

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**WILLIAM ROGER CLEMENS**

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**V.**

**NO.: 4:08-CV-00471  
JURY DEMANDED**

**BRIAN McNAMEE**

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

TO THE HONORABLE COURT:

Plaintiff William Roger Clemens ("Clemens") complains of Defendant Brian McNamee ("McNamee").

**I.**

**PARTIES**

1. Clemens is an individual who is a citizen of and resides in Harris County, Texas.
2. McNamee is an individual who is a citizen of and resides in New York. He has been served with process and appeared in this lawsuit.

**II.**

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction because Clemens and McNamee are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a)(1).

4. This Court has personal jurisdiction over McNamee because the Texas long-arm statute establishes personal jurisdiction over McNamee and the exercise of personal jurisdiction over McNamee in Texas does not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

5. The Texas long-arm statute authorizes personal jurisdiction over McNamee because McNamee has done business in Texas by contracting with Texas residents with the performance of the contracts to occur in whole or in part in Texas. Specifically, McNamee contracted with Clemens and Andy Pettitte, both Texas residents, to perform services in Texas as a strength and conditioning trainer. Between approximately 1999-2007, McNamee derived substantial income as payment for training Clemens and Pettitte in Texas. For example, in 2004 alone, Pettitte paid McNamee approximately \$62,000-\$64,000 to train him in Texas. McNamee traveled to Texas at least 30-38 times between 1999-2007 to provide services as a strength and conditioning trainer to Clemens and Pettitte, each time staying approximately 5 days.

6. McNamee has also done business in Texas by committing the torts of defamation and intentional infliction of emotional distress in whole or in part in Texas. Specifically, while present in Texas to train Clemens and Pettitte, McNamee maliciously and intentionally defamed Clemens, a Texas resident, by falsely telling Pettitte, a Texas resident, that Clemens had used steroids and human growth hormone (“HGH”). Moreover, McNamee maliciously and intentionally defamed and inflicted emotional distress on Clemens in whole or in part in Texas by repeating his false accusations that Clemens had used steroids and HGH to the Mitchell Commission and SI.com, knowing

that his false accusations would be republished and widely-circulated and read in Texas, thereby causing devastating injury to Clemens in Texas, where McNamee knew that Clemens lives, worked, and has significant business interests, which in fact has occurred.

7. The Due Process Clause authorizes personal jurisdiction over McNamee in Texas because he has purposefully availed himself of the benefits and protections of Texas by establishing “minimum contacts” with Texas such that the maintenance of this suit in Texas does not offend traditional notions of fair play and substantial justice.

8. This Court has specific jurisdiction over McNamee because Clemens’s suit arises out of or results from McNamee’s contacts with Texas. Specifically, while present in Texas to train Clemens and Pettitte, McNamee intentionally and maliciously defamed Clemens, a Texas resident, by telling Pettitte, a Texas resident, that Clemens had used steroids and HGH.

9. Moreover, McNamee intentionally and maliciously defamed and inflicted emotional distress on Clemens in Texas by repeating his false accusations that Clemens had used steroids and HGH to the Mitchell Commission and SI.com, knowing that they would republish and widely-circulate them in Texas. Indeed, McNamee’s false accusations have been circulated to—and read by—millions of Texas residents via the Internet and the numerous Texas newspapers that republished them. McNamee knew that the republication of his false accusations by the Mitchell Commission and SI.com in Texas would cause devastating injury to Clemens’s reputation, mental state, and business interests there and, indeed, it has. McNamee knew that, by expressly aiming his intentionally tortious conduct at Clemens in Texas, he would cause Clemens to feel the

brunt of his enormous emotional, reputational, and economic injury in Texas because, as McNamee knew, Clemens lives, worked, and has significant business interests in Texas. Specifically, McNamee knew that: Clemens has lived in Texas for many years; Clemens has long-term personal services contracts with Texas-based businesses; and Clemens runs a charitable foundation in Houston, Texas.

10. Venue is proper in the Southern District of Texas because McNamee removed this lawsuit from a Harris County, Texas district court to this Court, thereby fixing proper venue in this district. Venue is also proper in the Southern District of Texas is proper because a substantial part of the events or omissions giving rise to Clemens's defamation claims occurred in this district. Specifically, while present in Texas to provide strength and conditioning trainer services to Clemens and Pettitte, McNamee defamed Clemens, a Texas resident, by telling Pettitte, a Texas resident, that Clemens had used steroids and HGH.

