

Defendant HOWARD STERN is an individual resident of California and already has made an appearance by filing a special appearance in this case.

Defendant BONNIE STERN is a resident of the state of California and already has made an appearance by filing a special appearance in this case, which this Court has denied.

Defendant HARRINGTON is a resident of the state of Texas and already has made an appearance by filing an answer in this case.

Defendant HARRIS is a resident of the state of Georgia and already has made an appearance by filing an answer and by withdrawing his special appearance in this case.

Defendant TURNER, also known as "Rose," is a resident of the state of Texas and already has made an appearance by filing an answer in this case.

Defendant LEVIN is a resident of the state of California and already has made an appearance by filing an answer in this case.

Defendant TMZ is a California corporation and already has made an appearance by filing an answer in this case.

Defendant BIRKHEAD is an individual residing in California and already has made an appearance by filing a special appearance in this case.

II.

DISCOVERY PLAN

Discovery in this cause will be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

III.

JURISDICTION AND VENUE

The amount in controversy in this cause exceeds the jurisdictional minimum of this Court. Jurisdiction is proper against TURNER and HARRINGTON, because they are

residents of the state of Texas. Jurisdiction is proper against HOWARD STERN, BONNIE STERN, HARRIS, BIRKHEAD, LEVIN, and TMZ, because they committed, in whole or in part, a tort in the state of Texas. In conspiring to defame and in defaming VIRGIE ARTHUR, HOWARD and BONNIE STERN, BIRKHEAD, and HARRIS, along with other co-conspirators, including LEVIN and TMZ, who have answered and obviously are subject to the jurisdiction of this Court, directed their conspiratorial and defamatory efforts into Texas, where they knew VIRGIE ARTHUR resides.

Texas has specific personal jurisdiction over Defendants HOWARD and BONNIE STERN. They used a Texas resident, Defendant NELDA TURNER, as their agent to accomplish the work of conspiring against and defaming Plaintiff. Defendant BONNIE STERN sent email to NELDA TURNER at email addresses in Texas, and BONNIE STERN directed others to send email to TURNER in Texas. Defendant BONNIE STERN informed Defendant TURNER of HOWARD STERN'S wishes regarding the manner and means of attempting to dig up defamatory stories, which the conspirators called "researching," as well as other work being done on HOWARD STERN'S behalf by the CONSPIRATORS to defame VIRGIE ARTHUR and others.

HOWARD STERN, BONNIE STERN, LARRY BIRKHEAD, ART HARRIS, HARVEY LEVIN, and TMZ, along with the other conspirators, worked together in a conspiracy to direct defamatory stories into Texas, where they knew VIRGIE ARTHUR resided, with the intention of injuring her reputation there and in other places. They specifically directed the defamatory step-brother and prison interview stories into Texas for the purpose of injuring VIRGIE ARTHUR'S reputation, and they were successful in that endeavor.

Texas has jurisdiction over Defendant BIRKHEAD, because he conspired with HOWARD STERN, BONNIE STERN, ART HARRIS, and HARVEY LEVIN/TMZ to

defame VIRGIE ARTHUR. As part of and in furtherance of that conspiracy, HOWARD STERN and BIRKHEAD sent a false and defamatory story (the step-brother story), to Defendants LEVIN and TMZ for publication by them, and, in so doing, BIRKHEAD and HOWARD STERN directed defamation into Texas with the intention of injuring VIRGIE ARTHUR'S reputation and which did injure her reputation. BIRKHEAD has admitted that he sent the step-brother story to TMZ/LEVIN, as shown by an email produced in this case by Defendant TURNER. BIRKHEAD and HOWARD STERN have admitted to co-conspirators that the email establishes Texas jurisdiction over them. BIRKHEAD and HOWARD STERN, communicating through BONNIE STERN, urged TURNER not to produce the email in this litigation for that reason, because the email was true, and because of what it would do to their defenses in this case.

