meters. Jordan and I hit it off,
22 because Jordan was pretty nice and had a funny way about him/her. After tryouts, we
23 both made the team. I was extremely happy, and so were my parents, because to top it all
24 off I got a scholarship covering 50% of my tuition. Jordan and I started hanging out a lot.
25 Not just at practice, but outside too. We were pretty close, despite the fact that Jordan was
26 always a little faster than I was and usually edged me out at track meets.

27 6. Our first two years were pretty normal for track runners I guess. During the
28 season we would pull two-a-days--working out and lifting weights in the morning before

1 class, and running at track practice after school. We usually would meet at my locker
2 right after our last class and head out to the field together.

3 7. Our junior year Jordan changed a little. Jordan was really busy at home making
4 dinner, doing the cleaning and laundry, and picking up groceries. I think all the extra
5 work was a little much and wore Jordan out. Jordan started to skip morning workouts
6 with me. Jordan's running suffered. I kept up my workouts, and my times kept
7 improving. Not Jordan. Jordan's times started to dip towards the end of the season. We
8 were pretty much tied by the final meet of the season.

9 8. Coach noticed Jordan was slacking too, and was not happy. It wasn't just Jordan's
10 track performance--it was Jordan's school performance as well. Coach started riding
11 Jordan pretty hard. It got worse at the end of that year. One of the seniors received a full-
12 ride scholarship to ASU. It's not that this was unusual or anything, I mean, Desert
13 Willow almost always finishes in the top five in state, and every year it seems like
14 someone gets a scholarship. That scholarship came at a bad time for Jordan. Like I said,
15 Coach already was riding Jordan pretty hard, and we found out about the scholarship just
16 as Jordan's times hit their lowest of the year. Coach pretty much blew a gasket. I
17 remember one day in the locker room I heard yelling coming from Coach's office. I
18 looked in the window and could see Coach standing over Jordan screaming and yelling. I
19 heard Coach tell Jordan "forget about a college scholarship, if you don't straighten up, I
20 am going to yank your Desert Willow scholarship!" Right then, Coach looked up and saw
21 me through the window. Coach pointed at me and hollered, "I hope you heard that,
22 because the same goes for you!" Then Coach slammed the door and went back to yelling
23 at Jordan.

24 9. A week later Coach saw Jordan and me in the hall and told us to be at the end of the
25 year banquet early so we could talk. We did, and Coach pulled us into a side room one
26 at a time. I went first. Coach asked if I thought I could get my numbers up so that I could get
27 a scholarship. I said I was working really hard, and I thought it was possible. Coach then
28 told me "getting a scholarship for track takes more than just workouts and

1 practice. It's about what you put into your body too." I told Coach I knew that, and that I
2 was on a good diet. "Diet, yeah, that's important too," Coach said. Then Coach said:
3 "You know only the best of the best get scholarships, right? You have to do whatever it
4 takes." "Yes," I responded. Coach then told me that some of my competitors no doubt
5 were using "supplements" and that, whether I liked it or not, they were the ones who were
6 going to get the scholarships. Coach asked me what I thought about that. I said I didn't
7 think it was fair. Then Coach said, "It's not fair, and I certainly won't give you anything,
8 but one year is a pretty small price to pay for a scholarship that could have lifelong
9 benefits." With that, Coach told me to send Jordan in.

10 10. About ten minutes later, Jordan sat next to me at the table. I asked about the
11 meeting with Coach. Jordan wouldn't look at me, but said "one year is a pretty small
12 price to pay for a scholarship. Coach is right."

13 11. The summer after our junior year Jordan and I didn't hang out that much. I had
14 gotten a summer job to try and start saving for college just in case, and Jordan still was
15 pretty busy at home.

16 12. When our senior year started, things began to change. Don't get me wrong, we
17 were still pretty close, it's just that Jordan started acting funny. Most of the time Jordan
18 just wanted to focus on track. We didn't meet at my locker after class anymore. Jordan
19 went home instead and met me on the field. It seemed like Jordan didn't want to hang
20 out; Jordan just wanted to work out. After practice it was the same thing. Jordan would
21 just go straight home, without even showering. At the time, I just figured Jordan was
22 embarrassed. Jordan had started to get some pretty bad body acne.

23 13. Jordan started getting sick a lot too. It started with the nosebleeds. It seemed
24 like once a week Jordan would have to duck out of one of the classes we had together to
25 see the school nurse. Then Jordan started missing school. It happened a lot. When I
26 asked about it, Jordan just told me it was the flu or a bad cold. I figured it was just stress
27 from trying to get a scholarship and from the pressure Coach put on Jordan every practice.

28 14. I was amazed when track season finally started in February 2008. Despite being

1 sick all the time and missing school and practice, Jordan's numbers were up. I mean way
2 up. Usually, it takes a little time to get back into the swing of things. Not for Jordan.
3 Right from the start, Jordan's numbers were tenths of a second ahead of the previous year --
4 and that is a lot for the 100 meters.

5 15. Coach kept a chart of our best times on a bulletin board in the locker room. It
6 showed our time at the final meet of the year for every year we had been on the team, and
7 our current best time. Everyone saw how much Jordan had improved. A lot of the other
8 runners started talking.

9 16. Right away, I knew something wasn't right. Jordan idolized Coach. Jordan
10 always had talked about what a great track career Coach had before becoming a teacher.
11 Jordan wanted to be just like Coach. And that's when I remembered our talk with Coach
12 before the banquet. I know that Jordan would do whatever Coach said. I quickly put two and
13 two together, and that's when I realized Jordan was using steroids.

14 17. I didn't know what to do, so I decided that I would try and tell Coach. I knew I
15 was risking my scholarship to Desert Willow, but I had saved up some money from my
16 summer job. I had to risk it. Jordan was my friend. Jordan was in trouble. So I went and
17 told Coach. Coach asked if I had seen Jordan use steroids; if I had seen the steroids; if I
18 had asked Jordan. Of course, I said no. Coach said: "Then my hands are tied. Besides,
19 whatever you are worried about can't be that bad, just look at Jordan's times." That must
20 have been toward the end of April, maybe the beginning of May.

21 18. A few days later, on May 6, 2008, I went to school like any other day. I didn't
22 see Jordan at school that day. I figured Jordan was sick again, but I thought it was odd,
23 because we had a track meet that afternoon and Jordan never missed school on the day of a
24 meet. Toward the end of the day, there was a page over the intercom in my classroom. I
25 was asked to go to the front office. When I got there, there was a bunch of people
26 huddled around talking quietly. One of them, a school counselor, came over and put his
27 arm around me and took me to his office. I started getting worried. I asked what was
28 wrong. He said he would tell me in just a moment. I walked into his office. My heart

1 started beating harder. I sat down. He closed the door. He sat down next to me. He
2 wouldn't look at me. I was starting to panic. "What's going on?" I asked. He told me
3 that Jordan died. I thought I heard him wrong. It felt like the wind had been knocked out
4 of me. He said it happened sometime in the middle of the night. I don't remember what
5 else he said.

