

Cause No. 141-307474-19

VICTOR MIGNOGNA
Plaintiff,

v.

FUNIMATION PRODUCTIONS LLC,
JAMIE MARCHI, MONICA RIAL, AND
RONALD TOYE,
Defendants.§
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IN THE DISTRICT COURT

141ST JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

**PLAINTIFF'S OBJECTIONS TO AND MOTION TO STRIKE DEFENDANTS'
AFFIDAVITS AND EXHIBITS ATTACHED TO DEFENDANTS' MOTIONS AND
BRIEF FOR ATTORNEY'S FEES AND SANCTIONS PURSUANT TO THE TEXAS
CITIZENS PARTICIPATION ACT**

NOW COMES Plaintiff, Victor Mignogna, and hereby filed his *Objections to and Motions to Strike Defendants' Affidavits and Exhibits Attached to Defendants' Motions and Brief for Attorney's Fees and Sanctions Pursuant to the Texas Citizens Participation Act*. In support thereof, Plaintiff would respectfully show the following:

1. On November 4, 2019, each Defendant filed Motions and/or Briefs in Support of their request for attorney's fees and sanctions against Plaintiff. Plaintiff objects to and moves to strike affidavits and supporting evidence offered by Defendants in support of their requests for attorney's fees, costs, and sanctions.

2. The *Motion for Reasonable Attorney's Fees, Costs and Sanctions* filed by Defendant, Funimation Productions, LLC, is thirteen (13) pages in length and has one hundred and twelve (112) pages of exhibits attached:

a. Exhibit 1-Affidavit of John Volney

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and Exhibits

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- b. Exhibit 1A-John Volney's Resume'
- c. Exhibit 1B-Christian A. Orozco's Resume'
- d. Exhibit 1C-Lynn, Pincker, Cox and Hurst Invoices
- e. Exhibit 1F-Transcript of Excerpts from YouTube Livestream
- f. Exhibit 1G-Screenshot from YouTube Livestream
- g. Exhibit 2-Excerpts from Deposition of Vic Mignogna

3. The *Motion to Determine Sanctions and Attorney's Fees* filed by Defendant, Jamie Marchi, is nine (9) pages in length and has sixty-six (66) pages of exhibits attached:

- a. Exhibit A-Letter from T. Beard to J. Marchi-Take-Down Ltr.
- b. Exhibit B-Deposition of Victor Mignogna-Mignogna Depo.
- c. Exhibit C-Declaration of Jamie Marchi-Marchi Dec.
 - (i.) Exhibit C-1-Letter to Jamie Marchi from Unknown Individuap
- d. Exhibit D-Tweet by Stan Dahlin-Dahlin Tweet
- e. Exhibit E-Examples of "Dammit Nick" T-Shirt-Dammit Nick Shirt
- f. Exhibit F-Photographs of Plaintiff, Counsel, and Nick Rekieta-Team Photos
- g. Exhibit G-Declaration of Sam Johnson-Johnson Dec.
 - (i.) Exhibit G-1-Engagement Letter

4. The *Brief in Support of Sanctions and Attorney's Fees Pursuant to the Texas Citizen's Participation Act* filed by Defendants', Monica Rial and Ron Toye, is thirteen (13) pages in length and has two hundred and sixty-eight (286) pages of exhibits attached:

- a. Exhibit 1-Screenshots from Kiwi Farms
- b. Exhibit 2-Obituary of Louis Walter Owen

- c. Exhibit 3-Online Article from MCDmag.com about the Louis & Peaches Owen Heart Hospital
- d. Exhibit 4-Last Will and Testament of Louis Walter Owen
- e. Exhibit 5-Certificate of Formation for Rekieta Media
- f. Exhibit 6-Screenshots from Kiwi Farms
- g. Exhibit 7-Online Article from CBR.com entitled “The Vic Mignogna Lawsuit Failed, But Fan Rage Made It Worse”
- h. Exhibit 8-Online Article from Minnesota Lawyer entitled “Minnesota attorney plays soldier’s role in anime war”
- i. Exhibit 9-Email dated September 6, 2019 from unknown sender to webmaster@TarrantCounty.com along with screenshots from unknown individuals
- j. Exhibit 10-Screenshot of GoFundMe
- k. Exhibit 11-Affidavit of J. Sean Lemoine
 - (i.) JSL Exhibit C to Affidavit-Biographies from Wicks, Phillips, Gould & Martin, LLP for J. Sean Lemoine, Ethan Minshull, Jeff Mills, Jeffrey W. Hellberg, Jr. and Zachary Farrar
- l. Exhibit 12-Affidavit of Casey Erick
 - (i.) Exhibit A-Order Granting Defendants’ Motion to Dismiss Under the TCPA
 - (ii.) Exhibit B-Biography from Cowles Thompson of Casey Erick
 - (iii.) Exhibit E-Cost Report

m. Exhibit 13-Affidavit of Andrea Perez

(i) Exhibit A-Redacted Invoices from Carrington Coleman

(ii) Exhibit B-Biography from Carrington Coleman of Andrea Perez

n. Exhibit 14-Notice of Deposition dated April 25, 2019 for Plaintiff

5. For the following reasons, the following exhibits attached to the *Motions and Brief in Support of Sanctions and Attorney's Fees* should be struck from the record and/or not considered by this Honorable Court:

