

existence of a genuine issue of a material fact against the movant. *M.D. Anderson Hosp. & Tumor Inst. V. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000).

When evaluating a motion for summary judgment based on the nonmovant's pleadings, the trial court must do the following: (1) assume all allegations and facts in the nonmovant's pleadings are true.¹ *Natividad v. Alexis, Inc.*, 875 S.W.2d 695, 699 (Tex. 1994); *Valles v. Texas Comm'n on Jail Stds*, 845 S.W.2d 284, 286 (Tex. App. – Austin 1992, writ denied); see also *American Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 434 (Tex. 1997) (not incumbent on nonmovant plaintiff to produce evidence supporting allegations made in her pleadings); (2) make all inferences in the nonmovant's pleadings in the light most favorable to the nonmovant. *Medina v. Herrera*, 927 S.W.2d 597, 602 (Tex. 1996); *Natividad*, 875 S.W.2d at 699; *Valles*, 845 S.W.2d at 286; and (3) ensure that any defects in the pleadings cannot be cured by amendment. *In Re B.I.V.*, 870 S.W.2d 12, 13 (Tex. 1994).

Texas courts long have held that “an allegedly defamatory publication should be construed as a whole in light of the surrounding circumstances based upon how a person of ordinary intelligence would perceive it.” *Turner v. KTRK Television*, 38 S.W.3d 103, 114 (Tex. 2000) (citing *Musser v. Smith Protective Servs.*, 723 S.W.2d 653, 655 (Tex.1987); *Guisti v. Galveston Tribune Co.*, 105 Tex. 497, 150 S.W. 874, 878 (1912); *Kapellas v. Kofman*, 1 Cal.3d 20,81 Cal.Rptr. 360, 459 P.2d 912 (1969)(en banc) (publication should be viewed “not so much by its effect when subjected to the critical analysis of a mind trained in the law, but by the natural probable effect on the mind of the average reader.” (citations omitted)). Whether a publication is capable of a defamatory

¹ See Plaintiff's Fourth Amended Original Petition, attached as Exhibit A.

meaning is initially a question for the court, but when a publication is of ambiguous or doubtful import, the jury must determine its meaning. *Turner*, 38 S.W.3d at 114.

Because a publication's meaning depends on its effect on an ordinary person's perception, courts have held that, under Texas law, a publication can convey a false and defamatory meaning by omitting or juxtaposing facts, even though all the story's individual statements considered in isolation were literally true or non-defamatory. *Id.* (citing *Golden Bear Distributing Sys. v. Chase Revel, Inc.*, 708 F.2d 944, 948-49 (5th Cir.1983)(applying Texas law); *Express Publ'g. Co. v. Gonzalez*, 350 S.W.2d 589, 592 (Tex.Civ.App.--Eastland 1961, writ ref'd n.r.e.); *Huckabee v. Time Warner Entertainment Co.*, 19 S.W.3d 413, 425 (Tex.2000)("A broadcaster's omission of facts may be actionable if it so distorts the viewers' perception that they receive a substantially false impression of the event.")).

Summary Judgment Evidence

In support of her response, Arthur relies on the following evidence attached to this Response and incorporated herein, as well as any other competent summary judgment evidence on file at the time of the submission of the Motion. Arthur specifically incorporates by reference the exhibits that TMZ and Levin attached to their Motion.

- Exhibit A: Affidavit of Virgie Arthur, April 23, 2010.
- Exhibit B: Public comments to TMZ.com's April 19, 2007 Article.
- Exhibit C: TMZ Production, Inc.'s Responses to Plaintiff's First Set of Interrogatories.
- Exhibit D: Urban Dictionary definition of "Boink."
- Exhibit E: Urban Dictionary definition of "WTF."