Texas has jurisdiction over HOWARD STERN for the reasons stated in the previous paragraph. Texas jurisdiction also is established by the fact that, in his efforts to conspire against and to defame VIRGIE ARTHUR, HOWARD STERN and his lawyers used TURNER as his agent in Texas. TURNER knew that the step-brother story was false, and, as HOWARD STERN's agent, her knowledge is imputed to him. Additionally, while trying to shop the step-brother story to CBS for wide distribution, HOWARD STERN admitted to CBS that he had serious doubts about the truth of the step-brother story. In fact, HOWARD STERN stated to CBS, "Some of this info. is definitely not correct"

Texas also has jurisdiction over HOWARD STERN, because he has done continuous and systematic business in Texas, by appearing in a Harris County probate court for many months as a lawyer advising Vickie Lynn Marshall in the case of *Marshall v. Marshall*, by traveling to Texas to be interviewed by the F.B.I. on a matter involving the Estate of Vickie Lynn Marshall, by traveling to Texas to attend two

depositions of witnesses in the related cases of *Stern v. O'Quinn* and *Stern v. Cosby*. HOWARD STERN also has waived the jurisdictional issue by engaging in actions in Texas that were not related to his jurisdictional challenge in the present case, *i.e.* filing a frivolous motion to recuse the Honorable Tony Lindsay in this case and filing a frivolous grievance with the State Bar of Texas against undersigned counsel for ARTHUR in connection with this case. More recently, HOWARD STERN filed an extraordinary screed, his Reply in Support of Motion to Quash the Notice of Deposition of Defendant Howard K. Stern and Motion for Protective Order, which is filled with *ad hominem* arguments that have no relation to the issue of Texas jurisdiction. Stern even admitted as much in the document itself. That document also supports waiver of the jurisdictional issue.

Texas has personal jurisdiction over Defendant BONNIE STERN, as the trial court has denied her special appearance.

Defendant HARRIS is subject to Texas jurisdiction in this case, and he admitted that when he withdrew his special appearance and the perjurious affidavit that he submitted in support of his special appearance.

HARRIS, through CBS and on its *Entertainment Tonight* program, directed into Texas a defamatory story based on a prison interview with a relative of VIRGIE ARTHUR, which repeated false allegations that ARTHUR was complicit in sexual abuse of her daughter, Vickie Lynn Marshall, when Marshall was a child in her home. The CBS television broadcast of the prison interview also falsely implied that ARTHUR was an unfit mother and that she should not be allowed contact with her granddaughter, Dannielynn. For HARRIS, the purposes of the prison interview were to make money for himself, to discredit VIRGIE ARTHUR, and to help BIRKHEAD and HOWARD STERN to prevent VIRGIE ARTHUR from having a relationship with her

granddaughter, Dannielynn. HARRIS acted as a media consultant, spinning stories against VIRGIE ARTHUR and in favor of HOWARD STERN and his lawyers, while falsely posing as an independent journalist.

Additionally, ARTHUR incorporates by reference all allegations set out in Plaintiff's previously-filed responses in opposition to special appearances of Defendants HOWARD STERN, BONNIE STERN, and ART HARRIS, which are in the Court's file. ARTHUR also incorporates by reference all allegations set out in her Motion for Sanctions Against Bonnie Stern, filed with this Court on July 6, 2009.

Venue is proper in this county because HARRINGTON is a resident of Harris County, Texas.

IV.

FACTUAL BACKGROUND

This is a case of defamation and conspiracy to defame.

Plaintiff VIRGIE ARTHUR's daughter was Vickie Lynn Marshall, also known as Anna Nicole Smith, now deceased. Ms. Marshall lived with and entrusted her personal and business affairs to HOWARD STERN, BONNIE STERN's brother. HOWARD STERN was Ms. Marshall's lawyer and companion in the months preceding her death. During that time and with her connivance, HOWARD STERN publicly pretended to be Ms. Marshall's husband and the father of her new-born child. HOWARD STERN maintained tight control over Ms. Marshall's environment. For his own benefit, he isolated Ms. Marshall from her family and others who cared about her. He decided who could visit Ms. Marshall, who could speak to Ms. Marshall, what public appearances Ms. Marshall could make, and the content of those public appearances. Defendant BIRKHEAD, appearing on *Larry King Live*, affirmed that HOWARD STERN was like a

Svengali toward Ms. Marshall and suggested that HOWARD STERN's control over her was "like Stockholm Syndrome."