- a. The Affidavits of John Volney at Exhibit 1 from Defendant, Funimation Productions, LLC , J. Sean Lemoine at Exhibit 11, Casey Erick at Exhibit 12 and Andrea Perez at Exhibit 13 from Defendants', Monica Rial and Ron Toye, along with the Declaration of Sam Johnson at Exhibit G from Defendant, Jamie Marchi, are inadmissible because not only do the Affidavits/Declaration lack foundation, they are hearsay evidence under Texas Rules of Evidence Rule 801 and Rule 802 and they violate Texas Rules of Evidence Rule 902 (10)(B)(2) and (6) and are therefore inadmissible.
- b. The screenshots of law firm websites with the biographies/resumes' of John Volney and Christian Orozco at Exhibits 1A and 1B, J.Sean Lemoine, Ethan Minshull, Jeff Mills, Jeffrey W. Hellberg, Jr. and Zachary Farrar at JSL Exhibit C to Affidavit (Exhibit 11), Casey Erick at Exhibit B of Exhibit 12 and Andrea Perez Exhibit B to Exhibit 13 are hearsay under Texas Rules of Evidence Rule 801 and Rule 802, violate Texas Rules of Evidence Rule 104 and Rule 901 regarding authentication of electronic evidence and violate the "Best Evidence" Rule under Texas Rules of Evidence Rule 1004 , thereby making them inadmissible.

- c. Exhibit 1F from Defendant, Funimation Productions, LLC, is hearsay under Texas Rules of Evidence Rule 801 and Rule 802 and is irrelevant to the Court's determination of sanctions and attorney's fees, along with being harassing and included as a means to attempt to prejudice Plaintiff with the Court making these Exhibits inadmissible.
- d. Exhibit 1G from Defendant, Funimation Productions, LLC, Exhibit 1 and Exhibit 6 from Defendants' Monica Rial and Ron Toye, and Exhibit D and Exhibit E from Defendant, Jamie Marchi are hearsay under Texas Rules of Evidence Rule 801 and Rule 802, violate Texas Rules of Evidence Rule 104 and Rule 901 regarding authentication of electronic evidence and are not only irrelevant to the Court's determination of sanctions and attorney's fees, but are harassing and included as a means to attempt to prejudice Plaintiff with the Court making these Exhibits inadmissible.
- e. Exhibit F from Defendant Jamie Marchi is hearsay under Texas Rules of Evidence Rule 801 and Rule 802, violates Texas Rules of Evidence Rule 104 and Rule 901 regarding authentication of electronic evidence, violates the "Best Evidence" Rule under Texas Rules of Evidence Rule 1004, is irrelevant to the Court's determination of sanctions and attorney's fees, but is also harassing and included as a means to attempt to prejudice Plaintiff with the Court making this Exhibit inadmissible.
- f. Exhibit 9 from Defendants' Monica Rial and Ron Toye and Exhibit C-1 of Exhibit C from Defendant, Jamie Marchi are both hearsay under Texas Rules of Evidence Rule 801 and Rule 802, lack foundation and are irrelevant to the Court's determination of

sanctions and attorney's fees, along with being harassing and included as a means to attempt to prejudice Plaintiff with the Court making these Exhibits inadmissible.

- g. Exhibits 3, 7 and 8 from Defendants' Monica Rial and Ron Toye are hearsay under Texas Rules of Evidence Rule 801 and Rule 802, lack proper foundation , are irrelevant to the Court's determination of sanctions and attorney's fees, along with being harassing and included as a means to attempt to prejudice Plaintiff with the Court making these Exhibits inadmissible.
- h. Exhibit 2 and Exhibit 4 from Defendants' Monica Rial and Ron Toye are hearsay under Texas Rules of Evidence Rule 801 and Rule 802, lack proper foundation , are irrelevant to the Court's determination of sanctions and attorney's fees, along with being harassing and included as a means to attempt to prejudice Plaintiff with the Court making these Exhibits inadmissible. These two (2) exhibits are particularly egregious and offensive because they include information about a person who is not a party to this lawsuit and reference the deceased grandfather of a person who is not a party to this lawsuit.