### **III.**

#### **FACTUAL BACKGROUND**

11. Clemens was born in Dayton, Ohio in 1962. He was one of six children raised primarily by a single mother who worked several jobs to support her family. After spending his early childhood in Dayton, Clemens moved with his family to Houston in 1977, where he has lived ever since. During his high school days in Houston, Clemens became a stand-out athlete at Spring Woods High School, where he excelled in football, basketball, and especially baseball.

12. Though Clemens was drafted by the New York Mets upon graduation from high school, he opted to attend college. When The University of Texas failed to offer him a scholarship, however, he attended San Jacinto Junior College, where he played baseball. After a stellar freshman year on the baseball field, Clemens was offered a scholarship to The University of Texas. While at Texas, Clemens led the mighty Longhorns to a national title at the College World Series in 1983. Clemens became the first player to have his baseball uniform number retired at The University of Texas.

13. Clemens was drafted in the first round by the Boston Red Sox in 1983, and quickly rose through the minor league system, making his major league debut on May 15, 1984. During his 13-year career with the Red Sox, Clemens had numerous record breaking seasons. In 1986, Clemens received the American League Most Valuable Player Award and the first of his seven Cy Young awards, all while helping the Red Sox reach the World Series. He made baseball history that same year by becoming the first pitcher to ever strike out 20 batters in a single, nine-inning game. After the game, Clemens's manager reportedly commented that "I watched perfect games by Catfish Hunter and Mike Witt, but this was the most awesome pitching performance I've ever seen." Clemens repeated that same accomplishment in 1996—becoming the only player to do so.

14. While playing for the Red Sox, Clemens won two more Cy Young awards (1987 and 1991). Since his departure in 1996, no other Red Sox player has worn Clemens's number "21."

15. When the Red Sox did not aggressively try to re-sign Clemens following the 1996 season, Clemens signed a multi-year contract with the Toronto Blue Jays (Red Sox general manager Dan Duquette famously stated, after Clemens signed with Toronto, that he wished Clemens well during the “twilight of his career”). Clemens finished the 1996 season with Boston brilliantly, and continued his dominating performance through the 1997 season with Toronto, during which he won his fourth Cy Young award and the pitching triple crown.

16. In 1998, Clemens met Brian McNamee for the first time. Clemens was in his second year with Toronto at the time, and McNamee had just been hired by the Toronto organization as a trainer. McNamee was hired by Toronto after working several years with the New York Yankees organization as a bullpen catcher.

17. Clemens and McNamee soon discovered a shared intensity for grueling, military-style workouts. Clemens shared his own rigorous personal training regimen with McNamee, which McNamee helped modify. Though Clemens had experience with other personal trainers, McNamee impressed Clemens with his commitment to Clemens’s disciplined work-outs.

18. Just as he had done prior to meeting McNamee, Clemens continued his pitching dominance in 1998, winning the Cy Young award for the fifth time and a second consecutive pitching triple crown. Clemens was traded to the New York Yankees in 1999, where he helped the Yankees secure back-to-back World Series titles in 1999 and 2000. In 2000, McNamee began to aggressively lobby Clemens for a job with the Yankees in order to be back in New York with his family. That same year, the Yankees

hired McNamee as an assistant trainer and McNamee began working with the Yankee players, including Clemens.

19. Around this time, suspected steroid use by major league baseball players began drawing considerable attention. On October 1, 2000, *The New York Times* published an article by McNamee. The article, entitled “Don’t be so Quick to Prejudge all that Power,” was crafted by McNamee as a public rebuttal to a previous piece published by the same newspaper, which suggested improved player performance in major league baseball was attributable to steroid use. McNamee’s unsolicited statements in the article he wrote reached an international audience, and he told the world in his own words that imputing steroid use to all high-performing players in the league was “unsubstantiated and unfounded.” McNamee also stated that the article’s smear against “the improved performances of today’s players is just wrong.” In unambiguous terms, McNamee proclaimed that an alternative explanation for improved player performance included the fact that “[p]layers today are so much smarter when it comes to their bodies, how they work them, and what they put in them.”

20. Clemens had yet another record-breaking performance in 2001. He was the first pitcher in the history of major league baseball to begin a season with a record of 20 wins and one loss. This was his sixth 20-win campaign over the course of 17 years. He also won the Cy Young award for the sixth time. Despite his record wins and additional Cy Young award, his individual statistics that year were consistent with his overall career performance.