HOWARD STERN also maintained influence and control over Ms. Marshall by providing her with prescription drugs, including prescriptions obtained illegally in his name and other persons' names, but intended for Ms. Marshall, who was an addict. Ms. Marshall's son, Daniel Smith, who was not a methadone user, died of a massive dose of methadone on September 10, 2006, while visiting his mother, baby sister, and HOWARD STERN in the Bahamas.

The death of VIRGIE ARTHUR'S grandson, Daniel Smith, alarmed her and caused her great concern about the safety of Ms. Marshall and Ms. Marshall's infant daughter, Dannielynn. HOWARD STERN controlled all channels of communication with Ms. Marshall and effectively prevented VIRGIE ARTHUR from communicating with her daughter through normal channels. When HOWARD STERN discovered Ms. Marshall leaving a voice message for her mother about the death of Daniel, HOWARD STERN interrupted and hung up the phone.

In a televised interview with Nancy Grace, VIRGIE ARTHUR warned Ms. Marshall to be cautious about the people who surrounded her or she might be next. Unfortunately, VIRGIE ARTHUR's words of warning went unheeded. Following these events, Vickie Lynn Marshall died of a drug overdose. The State of California now is prosecuting HOWARD STERN for eleven felony counts in connection with obtaining and supplying the drugs that killed Vickie Lynn Marshall. The State of California officially has notified VIRGIE ARTHUR that she is regarded as next of kin to the victim in that case, under Marsy's Law.

Eventually Defendant BIRKHEAD and HOWARD STERN struck a deal. Pursuant to this deal, HOWARD STERN acknowledged that BIRKHEAD, not

HOWARD STERN, was the father of Dannielynn. In exchange, HOWARD STERN retained what he always wanted – continued control over Dannielynn’s anticipated fortune, as executor of the estate of her deceased mother. The only person standing in the way of this sweetheart deal reaching fruition was perceived to be VIRGIE ARTHUR, who was still fighting for custody of her granddaughter, or at least for a place in her granddaughter’s life.

HOWARD STERN and BIRKHEAD were infuriated over this and worked with the defendants and others to continue a plot and a conspiracy to destroy VIRGIE ARTHUR and anyone else they perceived to be standing in the way of exercising control over the millions of dollars that might be the estate’s, and Dannielynn’s, one day.

The members of HOWARD STERN’s cabal included defendants BONNIE STERN, BIRKHEAD, HARRINGTON, HARRIS, TURNER, TMZ, LEVIN, and others who already were a part of the conspiracy, and some who later would join the conspiracy. These defendants and the co-conspirators who are not named as defendants in this petition are collectively referred to as the “CONSPIRATORS.”

HOWARD STERN, BONNIE STERN, HARRINGTON, HARRIS, and TURNER took any opportunity to refer to VIRGIE ARTHUR as "Mommie Dearest", thereby republishing in capsule form Ms. Marshall's drug-induced, paranoid, false, and defamatory depiction of VIRGIE ARTHUR as an abusive mother. TURNER has acknowledged on her website that the term “Mommie Dearest” is shorthand for abusive mother. HARRINGTON has admitted in open court that she has been “involved from the beginning.” HARRINGTON served as a moderator on TURNER’S website, which was favorable to HOWARD STERN and which took every opportunity to denigrate ARTHUR. HARRINGTON’S liability in the conspiracy further is demonstrated by the fact that, when she was ordered by the Court to turn over her computer for forensic

analysis by a special master, she falsely claimed that her computer had been stolen in a burglary.

Bonnie Stern's liability in the conspiracy further is demonstrated by the fact that, in the words of a computer forensic specialist appointed by the Court as a Special Master, which have been adopted by the Court in its findings of fact, the electronic "media submitted for examination by Bonnie Stern reveals a wide-ranging, concerted and insidious effort by or for Ms. Stern to destroy evidence."

