

CAUSE NO. _____

ADB INTERESTS, LLC

Plaintiffs

v.

MICHELLE LANUM

Defendant

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION
AND APPLICATION FOR INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, ADB Interests, LLC ("ADB" or "Plaintiff"), complaining of Michelle Lanum ("Defendant"), and for cause of action and grounds for relief would respectfully demonstrate unto this Honorable Court the following:

I.

DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of Texas Rules of Civil Procedure 190.

2. Pursuant to TEX. R. CIV. P. 47, Plaintiff seeks monetary relief of \$2,000,000.00 but not more \$5,000,000.00 and non-monetary relief.

II.

PARTIES

3. ADB Interests, LLC. is a limited liability company organized and existing under the laws of the State of Texas with its principal office in Houston, Harris County, Texas.

4. 5. Michelle Lanum, is an individual citizen of Florida, who may be served with process at her place of residence: 18002 Richmond Place Drive, Apt. 927, Tampa, Florida 33647 or wherever she may be found. Service is requested at this time.

III.

JURISDICTION AND VENUE

6. The court has jurisdiction over this dispute because the damages sought are within the jurisdictional limits of the court. The court has jurisdiction over defendant pursuant to Tex. CIV. PRAC. & REM. CODE §§ 17.041 *et seq.* Venue is proper in Harris County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE § 15.017 because this is a suit for libel, and slander and it is brought, at the election of Plaintiffs, in the county in which ADB's principal office is located at the time of the accrual of the cause of action and pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002 because all or a substantial part of the acts complained about occurred in Harris County, Texas.

IV.

STATEMENT OF FACTS

7. Plaintiff, ADB produces, markets and sells consumer products to aid in opening the fascia, which is the thin sheath of fibrous tissue enclosing muscles and organs. ADB's products include the FasciaBlaster®, FaceBlaster™, Mini2™, Nugget and other products designed to assist the consumer in achieving optimal results, including instructional videos on the proper use of each product. ADB's products are designed for self-treatment to assist in pain reduction, improved flexibility, joint function, circulation, muscle definition and performance, nerve activity, posture, and enhanced beauty, including the virtual elimination of cellulite.

8.

9. The FasciaBlaster ® is the cornerstone of ADB's product line. Upon information and belief, Defendant purchased products from ADB, which orders were processed in Texas.

10. On or about December 10, 2016, Defendant volunteered and participated in “Effects of FasciaBlaster® Use on Healthy Women,” (the “Study”) a research study on how the use of the FasciaBlaster® affects the systems of the human body.

11. In connection with her participation in the study, Defendant executed a Consent Agreement (the “Consent Agreement”) with ADB that contains a nondisclosure provision (the “NDA”) with the following language:

“In the same way we keep your private information confidential, you are required to keep these protocols and access to study materials confidential until the information is release by The Fascia Advancement Institute™ and ADB Interests, LLC. You are not to share the videos or instruct others on social media to perform this technique without express written consent of the ADB Interests, LLC. All procedures, protocols, and research data are the property of ADB Interests, LLC and may not be reproduced without permission.”

12. Additionally, the Consent Agreement provides a limited non-exclusive, non-transferable license as follows:

Without limiting the foregoing, you acknowledge and agree that the trade names, logos, tag lines, and other trademarks and service marks associated with the ADB Interests, LLC, and that you are not permitted to use, sell, or otherwise distribute the Marks without our prior written consent.

Subject to your compliance with these terms, ADB Interests, LLC grants you a limited non-exclusive, non-transferable license to access and use the Ashley Black Products, for your own personal use only, and not for use as a service provider or any other commercial use.

You may not use, copy, reproduce, distribute, license, sell, transfer, publish, post, publicly display, publicly perform, transmit, broadcast, adapt, modify, prepare derivative works based upon, or otherwise exploit any features, functionality, tools or content of the Ashley Black Products in any form or by any means, or sublicense the rights granted in the terms, except as expressly permitted herein, without the prior written permission of ADB Interests, LLC.

13. After signing the Consent Agreement and participating in the Study, Defendant breached its terms by publishing disparaging and defamatory statements and details regarding the outcome of the Study.

14. Defendant posted, on numerous occasions, symptoms she allegedly experienced during the Study, side effects she allegedly experienced after the Study, the number of participants, and actual details of the events, all in breach of the Consent Agreement.

15. Additionally, Defendant made false and unproven medical claims that the use of the FasciaBlaster® can cause bodily harm and body deterioration.

16. Specifically, Defendant alleged, without proof, that the use of the FasciaBlaster® can cause nausea, vomiting, extreme weight loss, and destruction of the body's connective tissue.

17. Defendant published additional false, defamatory and disparaging comments on multiple Facebook groups alleging a connection between the FasciaBlaster® and skin detachment and collagen breakdown.

18. Defendant's attempts to spread libelous and defamatory material about ADB caused injury to the reputation and business practices of ADB and Ashley Black, personally.