6 19. A little while later my mom came to pick me up. When I left the office, I saw
7 Coach in the front office. Coach was sitting alone, crying. As I left with my mom, I
8 remember turning and saying, "I hope you're happy. You killed my best friend."

9 20. I quit the team the next day. I know Coach was put on administrative leave, but I
10 couldn't go back to that locker room. I couldn't be on that field. I couldn't be where my
11 Coach slowly killed my best friend.

12
13 /s/ Morgan Pearce

14 SUBSCRIBED AND SWORN to before me, a Notary Public, on October 3, 2008, by
15 Morgan Pearce.

16 /s/ Jearl Stanton

17 My

18 Commission Expires

19 November 5, 2010

1 **AFFIDAVIT OF LYNN ROPER, Ph.D.**

2 STATE OF MICHIGAN)

) ss.

3 County of Wayne)

4 Lynn Roper, Ph.D., first duly sworn, under oath, states as follows:

5 1. I obtained my Bachelor of Science degree in physical education and health in 1989
6 from the University of Georgia. From 1989 to 1994, I taught high school physical
7 education and health in Atlanta, Georgia. I also was the head track coach at the school.

8 2. In 1994, my favorite nephew Scott died of a heart attack. It was devastating and a
9 shock to the whole family, because Scott was only 16 years old, he played sports since he
10 was a young boy, and he was in great physical shape. Scott always looked up to me and
11 said that he wanted to follow in my footsteps and become a physical education teacher
12 and coach.

13 3. I always pushed Scott to be the best athlete he could be in every sport. He always
14 worked hard and excelled at every sport he played. I was very excited when Scott began
15 playing linebacker for his high school's varsity football team. It was amazing how
16 quickly Scott developed. He was bigger than anyone else on the team in no time at all,
17 and he quickly became the star linebacker. I was so proud of all of Scott's hard work.

18 4. I'll never forget the fall afternoon in 1994 when I received a call from my sister,
19 Scott's mother. I could tell immediately that something bad had happened, but nothing
20 could have prepared me for what I was about to learn. I was absolutely floored when my
21 sister told me that Scott collapsed at football practice and was dead. My disbelief turned
22 to anger when the autopsy report came back several days later and revealed that Scott had
23 been taking steroids. Although I had no clue that Scott was using steroids, I still feel
24 guilty that I pushed him too hard and set the level of expectations too high. I decided that I
25 needed to learn more about steroids, and I vowed to do whatever I could to hold
26 accountable those who are responsible for encouraging steroid abuse.

27 5. I couldn't stand to coach anymore after Scott's death, so I quit my teaching and
28 coaching positions and returned to graduate school at Florida State University. I obtained

1 my Master of Science degree in applied exercise physiology in 1995, and I obtained my
2 Doctor of Philosophy degree in applied exercise physiology in 1997. My doctoral
3 dissertation was entitled “Juice Isn’t Just For Breakfast Anymore: The Use Of Anabolic
4 Steroids By Amateur Athletes”. It focused on the use of stanozolol, which was the steroid
5 found in Scott’s system.

6 6. In 1997, immediately after obtaining my Ph.D., I took a position as a researcher at
7 the Human Performance Laboratory (“HPL”) in the Department of Kinesiology and
8 Health Education in the College of Education at the University of Texas at Austin.
9 Kinesiology is the scientific study of movement. One of the primary goals of the
10 discipline is to understand the processes that control movement and the factors that affect
11 the acquisition of motor skills. At the HPL, we studied oxygen consumption and cardiac
12 output in humans.

13 7. In 2000, I accepted a position as the executive director of the Midwest Institute for
14 Exercise Physiology in Michigan. The Institute is a private for-profit organization that
15 studies all aspects of exercise physiology. Since my arrival, I have focused the Institute’s
16 studies on the use of steroids by both amateur and professional athletes for two reasons.
17 First, I have a deep personal interest in the subject. Second, as executive director, my
18 most important responsibility is the bottom line. As everyone knows, the abuse of
19 steroids is the hot issue in our field. As such, the Institute’s published studies have
20 become very profitable.

21 8. One of the conditions of my accepting the Institute’s executive director position is
22 that I am allowed to do consulting on the side. Since 2000, I have accepted around 10
23 outside engagements. I was contacted by the attorneys for Kelly Simon to provide expert
24 testimony in Kelly’s case against Terry Swift and Desert Willow High School. I am
25 charging my standard fee of \$500 per hour. I have not been paid yet, but I estimate that
26 my total fee will be approximately \$10,000. I probably will donate half of my fee to the
27 Scott Johnson Foundation, a non-profit organization that I established in memory of my
28 nephew. The Foundation’s mission is to educate young amateur athletes about the

1 dangers of steroid abuse and to do whatever possible to hold those who encourage steroid
2 abuse responsible for the harm that they cause.

3 9. Steroids are not bad in and of themselves. In fact, steroids are hormones naturally
4 produced by the human body. Naturally produced steroids help control: (i) the stress of
5 illness and injury; (ii) immune functions; (iii) development of sexual characteristics;
6 (iv) inflammation; (v) metabolism; and (vi) salt and water balance. Synthetic steroids are
7 chemically similar to natural steroids and duplicate their actions, and they can be
8 prescribed by doctors for various legitimate medical treatments. Some of the synthetic
9 steroids that are commonly prescribed include cortisone, hydrocortisone and prednisone. All
10 three of these synthetic steroids often are used to suppress inflammation, and their use can
11 alleviate the symptoms of inflammatory conditions such as arthritis and asthma.

12 10. Even the steroids that are used for legitimate medical purposes have serious side
13 effects, such as: (i) bone thinning; (ii) high blood pressure; (iii) fluid retention; (iv) mood
14 swings; (v) weight gain; (vi) muscle weakness and pain; (vii) nerve damage; and
15 (viii) decreased resistance to infection. Because of the potential severe consequences, it is
16 important that the use of steroids be monitored closely by a medical doctor.

17 11. Most people who think of steroid abuse are thinking of anabolic steroids.
18 Anabolic steroids are chemically related to testosterone. Although anabolic steroids can
19 be prescribed to treat certain growth and other disorders, they are less commonly
20 prescribed than cortisone, hydrocortisone and prednisone. Anabolic steroids are
21 commonly used by athletes illegally either orally or by injection to increase muscle mass
22 and strength by allowing athletes to recover from a hard workout more quickly. Some
23 athletes also like the aggressive feelings caused by anabolic steroids.

