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INDEX NO. 153557/2012

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SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK		
	: : Index No. 153557/2012 : : AFFIRMATION IN SUPPORT	F
TOOLEY, individually and as an employee of USA BASKETBALL, and JAMES CAWLEY, individually and as an employee of NATIONAL BASKETBALL ASSOCIATION, Defendants.	: :	

Vincent Alfieri, an attorney duly admitted to practice in the Courts of the State of New York, affirms under penalty of perjury that:

- 1. I am a member of the law firm Bryan Cave LLP, attorneys for defendant USA Basketball, Inc. ("USAB") and James Tooley ("Mr. Tooley") in this action. I am familiar with the relevant facts and circumstances set forth herein, and submit this affirmation in support of the motion of USAB and Mr. Tooley pursuant to CPLR §§ 3211(a)(2), (7) and (8) to dismiss with prejudice the claims brought against them by Plaintiff Kelley D.F. Hardwick ("Ms. Hardwick"), and for such other and further relief as the Court deems proper.
- 2. Attached as Exhibit 1 is a copy of the Verified Amended Complaint (the "Amended Complaint") filed by Ms. Hardwick in this action.
- 3. In her Amended Complaint, Ms. Hardwick asserts claims against USAB, Mr. Tooley, Geno Auriemma, the National Basketball Association and James Cawley for alleged violations of the New York State Human Rights Law, N.Y. Executive Law § 296 *et seq*. (the "NYSHRL") and the New York City Human Rights Law, N.Y.C. Administrative Code § 8-107

et seq. (the "NYCHRL") in connection with alleged discrimination, harassment and retaliation.

Ms. Hardwick also asserts an assault claim against Geno Auriemma and USAB.

- 4. USAB and Mr. Tooley deny that Ms. Hardwick's allegations against them have merit, and maintain that they did not directly or indirectly engage in discrimination towards, harassment of, or retaliation against Ms. Hardwick, and did not condone, ratify, or acquiesce in any such conduct.
- 5. Even assuming the truth of Ms. Hardwick's allegations solely for purposes of this motion, Ms. Hardwick's claims against USAB and Mr. Tooley fail as a matter of law.
- 6. USAB is an Illinois corporation that maintains its principal place of business in Colorado Springs, Colorado. (Complaint ¶ 13). Mr. Tooley is a Colorado resident. (Affidavit of James Tooley ¶ 2).
- and Mr. Tooley's motion, as a foreign corporation and individual, USAB and Mr. Tooley cannot be held liable for alleged conduct in violation of the NYSHRL and NYCHRL where that conduct did not occur, and had no impact, within the borders of the State of New York or the City of New York. The allegations in Ms. Hardwick's Amended Complaint concern precisely that conduct alleged to have occurred outside of, and which had no impact within, the State or City of New York. While Ms. Hardwick includes a conclusory allegation in her Amended Complaint that Mr. Tooley and Geno Auriemma agreed to affect Ms. Hardwick's employment by the NBA in New York an allegation made for the first time in Ms. Hardwick's Amended Complaint, in response to USAB demonstrating the deficiencies of Ms. Hardwick's initial complaint in its prior motion to dismiss this conclusory allegation is made in stark contrast to Ms. Hardwick's specific allegations identify alleged impact on her in London, England. The conclusory allegation of an

agreement between Mr. Tooley and Geon Auriemma is insufficient to avoid dismissal. For these reasons, as discussed more fully in USAB and Mr. Tooley's memorandum of law, the NYSHRL and the NYCHRL cannot be applied to or form the basis of any claims against USAB or Mr. Tooley.

- 8. Additionally, Ms. Hardwick's assault claim is also deficient as a matter of law. The allegations of assault are not plausible, and moreover, Ms. Hardwick has not alleged a sufficient basis to hold USAB or Mr. Tooley vicariously liable for an assault allegedly committed by Geno Auriemma. For these reasons, as discussed more fully in USAB and Mr. Tooley's memorandum of law, the assault claim should be dismissed with prejudice.
- 9. In addition to the pleading deficiencies of the claims against Mr. Tooley, Mr. Tooley should be dismissed from this action for the additional reason that this Court lacks personal jurisdiction over him.
- 10. Accordingly, pursuant to CPLR §§ 3211(a)(2) and (7), USAB seeks the dismissal, with prejudice, of the claims asserted against it. Mr. Tooley seeks the dismissal, with prejudice, of the claims against him pursuant to CPLR §§ 3211(a)(2), (7) and (8).

WHEREFORE, it is respectfully requested that this Court dismiss with prejudice Ms. Hardwick's claims against USAB and Mr. Tooley, and grant such other and further relief as it deems proper.

Dated: New York, New York December 19, 2012

VINCENT ALEJERI