- Exhibit F: Article: "Virgie Arthur: Incest is best, she put her stepbrother to the test."
- Exhibit G: Article: "Virgie Arthur Sort of Committed Incest."
- Exhibit H: Article: "Virgie Arthur Effed Her Stepbrother!"
- Exhibit I: Article: "Virgie Arthur And Her Step-Brother Were Really Close, And By "Close" I Mean Screwing."
- Exhibit J: Article: "Virgie Arthur had a Kid with her Step-brother!"
- Exhibit K: Article: "Virgie Arthur Had a Baby with Her Step Brother."
- Exhibit L: Article: "Virgie Beds Brother."
- Exhibit M: Article: "Virgie Slept with Her Brother?"
- Exhibit N: Certified Fourth Amended Original Petition.
- Exhibit O: Affidavit of Tommy Thomas, then Sheriff of Harris County, Texas.
- Exhibit P: Affidavit of Ronnie Silvio, then Captain, Harris County Sheriff's Department.
- Exhibit Q: FINDLAW.COM: Texas Marriage Age Requirements Laws.
- Exhibit R: Sworn Statement of Chrystal Ann Baker.
- Exhibit S: Affidavit of Nelda Turner and email.
- Exhibit T: Partial transcript, Oral and Videotaped Deposition of Nelda Turner.
- Exhibit U: Email Defendant Howard Stern to Bonnie Tiegel dated March 21, 2007.

RESPONSE TO GROUNDS A & B: TMZ's April 19, 2007 falsely depicts Virgie Arthur as having "hooked up with her stepbro to produce" a child.

TMZ and Levin argue that the Article is "entirely accurate." (Motion at 8.) To the contrary, the falsity of the Article is shown by the public documents that TMZ and Levin have attached to their Motion as exhibits and by Virgie Arthur's affidavit, attached to this Response as Exhibit A.

In the snarky tone for which TMZ and Levin are known, the Article stated that Virgie's mother, Paralee, married George Tacker, the father of David Luther Tacker, "so Virgie and David became their stepkids. *They were all one big happy family – maybe too happy, because Virgie hooked up with her stepbro to produce David Luther Tacker, Jr.*" (emphasis added) That is the gist of the story – that Virgie Arthur, part of one big happy family with David, his father, and her mother, took a liking to her step-brother and had a child by him. The story is false.

Of course, "hooked up" in the context of the Article means "had casual sex with."² But, according to her affidavit, Virgie never "hooked up" with a "stepbro" to produce a child. When Virgie married David Luther Tacker, he was **NOT** her stepbrother. When Virgie's son by David Luther Tacker was conceived and born, David Luther Tacker was **NOT** her stepbrother. David Luther Tacker and Virgie separated after the child was born and **BEFORE** David Luther Tacker's father married Virgie's mother. David Luther Tacker and Virgie never lived together after his father married Virgie's mother. Virgie never had sexual intercourse with David Luther Tacker after his father married Virgie's mother. David Luther Tacker and Virgie never resided with his father and her mother. (See Exhibit A, affidavit of Virgie Arthur.)

The Article stated that "Virgie liked her stepbrother a whole lot." Taken in the context of the entire article, that was TMZ/Levin's way of saying that Virgie had sex with her step-brother. To the contrary, the truth is that at no time after David Luther Tacker's father married Virgie's mother did Virgie "like" David Luther Tacker, in any sense of the word (See Exhibit A). The two young people separated before Virgie's mother married his father, and Virgie has not spoken to David Luther Tacker since they separated. (See Exhibit A). George, Paralee, David, and Virgie never were "one big happy family." It is

² See Exhibit V.

just like TMZ and Levin to turn the words “happy family” and “liked,” however, into words of derision and something about which to sneer.

The “family tree” published with the Article depicts Virgie Arthur’s mother, Paralee, and David Tacker’s father, George, designated as “P” and “G,” getting together before Virgie and David did. (See Motion at 5) Virgie and David are designated by “V” and “D.” For good measure, the tree shows a heart between the V and D figures, indicating that the two young people fell in love after her mother and his father got together. TMZ and Levin even included a figure of a baby in the family tree to make it appear, falsely, that Virgie and Tacker – as stepbrother and stepsister – had produced a child.

Even if all of the story’s individual statements considered in isolation were literally true or non-defamatory -- which they were not -- the TMZ Article is actionable because, taken as a whole, it conveys a false and defamatory meaning by omitting or juxtaposing facts. *See Turner*, 38 S.W.3d at 114.

