

D-1-GN-17-003349

Cause No.: \_\_\_\_\_

**MICHAEL MELANSON, DMD  
and MICHAEL MELANSON,  
DMD, PLLC**

**Plaintiffs,**

v.

**NANCY GRACE, individually,  
and as principal of  
THE NANCY GRACE SHOW;**

**TURNER BROADCASTING  
SYSTEM, INC., a division of  
TIME WARNER, INC.;**

**CBS TELEVISION DISTRIBUTION, a  
division of CBS STUDIOS, INC.;**

**MAIL MEDIA, INC. d/b/a Daily  
Mail;**

**ASSOCIATED NEWSPAPERS  
NORTH AMERICA, INC.,  
d/b/a Daily Mail;**

**ERIN ELIZABETH FINN, individually,  
and as principal of  
www.HEALTHNUTNEWS.COM;**

**FHT MEDIA HOLDING, LLC d/b/a  
WOMANISTA**

**Defendants.**

**IN THE DISTRICT COURT**

**TRAVIS COUNTY**

261ST  
\_\_\_\_\_ **JUDICIAL DISTRICT**

## **PLAINTIFFS' ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, Plaintiffs, **MICHAEL MELANSON, DMD** and **MICHAEL MELANSON, PLLC**, (herein identified collectively as “Dr. Melanson” or “Plaintiffs”), and for cause of action against Defendants, **NANCY GRACE**, individually (hereinafter “Grace”); **TURNER BROADCASTING SYSTEM, INC.**, a division of **TIME WARNER, INC.** (hereinafter “TBS”); **CBS TELEVISION DISTRIBUTION**, a division of **CBS STUDIOS, INC.** (hereinafter “CBS”); **MAIL MEDIA, INC. d/b/a Daily Mail** (hereinafter “Daily Mail”); **ASSOCIATED NEWSPAPERS NORTH AMERICA, INC, d/b/a Daily Mail** (hereinafter “Daily Mail”); **ERIN ELIZABETH FINN**, individually (hereinafter “HealthNut”); and **FHT MEDIA HOLDING, LLC d/b/a Womanista** (hereinafter “Womanista”), allege and respectfully show the Court as follows:

### **A. Discovery Control Plan**

1. Discovery shall be conducted under Level 2 of Tex. R. Civ. P. § 190.3 because this Suit involves damages and seeks monetary relief in excess of \$1,000,000.00 but less than the jurisdictional limits of the Court.

### **B. Parties**

2. Plaintiff, Michael Melanson, DMD, a natural person, is a pediatric dentist residing in Travis County, Texas.

3. Plaintiff Michael Melanson, DMD, PLLC is a domestic professional limited liability company.

4. Defendant Nancy Grace, a natural person, is, upon information and belief, a nonresident of the State of Texas who has engaged in business in the State of Texas including, without limitation, by and through her action as star correspondent and moderator of the “Nancy Grace” show which aired and was broadcast to viewers in the State of Texas on HLN, formerly Headline News, a television channel owned and operated by Turner Broadcasting System, Inc, a division of Time Warner, Inc. Pursuant to Texas Civil Practice and Remedies Code §17.044 Grace may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as her agent for service, because she has not appointed a registered agent for service and does not maintain a regular place of business in Texas. The Texas Secretary of State is requested to forward via certified mail, return receipt requested, the citation and copy of this pleading to Grace at her last known address: Nancy Grace, c/o Turner Broadcasting System, Inc, One CNN Center, NT 1307B, Atlanta, GA 30303-2762. Issuance of citation is requested.

5. Defendant Turner Broadcasting System, Inc., a division of Time Warner, Inc. is, upon information and belief, a foreign corporation that has engaged in business in the State of Texas, including, without limitation, by broadcasting the Nancy Grace show via its television channel HLN to viewers in the State of Texas.

Pursuant to Texas Civil Practice and Remedies Code §17.044 TBS may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service because it has not appointed a registered agent for service and does not maintain a regular place of business in Texas. The Texas Secretary of State is requested to forward via certified mail, return receipt requested, the citation and copy of this pleading to Turner Broadcasting System, Inc, One CNN Center, NT 1307B, Atlanta, GA. Issuance of citation is requested.

6. At all material times hereto, TBS owned, controlled and/or operated the HLN television network upon which the Nancy Grace show was broadcast reaching audiences across the country including viewers in the State of Texas.

7. At all material times hereto, Grace acted as an agent, servant, employee and/or representative of TBS in her capacity as moderator and host of the Nancy Grace show.

8. Defendant Mail Media Inc. d/b/a Daily Mail is, upon information and belief, a foreign corporation that has engaged in business in the State of Texas including, without limitation, by and through its ownership, management, maintenance, control and/or operation of a website for the publication of tabloid news media at [www.dailymail.com.uk](http://www.dailymail.com.uk) and [www.dailymail.com](http://www.dailymail.com) . Pursuant to Texas Civil Practice and Remedies Code §17.044 Daily Mail may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701,

as its agent for service, because it has not appointed a registered agent for service and does not maintain a regular place of business in Texas. The Texas Secretary of State is requested to forward via certified mail, return receipt requested, the citation and copy of this pleading to Mail Media, Inc, d/b/a Daily Mail, 51 Astor Place, New York, New York 10003. Issuance of citation is requested.

