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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
12

13 CRAIG SCHELKSKE,

14 Plaintiff,

15 v.

16 TMZ PRODUCTIONS, INC., a California
17 Corporation; EHM PRODUCTIONS, INC.,
18 a California Corporation; HARVEY
19 LEVIN, an individual; and DOES 1 through
20 100, inclusive,

21 Defendants.

Case No.: **BC 5 6 0 6 4 8**

COMPLAINT FOR DAMAGES:

- (1) Defamation
(2) False Light

DEMAND FOR JURY TRIAL

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

OCT 14 2014

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

1 Plaintiff CRAIG SCHELSKE hereby sues TMZ PRODUCTIONS, INC., a California
2 Corporation, EHM PRODUCTIONS, INC., a California Corporation, HARVEY LEVIN, an
3 individual, (collectively, "TMZ Defendants") and DOES 1 through 100, inclusive, and in
4 support thereof, allege as follows:

5 **NATURE OF THE CASE AND PARTIES**

6 1. The true names and capacities, whether individual, corporate, associate or
7 otherwise, of the defendants Does 1 through 100, are unknown to Plaintiff, who therefore sues
8 said defendants by such fictitious names and will ask leave to amend this complaint to show
9 their true names and capacities when ascertained. Plaintiff is informed and believes, and
10 thereon alleges, that each of the fictitiously named defendants are negligently or otherwise
11 responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries as
12 herein alleged were proximately caused by that negligence.

13 2. Plaintiff is informed and believes, and on such information and belief alleges, that
14 at all times herein mentioned each of the defendants was the agent, either actual or ostensible,
15 and employee of each of the remaining defendants, and in doing the things hereinafter alleged,
16 was acting within the purpose and scope of such agency and employment and with the advance
17 knowledge, authorization or ratification of each of the remaining defendants and at least one of
18 the officers, directors or managing agents of each of the corporate defendants.

19 3. Plaintiff CRAIG SCHELSKE resides in Marion County, State of Oregon.

20 4. Plaintiff is informed and believes, and on such information and belief alleges, that
21 at all times herein mentioned defendant TMZ PRODUCTIONS, INC., was then, and now is,
22 doing business in the State of California, with its headquarters in the County of Los Angeles,
23 State of California.

24 5. Plaintiff is informed and believes, and on such information and belief alleges, that
25 at all times herein mentioned defendant EHM PRODUCTIONS, INC., was then, and now is,
26 doing business in the State of California, with its headquarters in the County of Los Angeles,
27 State of California.

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1 6. Plaintiff is informed and believes, and on such information and belief alleges, that
2 at all times herein mentioned defendant HARVEY LEVIN, was then, and now is, a resident of
3 the County of Los Angeles, State of California.

4 7. Plaintiff is informed and believes, and on such information and belief alleges, that
5 defendant HARVEY LEVIN, was then, and now is, executive producer and managing editor of
6 defendants TMZ PRODUCTIONS, INC., and EHM PRODUCTIONS, INC., and as such
7 responsible for all content published on the television broadcasts by defendants TMZ
8 PRODUCTIONS, INC., and EHM PRODUCTIONS, INC., including “TMZ on TV.”

9 8. Plaintiff is informed and believes, and on such information and belief alleges, that
10 defendants TMZ PRODUCTIONS, INC., and EHM PRODUCTIONS, INC. and DOES 1
11 through 100, own and operate TMZ.com, and are responsible for all content published on the
12 website, TMZ.com. Defendant HARVEY LEVIN, as executive producer and managing editor
13 of defendants TMZ PRODUCTIONS, INC., and EHM PRODUCTIONS, INC., is also
14 responsible for all content published on TMZ.com.

15 9. At all times herein mentioned, the “TMZ Broadcast” references a June 17, 2014
16 television episode of TMZ on TV, when TMZ Defendants published a story about plaintiff
17 CRAIG SCHELSKE. This story surrounded Mr. Schelske’s previous divorce to country music
18 star, Sara Evans.

19 10. During the TMZ Broadcast, TMZ Defendants and DOES 1 through 50 began this
20 particular story with the following line: “Adultery. Sex Photos. Chicken Feed.” TMZ
21 Defendants and DOES 1 through 50 went on to explain that this story was about “the nastiest
22 divorce in all of country music.” TMZ Defendants and DOES 1 through 50 then reported that
23 Sara Evans had once claimed that Mr. Schelske had cheated on her during their marriage.