TMZ and Levin argue that the Article is not capable of defamatory meaning, but they must not have read the results of the poll they took, which shows 85% of the 115,403 respondents saying that Virgie “boinking” David is “creepy.” Their own poll proves Arthur’s point. TMZ and Levin also studiously ignore the comments posted to the Article by members of the public, except to disclaim legal responsibility for them. (Motion at 13.) Those comments, however, show that members of the public regarded sex with a step-brother as akin to incest, which is exactly the result that TMZ/Levin intended. Rather than reproducing them in all of their filthy detail in the body of this Response, Arthur refers this Court to Exhibit B, Comments ## 1, 4, 5, 6, 12, 23, 62, 95, 128, 146,

179, 188, 232, 276, 302, 330, 380, 471, 553, 645, 1013, 1076, 1393, 1394, 1550, 1634, 1760, 1992, and 2011.

TMZ has admitted that the comments on its site are reviewed by a moderator for such things as sexually explicit language, and swear words and their derivations, which the moderator has been instructed to remove. (See Exhibit C, TMZ's answer to Plaintiff's Interrogatory No. 18.) Incredibly, however, neither the moderator nor the editor of the Article must have considered the word "boinking" to be sexually explicit, despite its popular connotation,³ as shown by the fact that the Article uses the word and so do some of the comments that the moderator allowed to be posted. (See Exhibit B, comment 12.) TMZ and Levin also must not have realized that "WTF" is a derivation of a swear word,⁴ because they allowed that to be posted in the 5th comment about Virgie Arthur. (See Exhibit B, comment 5.) The point is that TMZ/Levin allowed such comments to be posted because they served the purpose of damaging Virgie Arthur's reputation. In this legal case, however, they come back to bite TMZ and Levin, because the vehemence and lewd nature of the comments show that the story was capable of defamatory meaning.

The defamatory statements and publications made by the defendants were republished in various media, and the republications show that people took the TMZ/Levin step-brother story to mean that Virgie had sex with her step-brother and thereby produced a child. Not atypical were headlines like the following:

"Virgie Arthur: Incest is best, she put her stepbrother to the test"⁵

"Virgie Arthur Sort of Committed Incest."⁶

³ See Exhibit D.

⁴ See Exhibit E.

⁵ See Exhibit F.

⁶ See Exhibit G.

“Virgie Arthur Effed Her Stepbrother!”⁷

“Virgie Arthur And Her Step-Brother Were Really Close, And By “Close” I Mean Screwing”⁸

“Virgie Arthur Had a Kid with her Step-brother!”⁹

“Virgie Arthur Had a Baby with Her Step Brother”¹⁰

“Virgie Beds Brother”¹¹

“Virgie Slept with Her Brother?”¹²

The TMZ/Levin and their co-conspirators are legally responsible for such republication of their defamatory statements. *Wheeler v. Methodist Hosp.*, 95 S.W.3d 628, 639 – 40 (Tex. App. – Houston [1st Dist.] 2002, no pet.) Levin, who is the Executive Producer of TMZ.com, pursuant to a “loan out” agreement between TMZ and Harvey Levin Productions, is responsible for TMZ’s publications. (Exhibit C, Answer to Interrogatory No. 17.)

In reaching a decision on a traditional summary judgment motion, the Court must take as true the factual allegations in the Petition that the conspirators – in their own words -- set out to “destroy” Virgie Arthur, that they were desperate to find “Virgie dirt,” that they would use anything they could find to “discredit” her, and that they conspired with TMZ and Levin. (Exhibit N, Fourth Amended Original Petition at 11 – 13.) Also, according to the Petition, as a result of the Defendants’ statements, Arthur’s reputation, which once was above reproach,¹³ has been severely damaged and she has suffered extreme mental anguish, public humiliation, and embarrassment. (Exhibit N at 14.)

⁷ See Exhibit H.

⁸ See Exhibit I.

⁹ See Exhibit J.

¹⁰ See Exhibit K.

¹¹ See Exhibit L.

¹² See Exhibit M.

¹³ See Exhibits O and P.

Response to Part C: Part C is nothing but TMZ/Levin and their legal counsel joining in an inept effort to continue what their Article started, *i.e.* gratuitously denigrating Virgie Arthur.

Part C of the Motion makes no real legal point, does not support summary judgment, and constitutes a misuse of filings in this Court.

