

Cause No. 2009-550,359

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
BY [Signature] DEPUTY
2009 DEC 29 PM 2:52
Barbara Dwyer

MIKE LEACH § IN THE 99th
 §
VS. § DISTRICT COURT
 §
TEXAS TECH UNIVERSITY § LUBBOCK COUNTY, TEXAS

**MIKE LEACH'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION**

A. Discovery Control Plan

1. Mike Leach intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.

B. Parties

- 2. Plaintiff is Mike Leach, the head football coach at Texas Tech University.
- 3. Defendant is Texas Tech University.

C. Jurisdiction

4. The court has jurisdiction over the lawsuit under Texas Civil Practice & Remedies Code Section 65.023.

D. Venue

5. Venue is proper in Lubbock County, Texas. Specifically, venue is allowed in this county because all or a substantial part of the events or omissions occurred in this county. Tex. Civ. Prac. & Rem. Code §15.002(a)(1). Venue is mandatory in this county because of Texas Civil Practice & Remedies Code Section 65.023 which states that a writ of injunction against a party who is a resident of this state shall be tried in a district court or county court in the county in which the party is domiciled.

E. Facts

6. Mike Leach files this motion without any intention to violate any provision of his contract. It is with great regret in the face of duress being confronted without any due process that it has become essential that it be filed.

7. On December 28, 2009, Mike Leach received the following letter from Defendant:



“Dear Coach Leach:

We recently received a complaint from a player and his parents regarding your treatment of him after an injury, and we have undertaken an investigation of that complaint. We consider this a serious matter. Until the investigation is complete, you are suspended from all duties as Head Football Coach effective immediately.

Sincerely,
Gerald Myers
Athletics Director

Guy Bailey
President”

See Exhibit A, December 28, 2009 Texas Tech University Letter to Mike Leach.

Mike Leach has been accused by “a player and his parents” of mistreating one of the football players at Texas Tech. There has been absolutely no evidence presented that Mike Leach committed any act which harmed or caused any risk to his player or that he otherwise violated any university rules or standards. Craig James, an ESPN sports analyst and rumored potential political candidate, has apparently fueled this controversy to retaliate against Mike Leach for his displeasure with the extent of his son’s role on Texas Tech University’s football team.

Without any explanation about what Mike Leach did wrong, without even naming the individual(s) who have accused Mike Leach of wrongdoing, and with absolutely no process regarding the allegations, it is unjust and unconscionable for Defendant to suspend Mike Leach so as to prevent him from coaching his team just days before the Alamo Bowl. There is no legal grounds for the suspension and no provision in Mike Leach’s contract authorizing it.

F. Count 1 – Breach of Contract

8. Defendant has breached its contract with Mike Leach by suspending Mike Leach without any process or contractual basis.
9. In pertinent part, the contract states:

Breach of such rules and standards, whether willful or through negligence, may be subject to disciplinary action and penalties ranging from termination, public or private reprimand to monetary fines or adjustments in compensation or adjustments in the term of this contract as determined by the President following consultation and review with the Director of Intercollegiate Athletics.

See Exhibit B, Employment Contract, State of Texas, County of Lubbock at Page 5,

Section IV.

Defendant has not terminated, reprimanded, or fined Mike Leach, nor has it adjusted the term of Mike Leach's contract. He has simply been suspended without any process or contractual basis.

G. Application for Temporary Restraining Order

8. Mike Leach seeks that this Court enter an order restraining Texas Tech University from suspending Mike Leach from coaching the football team.

9. It is probable Mike Leach will recover from Defendant after trial on the merits because Mike Leach has not committed any wrongdoing, he has not been informed of any rules or standards he has violated, and his contract does not provide for suspension even if Defendant had shown a violation of a rule or standard, which it has not.

10. If Mike Leach's application is not granted, harm is imminent because Mike Leach will be unable to coach his football team in practice prior to the Alamo Bowl and during the Alamo Bowl.

11. The harm that will result if the temporary restraining order is not issued is irreparable the Alamo Bowl will be played on January 2, 2009 and preparation is needed immediately. Not only will Mike Leach suffer personally due to his contract provisions and with regard to compensation(*see Exhibit B at page 4*), but his reputation and record will also be harmed as well as the reputation of his team, the football program, and the university.