21. After the 2001 season, Clemens stopped training with McNamee after he learned that McNamee was a suspect in a rape investigation in Florida (this same period of time marks what McNamee later contends is the last time he injected Clemens with steroids). The rape investigation in Florida, which reveals that McNamee lied to police officers and refused their requests for evidence in a situation where he denied any wrongdoing, ultimately led to his release from the Yankees organization, though no formal charges were brought against him. McNamee's termination from the Yankees and from Clemens left McNamee embittered.

22. After the incident in Florida, McNamee complained to Clemens that he could no longer make a living as a trainer. McNamee pleaded with Clemens for work, insisting that the alleged rape in Florida was actually a life-saving attempt and that he had "taken the rap" for others. McNamee's explanation was totally at odds with the conclusions of the police officers conducting the official investigation in St. Petersburg, Florida. Since this was unknown to Clemens, he gave McNamee the benefit of the doubt and eventually agreed to re-hire McNamee. Thereafter, McNamee continued to routinely come to Houston through the summer of 2007 to train Clemens. Also during this same period of time, McNamee frequently came to Texas to train other professional athletes. Significantly, McNamee has never contended that Clemens used steroids after 2001, despite their continued contact with one another.

23. Clemens continued to pitch for the Yankees for two more seasons. In 2003, Clemens again distinguished himself by becoming the 21<sup>st</sup> pitcher ever to win 300 games. He was also the 3<sup>rd</sup> pitcher ever to record 4,000 strike-outs. Consistent with his



precedent-setting performances throughout his entire career, Clemens became the only pitcher in the history of major league baseball to record both of these record-setting feats during the same game.

24. While playing with the Red Sox, Blue Jays, and Yankees, Clemens temporarily resided in those cities during the baseball season. Despite his temporary residence in those cities, however, Clemens never intended to reside there permanently, but instead he returned to Texas at the end of each baseball season where he lived with his wife and four sons. Texas is also home to Clemens's extended family. Clemens's mother lived in Texas until her death, and his five siblings and seven of his nephews and nieces still reside in Texas. Clemens has never owned any real property in New York and has no office or business operations there.

25. Clemens retired at the end of 2003, but reconsidered his decision and joined his home-town Houston Astros in 2004. Clemens's performance that year earned him an unprecedented seventh Cy Young award. He also climbed to second (behind Nolan Ryan, who retired at age 46) on the all time strike-out list and was named a starter to the National League All Star Team.

26. Clemens re-signed with the Astros in 2005 and continued his pitching dominance. His ERA that year was a remarkable 1.87—the lowest in the major leagues and the lowest in his 22-season career. Clemens also helped lead the Astros to their first World Series.

27. Clemens pitched one more season for the Astros, where he was again dominating as a pitcher, but because of low run support by the offense, won only seven

games in an abbreviated season. Clemens signed a one-year contract with the Yankees for the 2007 season. The Yankees' pursuit of another World Series appearance ended in post-season play. Clemens has since announced his intention to join the Houston Astros for his post-playing career.

28. According to what McNamee has told others, he was first confronted by federal authorities in the summer of 2007. McNamee has stated that in June of 2007, he was contacted by federal law enforcement authorities and asked to attend an interview with them in New York City. According to McNamee, he was told that the government had strong evidence that he was delivering packages of controlled substances for Kirk Radomski and that their evidence was sufficient to secure a conviction that would send him to prison for a considerable period. Throughout a lengthy interrogation the first day, McNamee told others that he repeatedly denied that Clemens had used steroids or HGH.

29. However, McNamee has told others during his second day of interrogation that he recanted and told the federal investigators that he had injected Clemens with steroids in 1998, 2000, and 2001, and HGH in 2000.

30. According to what McNamee has told others, some time after this two day interrogation, he was again contacted by federal authorities. This time, they wanted McNamee to repeat his story to former United States Senator George Mitchell even though, according to Earl Ward, McNamee's lawyer, it was not required by his proffer agreement with federal authorities.

31. Mitchell, a private citizen without any governmental authority, with the assistance of DLA Piper US LLP, a private law firm without any governmental authority

(collectively the “Mitchell Commission”), had begun an investigation into the use of performance enhancing substances in baseball at the request of Major League Baseball, a private business enterprise. The Mitchell Commission has described its investigation as “an independent inquiry on behalf of a private entity.” The investigation conducted by the Mitchell Commission was not a part of any governmental investigation into the use of performance enhancing substances in baseball. Indeed, Mitchell has expressly denied providing any information to governmental investigators and also denied that any governmental investigators used the Mitchell Commission’s investigation to do their work for them.