24 12. Anabolic steroids have serious side effects, many of which aid in determining
25 whether somebody is abusing steroids. Males may develop prominent breasts, baldness, a
26 higher voice, shrunken genitals and infertility. Females may develop a deeper voice,
27 enlarged genitals, increased body hair, baldness and increased appetite. Both males and
28 females may experience: (i) severe acne; (ii) liver problems; (iii) increased bad

1 cholesterol and decreased good cholesterol; (iv) aggressive behavior; (v) depression;
2 (vi) distractibility and irritability; (vii) extreme mood swings; (viii) paranoid jealousy; and
3 (ix) impaired judgment stemming from feelings of invincibility. Indeed, there are several
4 documented incidents of anabolic steroid abuse causing young athletes to commit suicide.

5 13. Erythropoietin (“ EPO”) is a glycoprotein hormone that is naturally produced by the
6 kidneys. It stimulates the bone marrow to make red blood cells. The rise in red blood cells
7 increases the oxygen-carrying capacity of the blood. It is possible for the body to produce
8 too much EPO on its own.

9 14. In 1985, EPO was produced synthetically for the first time. Synthetic EPO, which is
10 very expensive, is injected as a medical treatment for certain types of anemia. It also can
11 be given prior to surgery to patients who cannot receive a blood transfusion for
12 medical or religious reasons to counteract expected blood loss during the surgery.

13 15. Endurance athletes, such as cyclists, long-distance runners, speed skaters and cross-
14 country skiers, often misuse synthetic EPO to increase their endurance. This often is
15 called “blood doping”. The abuse of EPO is difficult to detect, however, because the
16 available tests cannot distinguish between naturally produced EPO and synthetic EPO.

17 16. Elevated levels of EPO can be extremely dangerous, especially when combined
18 with vigorous exercise, because it increases the viscosity (or thickness) of the blood. The
19 thicker blood has trouble passing through the thin capillaries. One common side effect of
20 abusing EPO is recurring nosebleeds. Another side effect is that a person abusing EPO
21 becomes ill more often, because the EPO lowers the white blood cell count, resulting in a
22 failure of the immune system. More significantly, when an athlete who uses EPO sleeps, the
23 athlete’s heart beats very slowly, increasing the risk for a heart attack or stroke.

24 17. It is difficult to know precisely how many student athletes are abusing steroids,
25 because most of the studies rely on surveys of the student athletes themselves. It is clear,
26 however, from studies by the Centers for Disease Control and Prevention that the abuse of
27 steroids by students is on the rise--and the age at which student athletes begin to use
28 steroids is going down.

1 18. The World Anti-Doping Agency (“ WADA”) was established in 1999 to promote
2 and coordinate the international fight against doping in competitive sports. It was set up
3 as a foundation under the initiative of the International Olympic Committee with the
4 support and participation of intergovernmental organizations, governments, public
5 authorities and other public and private bodies fighting against doping in sports. WADA
6 generates a list of prohibited substances each year. WADA’s list has become the standard in
7 competitive sports. Accordingly, I stay familiar with and can testify regarding
8 WADA’s list. EPO is on WADA’s list of prohibited substances.

9 19. I always believed that mandatory testing of athletes was an invasion of the right to
10 privacy guaranteed by the Constitution. When Scott died, however, I realized how wrong I
11 was and changed my mind. Designating a steroid as a prohibited substance does not do any
12 good unless the athletes are tested for prohibited substances. Accordingly, I believe that
13 random testing of high school athletes should be mandatory. Unfortunately, no state has yet
14 adopted mandatory random testing, but lawmakers in Florida and Michigan are trying to do
15 so.

16 20. Although no state requires mandatory random testing, I believe that individual
17 school districts and schools should institute mandatory random testing programs--and
18 several have. Most school districts, however, do not have random testing programs
19 because of the cost. Although the initial test is only \$80 per student athlete, it costs
20 significantly more to conduct a second round of tests to confirm a positive initial test.

21 21. Although mandatory testing programs are a good deterrent, mandatory testing
22 programs are not 100% effective, primarily because steroid abusers come up with ways to
23 mask steroid tests. Accordingly, even where mandatory testing programs are used, it is
24 important that athletic directors and coaches be vigilant in (i) watching their student
25 athletes for signs of steroid abuse, and (ii) counseling their student athletes against using
26 steroids, especially where signs of steroid abuse are present. In this regard, I believe that
27 all high school athletic directors and coaches should attend a six-hour course regarding
28 steroid abuse taught by a certified instructor. In addition, they should attend an annual

1 refresher course to stay abreast of the constant changes that occur with respect to steroid
2 abuse by athletes.

3 22. High school athletes are vulnerable and under a lot of pressure. This is especially
4 so with athletes who are looking to gain the edge necessary to compete at the next level.
5 Accordingly, high school coaches need to be careful not to say or do anything that their
6 student athletes could construe as encouraging the use of steroids.

7 23. I have reviewed all of the affidavits and all of the exhibits in this case. These are the
8 type of documents that I typically review in my consulting engagements, depending on the
9 type of engagement.

10 24. The amount of EPO in Jordan Simon's system at the time of death was extremely
11 high and in my opinion was the cause of Jordan's heart attack.

12 25. If the State of Kansas or Desert Willow High School had a mandatory random
13 testing program, then either: (i) Jordan's steroid abuse could have been discovered; or
14 (ii) the program may have deterred Jordan from using steroids. Moreover, even without a
15 mandatory testing program, I believe that it should have been obvious to Terry Swift,
16 Jamie Hagar and others that Jordan was abusing steroids. Accordingly, Desert Willow's
17 coaches and athletic director had a responsibility to take steps to prevent and stop Jordan's
18 steroid use. Instead, in the face of clear evidence of steroid abuse, Coach Swift continued to
19 push Jordan to improve Jordan's times. I believe that this led to Jordan's use of
20 steroids and ultimately caused Jordan's death.

21
22 /s/ Lynn Roper

23 SUBSCRIBED AND SWORN to before me, a Notary Public, on December 13,
24 2008, by Lynn Roper.

25 /s/ Sean O'Keefe

26 My

27 Commission Expires:

28 November 5, 2010

1 **AFFIDAVIT OF TERRY SWIFT**

2 STATE OF KANSAS)
3) ss.
4 County of JAYHAWL)

5 Terry Swift, first duly sworn, under oath, states as follows:

6 1. I am 55 years old and currently work for Desert Willow High School. I am on
7 administrative leave, and have been since May 2008.

8 2. I graduated from Drake University with a Bachelor's degree in physical education
9 in 1972. I received my Master's degree from the University of Iowa in physical education
10 in 1978. Desert Willow was the first school I worked for after graduating from the
11 University of Iowa. I've been a freshmen and sophomore physical education teacher at
12 Desert Willow for 27 years. I've been the track coach at Desert Willow for 15 years.