9. Defendant Associated Newspapers North America, Inc, d/b/a Daily Mail is, upon information and belief, a foreign corporation that has engaged in business in the State of Texas including, without limitation, by and through its ownership, management, maintenance, control and/or operation of a website for the publication of tabloid news media at [www.dailymail.com.uk](http://www.dailymail.com.uk) and [www.dailymail.com](http://www.dailymail.com) . Pursuant to Texas Civil Practice and Remedies Code §17.044 Daily Mail may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service, because it has not appointed a registered agent for service and does not maintain a regular place of business in Texas. The Texas Secretary of State is requested to forward via certified mail, return receipt requested, the citation and copy of this pleading to Mail Media, Inc, d/b/a Daily Mail, 101 Park Avenue, New York, NY 10178. Issuance of citation is requested.

10. Defendant CBS Television Distribution, a division of CBS Studios, Inc. is

a foreign entity doing business in the State of Texas. Defendant may be served via its registered agent Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas.

11. Defendant Erin Elizabeth Finn, a natural person, is, upon information and belief, a nonresident of the State of Texas who has engaged in business in the State of Texas including, without limitation, by and through her ownership, management, maintenance, publication, control and/or operation of a website known as [www.healthnutnews.com](http://www.healthnutnews.com). Pursuant to Texas Civil Practice and Remedies Code §17.044, HealthNut may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as her agent for service, because she has not appointed a registered agent for service and does not maintain a regular place of business in Texas. The Texas Secretary of State is requested to forward via certified mail, return receipt requested, the citation and copy of this pleading to HealthNut at her last known address: Erin Elizabeth Finn, 56 N. Arbor Dr. Ormond Beach, FL, 32174. Issuance of citation is requested.

12. Defendant FHT Media Holding, LLC d/b/a Womanista is, upon information and belief, a foreign corporation that has engaged in business in the State of Texas including, without limitation, by and through its ownership, management, maintenance, publication, control and/or operation of the website [www.womanista.com](http://www.womanista.com). Pursuant to Texas Civil Practice and Remedies Code

§17.044, Womanista may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service, because it has not appointed a registered agent for service and does not maintain a regular place of business in Texas. The Texas Secretary of State is requested to forward via certified mail, return receipt requested, the citation and copy of this pleading to FHT Holding, Inc, d/b/a Womanista, 12 Cadillac Dr. Suite 230, Brentwood, TN 37027-5314. Issuance of citation is requested.

### **C. Jurisdiction**

13. The Court has jurisdiction over this suit because it involves damages to the business and goodwill of Michael Melanson, DMD, PLLC, as well as damages to the reputation, career and person of Dr. Melanson in excess of TEN (10) MILLION DOLLARS.

### **D. Venue**

14. Venue is proper in Travis County as provided in § 15.017 of the TEX. CIV. PRAC. & REM. CODE ANN. The residence of Dr. Melanson is in Travis County, Texas.

### **E. Facts**

15. This is a libel and slander action arising from Defendants' reckless, irresponsible, false and defamatory media reports following the unfortunate, unforeseeable and unavoidable death of a child due to complications from anesthesia

which was administered in accordance with accepted standards of care and as medically indicated and necessary. The gist of Defendants' publications falsely portray Plaintiff as causing the death of a child by treating dental disease that did not exist. While freedom of the press is a valuable right, it does not provide license for media Defendants to wreak havoc on the reputation, career, life and family of an innocent, hard-working private citizen while engaging in reckless, shoddy journalism designed to promote their own self-interests and increase profits without due consideration for accuracy, integrity, respect and fairness. When such actions occur in the digital environment of the current internet age with nearly instantaneous and world-wide availability of all forms of media, the resulting harm increases exponentially as defamatory material is re-published across the globe within minutes of initial publication. When salacious and scandalous allegations are unleashed online they inevitably spread like wildfire destroying reputations, undermining relationships and turning lives upside down. Such is the case here.

16. At all times material hereto, Dr. Melanson was a private person, i.e., non-public figure, and a pediatric dentist residing in Travis County, Texas who has been married many years and has three children.

17. Pediatric dentistry is dental practice specializing in providing primary and specialty oral care for infants and children through adolescence including those with special health needs. Pediatric dentists are the pediatricians of dentistry. A



pediatric dentist receives two to three years of specialty training following dental school and limits their practice to treating children and adolescents who have unique dental needs.

18. Prior to occurrence of the facts underlying this case, Dr. Melanson was a successful pediatric dentist with a passion for providing excellent dental care to children. When he graduated from the Oregon Health & Science University – School of Dentistry in 2009, Melanson received the Senior Student Award in Pediatric Dentistry from the Oregon Academy of Pediatric Dentistry. Following dental school, Melanson was selected as one of only four pediatric dental residents chosen out of hundreds of applicants for two more additional years of extensive training in pediatric dental care and conditions.

19. Following his residency, Dr. Melanson moved his family to Austin, Texas and started his pediatric dental career by working at Austin Children’s Dentistry. Over the next four years, he worked hard and became the type of pediatric dentist desired by most families. He acquired a large patient base, was highly motivated and was involved and recognized in the community going to many civic, social and school events. His face and name were well known and well regarded in the Austin metro area. However, unbeknownst to him, his life was about to dramatically change.