TMZ and Levin argue that “the *unpublished* details of the Arthur-Tacker relationship and Arthur’s marital history would have been far more damaging than what TMZ *did* print.” (Motion at 16) (emphasis in the Motion). One example of a supposedly “damaging” fact that the Motion provides is that “Arthur was either 14 or 15 when she married Tacker” (Motion at 16) Arthur’s response to that is, “So what?” Texas law provides for marriage at that age. *See* TEX. FAM. CODE Secs. 2.101 – 2.103. One does not have to be a family law expert to find that out, either. Merely Googling “Texas marriage age” gets one the correct information:

Texas Marriage Age Requirements Laws¹⁴

More Information on Marriage Age Requirements

Code Section	§2.102 §2.101, 2.103
Minimum Legal Age With Parental Consent	Male: 14; Female: 14; (consent must be given during 30 day period immediately preceding the date of application for license)

TMZ/Levin do not argue, nor do they present any evidence, that their bullet points were known to the public, or even to them, when they published the Article. For that reason alone they are irrelevant. The bullet points were no reflection on Virgie Arthur’s reputation then, nor are they now. TMZ/Levin do not even attempt to explain how the bullet points about Virgie Arthur’s marriages and divorces are “damaging,” as they term them.

¹⁴ See Exhibit Q.

Response to Part D: TMZ's and Levin's participation in a conspiracy to defame Virgie Arthur makes them liable for any publication in furtherance of the conspiracy, as a matter of law, and there is evidence to support their liability.

TMZ and Levin argue, "To the extent Arthur intends to base her conspiracy to defame claim on a publication other than the April 19, 2007 Article, there is no evidence in support of such a claim." (Motion at 17.) Arthur's first response to that argument is that the argument does not comply with Tex. R. Civ. P., Rule 166a(i), which provides, "The motion must state the elements as to which there is no evidence." The TMZ/Levin Motion does not specify the claim, let alone the element for which there supposedly is no evidence. Assuming that the Motion is referring to the claim about the prison interview broadcast, Arthur's second response is that there does not need to be evidence, because TMZ and Levin are liable for any act done by their co-conspirators in furtherance of the conspiracy, as a matter of law. Arthur's third response is that there is sufficient evidence to support the liability of TMZ and Levin for the prison interview broadcast.

A conspiracy exists where two or more persons or entities have a meeting of the minds to accomplish an unlawful purpose or a lawful purpose by an unlawful act. *Ernst & Young, L.L.P. v. Pacific Mut. Life Ins. Co.*, 51 S.W.3d 573, 583 (Tex. 2001). To prove conspiracy, the plaintiff must prove that the parties involved had a meeting of the minds about the object of their conspiracy. *Transport Ins. Co. v. Faircloth*, 898 S.W.2d 269, 278 (Tex. 1995). "Since conspiracies, whether among businessmen or others, are rarely evidenced by explicit agreements, the determination of whether a conspiracy existed almost inevitably rests on the inferences that may fairly be drawn from the behavior of the alleged conspirators." *Michelman v. Clark-Schwebel Fiber Glass Corp.*, 534 F.2d 1036, 1043 (2d Cir.), cert. denied, 429 U.S. 885, 97 S.Ct. 236 50 L.Ed.2d 166 (1976). It must be proven that one of the persons involved committed at least one unlawful, overt

act in furtherance of the conspiracy. *Massey v. Armco Steel Co.*, 652 S.W.2d 932, 934 (Tex. 1983). Speech is an overt act. *Golden Eagle Archery, Inc. v. Jackson*, 24 S.W.3d 362, 368 (Tex. 2000).

Conspiracy liability extends beyond the active wrongdoer to those who may merely have planned, assisted, or encouraged the wrongdoer's acts. *Carroll v. Timmers Chevrolet, Inc.*, 592 S.W.2d 922, 925-26 (Tex. 1979). One who joins a conspiracy already in progress becomes responsible for the acts already committed by the conspirators. *Cleft of the Rock Foundation v. Wilson*, 992 F.Supp. 574, 584 (E.D. N.Y. 1998). One who joins a conspiracy in progress ratifies all that has come before. *Dixon v. Mack*, 507 F.Supp. 350, 350-51 (S.D. N.Y. 1980). "Once a conspiracy is proven, each co-conspirator is "responsible for all acts done by any of the conspirators in furtherance of the unlawful combination.'" *Carroll v. Timmers Chevrolet, Inc.*, 592 S.W.2d at 925 (quoting *State v. Standard Oil Co.*, 107 S.W.2d 550, 559 (1937)). " 'One may join a conspiracy already formed and in existence, and be bound by all that has gone before in the conspiracy, even if unknown to him.' " *United States v. Bibbero*, 749 F.2d 581, 588 (9th Cir.1984), cert. denied, 471 U.S. 1103, 105 S.Ct. 2330, 85 L.Ed.2d 847 (1985) (quoting *United States v. Knight*, 416 F.2d 1181, 1184 (9th Cir.1969)). It is not necessary that a member of a conspiracy know or be aware of all of its members, or that he take part in the full range of the conspiracy's activities. *United States v. Capers*, 61 F.3d 111, 1108 (4th Cir. 1995). It is not necessary to show that every act of a conspirator was in concert with the others or that all the conspirators agreed before each act. *International Bankers Life Ins. v. Hollaway*, 368 S.W.2d 567, 583 (Tex. 1963).