13 3. Desert Willow is a private school, and the faculty members are expected to serve
14 on one or more committees. I am the chair of the scholarship committee, which is
15 responsible for considering all students for academic and need-based scholarships. Desert
16 Willow is an expensive school – it costs \$15,000 per year for tuition alone. A lot of the
17 students' parents can't or don't want to pay that much for school.

18 4. I was on the track team in college. I went to Drake on a full-ride scholarship. I
19 never took drugs, but many of my classmates in high school did. Some of them used diet
20 pills and others used illegal prescription drugs to get a competitive edge. I think the drugs
21 let some of my classmates get into schools with great track programs.

22 5. After college I tried to make the Olympic team. I trained very intensely and
23 almost made the team. Most of the runners, I think, were using steroids. I just couldn't
24 keep up. Today, steroids are even more prevalent with professional and Olympic athletes.

25 6. Track is a very competitive sport. For five years, our school has finished in the
26 top three in the state in track and field. We consistently have the fastest and strongest
27 runners.

28 7. I am always on the lookout for students with the potential to be strong runners. I
first became aware of Jordan Simon when I happened to attend a meeting at Jordan's

1 middle school on the day of a track meet. Jordan was an incredible sprinter for a middle
2 school student. I could not have been happier when I found out that Jordan was interested in
3 Desert Willow.

4 8. The scholarship committee awarded Jordan a scholarship based on my
5 recommendation. Jordan would not have been able to attend Desert Willow without the
6 scholarship. As such, Jordan fit the criteria for a need-based scholarship. A condition of
7 keeping a scholarship at Desert Willow is to maintain a satisfactory attendance and
8 academic record.

9 9. Usually, teachers don't make a lot of money, but at Desert Willow, they make
10 more than average. I've been teaching a long time, so I make more than most teachers. I also
11 have the advantage of the Parent Pool. The better I do with the track team, the more money
12 the parents chip in to the Parent Pool. The parents like that I get good college recruiters to
13 come look at their kids and the parents reward me for a good job. Three years ago, I
14 made \$14,000 off the Parent Pool. Two years ago, I made \$22,000. That money is on
15 top of my salary.

16 10. I have never encouraged my students to take steroids or any drugs. I am honest
17 about the world, but that doesn't mean that I encourage them to take drugs.

18 11. I think it is irresponsible not to tell the kids about the realities of sports.
19 Everybody knows that many athletes cheat by using performance-enhancing drugs like
20 steroids, including testosterone and EPO.

21 12. I have told my kids that many top athletes use some dope, but they get paid well. In
22 fact, some of the better players have advisors on how to avoid testing positive. Today,
23 college and professional athletes have to dope to stay competitive.

24 13. The kids and I talked openly about performance-enhancing substances. It really is
25 hard to detect EPO in your body, and I'm sure I told the kids that. One runner on my
26 team, Kia Hummel, asked how to get EPO. I told Kia, in front of all the other kids, that
27 no one on my team needs to take drugs. I think I told the kids that anyone can get steroids
28 today – either from the internet or almost any “gym rat” can get steroids and other

1 performance-enhancing drugs. Some get the drugs from veterinarians, and others get the
2 drugs from doctors.

3 14. I made every kid sign an KIA form before they could participate in track. If a kid
4 was gone from practice on the day I gave out the KIA form, I followed up with the kid the
5 next day and got a signature on the KIA form. When I handed out the forms, I always
6 said, "This is an important form. Read it. Sign it, and follow it." I even kept a file
7 drawer with folders for every kid, in which I kept the KIA forms.

8 15. Some lawyers came to my office and went through all my papers. They took all
9 the KIA forms I kept, including the documents marked as Exhibits 1 and 2. They also
10 took my time record for the 100 meters, which is marked as Exhibit 8 and which I had
11 posted in the locker room. For each event, I kept a record of all the kids' times by year.
12 That way, I could see if the kids were improving or slowing down.

13 16. After the lawyers took all my stuff, I learned that the KIA form in Jordan's file
14 wasn't signed. I don't know how that happened. Maybe Jordan handed it in without a
15 signature on it. I didn't check every form. I just assumed that every kid would do what I
16 asked, and read and sign the form. If Jordan was sick on the day I handed out the KIA
17 form, I'm sure I would have followed-up and gotten a signature from Jordan on a different
18 day.

19 17. EPO is expensive. I didn't think any of the kids – even at a school like ours –
20 could afford it. I also didn't think any of the kids took it.

21 18. I told all the students every year, "Don't smoke, drink or do any drugs." I meant it.
22 Through some teacher associations I received some posters about steroids, which are
23 marked as Exhibits 5 and 6. I didn't hang the posters up – they looked really disgusting. I
24 also received some brochures about steroids, like the one marked as Exhibit 7, and I
25 passed those out in my P.E. classes.

26 19. Jordan was a good kid. Jordan seemed to really want to run in college and maybe
27 try out for the Olympics or run professionally. I didn't think Jordan had the talent, but
28 during 2008 my opinion started to change.

1 20. Back when Jordan was a sophomore and a junior, things weren't going so well. I
2 knew that Jordan had a lot of responsibilities at home, but school and track were taking a
3 backseat. I told Jordan that the high school scholarship was on the line – if school and the
4 track team weren't a priority for Jordan, Desert Willow would send Jordan packing for the
5 public school down the street.

6 21. Jordan started breaking records during the 2007-08 season. Jordan was shaving
7 tenths of seconds off times that I didn't think could get any lower. I was amazed. I
8 figured the pressure worked and I liked the results.

9 22. I was getting impressed. I was making lots of calls for Jordan, advising recruiters to
10 come take a look. I put a lot of pressure on Jordan because Jordan did well under
11 pressure.

12 23. I talked to Kelly Simon at some of the meets. I remember one day back in April
13 2008, Kelly came running into the gym. The kids were stretching, getting ready to do
14 sprints. Kelly was waiving around a paper, yelling at Jordan. I went over to see what the
15 issue was. Jordan pointed at me and yelled something like, "You know how I'm getting
16 so good – you explain it." Jordan stomped off. I told Kelly I'd handle the situation.

17 24. The next day after practice I talked to Jordan. I told Jordan I was proud of the
18 commitment it took to be a great runner. I knew Jordan was working hard. I told Jordan
19 that I thought the Olympics were a reasonable goal. I told Jordan to keep focused and stay
20 clean. I asked Jordan if there was anything I needed to know and Jordan said, "no."

21 25. I never thought there was a problem, and I never thought Jordan was using
22 steroids.

23 26. A couple of times we had to stop practice because of Jordan's nosebleeds. I knew
24 that nosebleeds were a symptom of EPO usage, but Jordan wasn't the doping kind of kid.
25 Jordan always begged me not to tell Kelly about the nosebleeds, so I didn't.