20. On or about March 29, 2016, a minor patient under Dr. Melanson's care at Austin Children's Dentistry ("ACD") suffered complications from anesthesia which required transportation to a nearby hospital where the patient was pronounced dead several hours later.

21. An autopsy was performed by the Travis County Medical Examiner's Office ("TCMEO"), and in connection therewith, Dr. Robert G. Williams, a practicing forensic odontologist, was engaged to review the case. Upon information and belief, Dr. Williams is not a pediatric dentist, and does not have extensive history or experience in pediatric dentistry care or conditions.

22. On or about Friday, July 15, 2016, around 2:36 p.m., Dr. Williams caused a forensic odontology report ("Report") to be published to the public, by and through TCMEO, related to his review of case #ME-16-01377 involving the death. Dr. Williams was aware his report would be widely published publicly when he provided it to the TCMEO because of intense prior media interest and reports concerning the case.

23. Dr. Williams' Report purported to be based on an analysis of the *ante-mortem* dental records regarding the dental patient which were supplied to the TCMEO by ACD as requested. Included among the *ante-mortem* records were 2 radiographs purportedly analyzed by Dr. Williams which were obtained by Dr. Williams without following best practices and without the radiographs being placed

in the proper radiographic settings. Additionally, Dr. Williams' Report purported to be based on a review of *post-mortem* records of the dental patient including 31 dental radiographs and 3 dental photographs.

24. The Report's analysis section indicated that Dr. Williams noted that two *antemortem* occlusal radiographs taken on 03/29/2016 showed 8 partially erupted teeth, (4 upper, 4 lower anterior primary teeth) which appeared to be "*free of any dental disease and/or dental restorations.*" The analysis section also stated the "*teeth had also been prepared to have Stainless Steel Crowns placed subsequent to the completion of the dental pulpotomies.*"

25. The "opinion" section of Dr. Williams' Report concluded that, "*One can only speculate as to why any treatment was performed considering no indication of dental disease or pathology was seen in the dental radiographs dated 03/29/16. Written records indicated that no decay was seen on the dental visit dated 07/21/2015. It is possible that the partially erupted teeth may have had a (sic) congenital enamel defects but not necessarily requiring treatment with the child of this age. No evidence that the child was in any type of pain was ever notated in the dental record and no pulp vitality test was ever performed.*" The Report was clearly alarming, damaging, controversial, inflammatory and scandalous to Dr. Melanson. The statement called into question whether the professional judgment and dental practices of Dr. Melanson met the applicable standards of dental care and were

honest and ethical. The Report questioned whether the deceased patient had any dental disease, and whether the treatment by Dr. Melanson was necessary. Dr. Williams' Report resulted in a TCMEO ruling of an "undetermined" cause of death instead of a "natural" designation due to his claim of a lack of the presence of a disease process requiring dental treatment.<sup>1</sup>

26. The publication of Dr. Williams' Report and statements caused an immediate and intense frenzy of salacious and scandalous media stories and negative public scrutiny focused on Dr. Melanson, including but not limited to those statements and reports at issue herein. A firestorm of reports cascaded across the world wide web and other media outlets repeating and republishing the certain excerpts and statements contained in Dr. Williams' Report, and often doing so in an inaccurate and unfair manner designed to sensationalize the story and increase ratings and profits.

27. As a result, Melanson was vilified in the media, including on a national level via various outlets and sources. The initiation of several investigations of Dr. Melanson soon followed. However, upon publication of the Report, it was immediately obvious there were serious defects in Dr. Williams' review of the case

---

<sup>1</sup> The TCMEO Medical Examiner report ME-16-01377 at page 5 clarifies that the manner of death for an intraoperative death is generally classified as 'natural' if the death is due to a known and recognized complication of an appropriate treatment for natural disease.

and his Report, and that several of Dr. Williams' statements were blatantly and grossly incorrect and without a reasonable basis.

28. Shocked by the statements expressed in Dr. Williams' Report, ACD immediately suspended Dr. Melanson from seeing patients and conducted an internal review of the statements made by Dr. Williams in his Report. The internal review concluded the treatment provided to the patient in case #ME-16-01377 was dentally necessary, was appropriate, was provided in response to the initiating concerns that were appropriately raised by the minor patients' own parent, and was provided in accordance with applicable guidelines of the American Association of Pediatric Dentistry ("AAPD"). ACD further concluded that a close review of the dental patient's records and radiographs should have never led to the statements made by Dr. Williams in his Report. Nonetheless, Dr. Melanson remained suspended from seeing patients at ACD.

29. In addition to internal reviews, ACD obtained several reviews by well-known and well-respected independent pediatric dentists, who reviewed the patient records, radiographs, Dr. Melanson's treatment of the patient, and the statements made by Dr. Williams' in his Report. The independent pediatric dentists concluded that the clear dental necessity for Dr. Melanson's treatment was obvious and supported in the record entries and radiographs, including some of which were not

even noted or referred to by Dr. Williams in the short and brief conclusions contained in his Report.