32. McNamee has contended that when he initially refused to speak with Mitchell, he was told by the federal government that he would be moved from his “witness” status back to a “target” status and fully prosecuted. McNamee has stated that when faced again with the threat of federal prosecution, he agreed to speak with the Mitchell Commission. However, Ward, McNamee’s lawyer, has stated that McNamee voluntarily spoke with the Mitchell Commission: “He had no problems speaking with Senator Mitchell.” And Senator Mitchell has testified that McNamee requested to be interviewed by the Mitchell Commission.

33. McNamee appeared before the Mitchell Commission and intentionally and maliciously repeated to its members his false accusations that Clemens had used steroids and HGH. McNamee knew that the Mitchell Commission would republish his false accusations and that they would be widely-circulated and read in Texas. McNamee also knew that his false accusations would have a devastating impact on Clemens’s reputation,

mental state, and business interests in Texas where McNamee knew that Clemens lived, worked, and conducted the most business.

34. On December 13, 2007, the Mitchell Commission released its *Report to the Commissioner of Baseball of an Independent Investigation Into the Illegal Use of Steroids and Other Performance Enhancing Substances By Players In Major League Baseball* (“Mitchell Report”). The Mitchell Report republished to the world McNamee’s false accusations that Clemens had used steroids and HGH. A link to the Mitchell Report was immediately placed on dozens of websites, including MLB.com, the official website for Major League Baseball, and thereby circulated to every Texas resident with Internet access (approximately 16,000,000 people). MLB.com was accessed by at least 19,000,000 visitors in December 2007. In addition, virtually every major Texas newspaper and many smaller ones extensively reported McNamee’s false accusations that Clemens had used steroids and HGH. And every national news service republished McNamee’s statements thereby disseminating his false accusations nationwide.

35. Since McNamee’s comments in the Mitchell Report were released, McNamee has publicly repeated his false accusations that Clemens used steroids. Directly contrary to the assertion of McNamee’s counsel, Richard Emery, who told the New York Daily News on March 4, 2008 that McNamee “did not speak to the press,” McNamee in fact spoke to Jon Heyman, a senior writer with SI.com on January 6, 2008. Specifically, on January 6, 2008, McNamee invited Heyman, his friend, into his home and gave him an exclusive interview. During that interview, McNamee intentionally and maliciously repeated his false accusation that Clemens had used steroids. At the time of

the interview, McNamee knew that: Heyman would republish in an article on SI.com McNamee's false accusation that Clemens had used steroids; SI.com is a web-based sports magazine accessible from any computer with Internet access; Heyman's SI.com article would be widely circulated to millions of Texas residents; his false accusation of steroid use would have a devastating impact on Clemens's reputation, emotions, and business interests; and Clemens would bear the brunt of the injury caused by McNamee's false accusation in Texas because Clemens lives, worked, and had significant business interests there. Heyman posted his article containing McNamee's false accusation on SI.com on January 7, 2008. By his malicious and intentional conduct, McNamee intended to—and did—cause enormous injury to Clemens in Texas.

36. Unbeknownst to Clemens until earlier this year, McNamee had previously told Andy Pettitte the same fiction that he told the Mitchell Commission and SI.com—that Clemens had used steroids and HGH. Specifically, McNamee falsely told Pettitte during a conversation in Clemens's home gym in Houston, Texas in 1999 or 2000 that Clemens had used HGH. And McNamee also falsely told Pettitte at Pettitte's home gym in Deer Park, Texas in 2003 or 2004 that Clemens had used steroids.

37. The false accusations made by McNamee that Clemens used steroids and HGH unfairly and improperly link Clemens's performance as a pitcher in 1998, 2000, and 2001 to the use of steroids and/or HGH during that time. This link is untrue and maliciously ignores Clemens's consistent record-setting performances before and after this period of time.

#### IV.

##### DEFAMATION—FALSE ACCUSATION OF STEROID USE

38. Clemens incorporates by reference the facts set forth above.

39. McNamee intentionally told Pettitte, the Mitchell Commission, and SI.com that Clemens had used steroids.

40. McNamee's accusation that Clemens had used steroids is absolutely false.

41. McNamee's false accusation that Clemens had used steroids is defamatory *per se* because it accused Clemens of committing crimes, injured his profession, business, and calling, and exposed him to public hatred, contempt, ridicule, and financial injury.