26 27. I also noticed that Jordan was out sick a lot during that last year. I knew EPO
27 lowered a person's immunity, but almost all of our kids get sick during the season – just
28 comes with the territory. Besides, I never saw injection marks on Jordan's arms.

1 28. I remember a day in early to mid-April 2008 when I was picking up my mail from
2 the front office. My hands were full and I was in a hurry to get to track practice. I was
3 rushing by Jamie Hagar's office, when Jamie asked if I had a minute. Jamie told me that
4 Jordan printed an article about EPO, and to talk to Jordan about it. Jamie placed the
5 article on the stack of papers I was carrying, and I headed to my office. The article Jamie
6 gave me looks like the article marked as Exhibit10. I didn't read it at the time, but it looks
7 like the same thing Jamie gave me. I dropped the papers I was carrying on my desk, and
8 went straight out to practice. I never had the chance to talk to Jordan about the article
9 before Jordan died.

10 29. I wish I knew that Jordan was using steroids. I would have had a heart-to-heart
11 talk about the dangers of doping. I don't think it would have mattered, but at least I
12 wouldn't have to feel so guilty. I do not believe that I did anything to encourage Jordan to
13 take EPO, and I don't think I could have stopped it. However, I'm a real person and I
14 cared about Jordan very much. I don't want to see a 17-year old kid die needlessly. My
15 heart breaks for the family – I just don't think that I'm to blame.

16 /s/ Terry Swift

17 SUBSCRIBED AND SWORN to before me, a Notary Public, on December 4, 2008, by
18 Terry Swift.

19 /s/ Olympia Petard

20 My Commission Expires:

21 November 5, 2010
22
23
24
25
26
27
28

1 **AFFIDAVIT OF JAMIE HAGAR, Ed.D.**

2 STATE OF KANSAS)
3) ss.
4 County of JAYHAWK)

5 Jamie Hagar, Ed.D., first duly sworn, under oath, states as follows:

6 1. I am 47 years old and live in Shocker, Kansas, with my spouse and two children. I
7 am currently the Assistant Principal of Desert Willow High School. I am also the
8 school's Athletic Director. I am being considered to replace our current Principal who is
9 due to retire at the end of this school year.

10 2. I graduated from the University of Kansas in 1979 with a degree in Education. I
11 received my Masters in Education in 1981, from Kansas State University. I taught at a high
12 school in Topeka for 8 years before returning to Wichita State for my Doctor of Education,
13 which I received in 1991. I then moved to Shocker and taught at Desert Willow for 3 years
14 before being offered the job as Assistant Principal in 1994. I was a basketball coach
15 for the school at that time. I remained a coach until 2000, when I was asked to be the
16 school's Athletic Director.

17 3. Desert Willow is a private high school. We employ the best teachers and produce
18 the best students. This does not come cheap. Our students' parents pay tuition, \$15,000
19 per year, but this is a small price to pay for the level of education we provide. As with
20 most schools that charge tuition, we do offer scholarships--both academic and need-based.

21 4. Because of the level of professionalism we expect, our teachers are paid more than
22 most. Additionally, those teachers who take on the extra assignment of coaching receive a
23 higher salary. This is complemented by a "Parent Pool." This Pool is funded by parents'
24 pledges at the beginning of the year. The better the student or team does, the greater the
25 bonus for the coach. The parents generally enjoy this incentive system, because it
26 increases the notoriety of our athletics as well as the scholarship chances of our students.

27 5. As one would expect from a school such as ours, we have a rigid Zero Tolerance
28 Policy when it comes to substance abuse. Whenever a student is found to have possessed
or abused a controlled substance, there are a number of steps we must follow.

1 a. First, the offending student is suspended from extracurricular activities. In this
2 regard, if the student is an athlete, that student is immediately suspended from the next
3 tournament or game. The student may continue to participate in practices, so that the
4 student remains in competitive shape, but the student must sit out the next competition.
5 Upon the second violation, the student athlete is banned for 8 weeks--a substantial penalty
6 because it means most of the season is lost. The suspension may be reduced to 3 weeks if
7 the student agrees to see one of our school counselors. Upon the third violation, the
8 student athlete is banned from competition permanently.

9 b. Second, parents are notified regardless of whether the student has attained the
10 age of majority.

11 c. Third, additional action may be taken by the school as is appropriate. This
12 includes, but is not limited to, detention, suspension from school, and expulsion.

13 d. Finally, if the student is found in possession of a controlled substance, the
14 police are contacted immediately.

15 6. Since 2000, when I became the Athletic Director, there have been 20 violations of
16 the policy by student athletes--at least one in every sport. These violations all have been
17 reported by the coach, the team captain, or another teammate. Every sport except track
18 has had at least one student use a form of steroid in violation of the policy. Only two
19 students have violated the policy a second time. One was a sophomore, the other a junior.
20 Both were members of the football team. On both occasions, the second violation took
21 place midway through the season, so the students were suspended for the remainder of the
22 season.

23 7. Coaches at Desert Willow are held to a similarly high standard. Any coach who
24 may have had knowledge of a student's substance abuse, and promoted or remained silent
25 about the abuse, immediately will be placed on administrative leave. A formal inquiry
26 then will be conducted. If found to be in violation of the policy, the coach immediately
27 will be terminated, and the authorities may be contacted, if criminal conduct is suspected.
28 No coaches ever have violated this policy, although Terry Swift remains on administrative

1 leave.

2 8. All coaches are required to attend a workshop at the beginning of the school year.
3 Among other things, the workshop provides training on the abuse of all forms of
4 controlled substances. Coaches are taught how to recognize use, and are instructed on the
5 appropriate actions to take in the event use is suspected. Additionally, coaches are
6 provided with a copy of Section 14.13 of the Kansas Interscholastic Association (“KIA”)
7 Bylaws and KIA Form 14.13. They are required to explain the policy and form to the
8 students and then obtain signatures from the students on a copy of the form. Coaches also
9 are provided pamphlets, posters and other instructive materials to post in locker rooms and
10 training facilities, and to distribute to students. It is within each coach’s discretion how to
11 use these materials.

12 9. I am aware that Coach Terry Swift did not attend the workshop at the beginning of
13 the 2007-2008 school year. Terry requested leave in order to take a much-needed
14 vacation. I granted the request because I knew Terry had attended the workshop in years
15 past, and the training really had not changed in years. I told Terry that I would obtain
16 copies of all materials distributed in case Terry wanted them. The materials distributed
17 included (among other things) the documents marked as Exhibits 1, 5, 6 and 7, and a
18 blank form of Exhibit 2 (i.e., without the line for the student’s signature). Terry asked for
19 the KIA forms, but not the other materials.

20 10. I also am aware that Jordan Simon did not sign that KIA form this past year. I
21 was told that this was because Jordan was ill and not present on the first day of the track
22 season. I do know that Jordan has signed the form in the past.