30. On or about 07/25/16, an ACD representative discussed the problems found in Dr. Williams' Report, including the statements implying the lack of dental need for treatment of the patient, with TCMEO Chief Medical Examiner, Dr. J. Keith Pinckard. Dr. Pinckard indicated he had no objection to direct discussions with Dr. Williams regarding the Report and promised that, if in fact, Dr. Williams agreed to correct the Report that the TCMEO would accordingly issue an amended report. Accordingly, ACD began efforts to reach out to Dr. Williams.

31. On or about 07/26/16, an ACD representative faxed a letter to the office of Dr. Williams setting out the problems raised with the Report.<sup>2</sup> The letter included the reviews of the case by the independent pediatric dentists and requested Dr. Williams' reconsideration of his Report.

32. On or about 07/27/16, an ACD representative discussed the Report and the findings of the independent pediatric dentists directly with Dr. Williams. Dr. Williams indicated in response to the independent pediatric dentists' findings, he had conducted an additional review and consulted with a pediatric dentist. Dr. Williams agreed with the findings made by independent consultants that necessary and appropriate dental work was planned and performed by Melanson on the minor

---

<sup>2</sup> The letter and independent pediatric dentists' reports sent to Dr. Robert G. Williams were also copied to the TCMEO.

patient. He also acknowledged the concerns and risks regarding “Nursing Caries/Baby Bottle Syndrome” and the need for immediate dental treatment in those cases.<sup>3</sup> Dr. Williams understood the devastating effects the incorrect statements in his Report were having on the career of Dr. Melanson and the business of ACD. Dr. Williams agreed it was absolutely necessary to amend his Report and promised to expedite a revised report to the TCMEO correcting and clarifying his Report and statements. Dr. Williams further agreed to work with ACD to assist in clarifying the misleading perceptions which were based upon his Report.<sup>4</sup>

33. On or about 07/28/16, ACD made a formal request to the TCMEO for a copy of the revised autopsy report in Case #ME-16-01377.

34. Later, on or about 07/28/16, an ACD representative called the TCMEO to clarify the status of the pending revised autopsy report in Case #ME-1601377. The ACD representative received a return call from TCMEO Chief Administrator Sarah Scott. Ms. Scott indicated the TCMEO would not issue a revised report and would release a statement later regarding the matter. When challenged with the fact that Dr. Williams had already agreed to revise his Report and that Dr. Pinckard, the Chief Medical Examiner, had agreed to amend the Report in accordance with Dr. Williams’ determination, Ms. Scott responded by indicating that Dr. Williams had

---

<sup>3</sup> Also known as Early Childhood Caries or (ECC). AAPD guidelines recognize the unique and virulent nature of ECC which can require immediate intervention that is medically necessary to prevent more widespread health problems which can include infection with life threatening fascial space involvement.

<sup>4</sup> Dr. Williams’ Admission that his Report was wrong, and his agreement to correct it, is documented in his own email to Dr. Pinckard, dated July 20, 2016, several days before he was contacted by a representative of ACD.

*“changed his mind last night”* and that they would not provide an explanation because they considered it *“an internal matter.”* Ms. Scott later issued a statement indicating that *“...there will be no change in either the consulting forensic odontologist’s report nor the cause and manner of death as originally issued by the medical examiner.”*

35. However, it would be discovered that on April 3, 2016, while records and information were still being collected and processed regarding the minor patient in Case #ME-16-01377, Dr. Williams expressed in an email to the Travis County Medical Examiner, J. Keith Pinckard, the unfounded, incorrect and false representation that the case involved Medicaid abuse.<sup>5</sup> Dr. Williams had no evidence to support his unfounded assertion.

36. Dr. Williams then proceeded to ignore almost every piece of evidence and objective fact set out in the dental record in ME-16-01377 in order to avoid admitting that his initial unfounded claim against ACD and Dr. Melanson was wrong. He also later ignored the admonitions of pediatric dentists who clearly told him that they saw dental pathology present in the case. Dr. Williams even ignored queries from his own dentist associates who asked him about what was documented in the dental record.

37. It would also be discovered that on July 5, 2016, after resolving a

---

<sup>5</sup> In the same email, Dr. Williams also stated: “The dentist and the anesthesiologist should be shot”.



longstanding issue of his failure to comply with the liability requirements of his professional services agreement with Travis County, Dr. Williams issued an odontology report that was noted by TCMEO officials to have had errors. This first draft odontology report contained a statement under the opinion section declaring, ***“that there was no evidence of pathology or dental disease in the dental records prior to dental treatment.”*** However, Dr. Williams knew the dental records were absolutely replete with evidence of pathology or dental disease in the minor patient treated at ACD, and therefore He changed his report in an attempt to conceal the obvious objective fact that almost the entirety of the minor patient’s dental record in ME-16-01377 documented dental pathology and dental disease.

38. In the weeks following, representatives of ACD and Melanson made numerous phone calls to Dr. Williams who engaged in a pattern of conduct indicating an unwillingness to have any substantive dialogue regarding the case.

39. On or about August 15, 2016, a representative of Melanson wrote Dr. Williams reminding him of (1) his re-review of the patient’s records, (2) his agreement that there was evidence justifying the dental work performed by Melanson, and (3) his agreement to amend and correct his Report.

40. After receiving the August 15, 2016 letter, Dr. Williams phoned Dr. Melanson’s representative, agreed to take another look at the matter, stated he wanted to see *“everything you guys got”*, and that he would review and call back.