A conspiracy may be established by circumstantial evidence, and that usually is the case. *Schlumberger Well Surv. Corp. v. Nortex Oil & Gas Corp.*, 435 S.W.2d 854,

858 (Tex. 1968). It was early said by the Texas Supreme Court in *Jernigan v. Wainer*, 12 Tex. 189, 193 (1854):

When men enter into conspiracies, they are not likely to call in a witness In such cases the injured party must necessarily have recourse to circumstantial evidence. For it is only by the inferences and deductions which men properly and naturally draw from the acts of others in such cases, that their intentions can be ascertained. They are not likely to proclaim them in the hearing of witnesses.

And in *Whitmore v. Allen*, 33 Tex. 355, the Texas Supreme Court observed,

A conspiracy may be proven as well by the acts of the conspirators, as by anything they may say, touching what they intended to do.

Conspiracy liability can be established by proof showing circumstances from which a natural inference arises that the unlawful, overt acts were committed in furtherance of a common design, intention, or purpose of the conspirators.

In the present case, the existence of a conspiracy to defame Virgie Arthur is established by the sworn statement of former co-conspirator Chrystal Baker. (See Exhibit R, Statement of Chrystal Ann Baker, pages 28-31, 36-37, 47-48, 70-71, 91.) Mrs. Baker's sworn statement also shows that Defendant Levin "signed on" to the conspiracy. (See Exhibit R, Statement of Chrystal Ann Baker, page 94-95.) Levin joined the conspiracy because Levin, who previously had been "cutting up" Howard Stern, was promised that he "would get a couple [of] juicy stories, and Lin Wood wouldn't pursue him." (See Exhibit R, Statement of Chrystal Ann Baker, page 94.) So Levin would concentrate "more on the Virgie cutting up, and have a reward of getting some juicy story thereafter." (*Id.*)

TMZ's and Levin's participation in the conspiracy also is shown by an email, dated only four days after the publication of the TMZ Article in question. (See Exhibit S.) The email was produced by one of the conspirators, Defendant Turner, and it revealed that Defendant Birkhead released the step-brother story to Levin at TMZ for the purpose

of injuring Virgie Arthur and “because of the amount of viewership tmz gets.” (See Exhibit S.) The email mentions by name most of the Defendants/conspirators, including TMZ/ Levin, Howard Stern, Bonnie Stern, Larry Birkhead, and Art Harris. The Article itself shows that TMZ/Levin published it to help Birkhead and to hurt Virgie Arthur, because it begins thus, “As Larry Birkhead’s custody hearing looms with grandma Virgie standing largely in the way, TMZ has dug up an interesting family tree” Because TMZ and Levin now state that they do not know from where they got the story, they are not in a position to deny that it came from Birkhead, as the email from Bonnie Stern to Rose Turner states. (See Exhibit C, answers to Interrogatory No. 16.)

The first sentence of the Article, quoted immediately above, shows that the purpose of the Article was to depict Virgie Arthur as a bad person, in order to give an advantage to Birkhead in custody issues involving Arthur’s granddaughter, Dannielynn. The purpose of the prison interview broadcast that also forms a basis of this litigation, was the same, *i.e.* to depict Virgie Arthur as a bad person – in particular, a bad mother – a person with whom Dannielynn would not be safe. (See Exhibit T), deposition of Nelda Turner, 125:13 – 128:23.) Because both the TMZ step-brother Article and the prison interview broadcast had the same goal – discrediting Virgie Arthur to the advantage of Birkhead on issues of custody of Dannielynn, both publications clearly were in furtherance of the same conspiracy, and TMZ and Levin are liable for the prison interview broadcast as co-conspirators with Art Harris, who conducted the interview and appeared on TV in it.