23 11. Jordan Simon’s death came as a shock to the faculty, staff and students of Desert
24 Willow. I knew Jordan personally. As Athletic Director, I attend as many athletic
25 competitions as my schedule will allow and enjoyed watching Jordan blossom into a star
26 sprinter. Jordan had a great attitude, and worked hard. When you work hard, you get
27 positive results, and that’s what I saw with Jordan--positive results. I never suspected
28 Jordan would use steroids.

1 12. Understandably, Jordan's death as well as recent media attention involving
2 professional athletes has raised the issue of random drug testing. Desert Willow does not
3 currently test student athletes, and I do not see such testing in our foreseeable future. One
4 reason is that drug testing simply isn't reliable. It isn't 100% effective. For instance,
5 there are numerous substances for which there currently is no test. Another, more
6 significant reason is that we simply can't afford it. We have over 100 student athletes
7 and these athletes would need to be tested regularly in order for the testing to be effective.
8 Although our school tuition seems high, I assure you we are on a very tight budget. We
9 currently need to update our computer lab, add additional space for classes and hire
10 additional teachers. We are forced to turn away a large number of students because we
11 simply do not have the space. If testing were effective and affordable, I would certainly
12 consider it.

13 13. At Desert Willow, we have focused on education and prevention when it comes to
14 drug use. In this regard, we have implemented a comprehensive program designed to
15 educate students on the harmful effects of drug use. All students are required to take a
16 Health course their freshman year. This course deals with a range of issues from sex
17 education to general health needs. It is mandated that one week be spent specifically on
18 drugs, including steroids. Emphasis is placed on the physical dangers of drug use, legal
19 consequences, and how to recognize whether a friend is using drugs. We also instruct
20 students on our confidentiality policy when it comes to reporting the drug use of fellow
21 students.

22 14. After Jordan's death, we asked a local physician to speak with the students about
23 the dangers of steroid use. He has volunteered his services in the future and we have
24 accepted. Now we will have a similar lecture every school year.

25 15. I find it hard to believe that Terry Swift is being sued for Jordan's death. I have the
26 utmost respect for Terry. Terry puts in as much time, if not more, than any of our
27 other coaches: This includes practice, off-season training sessions, chairing the
28 scholarship committee and even tutoring students who are struggling to make eligibility

1 because of poor grades. As a result of this effort, Terry was a district finalist two years
2 ago for teacher-coach of the year. This is an award for which students nominate coaches.
3 Students write an essay explaining how the coach has made a positive impact on their life,
4 both on and off the field.

5 16. Our track team finished first in the state last year. In fact, we have finished first
6 three times in the past five years, and we never have finished below third during that
7 period. This is due to the effort and dedication of Terry. I know that winning isn't
8 everything for Terry. Terry would be happy if the team didn't win, so long as the students
9 gave their best.

10 17. It is true that I have received three complaints from parents regarding Terry. The
11 concerns were that Terry was pushing their children too hard. I take these complaints
12 seriously. I personally investigated the claims to determine if there was any merit, and I
13 found none. I was not surprised. As a basketball coach I must have received two or three
14 complaints per year for being too hard on students or not playing someone's child enough. I
15 assure you there was no merit to those complaints. Some parents just don't understand
16 that participation in athletics isn't all high-fives and smiles.

17 18. Our school has taken steps to prevent students from abusing internet privileges on
18 the school's computers. Each student is assigned a username and password. When a
19 student prints a document, the document is printed out on a printer behind the library
20 reference desk. A cover sheet is printed with the student's name and ID number. The
21 student then must ask the librarian for the printout. The librarian briefly will review the
22 content, and so long as it is appropriate, will hand it to the student. If the student doesn't
23 pick up the printout, it will be placed alphabetically in a file in case the student requests it
24 later. This process is followed with every printout from a school computer.

25 19. On April 11, 2008, I received a visit from Mrs. Andrews, our school librarian.
26 She had a printout that she was about to file, which is marked as Exhibit 10, and thought I
27 should see it. The printout was an article titled "Enhancing Your Performance The
28 Unnatural Way: A Look At The Banned Substance EPO" written by Chris Tull. It

1 appeared on the beginnertriathlete.com website on April 10, 2008. The cover sheet that
2 printed with the article bears Jordan's name and student ID.

3 20. On the afternoon of April 12, 2008, I gave a copy of the article to Terry. I asked
4 Terry to have a talk with Jordan. I wanted Terry to determine if there was a chance
5 Jordan was using this EPO substance and to remind Jordan once again of the school's
6 Zero Tolerance Policy. I was sure that Terry would talk with Jordan and let me know if
7 there was a problem, so I didn't give it another thought.

8 21. I cannot express in words how devastating Jordan's death has been for me. I
9 cannot escape the feeling that there is something I could have done to prevent this tragedy. I
10 realize, however, that I have done everything I can. At Desert Willow the education and
11 well-being of our students is our primary concern. We have done the best we can to
12 prevent and deter drug use, but the simple fact is this--no matter what we do, if a student
13 wants to use illegal substances, the student will find a way.

14
15 /s/ Jamie Hagar

16 SUBSCRIBED AND SWORN to before me, a Notary Public, on December 05, 2008,
17 by Jamie Hagar.

18 /s/ Leslie Smith

19 My

20 Commission Expires:

21 February 12, 2011

1 **AFFIDAVIT OF AUBREY BRADY**

2 STATE OF TENNESSEE)
3) ss.
4 C o u n t y o f K n o x)

5 Aubrey Brady, first duly sworn, under oath, states as follows:

6 1. I was born and raised in Tennessee. Sports were a very important part of my life
7 growing up. My daddy played football for the University of Tennessee Vols long before I
8 was born. For as long as I can remember, my family has attended every home football
9 game. Nothing can compare to that experience--105,000 orange-clad fans packed into
10 Neyland Stadium; and tailgating with the Volunteer Navy on the Tennessee River. It was a
11 foregone conclusion that I would be attending UT. I couldn't wait to become a part of
12 Orange Nation.

13 2. I earned my Bachelor of Science degree in exercise science in 1985 from the
14 University of Tennessee. I obtained my teaching certificate, and immediately began
15 teaching physical education at Bearden High School in Knoxville, Tennessee. Bearden
16 has a long tradition of academic excellence, but the Bulldog Athletic Department also is
17 an important part of the Bearden experience. Bearden's philosophy is that an excellent
18 athletic program in itself can be a meaningful learning experience. This philosophy was
19 instilled in me as a young teacher, and it convinced me that I made the right career choice. I
20 really loved my job as a teacher and the significant influence that I had as a teacher on
21 my students' lives. While I was teaching, I continued with my education at UT during my
22 spare time. I ultimately earned my Masters of Science in Sport Management in 1991.