24 11. TMZ Defendants and DOES 1 through 50 then wondered aloud about whether
25 any proof existed of this so-called claims by Sara Evans that Mr. Schelske had not remained
26 faithful to her during their marriage.

27 12. Immediately thereafter, TMZ Defendants and DOES 1 through 50, made a
28 stunning announcement: Mr. Schelske “took a hundred photographs of himself having sex with

1 other people. That's how she found out." In making this devastating pronouncement, TMZ
2 Defendants and DOES 1 through 50 appear to knowingly look at a smart phone, suggesting that
3 they had these photographs in their possession. Then TMZ Defendants and DOES 1 through
4 50 conclusively declared: "Yeah. That's pretty good proof."

5 13. The TMZ Broadcast, made by TMZ Defendants and DOES 1 through 50, left its
6 viewers with the unmistakable belief that Mr. Schelske was unfaithful while married to his
7 previous spouse, Sara Evans, and that Sara Evans had discovered his infidelity when she found
8 a hundred photographs of him having sex with other people.

9 14. These statements made by TMZ Defendants and DOES 1 through 50 on the TMZ
10 Broadcast on June 17, 2014, were and are unequivocally false.

11 15. Indeed, TMZ Defendants and DOES 1 through 100, in a story published on
12 TMZ.com on July 15, 2010, entitled *Sara Evans' Ex – I'm Not Possessed by Satan!*,¹ published
13 "exclusive" documents pertaining to a reported child custody agreement between Mr. Schelske
14 and Sara Evans. At all times herein mentioned, these documents shall be known as the "TMZ
15 Papers."

16 16. In the TMZ Papers, there are records labeled "Exhibit C." These records detail
17 text messages between Mr. Schelske and Sara Evans in July 2009. In reference to the
18 allegations of infidelity, Mr. Schelske exclaimed: "Well it DESTROYED lives and
19 relationships. It yo[u] [a]r[e]n[']t responsible deliver over those who [a]r[e] so that justice can
20 b[e] done and we can get on w/ life." Sara Evans replied by saying: "I will always tell our
21 children that the things said about you were not true."

22 17. Despite having the TMZ Papers in their possession, TMZ Defendants and DOES
23 1 through 50, on the TMZ Broadcast, still reported that Mr. Schelske was unfaithful while
24 married to his previous spouse, Sara Evans, and that Sara Evans had discovered his infidelity
25 when she found a hundred photographs of him having sex with other people.

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28 ¹ <http://www.tMZ.com/2010/07/15/sara-evans-barker-craig-schelske-jay-barker-husband-lawsuit/> (last visited August 14, 2014)

1 18. Numerous other credible sources of information cast serious doubt, if not entirely
2 undermine, these false reports by TMZ Defendants and DOES 1 through 50, on the TMZ
3 Broadcast. These include numerous news reports from credible news sources stating that these
4 allegations were in fact false and had resulted in a settlement and apology to Mr. Schelske by a
5 lawyer who made these false allegations to People Magazine.

6 19. TMZ Defendants and DOES 1 through 100 clearly understood the difference
7 between reporting facts and allegations. In a TMZ.com report on the same day, TMZ
8 Defendants and DOES 1 through 100 reported that Sara Evans "*claimed* he was banging the
9 nanny."² In contrast, during the TMZ Broadcast, TMZ Defendants and DOES 1 through 50
10 *unquestionably reported as fact* that Mr. Schelske was unfaithful while married to his previous
11 spouse, Sara Evans, and that Sara Evans had discovered his infidelity when she found a
12 hundred photographs of him having sex with other people.

13 20. On July 1, 2014, fourteen calendar days after the TMZ Broadcast, Mr. Schelske
14 served a letter on all TMZ Defendants in which he unequivocally asked for a retraction of the
15 following statement: "A hundred photographs showing me having sex with other people were
16 taken by me while I was married to my ex-spouse[, Sara Evans]."