12. Mike Leach has no adequate remedy at law because damages are incalculable.

13. There is not enough time to serve notice on the Defendant and to hold a hearing on the application.

14. Mike Leach is willing to post bond.

H. Request for Temporary Injunction

15. Mike Leach asks the court to set his application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendant.

I. Affidavits

16. Mike Leach's affidavit that proves the allegations in the application for injunctive relief are attached as *Exhibit C, Affidavit of Mike Leach* and is incorporated by reference.

J. Demand for Jury

17. Mike Leach demands a jury trial and tenders the appropriate fee.

L. Prayer

18. For these reasons, Mike Leach asks that Defendant be cited to appear and answer and, on final trial, that Mike Leach have judgment against Defendant for:

- a. Temporary injunctive relief.
- b. Actual damages within the jurisdictional limits of this court.
- c. Attorney fees.
- d. Prejudgment and post-judgment interest as allowed by law.
- e. Costs of suit.
- f. All other relief, in law and in equity, to which Mike Leach may be entitled.

Respectfully Submitted,



Ted A. Liggett
Texas State Bar No. 00795145
P.O. Box 2368
Lubbock, Texas 79408
1001 Main Street, Suite 705
Lubbock, Texas 79401
Phone: (806) 787-6014
Fax: (806) 589-0765

ATTORNEY FOR MIKE LEACH

EXHIBIT A

December 28, 2009 Texas Tech University Letter to Mike Leach



TEXAS TECH UNIVERSITY

Office of the President

December 28, 2009

Mike Leach
Head Football Coach
Texas Tech University
Lubbock, TX

Dear Coach Leach:

We recently received a complaint from a player and his parents regarding your treatment of him after an injury, and we have undertaken an investigation of that complaint. We consider this a serious matter. Until the investigation is complete, you are suspended from all duties as Head Football Coach effective immediately.

Sincerely,

A handwritten signature in cursive script that reads "Gerald Myers".

Gerald Myers
Athletics Director

A handwritten signature in cursive script that reads "Guy Bailey".

Guy Bailey
President

EXHIBIT B

Employment Contract, State of Texas, County of Lubbock

**EMPLOYMENT CONTRACT
STATE OF TEXAS
COUNTY OF LUBBOCK**

This Employment Contract (hereinafter the "Agreement") is made and entered into this the 19th day of February, 2009, by and between Texas Tech University, herein called "University" and Mike Leach, herein called "Coach". The parties hereby specifically agree that each party has received or shall receive adequate consideration to supersede the existing Employment Contract between the parties dated August 11, 2006 (herein the "Prior Agreement"), and such Prior Agreement shall be and is hereby terminated as of the date of this Agreement.

**I.
TERM**

Both parties hereby mutually agree that for and in consideration of the mutual benefits and consideration received or to be received by the parties that Coach shall be employed as Head Football Coach at the University for a term of five years beginning the 1st day of January, 2009, and ending on the 31st day of December, 2013 (the "Term"), upon the terms, conditions, stipulations, covenants and agreements as set forth herein. For purposes of this Agreement, each calendar year during the term of this Agreement shall be referred to as a "Contract Year."

The parties agree, however, that in the event that the University's football team is invited to a bowl game or playoff scheduled within 30 days after the expiration of the Term of this Agreement, Coach shall continue his duties as specified herein until such bowl or playoff is completed. During such time, Coach shall be entitled to receive any supplemental compensation otherwise due related to such bowl game or playoff as set forth in this Agreement.

**II.
PRIMARY DUTY ASSIGNMENT**

Coach shall be employed as Head Football Coach at University during the Term of this Agreement.

**III.
COMPENSATION AND BENEFITS**

A. BASE SALARY

Coach shall be paid the following annual Base Salary during the period of this Agreement.

January 1, 2009 – December 31, 2009	\$300,000
January 1, 2010 – December 31, 2010	\$300,000
January 1, 2011 – December 31, 2011	\$300,000
January 1, 2012 – December 31, 2012	\$300,000
January 1, 2013 – December 31, 2013	\$300,000

Payment shall be in accordance with the payroll policies of the University and subject to such deductions as may be required by applicable state and federal laws and regulations. Changes in Base Salary must be in writing and signed by the parties.

