

CAUSE NO. 2007-62428

VIRGIE ARTHUR, Plaintiff,	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
HOWARD K. STERN, CBS STUDIOS INC., and KPRC HOUSTON, Defendants.	§	
	§	
	§	280 TH JUDICIAL DISTRICT

**DEFENDANT KPRC HOUSTON’S ANSWER
TO PLAINTIFF’S ORIGINAL PETITION**

COMES NOW KPRC Houston (“KPRC”) and files this Answer to Plaintiff’s Original Petition.

**I.
GENERAL DENIAL**

KPRC generally denies each and every substantive allegation in Plaintiff’s Original Petition and demands strict proof thereof as required by law.

**II.
AFFIRMATIVE DEFENSES**

For further answer, if same be necessary, KPRC alleges that Plaintiff’s claims are barred by the wire service defense because KPRC acted as a mere conduit for the broadcast complained of by Plaintiff and played no role in the reporting, production, or editing of such broadcast.

For further answer, if same be necessary, Plaintiff’s Original Petition fails to state a claim upon which relief could be granted.

For further answer, if same be necessary, the statements complained of as they relate to Plaintiff are true or substantially true.

For further answer, if same be necessary, the statements complained of as they relate to Plaintiff are not capable of defamatory meaning.

For further answer, if same be necessary, the statements at issue were not published with actual malice as that term is defined by the United States and Texas Supreme Courts as a matter of law, thus negating an essential element of Plaintiff's defamation claim in as much as she is a public official and/or a public figure. In the alternative, the complained of statements were not negligently published, thus negating an essential element of Plaintiff's claims. For further answer, if same be necessary, Defendant did not publish some of the complained of statements.

For further answer, if same be necessary, some of the complained of statements constitute expressions of either opinion, rhetoric, or hyperbole.

For further answer, if same be necessary, Plaintiff's claims against KPRC fail because there is no evidence of one or more essential elements on which Plaintiff would have the burden of proof at trial.

Pursuant to § 73.003 of the Texas Civil Practice & Remedies Code, KPRC asserts that Plaintiff has been the subject of other critical reports which have adversely effected her reputation and mitigate the damages, if any, suffered by her as a result of the complained of statements.

For further answer, if same be necessary, KPRC alleges that Plaintiff's claims are barred by the incremental harm doctrine because the true or unchallenged statements in the broadcast or broadcasts at issue, as well as other statements by other media and publicly disseminated statements by Plaintiff or her representatives, are such that any false or defamatory statements of fact in the challenged broadcast or broadcasts had a negligible effect on Plaintiff's reputation and are not therefore actionable.

For further answer, if same be necessary, any award of damages in this case for the claims alleged would be unconstitutional under Article 1, § 8 of the Texas Constitution and/or

the First Amendment to the United States Constitution.

For further answer, if same be necessary, Plaintiff has not suffered any actual, special, consequential or other damages.

For further answer, if same be necessary, Plaintiff's claims are barred and/or limited in whole or in part by the negligence of Plaintiff and/or a responsible third party.

For further answer, if same be necessary, KPRC alleges that Plaintiff is not entitled to punitive or exemplary damages under the laws of the United States and Texas because: (i) Plaintiff's cause of action is pursuant to statute — § 73.001 et. seq. of the Tex. Civ. Prac. and Rem. Code — and punitive damages are impermissible for the mere violation of a statute; (ii) an award of punitive or exemplary damages would be unconstitutional under the United States and Texas Constitutions, specifically, the First Amendment to the United States Constitution and Article I, § 8 of the Texas Constitution; (iii) any recovery of punitive or exemplary damages by the Plaintiff in this civil lawsuit would constitute the imposition of a criminal fine or penalty without the substantive or procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3, 3a, 10, 13, 15 and 19 of the Texas Constitution; (iv) any such award of punitive or exemplary damages in this case would amount to nothing less than a denial to KPRC of due process and equal protection of the laws as are guaranteed under the United States and Texas Constitutions; (v) the imposition of any punitive or exemplary damages in this lawsuit would constitute an excessive fine or penalty under Article I, Sections 13 and 19 of the Texas Constitution; (vi) an award of punitive or exemplary damages on the facts of this case is unconstitutional or in violation of the common law, absent clear and convincing proof that the false, defamatory statements of defamatory fact, if any, about Plaintiff were published with "actual malice," as that term is defined by the United

States and Texas Supreme Courts, which “actual malice” KPRC denies, and absent proof of common law malice, that is, ill will, spite or evil motive and further absent proof in compliance with Chapter 41 of the Texas Civil Practice and Remedies Code; (vii) exemplary damages awarded, if any, against KPRC would be limited by Chapter 41 of the Texas Civil Practice and Remedies Code; (viii) KPRC alleges it has not been given fair notice of the conduct that may subject KPRC to punishment or exemplary damages and also of the severity of the penalty or exemplary damages that may be imposed; and (ix) punitive damages would violate the United States and Texas Constitutions and common law because such an award is based from procedures that are vague, open-ended, unbound in discretion, arbitrary and without sufficient constraints or protection against arbitrary and excessive awards.

For further answer, if same be necessary, KPRC alleges that Plaintiff’s claims are barred because the alleged injuries to Plaintiff and her damages, if any, are due solely to other causes and matters which are not related to KPRC’s statements, acts, operation or conduct.

For further answer, if same be necessary, KPRC alleges that the statements complained of constitute fair and impartial reports and comments on public and newsworthy proceedings and controversies of public interest and public concern and are accordingly protected by privilege including, but not limited to, the “Fair Report Privilege.”

III. **JURY DEMAND**

KPRC demands a jury trial.

WHEREFORE, PREMISES CONSIDERED, KPRC prays that judgment be entered in its favor, that Plaintiff take nothing by way of her action herein, that KPRC be awarded its costs of action, and for such other and further relief, both at law and in equity, to which it may be entitled.

Respectfully submitted,

JACKSON WALKER, L.L.P.

By: /s/ Nancy W. Hamilton
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**ATTORNEYS FOR
DEFENDANT KPRC HOUSTON**

CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of November 2007, a true and correct copy of the foregoing **DEFENDANT KPRC HOUSTON'S ANSWER TO PLAINTIFF'S ORIGINAL PETITION** was served via certified mail, return receipt requested upon:

Neil McCabe
The O'Quinn Law Firm
440 Louisiana, Suite 2300
Houston, Texas 77002

/s/ Nancy W. Hamilton
Nancy W. Hamilton



I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this _____

Certified Document Number: _____

THERESA CHANG, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com