17 21. On July 7, 2014, counsel for TMZ Defendants and DOES 1 through 100, replied
18 in a letter that TMZ Defendants refused to retract this statement. In particular, this letter
19 specifically noted their refusal to retract "the reference to certain nude photographs." This
20 letter also falsely claimed that "many of the comments on the television program were stated as
21 opinion." As detailed above, these TMZ Defendants and DOES 1 through 100 understood the
22 difference between reporting facts and allegations (or opinions), and they chose to report,
23 during the TMZ Broadcast, that during Mr. Schelske's previous marriage with Sara Evans, he
24 took a hundred photographs of himself having sex with other people.

25 22. Moreover, this statement uttered by TMZ Defendants and DOES 1 through 100 is
26 sufficiently factual to be susceptible of being proven true or false. As such, it is actionable and
27

28 ² <http://www.tMZ.com/2014/06/17/sara-evans-craig-schelske-divorce-chickens-warrant-arrest-court-bankruptcy/> (last visited August 14, 2014) emphasis added.

1 not an opinion.

2 23. Plaintiff is informed and believes, and on such information and belief alleges, that
3 TMZ Defendants and DOES 1 through 100 knew, or should have known, this statement was
4 false, yet they still published it out of actual malice despite having serious doubts about the
5 truthfulness of the statement at the time of the TMZ Broadcast.

6 24. Each reference in this Complaint to “defendant,” “defendants” or a specifically
7 named defendant also refers to the DOE defendants named in the same cause of action.

8 **FIRST CAUSE OF ACTION**

9 *(Defamation: Plaintiff CRAIG SCHELSKE Against Defendants TMZ*
10 *PRODUCTIONS, INC., a California Corporation, EHM*
11 *PRODUCTIONS, INC., a California Corporation, HARVEY LEVIN,*
12 *an individual, and DOES 1 through 100)*

13 25. As and for a separate and distinct First Cause of Action, plaintiff CRAIG
14 SCHELSKE complains against defendants TMZ PRODUCTIONS, INC., a California
15 Corporation, EHM PRODUCTIONS, INC., a California Corporation, HARVEY LEVIN, an
16 individual, and DOES 1 through 100, inclusive, and each of them, and alleges:

17 26. Plaintiff hereby incorporates by reference all paragraphs herein above as if fully
18 set forth in detail below.

19 27. During the TMZ Broadcast on June 17, 2014, which was a television episode of
20 TMZ on TV, TMZ Defendants and DOES 1 through 100 published a story about plaintiff
21 CRAIG SCHELSKE. In that story, TMZ Defendants reported as fact that Mr. Schelske had
22 taken a hundred photographs of himself having sex with other people, while he was married to
23 Sara Evans. This statement is unequivocally false, and slander per se.

24 28. Publication of this statement constitutes not only reckless, but also intentional and
25 malicious, disregard for the truth because this false statement of fact about Mr. Schelske is
26 fictitious, unfounded, and contradicted by the facts and circumstances surrounding Mr.
27 Schelske’s marriage with Sara Evans. Plaintiff is informed and believes, and on such
28 information and belief alleges, that TMZ Defendants and DOES 1 through 100 made no

1 meaningful attempt to contact Mr. Schelske to verify the contents of the TMZ Broadcast, and
2 failed to conscientiously verify the contents of the article in general. To the contrary, TMZ
3 Defendants and DOES 1 through 100 intentionally, maliciously and recklessly relied on
4 untrustworthy and ill-intended sources, lacking proof of the defamatory statement asserted in
5 the TMZ Broadcast. Even a perfunctory attempt to investigate the facts, starting with
6 TMZ.com, and the TMZ Papers located therein, would have revealed the falsity of this
7 statement. Thus, at best, TMZ Defendants and DOES 1 through 100 could have harbored
8 massively serious doubts about the truthfulness of the statement-at-issue at the time of the TMZ
9 Broadcast.

10 29. TMZ Defendants and DOES 1 through 100, in their quest to maximize profits by
11 blatantly peddling sensational falsehoods as “news,” published the TMZ Broadcast at the
12 expense of Mr. Schelske, who is unquestionably not a public figure.