B. HEALTH, RETIREMENT, VACATION AND OTHER LEAVE

Coach will be eligible to participate in the same benefits as all other University employees. University policy and Texas state law shall govern such benefits. Vacation leave shall be taken at such time or times agreed upon between Coach and the Director of Intercollegiate Athletics.

C. PERQUISITES

1. **Courtesy Automobiles**: Coach shall receive two (2) courtesy automobiles.

2. **Camps**: Coach, acting as an individual or a private legal entity, may offer a camp using University facilities after first receiving written approval by the Director of Intercollegiate Athletics. It is understood that Coach or other University personnel involved will use personal vacation time when preparing for and conducting a private camp and that University facilities, equipment and resources may be used according to the terms and conditions of a separate Facility Use Agreement. Such Facility Use Agreement must be in writing and signed by both parties before commencement of a camp. Coach shall have permission to use the terms "Texas Tech University" and "Red Raider Football" and all logos and trademarks of University related to Texas Tech Football in the description and identification of any Football camp conducted by the Coach, upon approval by the Director of Intercollegiate Athletics.

3. **Guarantee of Outside Athletics Related Personal Income**: If the annual Outside Athletics Related Personal Income ("Outside Income") of Coach does not reach the following amounts for an entire Contract Year, the University agrees to make up any shortfall up to that amount (the "Guarantee"). If the Outside Income of Coach exceeds the amounts below during a Contract Year, Coach shall be entitled to retain such excess income:

<u>Contract Year</u>	<u>Outside Athletics Related Personal Income</u>
2009	\$1,600,000
2010	\$1,900,000
2011	\$2,200,000
2012	\$2,200,000
2013	\$1,700,000

It is agreed that the Outside Income of Coach shall include but not be limited to the following income arranged through the University or Learfield Communications, Inc.:

- a. Uniform/clothing contracts;

- b. Shoe/equipment contracts;
- c. Apparel contracts;
- d. Television coaches shows;
- e. Pre-game, post-game and other radio shows;
- f. Speaking engagements arranged through University;
- g. Merchandising contracts; or
- h. Other income received by Coach resulting from being the Head Football Coach at University but not including sports camps.

The following types of income arranged through IMG World ("IMG") or successor agent shall be excluded from the calculation and determination of the Guarantee:

- a. National speaking engagements arranged through IMG;
- b. Television, radio and Internet commercial contracts arranged through IMG;
- c. Book contracts; or
- d. All other income arranged by IMG or successor agent.

With respect to activities over which he exerts full control, Coach will use his reasonable efforts to maximize his Outside Income so as to minimize the contribution the University is required to make under this section. Coach will earn a bonus of \$100,000 (One Hundred Thousand Dollars) if Coach's Outside Income equals or exceeds 90% of the Outside Income Guarantee for the corresponding Contract Year as set forth herein.

A report of Outside Income, with specific supporting documentation, i.e., copies of checks, etc., adequate for University to review and approve, shall be presented by Coach to the University's President after January 1 following the Contract Year in which the Outside Income is earned. University will pay such Guarantee and related bonus for earning 90% or more of the Outside Income, if applicable, to Coach no later than 30 days after University receives such report from Coach. The Guarantee will only be due and payable upon Coach's completion of an entire Contract Year. provided, however, that in the event of a termination of this Agreement without cause by the University, the Guarantee for the Contract Year in which such termination occurs shall be nonetheless paid to Coach on a pro-rata basis through the date of such termination, unless such termination occurs during the months of January or February (in which case there shall be no pro-ration of the Guarantee payable to Coach for that particular Contract Year).

4. Supplemental Compensation: Beginning with the 2009 football season, in the event the University football team achieves the following accomplishments, Coach shall receive Supplemental Compensation as follows:

- a. Football team attains a Graduation Success Rate of 65% as defined by the NCAA - \$25,000
- b. Wins or ties for Big 12 South Championship -- \$25,000