23 3. As much as I love attending the Vols' football games, football is not my sport.
24 Instead, I grew up playing soccer. When I started teaching at Bearden High, there was an
25 opening for an assistant coach on the soccer team. I took the position, and then I became the
26 head coach three years later. I served as the head soccer coach until 1995, when I was
27 promoted to assistant principal in charge of discipline and athletics.

28 4. I wasn't fortunate enough to get an athletic scholarship to UT, so I had to take out
student loans to get through school. Everyone knows that teachers don't make much

1 money and often have to come out of pocket to buy school supplies, so it's no surprise
2 that I had to take out more loans to get through graduate school. By the time I was done, it
3 was hard to pay all of my living expenses as well as make my student loan payments. Even
4 with the increase in pay that came with my promotion to assistant principal, I still was
5 not making any headway. So, as much as I enjoyed my job, I had to find a way to make
6 more money. Then, I read an article somewhere that mentioned something about how
7 much consultants charge for their services. All I had to do was find an area in which I
8 could consult. Not long after that I started developing my consulting practice. I have
9 been consulting full-time for about seven years now. During that time, I've found that the
10 challenge in building a successful consulting practice is doing whatever it takes to give
11 your clients what they want, so that they will hire you for repeat engagements. It's all
12 about the repeat engagements.

13 5. I consult in the areas of sports management and administration. Much of my time is
14 spent reading articles and reports published in various periodicals and journals around the
15 country, so that I can keep up to date in what is a very fast-paced environment. I
16 specialize in preparing compliance programs to ensure that the athletic organization
17 adheres to the rules and regulations of the governing bodies to which it belongs. I found that
18 to be one of the more lucrative areas of consulting, and more importantly, an area that is
19 prime for repeat engagements. I consult for both professional and amateur athletic
20 organizations in Tennessee and the southeast region.

21 6. Within the last year, I began expanding my consulting services to serve clients
22 nationwide. I was pleased when I received a call from the lawyers for Terry Swift and
23 Desert Willow High School to consult in this case. The southwest region is a natural area for
24 expansion of my practice, and I hope to do more work in this region. Accordingly, I am
25 charging a discount flat fee of \$5,000 for my services in this case, which include reviewing
26 the statements of the other witnesses and all exhibits, speaking with the defense counsel,
27 preparing this affidavit setting forth my opinions and testifying at trial.

28 7. As assistant principal in charge of athletics at Bearden, I became actively involved

1 with the Tennessee Secondary School Athletic Association (“TSSAA”), which is the
2 governing body for high school athletics in Tennessee. Part of my job was to ensure
3 Bearden’s compliance with the TSSAA’s rules and regulations. The TSSAA Bylaws and
4 regulations do not contain any provisions relating to drug or steroid use. Rather, the local
5 school boards in Tennessee are free to make their own regulations regarding drug and
6 steroid use. I tried to get the TSSAA to establish rules and regulations regarding drug and
7 steroid use, because: (i) I believe that implementation and enforcement of a uniform
8 statewide standard is the most effective way to control drug and steroid use; and
9 (ii) steroid use in the South is particularly high. According to a 2001 study by the Centers
10 for Disease Control and Prevention, 11.2% of high school boys surveyed in Louisiana and
11 5.7% of high school girls surveyed in Tennessee reported using steroids at least once.
12 Those numbers are astounding. Fortunately, the numbers are not nearly as high in other
13 parts of the country, including in Kansas. In a recent nationwide survey, only 3.5% of
14 high school seniors reported using steroids at least once. The bad news is that those
15 results are up from approximately 2% reported about a decade ago.

16 8. Regardless of what rules are implemented statewide, a local school or school
17 district always has the ability to conduct itself at a higher standard. That being said, it
18 simply is cost-prohibitive for most high schools to institute any kind of effective steroid
19 testing program. The cost for an initial test is reported to range anywhere from \$80 to
20 \$100. This does not take into account the cost of conducting secondary testing on positive
21 results or the significant legal costs that schools face when their testing programs are
22 challenged in the courts.

23 9. A report published in August 2003 by the National Federation of State High
24 School Associations (“NFSHSA”), the National Interscholastic Athletic Administrators
25 Association (“NIAAA”) and the National Center for Drug Free Sport, Inc. indicated that
26 approximately 13% of the nation’s high schools have a drug-testing policy in place. Of
27 those schools, only 29% test for steroids.

28 10. Many high schools do use an NCAA-approved test to monitor their athletes for

1 use of marijuana, cocaine, amphetamines and methamphetamine. The reason is that many
2 certified laboratories offer standard screening packages for these drugs at a reasonable
3 cost, sometimes as low as \$20 per test. Although these affordable tests are better than no
4 testing at all, the problem with these tests is that they do not screen for use of alcohol and
5 tobacco, which are the drugs most commonly used by high school students, or steroids.
6 Moreover, even if a school had the financial resources to pay the significant cost of testing
7 its athletes for steroid use, the tests likely would screen only for anabolic steroids. It is
8 inconceivable that a high school testing program could screen for all steroids that might be
9 used by student athletes, including human growth hormone and erythropoietin (“EPO”).

10 11. Although a random drug-testing program cannot be 100% effective in detecting
11 actual drug use, these programs can have an important deterrent effect. I read an article in
12 the Kansas Republic about the random drug-testing program in the Paradise Valley
13 Unified School District, which at the time was the only district in Kansas with such a
14 program. According to the article, Paradise Valley High School officials reported that
15 “very few” athletes have tested positive for steroids since the program was implemented in
16 1991, and no athlete has tested positive in the last five years. The local experience is
17 consistent with the experiences reported in my area of the country. In this regard, the
18 Lauderdale County, Alabama school district, which implemented its program in 1990,
19 reported only “a handful” of positive test results in the first five years of its program.
20 Similarly, in an article appearing in the Interscholastic Athletic Administration magazine, an
21 unidentified Tennessee high school principal is quoted as saying: “This school has
22 never recorded a positive test in 10 years of testing. It is absolutely a deterrent.”

23 12. Since the Paradise Valley School District implemented testing, other schools in
24 Kansas have implemented random drug testing. The most recent are the three high
25 schools in the Chandler Unified School District, which (according to an October 21, 2007
26 article in the Kansas Republic) announced a random drug testing program to commence in
27 January 2009 for all students participating in athletic and non-athletic programs
28 sponsored by the Kansas Interscholastic Association (the “KIA”). Significantly, the

1 program is being funded by a three-year \$718,000 grant awarded by the U.S. Department of
2 Education.

3 13. The Chandler Unified School District program tests for alcohol, amphetamines,
4 marijuana, cocaine, Ecstasy, PCP and anabolic steroids. It does not test for EPO. The
5 first positive test results in an eight-week loss of eligibility for KIA events; the second
6 positive test results in loss of eligibility for the remainder of the school year; and the third
7 positive test results in a permanent ban from KIA activities. Positive test results have no
8 academic consequences, and they are not turned over to law enforcement.