HARRIS operates a website called "The Bald Truth." He often appears on Entertainment Tonight, a production of CBS, as a "special correspondent." On his website he has republished Vickie Lynn Marshall's defamatory statements in an article entitled, "Is Virgie Arthur A Grandmother With a Past? Volunteer Web Detectives Out to Investigate: Asking if Bahamas Social Services on The Case: Will Dannielynn Be Safe with Family in Texas?" HARRIS has claimed to be in direct contact with Defendant HOWARD STERN, who, HARRIS says, shares with HARRIS his secret thoughts. HARRIS's conspiratorial relationship with HOWARD STERN also is demonstrated by the fact that HARRIS has received from HOWARD STERN's representatives and has published certain documents that were under a protective order in a related case, incurring the disapproval of the federal district court in that case. HARRIS's conspiratorial relationship with TURNER and others and the expectation that HARRIS would be leaked documents are demonstrated by e-mails. HARRIS's conspiratorial relationship with HOWARD STERN also is shown by the fact that HOWARD STERN told HARRIS that, if he must use email, he should communicate using secret code words or code phrases, which HARRIS did. HARRIS was aware that TURNER and other co-conspirators live in Texas. HARRIS directed his defamatory statements at Plaintiff's reputation, which is centered in Texas.

Additionally, HARRIS undertook to interview one of Marshall's relatives, Larry Dale Hart, in prison. HOWARD STERN gave advance approval of the plan for the prison interview. In HARRIS's words, "Howard loved the fact I'm trying to get an interview " The interview was conducted at the Clarence N. Stevenson Unit in Texas. Indeed, HARRIS acknowledged that the interview was conducted in a prison near Cuero, Texas. The interview highlighted a childhood rape accusation that Ms. Marshall had made to CBS but which CBS had not broadcast previously because of its seriousness and because of serious doubts on the part of CBS about its truth or falsity. The broadcast actually begins with a close-up of Ms. Marshall's face and the sound of her saying the word "rape."

In fact, Hart, when asked by HARRIS whether he raped Ms. Marshall, emphatically denied the allegation and said that VIRGIE ARTHUR would have shot him. HARRIS gratuitously asserted, "people will question that answer." The implication of HARRIS's interview, the questions he asks and the comments he makes, is that Hart cannot be trusted and that it must be presumed that VIRGIE ARTHUR permitted the rape of her daughter. HARRIS conducted the interview in Texas, and he knew that the interview, when aired, would be directed into Texas, by virtue of being aired on a CBS program, *Entertainment Tonight*. VIRGIE ARTHUR's reputation is centered in Texas and, when the interview, with its publication of the defamatory allegation that VIRGIE ARTHUR permitted her daughter to be raped, was broadcast into Texas, VIRGIE ARTHUR was damaged in this state. HARRIS and CBS, who conspired with each other to defame VIRGIE ARTHUR through the broadcast of the prison interview, knew that VIRGIE ARTHUR lived in Texas and directed the broadcast into Texas with the intention of harming VIRGIE ARTHUR'S reputation there. HOWARD STERN knew of their plans in advance and approved of them.

HARRIS's animus in attempting to defame VIRGIE ARTHUR can be seen in the closing paragraph of written text accompanying a clip of a portion of his interview with Hart. This written text is found on HARRIS's website – "ArtHarris.com." Rather than permitting the interview to stand on its own and permitting viewers to make an unadulterated evaluation of Larry Dale Hart, Harris states

Despite an alleged rape Anna claims happened under her own roof, the accidental shooting, two brothers who went to prison for violent crimes, including rape, Larry believes Dannielynn would be safe with Virgie today.

The implication of HARRIS's gratuitous comments is that VIRGIE ARTHUR was not fit to gain custody of, and is not fit to have visitation with, her granddaughter and that this is so because VIRGIE ARTHUR was an unfit mother who permitted children to be shot in the head, permitted children to commit violent crimes, and permitted her step-son to rape her daughter.