- c. Advances to the Big 12 Championship Game - \$25,000
- d. Wins the Big 12 Championship Game - \$25,000
- e. Participates in Bowl Championship Series ("BCS") bowl - \$75,000
- f. Participates in Holiday or Cotton Bowl - \$50,000
- g. Participates in any other bowl - \$25,000
- h. Wins National Championship- \$250,000
- j. If Coach attains any of the following Big 12 Coach of the Year awards, he shall receive a one-time Supplemental Compensation payment in the amount of \$25,000:
 - a. Associated Press Big 12 Coach of the Year;
 - b. Big 12 Coach of the Year as selected by the Big 12 coaches
- k. If Coach attains any the following National Coach of the Year awards he shall receive a one-time Supplemental Compensation payment in the amount of \$50,000:
 - a. Associated Press National Coach of the Year;
 - b. Munger National Coach of the Year
 - c. Woody Hayes National Coach of the Year
 - d. Bear Bryant National Coach of the Year
 - e. Walter Camp National Coach of the Year
 - f. AFCA National Coach of the Year
 - g. Liberty Mutual National Coach of the Year
- l. Coach shall receive a one-time Supplemental Compensation payment based on the highest of the following rankings:
 - a. Final Associated Press or USA Today Poll Ranking #11-25 - \$25,000
 - b. Final Associated Press or USA Today Poll Ranking #1-10 - \$50,000
- m. In addition to the above Supplemental Compensation payments, Coach shall earn the greater of any of the following team accomplishments:
 - 1. 5 regular season conference wins - \$25,000
 - 2. 6 regular season conference wins - \$50,000
 - 3. 7 regular season conference wins - \$75,000
 - 4. 8 regular season conference wins - \$100,000

Coach will not receive any bonuses for any year that football team receives NCAA Academic Performance Rate (APR) scholarship reduction penalties.

All Supplemental Compensation will be paid to Coach no later than February 15 of the year following the Contract Year in which the Supplemental Compensation was earned provided, however, that any Supplemental Compensation related to a bowl game, playoff game or National Championship will be deemed to have been earned during the Contract Year in which that football season has taken place.

5. **Contract Completion Bonus:** If Coach is the Head Football Coach at University as of December 31, 2009, University will pay to Coach a Contract Completion Bonus of \$800,000 (Eight Hundred Thousand Dollars), such payment to be made no later than February 1, 2010. If Coach is the Head Football Coach at University as of December 31, 2010, University will pay a Contract Completion Bonus of \$200,000 (Two Hundred Thousand Dollars), such payment to be made no later than February 1, 2011. If Coach is the Head Football Coach at University as of December 31, 2013, University will pay a Contract Completion Bonus of \$600,000 (Six Hundred Thousand Dollars), such payment to be made no later than February 1, 2014.

6. **Club Memberships:** The University will pay Coach's membership fees, monthly dues and related assessments in a country club approved in advance by University and in the Lubbock Club. It is understood and agreed that such membership is provided for business purposes so as to allow Coach to develop and promote interest and support and sponsorship of the football program and the University.

7. **Football Tickets:** The University will provide to Coach the use of a football stadium suite with up to 20 tickets and reasonable food and beverages for each University home football game at no cost to Coach. The University will also provide Coach up to 20 tickets to each University away football game and any bowl game in which the University's football team participates during the term of this Agreement, also at no cost to Coach.

IV. **PERFORMANCE**

In the performance of his duties, Coach shall be directly responsible to and under the supervision of the Director of Intercollegiate Athletics. Without limitation of the foregoing, Coach, in the performance of his duties, shall conduct himself at all times in a manner consistent with his position as an instructor of students. The parties agree that, although this Agreement is sports related, the primary purpose of the University and this Agreement is educative. Thus, the educative purposes of the University shall have priority in the various provisions of this Agreement. Coach will follow all applicable University policies and procedures. Coach shall not, either directly or indirectly, breach or countenance the breach by any player or coach subject to his control or supervision of any of the rules and standards of the Big 12 Conference, the NCAA, youth, collegiate, and master's amateur athletics as well as other associations or agencies to which the University adheres. In this connection, Coach agrees to devote his entire time, labor, effort and attention, in good faith, to conduct and perform the duties commensurate with the position as Head Football Coach, bearing in mind that University recognizes and accepts that Coach has the ability to engage in reasonable Outside Income producing activities as defined in Article III.C.3. Coach shall assure the fair and responsible treatment of student-athletes in relation to their health, welfare and discipline. Breach of such rules and standards, whether willful or through negligence, may be subject to disciplinary action and penalties ranging from termination, public or private reprimand to monetary fines or adjustments in compensation or adjustments in the term of this contract

as determined by the President following consultation and review with the Director of Intercollegiate Athletics. The provision of this Article IV shall be without prejudice to any right the University may have under Article V of this Agreement.