41. Dr. Melanson and his representative then immediately forwarded additional information to Dr. Williams which included applicable AAPD guidelines, certain radiographs (now in the proper settings) which Dr. Williams had previously obtained and purported to review without being in the proper settings, and certain textbook excerpts.

42. Dr. Melanson's representative subsequently made several attempts to follow up with Dr. Williams who continued to avoid having any further substantive dialogue on the issues.

43. Accordingly, Dr. Williams' false and defamatory Report, acknowledged by him to be wrong, was not corrected and to this day remains uncorrected.

44. Meanwhile, as Dr. Melanson, ACD, and their designated representatives were engaged in the above described efforts to convince Dr. Williams to correct his false statements and defamatory report, the avalanche of false, scandalous and salacious media reports, which began almost instantaneously upon release of the Report, continued to spread like wildfire across various media outlets and the world wide web.

### **NANCY GRACE**

45. On or about September 1, 2016 Defendant Grace, made certain false and defamatory statements concerning Plaintiffs via her television broadcast known as The Nancy Grace Show which was aired on the television channel known as HLN

and is owned and operated by TBS. A transcript of the show was also published on the internet site of Cable News Network, Inc. which is also owned and operated by TBS. The Grace broadcast/publication not only repeated and republished certain defamatory material contained in the Report, but also published additional defamatory material by inaccurately and falsely “reporting on the Report” in a manner to create false impressions and conclusions designed to increase viewership and ratings.

46. The Nancy Grace show broadcast and publication of the related transcript was entitled: “**14-Month-Old Dies in Dentist Chair**”.

47. In addition to the above statement contained in the title, which is defamatory in and of itself, the broadcast contained the following false, defamatory and injurious statements:

- a. “Their 1-year-old little girl Daisy died in the dentist’s chair while the dentist filling (sic) six cavities.”
- b. “But tonight, an autopsy revealing she did not even need the procedure.”
- c. “So the medical examiner’s autopsy included (sic) why any treatment was performed considering no indication of dental disease or pathology.”
- d. “Their 1-year-old little girl, their tot girl, Daisy, dies in the dentist chair while the dentist filled six cavities. But tonight, autopsy reveals little Daisy didn’t even need this procedure.”

- e. "I've never heard of a little baby getting this many cavities filled at once and getting crowns, and now the autopsy says none of the procedures were necessary."
- f. "The autopsy shows there were no cavities".

48. The Grace broadcast and transcript was false, defamatory and injurious, in the above identified statements, as well as the overall gist and impression which portrayed that a baby died in the dentist's chair, or at the dentist's office while and/or because of receiving unnecessary treatment at the hands of Dr. Melanson when no dental disease was present.

49. The Grace broadcast and transcript was false in that, **inter alia**, the baby did have dental disease and did not receive unnecessary or inappropriate treatment, did not die as a result of unnecessary treatment and did not die at the dentist's office, while in the dentist's chair, or as the result of any improper conduct by Dr. Melanson.

50. The Grace broadcast and transcript was defamatory in that the overall gist and impression was to unfairly and falsely portray Dr. William's Report as establishing there were no cavities, that no procedure or treatment was necessary, and that a baby died tragically and unnecessarily as a direct result of Dr. Melanson's egregious and outrageous conduct.

### **INSIDE EDITION**

51. On information and belief, CBS owns, manages, maintains, operates

controls and/or publishes the TV show known as Inside Edition as well as the corresponding website of [www.insideedition.com](http://www.insideedition.com).

52. On information and belief, Inside Edition is a tabloid television newsmagazine which premiered in January, 1989 and is the longest-running newsmagazine program that is not strictly focused on entertainment news. Upon information and belief, Insideedition.com is approximately 19 years old and receives approximately 17,800 unique visitors per day.

53. On or about August 30, 2016, Inside Edition made certain false and defamatory statements in an article entitled: “**Baby Dies Under Anesthesia as Dentist Fixed Cavities, but Autopsy Reveals She Didn’t Have Any**” on its website. The article not only repeated and republished certain defamatory material contained in the Report, but also published additional defamatory material by inaccurately and falsely “reporting on the Report in a manner to create false impressions and conclusions and designed to increase viewership and ratings.

54. In addition to the false and defamatory statement contained above in the title, the article also incompletely, inaccurately and misleadingly quoted the autopsy report as saying; “One can only speculate as to why any treatment was performed considering no indication of dental disease or pathology” when the autopsy report actually stated: “On can only speculate as to why any treatment was performed

considering no indication of dental disease or pathology was seen in the dental radiographs dated 03/29/16." (emphasis added).

55. In addition to repeating and republishing the defamatory material contained in Dr. William's Report, the article was false, defamatory and injurious, both by the above identified statements, as well as the overall gist and impression portrayed by the article that a baby died while Dr. Melanson fixed cavities when there were none.

56. The article was false in that, inter alia, the baby did not receive unnecessary or appropriate treatment, did not die as a result of unnecessary treatment, did not die under anesthesia, did not die as the dentist fixed cavities which did not exist, and did not die as the result of any improper conduct by Dr. Melanson.

57. The Inside Edition article was defamatory in that the overall gist and impression was to unfairly and falsely portray Dr. William's Report as establishing there were no cavities, that no procedure or treatment was necessary, and that a baby died tragically and unnecessarily as a direct result of Dr. Melanson's egregious and outrageous conduct.