V. **BREACH OF CONTRACT**

19. Plaintiff hereby incorporates and re-alleges the above paragraphs as if set forth fully herein.

20. On December 10, 2016, Defendant entered into the Consent Agreement with Plaintiff. The Consent Agreement contained an NDA provision as follows:

“In the same way we keep your private information confidential, you are required to keep these protocols and access to study materials confidential until the information is release by The Fascia Advancement Institute™ and ADB Interests, LLC. You are not to share the videos or instruct others on social media to perform

this technique without express written consent of the ADB Interests, LLC. All procedures, protocols, and research data are the property of ADB Interests, LLC and may not be reproduced without permission.”

21. Additionally, the Consent Agreement provides a limited non-exclusive, non-transferable license as follows:

Without limiting the foregoing, you acknowledge and agree that the trade names, logos, tag lines, and other trademarks and service marks associated with the ADB Interests, LLC, and that you are not permitted to use, sell, or otherwise distribute the Marks without our prior written consent.

Subject to your compliance with these terms, ADB Interests, LLC grants you a limited non-exclusive, non-transferable license to access and use the Ashley Black Products, for your own personal use only, and not for use as a service provider or any other commercial use.

You may not use, copy, reproduce, distribute, license, sell, transfer, publish, post, publicly display, publicly perform, transmit, broadcast, adapt, modify, prepare derivative works based upon, or otherwise exploit any features, functionality, tools or content of the Ashley Black Products in any form or by any means, or sublicense the rights granted in the terms, except as expressly permitted herein, without the prior written permission of ADB Interests, LLC.

22. Defendant breached the Consent Agreement by publishing disparaging and defamatory statements and photos regarding the outcome of the study without consent from Plaintiff. Specifically, Defendant posted on or about June 17, 2017 at 1:37 p.m., the following statement:

Hello you bunch of brave ladies and gents, I was also in the study and want to say that nothing works for everyone, that is scientifically IMPOSSIBLE. No business has a 100% satisfactory rate. I personally had mixed results, and while I feel this tool would be useful, it should be under the watchful eye of a trained and educated professional. Furthermore, I had my own personal experience with blasting that made me quit blasting entirely, but I am not here to present my story. I am here to show my support to anyone having negative effects. No you are not “crazy,” you are just not meant to blast. That’s it. That said, I will not pretend you do not exist nor that you do not have a right to be heard, and furthermore that no business should try and bully anyone for having a different point of view or experience.

EVER. And lastly, if RYNO or whomever tries to further contact any of my loved ones, they may want to think twice before going down that rabbit hole....Many blessings to all of you and I am sorry this is happening..."

23. Further, Defendant posted in the Facebook group Blaster "THE REAL STORY" that (1) she "experienced awful symptoms during the trial;" (2) "I endured symptoms for ninety days...This is a horrible joke;" (3) "Many others have a myriad of issues from neurological to aesthetic;" (4) that the purpose of the study was "[t]o market, not develop science;" (5) "We were duped;" (6) "no wonder they acted strange when we were in Atlanta, they didn't want us to actually share our experience, they wanted us to be fan girls which were not lol;" (7) that Ashley Black "seem predatory;" and (8) "But in any case it is abusive and it sucks . . . I was here for the science!!!"

24. Defendant publicly acknowledged her breach of the Consent Agreement in the following published statement: "I got booted from the private tampa study group for posting in here, lol, as well as master blaster group."

25. On or about July 7, 2017, Defendant posted a comment in response to a public statement from Ashley Black that accused her of "Lies."

26. Defendant published further alleged results from the Study and commented about the Study as follows: (1) "I vomited for 90 days;" (2) "The nausea was really bad, I lost almost twenty pounds;" (3) "I'm so sick of this shit show, I would walk away if I didn't see all this unnecessary abuse occurring, no I wasn't that thrilled with my results, but I would've walked away if they were honest and not bullying people... We are all experiencing undue emotional stress, for what? Some compound of odd people that value money over ethics....;" (4) "don't pretend anything is 100% and call yourselves scientists . . . What a joke;" (5) "Oh my goodness with the new science crap...None of you have any education to be backed in academia...SMH;" (6) "Yes,

you are destroying much needed connective tissue that works like a sheath and keeps everything in place;" (7) "I lost weight during the study, 18 pounds I think, of course that was due to daily nausea and vomiting; (8) "Everything she says and does is a contradiction and mockery of Truth;" (9) "It is a mockery of science and it's disgusting;" and (10) "Plus it was only 34 women, I asked them if they adjusted their effect size, Bart had no idea what I was talking about lol."