Further evidence of HARRIS's ill will and spite toward VIRGIE ARTHUR is found in an article published on HARRIS's website on October 11, 2007. In that article, HARRIS states "Virgie Sues Howard For Anna Trashing Mama; Says He's 'Manipulative, Deceitful, Dangerous!!' Look Who's Talking...What Could Be Next?" The reference to "look who's talking" is clearly meant to imply that VIRGIE ARTHUR, and not HOWARD STERN, is "manipulative," "deceitful," and "dangerous."

Employing the internet, the CONSPIRATORS set out to "destroy" VIRGIE ARTHUR. HOWARD STERN communicated with and led the conspiracy by using his sister, defendant BONNIE STERN as the go-between. The CONSPIRATORS spent countless hours in front of their computers, being guided by HOWARD STERN through his sister BONNIE STERN, "desperate" to find what they considered "VIRGIE ARTHUR dirt." They would use anything thing they could find "to discredit her." They were unabashedly proud of what they did, stating that "when it came to digging up the

dirt, no one had anything on” them. Their goal was simple and straightforward – to “destroy” “anyone that was opposed to Howard K. Stern or his interest.”

When the CONSPIRATORS found what they believed they could spin as “dirt” or “skeletons” in VIRGIE ARTHUR’s closet, they would publish these defamatory and false statements on websites run by some of the CONSPIRATORS, such as “Rose Speaks,” run by defendant TURNER with the assistance of HARRINGTON as a moderator, or on a website called “The Bald Truth,” run by defendant HARRIS. Defendant HOWARD STERN, through defendant TURNER, promised HARRIS exclusivity on a story about a childhood injury to one of ARTHUR’s children and a story about ARTHUR marrying a cousin. According to TURNER, “Howard said ONLY you [HARRIS] get these 2 stories in depth the injury to Donald Hart, Jr., the ‘Kissing Cousins” and if you want to correct the family tree that TMZ got wrong... I am suppose[d] to cooperate and help you find anything or facts you need... Rose.”

Not content with destroying VIRGIE ARTHUR’s reputation on their own sites, the CONSPIRATORS looked for a broader publication to disseminate their dirt. The CONSPIRATORS disseminated a false and defamatory article alleging that VIRGIE ARTHUR bore a son by her step-brother, David Luther Tacker. Defendant HOWARD STERN approached CBS with the step-brother story, while acknowledging, “Some of this info is definitely not correct.” Defendant BIRKHEAD sent the story to defendant TMZ and to its Executive Producer/Managing Editor, Defendant LEVIN. Wanting to assist Defendant BIRKHEAD and the other CONSPIRATORS in destroying VIRGIE ARTHUR’s reputation, TMZ and LEVIN published the story on their website, TMZ.com. The story ran under the title, “Virgie Has Son With Step-Brother.”

The intention to help BIRKHEAD and to hurt VIRGIE ARTHUR is shown by the way the article began: “As Larry Birkhead’s custody hearing looms with grandma Virgie

standing largely in the way, TMZ has dug up an interesting family tree – turns out Virgie liked her stepbrother a whole lot.” The story was sent to TMZ and LEVIN by Defendant BIRKHEAD, with the purpose of holding VIRGIE ARTHUR up to public ridicule. TMZ and LEVIN published the story for the same reason. Not content that thousands of persons read the story, many accusing VIRGIE of incest, TMZ and LEVIN used their website to conduct “an opinion poll.” Defendants TMZ and LEVIN published the results as follows:

Virgie boinking David is . . .

Creepy 85%

No problemo 15%

Total Votes: 115,403

In the snide and sneering 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.” But 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.

The article stated that “Virgie liked her stepbrother a whole lot.” The truth is 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. Again, the two young people separated before Virgie's mother married his father, and Virgie has not spoken to David Luther Tacker since they separated.