E. Consciousness of Guilt and Imputed Knowledge

According to the deposition testimony of Defendant Turner, Defendants Birkhead and Howard Stern, communicating to her through Defendant Bonnie Stern, urged Turner

not to produce in this litigation the RT 10 email “that said that Larry Birkhead had asked that a[n] article be put up on TMZ right before a hearing in the Bahamas because he needed the advantage over Virgie Arthur during that hearing The article about Virgie Arthur having a child with her stepbrother.” (See Exhibit T, 65:5 – 69:12.) Turner has reiterated in an affidavit that Bonnie Stern told Turner that Birkhead and Howard Stern, neither of whom had denied the truth of the RT 10 email, had told Bonnie that Turner should not turn over the email because it would establish jurisdiction over them and because of what it would do to their defenses.¹⁵ (See Exhibit S.) Such an attempt by Birkhead and the Sterns to persuade Turner not to produce the RT 10 email constituted an attempted cover-up, which is evidence of guilty knowledge. An attempt at concealment is evidence of consciousness of guilt. *Felder v. State*, 848 S.W.2d 85, 98 (Tex.Crim.App. 1992). An attempt to cover up also indicates consciousness of guilt. *Ross v. State*, 154 S.W.3d 804, 812 (Tex.App.—Houston [14th Dist.] 2004, pet. denied).

Turner further testified that, at the time of the publication, she knew the TMZ step-brother story was not accurate, especially “[t]he implication of almost incest between her and her stepbrother when he was not her stepbrother at the time.” (See Exhibit T 90:12–91:18) Howard Stern, in a March 2007 email to a producer *Entertainment Tonight/The Insider*, to whom he was forwarding the step-brother story, also said “Some of this info. Is definitely not correct, but it is possible that Virgie has a son with her step-brother with the last name Tacker. Would this be difficult to follow-up on?” (See Exhibit U.) So Howard Stern, the kingpin of the conspiracy, while trying to get the step-brother story published, either knew that it was false or had serious doubts about it. The long-standing and universal rule, in both civil and criminal cases, is that

¹⁵ For the admissibility of the statements repeated by Ms. Stern in the RT 10 email, by Mrs. Turner in her deposition and her affidavit, and by Mrs. Baker in her sworn statement, see TEX. R. EVID., Rules 801(e)(2)(A)& (E) and Rule 805.

“the knowledge of one conspirator is imputed to all.” *Ross v. State*, 267 S.W. 499, 501 (Tex. Crim. App. 1924) (quoting Wharton's Crim. Ev. vol. 2, § 919).

As outlined above, when evaluating a motion for summary judgment based on summary-judgment proof, the trial court must do the following: (1) assume all the nonmovant's proof is true. *Limestone Prods. Distrib., Inc. v. McNamara, Inc.*, 71 S.W.3d 308, 311 (Tex. 2002); (2) make every reasonable inference in favor of the nonmovant. *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003); and (3) resolve all doubts about the existence of a genuine issue of a material fact against the movant. *M.D. Anderson Hosp. & Tumor Inst. V. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000).

The references to Arthur in the TMZ Article in question fall within the scope of statutory libel per se, because they injure a living person's reputation and thereby expose her to public hatred, contempt or ridicule, and they impeach her integrity, virtue, and reputation. *Gartman v. Hedgpeth*, 157 S.W.2d 139, 140 – 41 (Tex. 1941); TEX. CIV. PRAC. & REM. CODE § 73.001. The statements also fall within the scope of common-law libel per se, because they impute sexual misconduct. *Marshall v. Mahaffey*, 974 S.W.2d 942, 949 (Tex. App. -- Beaumont 1998, pet. denied) (imputation of sexual misconduct). If this Court should find that the references to Arthur are capable of a defamatory meaning but are of ambiguous or doubtful import, the jury must determine its meaning. *Turner*, 38 S.W.3d at 114.

F. Objection to Defendant's Summary Judgment Evidence

Plaintiff objects to all of Defendants' summary judgment evidence because the Declaration of Richard W. Hess in Support of TMZ Productions, Inc.'s and Harvey Levin's Motion for Summary Judgment is not verified.

Prayer

Arthur prays that the Court deny the Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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