Unless notice of termination of employment has been given to Coach in accordance with Articles V.A. or V.D. below, Coach shall not engage in discussions or negotiate, either directly or indirectly, concerning Coach's prospective employment by any other employer without first providing prior written notice to the Director of Intercollegiate Athletics of such discussions or negotiations. Failure to provide such notice may be considered a material breach of this Agreement.

V. TERMINATION

A. FOR CAUSE

The University specifically reserves the right to terminate this Agreement for Cause. "Cause" is hereby defined as: Coach's violation of any material provision of this Agreement (with specific reference to Article IV), provided, however, that if such violation is capable of being cured, University shall allow Coach ten (10) business days to cure such violation, provided, however, that if such violation can be reasonably cured, but cannot be cured within ten (10) business days, Coach shall have a reasonable period of time to cure such violation. Notwithstanding Coach's opportunity to cure such violation, Coach shall immediately cease the violating activity upon receipt of notification of such violation from the University. "Cause" shall also include the commission of a major violation or an excessive accumulation of secondary violations of NCAA Legislation ("NCAA Violations") by Coach while at the University or while previously employed at another NCAA member institution; knowingly condoning NCAA Violations by any staff under Coach's direct control and supervision; failure by Coach to take appropriate disciplinary action against such staff member found by Coach to have committed NCAA Violations; failure by Coach to take appropriate disciplinary action against football student-athletes; or indictment of Coach of a criminal act that constitutes any felony, or any misdemeanor involving moral turpitude, under applicable local, state or federal laws.

In the event the University terminates this Agreement for Cause, the University's sole obligation to Coach shall be to pay his Base Salary until the effective date of termination (and any Supplemental Compensation that has been earned pursuant to Article III.C.4. above). In no case shall the University be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites, income, Supplemental Compensation, or any form of consequential damages resulting from or associated with Coach's employment.

B. INABILITY TO PERFORM

In the event of the inability of Coach to continue to perform his obligations under this Agreement by reason of a substantial physical or mental incapacity lasting in excess of one hundred twenty (120) days (of which at least sixty (60) must be

consecutive) which cannot reasonably be accommodated by the University and which prevents Coach from being able to perform essential functions of the duties and responsibilities set forth herein, this Agreement shall thereupon terminate and all future obligations between the parties hereto shall cease.

C. **BY COACH WITHOUT CAUSE**

Coach may terminate this Agreement at any time and for any reason. In such event, Coach shall be entitled to any Supplemental Compensation set forth in Article III.C.4. above earned prior to Coach's resignation. All other obligations not set forth above shall cease effective the date of the termination by Coach.

D. **BY UNIVERSITY WITHOUT CAUSE**

In addition to the provision set forth above, there is also reserved to the University the right to terminate this Agreement without cause at any time and for any reason. The parties agree that in the event this right to terminate is exercised, the University will pay to Coach liquidated damages in an amount equal to \$400,000 (Four Hundred Thousand Dollars) for each year remaining in the Term, pro rated as of the date of termination. It is agreed that University shall pay such liquidated damages in a lump sum within thirty (30) days after the effective date of termination. University shall also pay any Supplemental Compensation set forth in Article III.C.4 above earned prior to such termination. In such event, the University shall not be liable to Coach for any other University benefits, perquisites or any collateral business opportunities, outside income revenues or guarantees or other benefits associated with Coach's position as Head Football Coach.

E. **MUTUAL AGREEMENT**

The parties reserve the right to terminate this Agreement by mutual agreement. In the event the right to terminate pursuant to this paragraph is exercised, all liability of the parties shall cease effective the date of termination.

VI.
PUBLIC APPEARANCES

Coach shall make no public appearance, either in person or by means of radio, television, or internet willingly allow the use of Coach's name in connection with Coach's relationship to the University when any such appearance or use of name will result in unfavorable reflection upon the University. Coach will neither participate in, nor allow Coach's name to be used in connection with any particular athletic equipment and/or commercial activity wherein Coach will receive remuneration for such participation or use unless Coach first shall have received written consent therefore from the Director of Intercollegiate Athletics. Endorsement or consultation contracts with athletics shoe, apparel, or equipment manufacturers must be reviewed and approved by the Director of Intercollegiate Athletics before Coach can execute such an agreement.