The TMZ/LEVIN stepbrother story was accompanied by a "family tree" that falsely depicted Virgie Arthur's mother getting together with Tacker's father before Virgie got together with Tacker. TMZ and LEVIN included a heart symbol in the family tree, to create the false impression that the two young people fell in love while they were stepbrother and stepsister. 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.

When the defendant CONSPIRATORS undertook these actions and when the defendants TMZ and LEVIN published the article and the "poll" results, they were aware that the story related to a family tree in Texas, that VIRGIE ARTHUR resides in Texas, and that her reputation was centered in Texas. They also knew that the story was false.

HARRIS apparently was miffed that TMZ and not he was permitted to break the step-brother story. Defendant HOWARD STERN attempted to mollify him by offering him other exclusive stories. HOWARD STERN, working through defendant TURNER in Texas, promised HARRIS exclusivity on a story about a childhood injury to one of ARTHUR's children and a story about ARTHUR marrying a cousin. According to TURNER, "Howard said ONLY you [HARRIS] get these 2 stories in depth the injury to Donald Hart, Jr., the 'Kissing Cousins" and if you want to correct the family tree that TMZ got wrong... I am suppose[d] to cooperate and help you find anything or facts you need... Rose." As TURNER further explained to HARRIS, "I have been told by both the Stern family and Krista (on behalf of her and Mr. Wood) to assist you in anything you ask me to do." HARRIS responded, "rose – I sure do appreciate it ... I know krista and

lin and howard et al love your work” Clearly, Defendants HARRIS and HOWARD STERN, along with HOWARD STERN’s attorneys, Krista Barth and Lin Wood, all were working together to smear ARTHUR, through TURNER, HOWARD STERN’s agent in Texas. Mr. Wood, speaking for his client, HOWARD STERN, admitted in open court that he had engaged in efforts to smear ARTHUR, and that he smears opponents in defamation case as a matter of standard practice: “I’m sure I probably tried to go out and dig up dirt on Virgie Arthur because that’s how you defend a defamation case. You try to, in effect, attack the reputation of the plaintiff.”

V.

**FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS:
DEFAMATION**

ARTHUR incorporates the factually allegations from Parts I through IV above.

Defendants HOWARD STERN, BONNIE STERN, BIRKHEAD, HARRINGTON, HARRIS, TURNER, LEVIN, and TMZ published false statements, presented as factual, that concerned VIRGIE ARTHUR and that were defamatory. While publishing these statements, Defendants HOWARD STERN, BONNIE STERN, BIRKHEAD, HARRINGTON, HARRIS, TURNER, LEVIN, and TMZ acted negligently. Alternatively, if it is shown that VIRGIE ARTHUR is a limited public figure, which she does not admit but specifically denies, defendants published the defamatory statements with malice, as defined in constitutional law, *i.e.* with knowledge that they were false or with reckless disregard to falsity.

The Defendants directed the defamation into Texas, where they knew Ms. ARTHUR lived. As a direct and proximate result of Defendants’ publication of the defamatory statements, VIRGIE ARTHUR’s reputation has been severely damaged. The allegations contained in the defamatory statements have caused her to suffer extreme mental anguish, public humiliation, and embarrassment. Those who do not know her

have treated her with derision. Defendants have created a very negative public perception of Ms. ARTHUR, which threatens her ability to obtain court-ordered visitation of her granddaughter, Dannielynn, which Ms. ARTHUR does not think she can obtain unless she can clear her name. Ms. ARTHUR also brings this cause to recover a sum of money, as found by the trier of fact, which will compensate her for the damage caused by Defendants HOWARD STERN, BONNIE STERN, BIRKHEAD, HARRINGTON, HARRIS, TURNER, LEVIN, and TMZ.

In the unlikely event this Court finds that the statements and publications made by the defendants are not defamatory as a matter of law, then the audience to which they were directed to be defamatory could certainly reasonably understand the statements as being an attempt to defame VIRGIE ARTHUR. As such, the statements are defamatory by implication.

The defamatory statements and publications made by the defendants were republished in various media worldwide. For example, the TMZ step-brother story was republished in India the day after it was published in the U.S.