13 30. A reasonable trier of fact would interpret the statement made during the TMZ
14 Broadcast as an unequivocal false statement of fact. The other sensational pronouncements
15 surrounding this statement further underscore how this statement was conveyed as such. After
16 asking if there was any “proof” Mr. Schelske “cheated” on Sara Evans while they were
17 married, TMZ Defendants and DOES 1 through 50 unequivocally declared that Mr. Schelske
18 “took a hundred photographs of himself having sex with other people. That’s how [Sara Evans]
19 found out.” TMZ Defendants and DOES 1 through 50 then unequivocally concluded
20 “[y]eah[,] [t]hat’s pretty good proof” of Mr. Schelske’s infidelity. The statement-at-issue in the
21 TMZ Broadcast, as well its surrounding contextual statements, would be reasonably interpreted
22 by an average viewer as a statement of fact and, pursuant to law, slander per se.

23 31. TMZ Defendants and DOES 1 through 100 ability to make windfall tabloid
24 profits stemming from the publication of salacious news is dependent upon their ability to
25 persuade viewers (and readers) of the truthfulness of the information being published. Here,
26 they went to great lengths to persuade viewers that Mr. Schelske was not only unfaithful when
27 Sara Evans was his spouse, but that he was wildly unfaithful *and* there were a hundred
28 photographs taken by him showing he was unfaithful. Accordingly, the defamatory statement

1 in the TMZ Broadcast would be interpreted as a false factual statement by a reasonable trier of
2 fact and is slander per se. TMZ Defendants and DOES 1 through 100 manipulate their
3 publications to appear to be setting forth credible facts, yet their objective is to publish
4 sensational, scandalous material with a reckless disregard for the truth, or intentional distortion
5 of the truth, in order to reap substantial profits. Indeed, this can hardly be considered
6 journalism, as it falls woefully short of the standards of journalistic ethics. As the Society of
7 Professional Journalists Code states, true journalists “test the accuracy of information from all
8 sources and exercise care to avoid inadvertent error.” It strains credulity to suggest any such
9 testing occurred here.

10 32. Plaintiff is informed and believes, and on such information and belief alleges, that
11 TMZ Defendants’ and DOES 1 through 100 false statement of fact was at no time verified by
12 credible sources.

13 33. TMZ Defendants and DOES 1 through 100 further no public policy goal in their
14 pursuit of substantial profits by publishing false, salacious stories. There is simply no public
15 benefit.

16 34. Mr. Schelske is not a public figure, or someone who occupies an influential role
17 in ordering society. Rather, Mr. Schelske possesses no great notoriety, and has no pervasive
18 involvement in the affairs of society. Instead, he is a private individual who has had the most
19 intimate parts of his private life splashed all over national television and the internet. The mere
20 fact that Mr. Schelske was married to a country music star many years ago does not transform
21 him into a public figure.

22 35. Mr. Schelske does not enjoy access to mass media, and he has no means to
23 counteract the defamatory statement by TMZ Defendants and DOES 1 through 100 given the
24 significant media clout possessed by TMZ Defendants and DOES 1 through 100. He has also
25 not taken any pervasive actions to thrust himself to the forefront of any issues related to his
26 divorce with Sara Evans.

27 36. In fact, Mr. Schelske’s divorce with Sara Evans is not a matter of public concern,
28 despite the fact that it may be of interest to some viewers of the TMZ Broadcast. This matter,

1 as well as a statement regarding what caused the divorce, does not affect members of the public
2 because the outcome of their divorce does not affect the general public or some segment of it.
3 It is therefore not a matter of public concern.

4 37. TMZ Defendants' and DOES 1 through 100 actions are the proximate and legal
5 cause of Mr. Schelske's significant injuries because TMZ Defendants and DOES 1 through 100
6 controlled the content on the TMZ Broadcast, including all statements made on the TMZ
7 Broadcast.

8 38. TMZ Defendants' and DOES 1 through 100 actions are wrongful because they
9 did not verify the statement-at-issue from any credible source. In fact, their decision to publish
10 this statement against all of the evidence—including the evidence in their possession (e.g., the
11 TMZ Papers)—displays an utter contempt for the truth. Such actions are fairly characterized as
12 reckless, intentional and malicious towards Mr. Schelske and the truth of the matter.

13 39. This TMZ Broadcast has now been played for millions of people—both the
14 viewers during the TMZ Broadcast itself as well as the viewers who have seen the video online.
15 Whenever anyone enters an internet search of Mr. Schelske now, perhaps a perspective
16 employer, they will quickly encounter the utterly false and malicious video of the TMZ
17 Broadcast (and other publications that trusted the veracity of the TMZ Broadcast and
18 republished this material).