#### DAILY MAIL

58. Upon information and belief, Daily Mail owns, manages, operates, controls and/or publishes [www.dailymail.com](http://www.dailymail.com) and [www.dailymail.co.uk](http://www.dailymail.co.uk) (collectively, "Website"), a tabloid news publication, with more than 220 U.S.

employees. The Website has United States web traffic of approximately 4.4 million unique visitors each day.

59. On or about August 31, 2016 Daily Mail published an article entitled: **“Fury of parents whose one-year-old girl died under anesthesia while her dentist fixed ‘six cavities’ – as an autopsy now reveals she did NOT need the procedure”** on its Website. The article not only repeated and republished certain defamatory material contained in the Report, but also published additional defamatory material by inaccurately and falsely “reporting on the Report in a manner to create false impressions and conclusions and designed to increase viewership and ratings.

60. In addition to the false and defamatory statement contained above in the title, the article also incompletely, inaccurately and misleadingly quoted the autopsy report as saying; “One can only speculate as to why any treatment was performed considering no indication of dental disease or pathology” when the autopsy report actually stated: “On can only speculate as to why any treatment was performed considering no indication of dental disease or pathology **was seen in the dental radiographs dated 03/29/16.**” (emphasis added).

61. The article also contained the following false, defamatory and injurious statement along with two pictures: **“Bombshell report: An autopsy report released in July showed 14-month-old Daisy Torres (left) who died in March**

**while Dr. Melanson (right) was filling her cavities, had no dental disease.**” The pictures included with this statement were comprised of an appealing photo of the infant patient, and a lesser appealing photo of Dr. Melanson.

62. In addition to repeating and republishing the defamatory material contained in Dr. William’s Report, the article was false, defamatory and injurious, both by the above identified statements, as well as the overall gist and impression portrayed by the article that a baby died while Dr. Melanson fixed cavities when there were none.

63. The Daily Mail broadcast and transcript was false in that, **inter alia**, the baby did have dental disease and did not receive unnecessary or inappropriate treatment, did not die as a result of unnecessary treatment and did not die at the dentist’s office, while in the dentist’s chair, or as the result of any improper conduct by Dr. Melanson.

64. The Daily Mail broadcast and transcript was defamatory in that the overall gist and impression was to unfairly and falsely portray Dr. William’s Report as establishing there were no cavities, that no procedure or treatment was necessary, and that a baby died tragically and unnecessarily as a direct result of Dr. Melanson’s egregious and outrageous conduct.

### **HEALTHNUT**

65. Upon information and belief, Defendant, Erin Elizabeth Finn, owns,



manages, operates, controls and/or publishes [www.healthnutnews.com](http://www.healthnutnews.com), (“HealthNut”) a natural health publication that is within the top 20 natural health sites worldwide.

66. On or about July 16, 2016, HealthNut published an article entitled: “**CBS: NO dental disease seen in toddler who died at NW Austin dental office after unnecessary dental work**” on its website. The article not only repeated and republished certain defamatory material contained in the Report, but also published additional defamatory material by inaccurately and falsely “reporting on the Report” in a manner designed to create false impressions and conclusions and increase viewership and ratings.

67. In addition to the above statement contained in the title, which is false and defamatory in itself, the article contained the following false, defamatory and injurious statements:

- a. “A forensic review of the medical records of the toddler who died at a Northwest Austin dental office, show she had **no indication of ANY dental disease** that needed treatment.”
- b. “**In a report released to the media, from the American Board of Forensic Odontology, a review of Torres’ medical records showed her teeth to be free of any dental disease or dental restorations. Her teeth had been prepared to have stainless steel crowns placed on them but the report states the treatment was unnecessary.**”
- c. **This is happening here in Florida, too! These scammers have problems and then just go and set up shop somewhere else!**”

- d. “(I would cut my right arm off before EVER going near your frightening excuse of a clinic!)”
- e. “(A child was **KILLED** at your clinic.)”
- f. “A baby is **DEAD** from going to your poor excuse of a clinic.”
- g. “But the facts were already laid out, that sweet baby is dead now because she went to your clinic for work she didn’t need done at all!)”

68. The article also incompletely, inaccurately and misleadingly quoted the autopsy report as saying; “One can only speculate as to why any treatment was performed considering no indication of dental disease or pathology...” when the autopsy report actually stated: “On can only speculate as to why any treatment was performed considering no indication of dental disease or pathology **was seen in the dental radiographs dated 03/29/16.**” (emphasis added).

69. The article was false, defamatory and injurious, both by the above identified statements, as well as the overall gist and impression portrayed by the article that a baby needlessly died at the dentist’s office while and/or because of receiving treatment for dental disease by Dr. Melanson when none existed.

70. The article was false in that, **inter alia**, the baby did not receive unnecessary or inappropriate treatment, did not die as a result of unnecessary treatment and did not die at the dentist’s office, or as the result of any improper conduct by Dr. Melanson. The article was also false in that the American Board of Forensic Odontology did not release a report concerning the incident.

71. The Healthnut article was defamatory in that the overall gist and impression was to unfairly and falsely portray Dr. William's Report as establishing there were no cavities, that no procedure or treatment was necessary, and that a baby died tragically and unnecessarily as a direct result of Dr. Melanson's egregious and outrageous conduct.