Virgie Arthur's stepbrother is her son's father!
Washington | April 20, 2007 4:34:25 PM IST

If reports are to be believed, late model Anna Nicole Smith's estranged mother Virgie fell in love with her stepbrother, and gave birth to his son.

Virgie was born out of her mother Paralee and father Melvin's wedlock. But later on Paralee married one George William Tacker, who had begotten a son named David Luther Tacker from a woman, Betty Jo.

As per the family tree, Virgie and David were the step children of George and Paralee, and they had a happy family.

Later on Virgie fell for her step brother and gave birth to his son, although she does not share blood with George, reports TMZ. (ANI)¹

¹ WebIndia123.com,
http://news.webindia123.com/news/ar_showdetails.asp?id=704200854&cat=&n_date=20070420

Not atypical were headlines like the following: “Virgie Arthur: Incest is best, she put her stepbrother to the test.”² The likely effect of the step-brother story on ARTHUR’S ability to have a relationship with her granddaughter, Dannielynn, was not lost on observers.

The following is from a blogger in the United Kingdom:

Virgie Arthur And Her Step-Brother Were Really Close, And By "Close" I Mean Screwing

Anna Nicoles Moms had a relationship with her step-brother that resulted in a child. Now before everyone starts vomiting, remember - he wasn't a blood relation. The son doesn't have flippers If she is planning on trying to obtain custody of Dannielynn from Flat Iron, she might wanna leave this tidbit out. I know it's not illegal or anything but still – ewwww³

The defendants are legally responsible for such republication of their defamatory statements.

VI.

**SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS:
CONSPIRACY**

ARTHUR incorporates the factually allegations from Parts I through V above.

Defendants HOWARD STERN, BONNIE STERN, BIRKHEAD, HARRINGTON, HARRIS, TURNER, LEVIN, and TMZ had a meeting of the minds and decided on a course of action to destroy the reputation of VIRGIE ARTHUR and to hold her up to public ridicule. Also, defendants joined in an ongoing conspiracy led by HOWARD STERN and others. Defendants BONNIE STERN, BIRKHEAD, HARRINGTON, HARRIS, TURNER, LEVIN, and TMZ adopted the goals of the ongoing conspiracy, which previously had been launched by HOWARD STERN, and

² <http://www.snarkygossip.com/2007/04/19/virgie-arthur-incest-is-best-she-put-her-stepbrother-to-the-test/>

³

<http://gossip.americangirl.co.uk/index.php/2007/04/20/VirgieArthurAndHerStepBrotherWereReallyCloseAndByC>

they acted in furtherance of this ongoing conspiracy. Defendants committed one or more unlawful, overt acts in furtherance of the conspiracy. Plaintiff was damaged as a proximate result of the conspiratorial activities of defendants. Ms. ARTHUR brings this cause to clear her name and to recover a sum of money, as found by the trier of fact, which will compensate her for the damage caused by defendants.

VII.

EXEMPLARY DAMAGES

Defendants HOWARD STERN, BONNIE STERN, BIRKHEAD, HARRINGTON, HARRIS, TURNER, LEVIN, and TMZ were grossly negligent in undertaking the actions ascribed to them in this petition. Alternatively, Defendants HOWARD STERN, BONNIE STERN, BIRKHEAD, HARRINGTON, HARRIS, TURNER, LEVIN, and TMZ undertook these actions with malice as defined under Texas law and with malice as defined under constitutional law, *i.e.* with knowledge of the falsity of the defamatory statements or with reckless disregard as to the falsity of the statements. Plaintiff VIRGIE ARTHUR brings this cause to recover a sum of money, as found by the trier of fact, which will serve as an example to other persons who may, in the future, be tempted to engage in similar unlawful conduct.

VIII.

JURY DEMAND

Plaintiff demands a jury trial.

IX.