19 40. The TMZ Broadcast has exposed Mr. Schelske to hatred, ridicule, and disgrace,
20 and has caused Mr. Schelske to be shunned and avoided, and has injured Mr. Schelske in his
21 occupation, by significantly reducing career opportunities to him.

22 41. The TMZ Broadcast continues to be available for viewing on the internet. The
23 total viewership is undoubtedly in the millions, which will be determined at trial.

24 42. The TMZ Defendants and DOES 1 through 100 have committed slander per se,
25 and Mr. Schelske need not prove special damages. General damages are presumed to exist
26 (i.e., for loss of reputation, shame, mortification and hurt feelings). Mr. Schelske suffers and
27 continues to suffer losses sustained, which are normal and usual and which are to be anticipated
28 when a person's personal and professional reputation is substantially impaired through slander

1 per se. Mr. Schelske has also suffered mental stress and humiliation as a result of the injury to
2 his personal and professional reputation. This precise loss will be determined at trial.

3 43. Plaintiff is informed and believes, and on such information and belief alleges, that
4 the TMZ Broadcast by TMZ Defendants and DOES 1 through 100 of the defamatory statement
5 was made with malice and an intent to defame Mr. Schelske's reputation and with substantial
6 certainty that this publication would irreparably injure Mr. Schelske's reputation. TMZ
7 Defendants and DOES 1 through 100 published this defamatory statement anyway, putting the
8 pursuit of profits above all else. As such, punitive damages should be awarded to deter future
9 wrongdoing and misconduct by TMZ Defendants and DOES 1 through 100 and others who
10 exhibit an utter contempt and a reckless disregard for the truth. Particularly those individuals
11 who, like TMZ Defendants and DOES 1 through 100, seriously injure the reputation of an
12 innocent private individual in an intentional, malicious, and reckless fashion. The precise
13 amount of punitive damages will be determined at trial.

14 **SECOND CAUSE OF ACTION**

15 *(False light: Plaintiff CRAIG SCHELSKE Against Defendants TMZ*
16 *PRODUCTIONS, INC., a California Corporation, EHM*
17 *PRODUCTIONS, INC., a California Corporation, HARVEY LEVIN,*
18 *an individual, and DOES 1 through 100)*

19 44. As and for a separate and distinct Second Cause of Action, plaintiff CRAIG
20 SCHELSKE complains against Defendants TMZ PRODUCTIONS, INC., a California
21 Corporation, EHM PRODUCTIONS, INC., a California Corporation, HARVEY LEVIN, an
22 individual, and DOES 1 through 100 inclusive:

23 45. Plaintiff hereby incorporates by reference all paragraphs herein above as if fully
24 set forth in detail below.

25 46. During the TMZ Broadcast on June 17, 2014, which was a television episode of
26 TMZ on TV, TMZ Defendants and DOES 1 through 100 published a story about plaintiff Craig
27 Schelske. In that story, TMZ Defendants reported as fact that Mr. Schelske had taken a
28 hundred photographs of himself having sex with other people, while he was married to Sara

1 Evans. This statement is unequivocally false, and puts Mr. Schelske in a false light.

2 47. This statement by TMZ Defendants and DOES 1 through 100 defamed Mr.
3 Schelske's reputation in a significant way. Such a statement is wildly offensive to a reasonable
4 person. Therefore, TMZ Defendants and DOES 1 through 100 are liable for invasion of
5 privacy by publicity that placed (and continues to place) Mr. Schelske in a false light in the
6 public eye.

7 48. TMZ Defendants and DOES 1 through 100 published this statement in the TMZ
8 Broadcast for the sole purpose of earning profits. Publication of this false and defamatory
9 statement by TMZ Defendants and DOES 1 through 100 constituted a misappropriation of Mr.
10 Schelske's identity for commercial purposes in violation of his right to privacy, as recognized
11 in California and federal law.

12 49. TMZ Defendants and DOES 1 through 100 acted with full knowledge of the
13 falsity of the statement-at-issue; or at the very least, TMZ Defendants and DOES 1 through 100
14 acted negligently in failing to learn whether this statement placed Mr. Schelske in a false light.

15 50. TMZ Defendants and DOES 1 through 100 acted with full knowledge that
16 publication of the statement-at-issue during the TMZ Broadcast would irreparably injure Mr.
17 Schelske's reputation and place him in a false light.