### **WOMANISTA**

72. On information and belief, FHT owns, manages, operates, controls and/or publishes [www.womanista.com](http://www.womanista.com), a women's lifestyle publication with 6.838 million unique users and more than 10 million social followers.

73. On or about August 31, 2016, Womanista published an article entitled: **"14-Month-Old Girl Dies Under Anesthesia at the Dentist's Office"** on its website. The article not only repeated and republished certain defamatory material contained in the Report, but also published additional defamatory material by inaccurately and falsely "reporting on the Report" in a manner designed to create false impressions and conclusions and increase viewership and ratings.

74. In addition to the statement contained above in the title, which is in and of itself defamatory, the article republished by and through an embedded link ([http://www.insideedition.com/headlines/18379-baby-dies-under-anesthesia-as-dentist-fixed-cavities-but-autopsy-reveals-she-didn't-have-any](http://www.insideedition.com/headlines/18379-baby-dies-under-anesthesia-as-dentist-fixed-cavities-but-autopsy-reveals-she-didn-t-have-any)) a false and defamatory article originally published by Inside Edition.

75. The article also incompletely, inaccurately and misleadingly quoted the autopsy report as saying; “One can only speculate as to why any treatment was performed considering no indication of dental disease or pathology” when the autopsy report actually stated: “On can only speculate as to why any treatment was performed considering no indication of dental disease or pathology **was seen in the dental radiographs dated 03/29/16.**” (emphasis added).

76. The article was false, defamatory and injurious, both by the above identified statements, as well as the overall gist and impression portrayed by the article that a baby died at the dentist’s office while and/or because of receiving treatment for dental disease by Dr. Melanson when none existed.

77. The article was false in that, **inter alia**, the baby did have dental disease, did not receive unnecessary or inappropriate treatment, did not die as a result of unnecessary treatment, did not die at the dentist’s office and did not die as the result of any improper conduct by Dr. Melanson.

78. The Womanista article was defamatory in that the overall gist and impression was to unfairly and falsely portray Dr. William’s Report as establishing there were no cavities, that no procedure or treatment was necessary, and that a baby died tragically and unnecessarily as a direct result of Dr. Melanson’s egregious and outrageous conduct.

79. Upon information and belief, each Defendant entertained doubts that its

article, statements and publications were true but published them anyway.

80. Upon information and belief, each Defendant deliberately published its article and statements when it knew or should have known it was defamatory, and published such with reckless disregard of the truth.

81. Each Defendant's conduct violated professional standards of journalism ethics as exemplified by the Society of Professional Journalist ("SPJ") Code of Ethics. The SPJ Code of Ethics provides, in pertinent part:

- a. "An ethical journalist acts with integrity."
- b. "Ethical journalism should be accurate and fair."
- c. "Journalists should be honest...in gathering, reporting and interpreting information."
- d. "Journalists should...Verify information before releasing it."
- e. "Journalists should...Use original sources whenever possible."
- f. "Ethical journalism treats...subjects...as human beings deserving of respect."
- g. "Journalist should...Balance the public's need for information against potential harm or discomfort."
- h. "Journalists should...Show compassion for those who may be affected by news coverage."
- i. "Journalist should...Avoid pandering to lurid curiosity..."
- j. "Journalist should...Consider the long-term implications of the extended reach and permanence of publication."

k. “Journalist should...Abide by the same high standards they expect of others.”

82. In publishing the defamatory statements and article about Dr. Melanson, each Defendant failed to fulfill the above important ethical principles of journalism.

83. Each Defendant knew and intended that its defamatory statements and article about Plaintiff would be viewed by countless numbers of people, and would also be republished by numerous news outlets and websites, both because of the salacious and inflammatory claims made in the article, and also because republication is part of each Defendant’s strategy.

83. Each Defendant broadcast to the world false and defamatory statements about Plaintiffs in a malicious and reckless fashion thereby causing harm and damage to Plaintiffs’ reputation, economic opportunities, mental and emotional well-being, in addition to harming and damaging Plaintiff’s family.

84. Defendants published such statements verbally and in writing and graphics, and broadcast them on television and on the internet, worldwide, as described above, negligently, with actual malice, with knowledge of the falsity of the statements, and/or with reckless disregard to their truth or falsity.

85. The publication of these remarks has resulted in actionable damage to Plaintiffs’ reputation, caused loss of earnings, other economic losses, mental anguish and emotional distress, loss of enjoyment of life, humiliation, mortification,

embarrassment, shame, indignity, sleeplessness, anxiety, and other damages that may be determined during the course of discovery in this case.

86. Defendants' statements have inflicted tremendous and irreparable harm, emotional trauma, stress and heartache upon Dr. Melanson and his family. Dr. Melanson's life has been forever altered as has that of his family.

87. As to each article, publication and /or statement alleged herein to be defamatory, the article, publication and/or statement includes the entirety of such article, publication and/or statement including, without limitation, the cover headline, all text, all photographs, pictures or images, all video, and all interior text, head-lines, sub-headlines, and captions appearing in same.

88. Defendants knew, anticipated, foresaw and intended that their statements would be broadcast and would be read, watched and consumed in various forms and by countless people through various outlets across the United States and the World.