VII.
REPRESENTATIONS

It is mutually understood that this Agreement contains all of the terms and conditions to which the parties have agreed and that no other understandings or representations, either oral or written, unless referenced in the preceding paragraphs, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto and that any modification, amendment or addendum to this Agreement shall only be by written instrument signed by each party hereto.

VIII.
INTERPRETATION

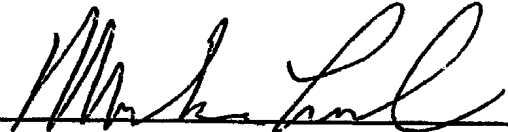
No provision or part of this Agreement which shall prove to be invalid, void or illegal shall in any way affect, impair or invalidate any other provision or part, and such other provision and parts shall remain in full force and effect.

IX.
APPLICABLE LAW

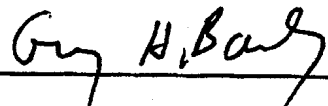
This Agreement is made and entered in Lubbock County in the State of Texas, the laws of Texas shall govern its validity and interpretation and the performance by the parties of their respective duties and obligations under this Agreement.

Coach has been advised to have this Agreement reviewed by counsel familiar with employment agreements before agreeing to the terms and conditions contained herein.

IN WITNESS WHEREOF, the parties hereto shall consider this Agreement to be effective on the 19th day of February, 2009.

 2-19-09
MIKE LEACH Date
Head Football Coach

 2-19-09
GERALD MYERS Date
Director of Intercollegiate Athletics

 2/20/09
GUY H. BAILEY Date
President

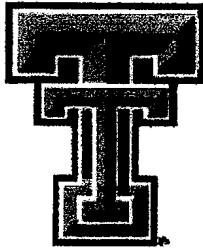
Thomasson, Russell

From: Gleason, Bobby
Sent: Thursday, February 19, 2009 4:47 PM
To: Thomasson, Russell; Hance, Kent
Cc: Myers, Gerald
Subject: Football Staff Salary Pool

Kent and Russell

Per your direction, the football staff will be provided a pool of \$400,000 to be allocated to football staff salary increases.

Bobby Gleason



Bobby Gleason
Deputy Athletics Director
Texas Tech University
Box 43031
Lubbock, Texas 79409
806-742-1438
806-742-1327 Fax
bobby.gleason@ttu.edu

Gerald Myers
2-19-09

Mark Lusk
2-19-09

EXHIBIT C
Affidavit of Mike Leach

STATE OF TEXAS §
COUNTY OF Deyar §


AFFIDAVIT OF MIKE LEACH

On this date, MIKE LEACH personally appeared before me, the undersigned Notary Public, and after being duly sworn stated the following under oath:

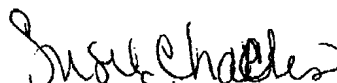
"My name is MIKE LEACH; I am over 18 years of age; and I am the suspended head coach of Texas Tech University's football team. I have never been convicted of a crime, and I am fully competent to make this affidavit.

On December 28, 2009, I was notified that I was suspended from all duties as Head Football Coach effective immediately. I was not provided any reason except that Texas Tech 'recently received a complaint from a player and his parents regarding [my] treatment of him after an injury.' The letter did not indicate what I had allegedly done wrong nor did it reference any rules or standards that I allegedly violated. It did not even identify the player or parents who accused me of mistreatment. There has been absolutely no evidence presented to me that I committed any act which violated any university rules or standards. I have never and would never intentionally harm or endanger a player. I am committed to Texas Tech University and the well being of my football players. I have been forced into this situation without being afforded any process. Not being allowed to coach immediately will cause irreparable harm because preparation for the game is ongoing and it will be over on January 2, 2009. Every minute of preparation is critical to be ready for the game."

^{December}
Signed ~~November~~ 29, 2009.


Mike Leach

SUBSCRIBED AND SWORN TO BEFORE ME on ^{December} ~~November~~ 29, 2009.


NOTARY PUBLIC