VI.
BUSINESS DISPARAGEMENT

27. Plaintiffs hereby incorporate and re-allege the above paragraphs as if set forth fully herein.

28. Defendant published false and disparaging words and photos about ADB and the FasciaBlaster® to third parties.

29. Defendant published the false and disparaging words with malice and without privilege.

30. The publication of the false and disparaging words caused ADB to suffer special damages, recovery of which is sought herein

VII.
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

35. Plaintiff hereby incorporates and re-alleges the above paragraphs as if set forth fully herein.

36. To obtain a temporary injunction, the applicant must show: (i) a cause of action; (ii) a probable right to the relief sought; and (iii) probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *Intercontinental Terminal*

Co. v. Vopak North America, Inc., 2011 WL 4398553, *2 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

37. Plaintiffs seek injunctive relief to require Defendant to remove disparaging and defamatory comments about Ashley Black, ADB and FasciaBlaster® from any and all websites, message boards, and social media websites, which is not a prior restraint on free speech but is an “abuse of the liberty to speak.” *Kinney v. Barnes*, 443 S.W.3d 87 (Tex. 2014). Based on Plaintiff’s alleged causes of action against Defendant, and as indicated in this verified petition, Plaintiff (i) shows a probable right of recovery and likelihood of success on the merits, (ii) Plaintiff will suffer imminent, irreparable harm without Court intervention, and (iii) there is no adequate remedy at law.

38. As a direct and proximate result of the Defendant’s wrongful actions, Plaintiff suffered and will continue to suffer imminent, irreparable injury for which no remedy at law exists without temporary and permanent injunctive relief. Plaintiff will post the reasonable bond necessary to facilitate the injunctive relief requested. Plaintiff requests that the bond amount, if any, be nominal.

39. The only adequate, effective, and complete relief for Plaintiff is to enjoin Defendant from maintaining past false, defamatory and disparaging comments on Internet websites, message boards, and social media websites until there is an adjudication of whether such statements are defamatory and disparaging. Pursuant to TEX. R. CIV. P. 680 *et seq.* and Tex. Civ. Prac. & Rem. Code 65.001 *et seq.*, and in order to preserve the *status quo* during the pendency of this action, Plaintiffs requests a temporary restraining order, and upon hearing, a temporary and permanent injunction, ordering and immediately enjoining Defendant, including her agents, servants, employees, independent contractors, attorneys, representatives, and those persons or

entities in active concert or participation with them (collectively, the “Restrained Parties”) from (i) maintaining publications, in any form, including without limitation by electronic mail, social media, message boards, letter, handbill, poster, and any advertising medium of any kind any false, misleading, defamatory or disparaging comments about Ashley Black, FasciaBlaster®, other products of **ADB or its affiliates.**, (ii) contacting, directly or indirectly, Plaintiffs’ agents, servants, employees, independent contractors, representatives, customers and clients; and (iii) all such other acts as this Court deems appropriate for injunctive relief.

VIII.
ATTORNEY’S FEES

40. The undersigned attorneys have been retained by Plaintiff to represent it in connection with this lawsuit. Plaintiff is entitled to recover all reasonable and necessary attorneys’ fees incurred in prosecuting this action through trial and all appellate levels pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, and as otherwise permitted at law or equity.

IX.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant, Michelle Lanum, be cited to appear and answer herein and that upon final trial Plaintiffs be awarded all relief as set out herein, including:

- (1) A temporary restraining order, and upon hearing, a temporary injunction for the relief requested above;
- (2) Upon final trial, judgment against Defendant for permanent injunctive relief;
- (3) Actual damages, nominal damages, exemplary damages and prejudgment and post-judgment interest;

- (4) Plaintiff's reasonable and necessary attorneys fees' in prosecuting its claims through trial and, if necessary, through appeal;
- (5) All costs of suit; and
- (6) Such other and further relief, at law or in equity, to which the Plaintiffs may show themselves justly entitled.

Respectfully Submitted,

JOHNSON DELUCA KURISKY & GOULD, P.C.



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**ATTORNEYS FOR PLAINTIFF
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VERIFICATION

STATE OF MINNESOTA

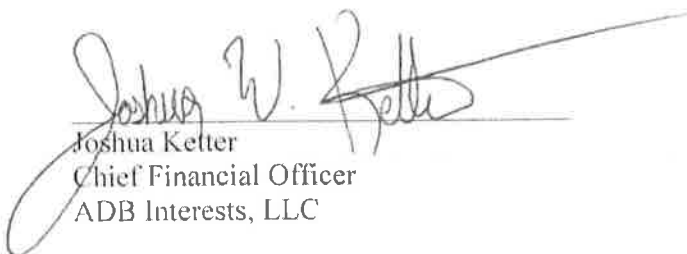
COUNTY OF Hennepin

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Before me, the undersigned Notary Public, on this day personally appeared Josh Ketter, who, after being duly sworn, stated under oath the following:

"My name is Joshua Ketter. I am over twenty-one years of age, of sound mind, and capable of making this affidavit. I am the Chief Financial Officer of ADB Interests, LLC, a Plaintiff in this cause. I have read Plaintiff's Original Petition, and the facts stated therein are within my personal knowledge, and are true and correct to the best of my knowledge."

Further affiant sayeth not.


Joshua Ketter
Chief Financial Officer
ADB Interests, LLC

Sworn to and subscribed before me by Joshua Ketter on the 20th day of July, 2017.




Notary Public in and for
The State of Minnesota

My commission expires: 01/31/2021



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this July 28, 2017

Certified Document Number: 76040131 Total Pages: 11

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com