PRAYER

Plaintiff VIRGIE ARTHUR requests that on final trial plaintiff VIRGIE ARTHUR have the following:

- Judgment against all defendants for actual damages as found by the trier of fact;

- Judgment against all defendants for exemplary damages as found by the trier of fact;
- Prejudgment and postjudgment interest as provided by law;
- Costs of suit; and
- Such other and further relief to which Plaintiff VIRGIE ARTHUR may be justly entitled.

Respectfully submitted,

THE O'QUINN LAW FIRM

By: 

Neil C. McCabe
State Bar No. 13335300
M. Michael Meyer
State Bar No. 13993850
440 Louisiana, Suite 2300
Houston, Texas 77002
713-223-1000 (telephone)
713-222-6903 (fax)
**ATTORNEYS FOR
PLAINTIFF VIRGIE
ARTHUR**

CERTIFICATE OF SERVICE

On the 30th day of June, 2010, Plaintiff served the foregoing Plaintiff's Fifth Amended Petition to all parties as follows.



NEIL C. MCCABE

**VIA ELECTRONIC MAIL AND
CERTIFIED MAIL**

Harry P. Susman
Richard W. Hess
SUSMAN GODFREY, LLP
1000 Louisiana, Suite 5100
Houston, Texas 77002-5096
713-651-9366
713-654-6666 - Fax
hsusman@susmangodfrey.com
rhess@susmangodfrey.com
*Attorneys for Defendants Harvey
Levin and TMZ Productions, Inc.*

**VIA ELECTRONIC MAIL AND
CERTIFIED MAIL**

L. Lin Wood
Luke A. Lantta
BRYAN CAVE, LLP
One Atlantic Center, Suite 1400
14th Floor
Atlanta, GA 30309
404-572-6600
404-572-6999 - Fax
lin.wood@bryancave.com
luke.lantta@bryancave.com
*Attorneys for Defendant Howard
Stern*

**VIA ELECTRONIC MAIL AND
CERTIFIED MAIL**

Linda M. Burow
Lennette W. Lee
CALDWELL LESLIE & PROCTOR, PC
1000 Wilshire Boulevard, Suite 600
Los Angeles, California 90017-2463
213-629-9040
213-629-9022 - Fax
burrow@caldwell-leslie.com
lee@caldwell-leslie.com
*Attorneys for Defendants Harvey
Levin and TMZ Productions, Inc.*

**VIA ELECTRONIC MAIL AND
CERTIFIED MAIL**

Walter Herring
BRYAN CAVE, LLP
JP Morgan Chase Tower
2200 Ross Avenue, Suite 3300
Dallas, TX 75201
214-721 8000
214-721 8100 - Fax
Walter.Herring@bryancave.com
*Attorney for Defendant Howard
Stern*

**VIA ELECTRONIC MAIL AND
CERTIFIED MAIL**

Diana Marshall
MARSHALL & LEWIS, LLP
1010 Lamar, Suite 450
Houston, Texas 77002
713-655-0300
713-655-0130 – Fax
DEMarshall@MarshallLewisLLP.com
*Attorney for Defendant Larry
Birkhead*

**VIA ELECTRONIC MAIL AND
REGULAR MAIL**

Nelda Turner
13348 Country Road 3111
Gladewater, Texas 75647
cajunrose@verizon.net
Pro Se Defendant

VIA CERTIFIED MAIL

Lyndal Harrington
8318 Burning Hills Drive
Houston, Texas 77071
tx_babee@yahoo.com
Pro Se Defendant

**VIA ELECTRONIC MAIL AND
CERTIFIED MAIL**

Charles L. “Chip” Babcock
Amanda L. Bush
Nancy W. Hamilton
JACKSON WALKER, LLP
1401 McKinney, Suite 1900
Houston, Texas 77010
713-752-4200
713-752-4221 – Fax
cbabcock@jw.com
abush@jw.com
nhamilton@jw.com
*Attorneys for Defendants Art
Harris and CBS Studios, Inc.*

VIA CERTIFIED MAIL

Bonnie Stern
269 S. Beverly Drive, No. 1247
Beverly Hills, California 90212
bonnies10@yahoo.com
Pro Se Defendant