89. Although there is no shield for liability for republishing defamatory statements of a party such as Defendants have done here, Defendants' articles, statements and publications at issue herein were more than mere reporting of defamatory statements of others. Instead, the gist of such articles, statements and publications were such that a person of ordinary intelligence could conclude that a baby died because of unnecessary treatment by Dr. Melanson for dental disease that did not exist.

90. Defendants are liable for repeating or otherwise republishing the defamatory material contained in the Report of Dr. Williams and subject to liability as if they had originally published it. Each time a slanderous or libelous matter is communicated to a new person, a new publication has occurred, and provides a separate basis for liability. Thus, one who, as Defendants here –repeats or republishes a slanderous or libelous matter already published by another is subject to liability to the same extent as if they had originally published it. It is no defense that the second publisher names the author or original publisher of the libel or slander. Defendants did not fairly and accurately repeat or republish the Report of Dr. Williams. However, to the extent Defendants’ statements may have, in part, accurately reported defamatory material contained in Dr. William’s Report, they are not shielded from liability by doing so.

**F. Demand for Retraction of Defamatory Material  
pursuant to the Texas Defamation Mitigation Act.**

91. Plaintiffs hereby make demand, to the extent not previously made, pursuant to the Texas Defamation Mitigation Act, that each Defendant correct, clarify and retract, as appropriate, each and every defamatory statement described herein.

**G. Defamation by Libel and Slander**

92. Plaintiffs incorporate all the foregoing paragraphs by reference as though fully set forth herein.



93. The actions and statements of the Defendants concerning Plaintiffs as alleged above were false and constitute defamation by libel and slander of the person, character, career, and business of Dr. Melanson.

94. Defendants statements concerning Plaintiffs as specifically alleged above which damaged Dr. Melanson in his occupation and profession were defamatory *per se*.

95. To the extent Defendants statements concerning Plaintiffs as specifically alleged above were not defamatory *per se*, they were defamatory *per quod* according to the extrinsic facts and circumstances pled and proven in this case.

96. Defendants statements and publications as a whole and each of their statements explicitly and through their implications and impressions are false and defamatory.

97. Defendants statements and publications as a whole and each of their statements explicitly and through their implications and impressions were made in a grossly irresponsible manner and negligently, with want of reasonable, due care and without appropriate and reasonable fact checking, investigation and regard for accuracy.

98. Defendants statements and publications as a whole and each of their statements explicitly and through their implications and impressions were made with knowledge of their falsity or with reckless disregard for their truth or falsity.

99. Defendants conduct and statements were knowing, committed and made with actual malice, willful and wanton entitling Plaintiffs to an award of punitive damages

100. The false and defamatory statements published by the Defendants caused grievous and irreparable injury and harm to the person, character and career of Melanson, caused him to suffer loss of income, caused him extreme emotional pain and mental anguish, forever altered his life and that of his family, and caused injury to his earning capacity and reputation and goodwill.

### **G. Business Disparagement**

101. Plaintiffs incorporate all the foregoing paragraphs by reference as though fully set forth herein.

102. The actions and statements of Defendants constitute business disparagement by libel and slander of the business of Dr. Melanson.

103. The Defendants' false and defamatory statements constitute false and disparaging words about the Plaintiffs economic interest causing injury to the business reputation and goodwill of Dr. Melanson which were published with malice, and without privilege and caused special damages.

104. Defendants' conduct caused Dr. Melanson to incur expenses necessary for the defense of Dr. Melanson's business reputation.

## **H. Damages**

105. Plaintiffs incorporate all the foregoing paragraphs by reference as though fully set forth herein.

106. As a direct result of Defendants' acts and omissions alleged herein, Plaintiffs Michael Melanson, DMD and Michael Melanson, PLLC sustained and is entitled to recover:

- a. General and direct damages;
- b. Special (consequential) damages; and
- c. Exemplary damages.

## **I. Jury Demand**

107. Plaintiffs hereby demand a jury trial.

## **J. Request for Disclosure**

108. Plaintiffs request that the Defendants disclose, within 50 days of service of this request, the information or material described in TRCP Rule 194.2.


## **PRAYER**

109. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants Nancy Grace, Turner Broadcasting System, Inc., CBS Television Distribution, Mail Media, Inc., Associated Newspapers North America, Inc., Erin Elizabeth Fin, and FHT Media Holding, LLC be cited to appear and answer herein, and that on final hearing hereof Plaintiffs recover the following:

- a. Actual damages within the jurisdictional limits of the Court;
- b. Special damages;
- c. Exemplary Damages;
- d. Prejudgment and post judgment interest;
- e. Costs of suit; and
- f. All other relief to which Plaintiffs are justly entitled.

Respectfully submitted,

**McCAULEY WESTBERG, PLLC**

By: 

**Warren R. Westberg**  
State Bar No. 21213100  
[westberg@mwrlawfirm.com](mailto:westberg@mwrlawfirm.com)  
**John W. Petereit**  
State Bar No. 24013316  
[petereit@mwrlawfirm.com](mailto:petereit@mwrlawfirm.com)

8105 Rasor Blvd., Suite 221  
Plano, Texas 75024  
(214) 506-6001 Telephone  
(972) 924-9924 Facsimile

**ATTORNEYS FOR PLAINTIFFS**