18 51. Mr. Schelske need not prove special damages to recover damages for false light
19 because broadcast of this statement constituted slander per se. Because the statement-at-issue
20 in the TMZ Broadcast is susceptible of a defamatory meaning on its face, and constitutes
21 slander per se, TMZ Defendants and DOES 1 through 100 are presumed liable for actual and
22 compensatory damages.

23 52. Mr. Schelske seeks compensatory damages, general damages, special damages
24 (for loss of reputation) in an amount to be proved at trial.

25 53. Plaintiff is informed and believes, and on such information and belief alleges, that
26 the TMZ Broadcast by TMZ Defendants and DOES 1 through 100 of the defamatory statement
27 was made with malice and an intent to defame Mr. Schelske's reputation and with substantial
28 certainty that this publication would irreparably injure Mr. Schelske's reputation. TMZ

1 Defendants and DOES 1 through 100 published this defamatory statement anyway, putting the
2 pursuit of profits above all else. As such, punitive damages should be awarded to deter future
3 wrongdoing and misconduct by TMZ Defendants and DOES 1 through 100 and others who
4 exhibit an utter contempt and a reckless disregard for the truth. Particularly those individuals
5 who, like TMZ Defendants and DOES 1 through 100, seriously injure the reputation of an
6 innocent private individual in an intentional, malicious, and reckless fashion. The precise
7 amount of punitive damages will be determined at trial.

8 **PRAYER**

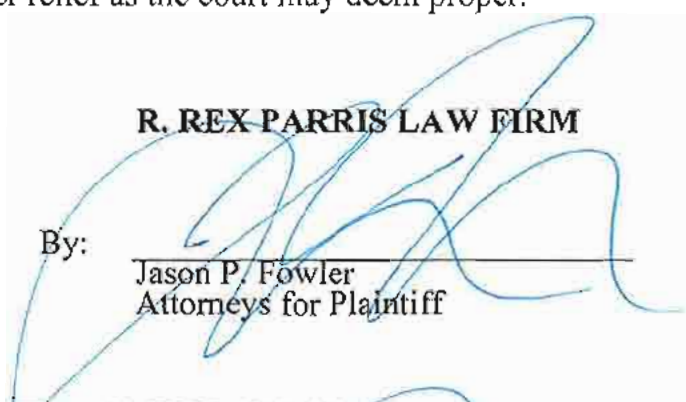
9 WHEREFORE, plaintiff CRAIG SCHELSKE prays for judgment against the
10 Defendants, and each of them as follows:

- 11 1. For general damages in an amount according to proof;
- 12 2. For economic damages according to proof;
- 13 3. For exemplary and punitive damages according to proof;
- 14 4. For costs of suit herein incurred;
- 15 5. For applicable statutory interest as provided by law; and
- 16 6. For such other and further relief as the court may deem proper.

17
18 DATED: October 13, 2014

R. REX PARRIS LAW FIRM

19
20 By:



Jason P. Fowler
Attorneys for Plaintiff

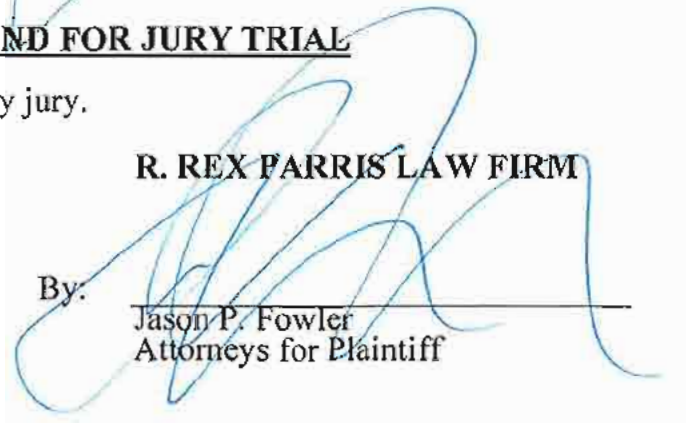
21
22
23 **DEMAND FOR JURY TRIAL**

24 Plaintiff hereby demands trial by jury.

25 DATED: October 13, 2014

R. REX PARRIS LAW FIRM

26
27 By:



Jason P. Fowler
Attorneys for Plaintiff