9 14. Although the anecdotal evidence suggests that random drug-testing programs have a
10 great deterrent effect, there are several other possible explanations. For instance, it is
11 possible that: (i) students who actually used steroids were not randomly selected for
12 testing; (ii) students used a type of steroid that is not detected by the test used by the
13 school; (iii) the steroids actually had passed through the system by the time of the test;
14 and/or (iv) students who actually used steroids found ways to mask their steroid use.
15 Accordingly, I do not believe that a random drug-testing program is the most effective
16 way of addressing the serious problem of steroid abuse by high school athletes.

17 15. Education is the key to detecting and eliminating the use of steroids by high school
18 athletes. First, student athletes must be educated about the dangers and consequences of
19 using steroids and other performance-enhancing substances. Second, parents must be
20 educated about: (i) how to monitor their children for signs of steroid and other drug
21 abuse; (ii) steps that can be taken to prevent their children from using steroids; and
22 (iii) what to do if they suspect that their children are using steroids or other drugs.
23 Finally, coaches and administrators must be educated in: (i) how to monitor student
24 athletes for signs of steroid and other drug abuse; (ii) what to do when they suspect that a
25 student is using steroids or other drugs; (iii) how to communicate appropriate messages
26 about steroids and other drugs to their student athletes; and (iv) how to avoid sending
27 inconsistent messages regarding steroids and other drugs. To be effective, the education
28 for students, parents, coaches and administrators cannot be a one-time event. The

1 message has to be reinforced repeatedly, especially to students.

2 16. I am familiar with the KIA's Bylaws. Paragraph 14.13 of the Bylaws contains the
3 KIA's Position Statement on supplements, drugs and performance-enhancing substances.
4 The KIA's approach is education-based. In this regard, the KIA: (i) has taken a strong
5 stance against the use of steroids and other drugs; and (ii) requires its member schools at
6 least annually to communicate to its student athletes the KIA's Position Statement
7 regarding the use of steroids and other drugs.

8 17. It appears that Desert Willow and Coach Swift are in compliance with the KIA's
9 requirement regarding the Position Statement. In this regard, the school has its student
10 athletes sign a copy of the Position Statement, which the school keeps on file. Desert
11 Willow's files contain a copy of a Position Statement with Jordan's name on it, but it is
12 not signed. Coach Swift confirmed that Jordan received a copy of the Position Statement,
13 but could not explain why the copy retained in the files did not have Jordan's signature.

14 18. I believe that the KIA's approach to steroid and other drug abuse is good, but like
15 any policy, it could be stronger. For instance, I would recommend that the KIA actually
16 set forth a statewide standard regarding the use of steroids and other substances. In this
17 regard, rather than being "strongly opposed" to the use of substances on the World Anti-
18 Doping Agency's Prohibited List, the KIA could ban the use of the substances on the
19 "Prohibited" List and mandate certain penalties for violation of the policy. In addition, the
20 KIA's policy might be more effective, if the KIA required that both students and parents
21 actually receive and sign a copy of the KIA's Position Statement.

22 19. Although the KIA has not adopted statewide penalties for the use of steroids and
23 other drugs by student athletes, Desert Willow High School has adopted its Zero
24 Tolerance Policy. In addition, Desert Willow requires all of its freshmen students to take a
25 Health course, which includes a weeklong segment on the use of drugs. I believe that this
26 is a reasonable response to the serious problem of steroid and other drug abuse by high
27 school student athletes.

28 20. As set forth above, parents, coaches and administrators need to be educated in how

1 to tell that a student is using steroids or other drugs. Most of the literature available in this
2 regard focuses on the signs of anabolic steroid abuse, which can be quite obvious. It is
3 much more difficult to detect the use of a glycoprotein hormone like EPO, but with the
4 proper education it often is possible to tell that an athlete is using a banned substance. For
5 instance, although there are no pronounced physical changes like those associated with
6 anabolic steroid abuse, an athlete who abuses EPO suddenly will develop unexplained
7 nosebleeds and become ill for unexplained reasons much more frequently than before
8 using EPO. In addition, an athlete who begins abusing EPO often will change their
9 personal habits. The athlete suddenly may start associating with different people, or
10 withdraw and seek extreme levels of privacy. By way of another example, the athlete
11 may visit websites that discuss steroids or the paraphernalia necessary to use steroids. In this
12 case, however, I do not believe that Coach Swift or Desert Willow High School had any
13 reason to suspect that Jordan Simon was using EPO.

14 /s/ Aubrey Brady

15 SUBSCRIBED AND SWORN to before me, a Notary Public, on December 10,
16 2008, by Aubrey Brady.

17 /s/ Ann Carver

18 My

19 Commission Expires:

20 October 13, 2011

SUPERIOR COURT OF KANSAS
JAYHAWK COUNTY

CV2008-35789

03/01/2009

HONORABLE LUBIN MILES

CLERK OF THE COURT
L. Schmidt
Deputy

FILED: 03/02/2009

KELLY SIMON

EDUARDO CHAVEZ

v.

TERRY SWIFT, et al.

SARAH CAVANAUGH

MINUTE ENTRY

9:27 a.m. This is the time set for the Final Pretrial Conference. Plaintiff and defendants are represented by counsel.

The Court confers with counsel regarding their Joint Pretrial Memorandum.

IT IS ORDERED as follows:

1. The plaintiff will call the following witnesses:
Kelly Simon
Morgan Pearce
Lynn Roper, Ph.D.
2. The defendants will call the following witnesses:
Terry Swift
Jamie Hagar, Ed.D.
Aubrey Brady
3. The exhibits that may be used at trial are premarked as follows:
Exhibit 1 KIA Bylaws (Portion of Article 14)
Exhibit 2 KIA Position Statement Form 14.13
Exhibit 3 Kansas Child Fatality Review Data Form
Exhibit 4 Toxicology Report
Exhibit 5 Poster (Girl)
Exhibit 6 Poster (Boy)
Exhibit 7 NFSHSA Brochure
Exhibit 8 Report of Race Times
Exhibit 9 Bank Records
Exhibit 10 Internet Printing Cover Sheet and Article
4. Authenticity (but not foundation) is stipulated for all exhibits; provided that the admissibility of Exhibits 3 and 4 is stipulated, and Exhibits 3 and 4 may be offered into evidence by either party without further foundation.

5. All witness affidavits are presumed to have been signed before trial. Each witness has reviewed his/her affidavit for accuracy, and no changes were made. Each exhibit or affidavit that bears a signature block is presumed to have been signed on the date indicated on the exhibit or affidavit.
6. The attached jury instructions are approved.

10:09 a.m. Matter concludes.