42. McNamee's false accusation that Clemens used steroids was made with actual malice because McNamee knew it was false.

43. The Mitchell Commission and SI.com republished McNamee's false accusation that Clemens had used steroids. At the time he falsely accused Clemens of having used steroids to Pettitte, the Mitchell Commission, and SI.com, McNamee knew that his false accusation would be communicated to other persons by them.

44. Until December 2007, Clemens did not know of and, in the exercise of reasonable diligence, should not have known of, McNamee's false accusation that he had used steroids.

45. The law presumes that McNamee's false, defamatory *per se* statement that Clemens had used steroids injured Clemens. Moreover, as a proximate result of the publication and republication of McNamee's false accusation that Clemens had used steroids, Clemens's good reputation has been severely injured. In addition, McNamee's

false allegation that Clemens had used steroids has also caused Clemens to suffer severe mental anguish, shame, public humiliation, embarrassment, and lost endorsement and business opportunities. Clemens seeks damages for these injuries from McNamee in an amount to be determined by a jury.

V.

**DEFAMATION—FALSE ACCUSATION OF HGH USE**

46. Clemens incorporates by reference the facts set forth above.

47. McNamee intentionally told Pettitte, the Mitchell Commission, and SI.com that Clemens had used HGH.

48. McNamee's accusation that Clemens had used HGH is absolutely false.

49. McNamee's false accusation that Clemens had used HGH is defamatory *per se* because it accused Clemens of committing crimes, injured his profession, business, and calling, and exposed him to public hatred, contempt, ridicule, and financial injury.

50. McNamee's false accusation that Clemens used HGH was made with actual malice because McNamee knew it was false.

51. The Mitchell Commission and SI.com republished McNamee's false accusation that Clemens had used HGH. At the time he falsely accused Clemens of using HGH to Pettitte, the Mitchell Commission and SI.com, McNamee knew that his false accusation would be communicated to other persons by them.

52. Until December 2007, Clemens did not know of and, in the exercise of reasonable diligence, should not have known of, McNamee's false accusation that he had used HGH.

53. The law presumes that McNamee's false, defamatory *per se* statement that Clemens had used HGH injured Clemens. Moreover, as a proximate result of the publication and republication of McNamee's false accusation that Clemens had used HGH, Clemens's good reputation has been severely injured. In addition, McNamee's false allegation that Clemens had used HGH has also caused Clemens to suffer severe mental anguish, shame, public humiliation, embarrassment, and lost endorsement and business opportunities. Clemens seeks damages for these injuries from McNamee in an amount to be determined by a jury.

## VI.

### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

54. Clemens incorporates by reference the facts set forth above.

55. McNamee falsely told Pettitte, the Mitchell Commission, and SI.com that Clemens had used steroids and HGH.

56. McNamee intended to cause Clemens to suffer severe emotional distress by making the false accusations.

57. McNamee's conduct in making the false accusations to Pettitte, the Mitchell Commission, and SI.com was extreme and outrageous.

58. McNamee's false accusations proximately caused Clemens to suffer severe emotional distress. Clemens seeks damages for these injuries from McNamee in an amount to be determined by a jury.



**VII.**

**EXEMPLARY DAMAGES**

59. Clemens incorporates by reference the facts set forth above.

60. Clemens is entitled to exemplary damages from McNamee because McNamee's conduct described above was malicious and grossly negligent.

**VIII.**

**JURY DEMAND**

61. Clemens demands a trial by jury on all issues.

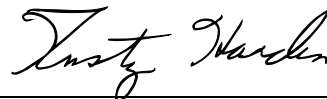
**IX.**

**PRAYER FOR RELIEF**

62. Clemens requests that on final trial he recover judgment against McNamee for:

- a. Actual damages in a sum to be determined by the jury;
- b. Exemplary damages in a sum to be determined by the jury;
- c. Pre- and post-judgment interest as provided by law;
- d. Costs of suit;
- e. Such other and further relief to which Clemens may be justly entitled.

Respectfully submitted,



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Rusty Hardin  
Attorney-in-Charge  
Federal I.D. No.: 19424

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**ATTORNEYS FOR PLAINTIFF  
WILLIAM ROGER CLEMENS**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of May, 2008, a true and correct copy of the foregoing instrument was served upon all counsel of record via certified mail, return receipt requested, in accordance with the Federal Rules of Civil Procedure as follows:

Richard D. Emery  
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A handwritten signature in black ink that reads "Joe Roden". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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Joe Roden