ARGUMENT

6. For the Affidavits of John Volney at Exhibit 1 from Defendant, Funimation Productions, LLC , J. Sean Lemoine at Exhibit 11, Casey Erick at Exhibit 12 and Andrea Perez at Exhibit 13 from Defendants', Monica Rial and Ron Toye, along with the Declaration of Sam Johnson at Exhibit G from Defendant, Jamie Marchi, the Affidavits/Declarations lack foundation. To the extent that each of the Affidavits/Declaration attempt to establish a reasonable attorney fee or the amount of said fees, they are hearsay pursuant to Texas rules of Evidence 801 and 802 because they

are being used to “prove the truth of the matter asserted” which is to prove that each attorney generated attorney’s fees while working on this matter and thus, they are inadmissible as evidence. The Affidavits/Declarations violate Rule 902 (10)(B)(2) which requires the statement “Attached are ____ pages of records.” John Volney, J. Sean Lemoine, Casey Erick, Andrea Perez and Sam Johnson all state “true and correct copies” and/or “original records or exact duplicates,” but not one includes the required statutory language of the exact number of pages of records. In addition, neither J. Sean Lemoine, Casey Erick, Andrea Perez or Sam Johnson have included the required statutory language from Texas Rules of Evidence 902 (10)(B)(6) that states “It is the regular practice of the business activity to make the records.” Absent this language, none of the Affidavits/Declarations can be authenticated and thus, they are inadmissible.

7. The screenshots from firm websites of the biographies/resumes’ of John Volney and Christian Orozco at Exhibits 1A and 1B, J.Sean Lemoine, Ethan Minshull, Jeff Mills, Jeffrey W. Hellberg, Jr. and Zachary Farrar at JSL Exhibit C to Affidavit (Exhibit 11), Casey Erick at Exhibit B of Exhibit 12 and Andrea Perez Exhibit B to Exhibit 13 are hearsay under Texas Rules of Evidence Rule 801 and Rule 802 because they are out of court statements made to prove the truth of the matter asserted which is that each individual is an attorney and has qualifications in an attempt to justify the large amount of attorneys’ fees being claimed and requested making these records inadmissible. Collectively, these biographies/resumes’ violate Texas Rules of Evidence Rule 104 and Rule 901 regarding authentication of electronic evidence because they are screenshots of websites that do not indicate who authored these biographies/resumes’, if the information included is accurate and correct and therefore they lack proper foundation for relevance and admissibility. With authentication being a condition precedent of admissibility, the inability to authenticate these screenshots of law firm

websites, makes these biographies/resumes' inadmissible. Finally, these screenshots of the biographies/resumes' violate the "Best Evidence" Rule pursuant to Texas Rules of Evidence Rule 1004 because the Court cannot determine if these are original biographies/resumes. In addition, each attorney could have attached an original resume', which is located in their offices, but failed to do so thereby making these records inadmissible.

8. Exhibit 1F from Defendant, Funimation Productions, LLC, is hearsay under Texas Rules of Evidence Rule 801 and Rule 802 because a transcript is an "out of court statement" and in this case is being used to attempt to persuade the Court that Plaintiff should have sanctions entered against him because of the actions of a non-party-clearly to prove that truth of the matter asserted by Defendants'-that sanctions should be awarded against Plaintiff for the actions of people who Plaintiff associates with. This exhibit is completely irrelevant to the Court's determination of sanctions and attorney's fees, along with being harassing and included to attempt to prejudice Plaintiff with the Court making this Exhibit inadmissible.

9. Exhibit 1G from Defendant, Funimation Productions, LLC, Exhibit 1 and Exhibit 6 from Defendants' Monica Rial and Ron Toye, and Exhibit D and Exhibit E from Defendant, Jamie Marchi are hearsay under Texas Rules of Evidence Rule 801 and Rule 802 because these screenshots of websites are statements made out of court and are being offered to prove the truth of the matter asserted by Defendants'-that sanctions should be awarded against Plaintiff for the actions of people who Plaintiff associates with. These exhibits also violate Texas Rules of Evidence Rule 104 and Rule 901 regarding authentication of electronic evidence because they are screenshots of websites that do not indicate who authored these records, if the information included is accurate and correct and therefore they lack proper foundation for relevance and admissibility. With authentication being a

condition precedent of admissibility, the inability to authenticate these screenshots of websites, makes these screenshots inadmissible. In addition, these screenshots are not only irrelevant to the Court's determination of sanctions and attorney's fees but are harassing and included to attempt to prejudice Plaintiff with the Court making these Exhibits inadmissible.

10. Exhibit F from Defendant Jamie Marchi is hearsay under Texas Rules of Evidence Rule 801 and Rule 802, because these photos are out of court statements made to prove the truth of the matter asserted by Defendants' that a large amount of sanctions should be awarded against Plaintiff for the actions of people who Plaintiff associates with. These photos violates Texas Rules of Evidence Rule 104 and Rule 901 regarding authentication of electronic evidence because there is no indication of who took the pictures, when they were taken, if they are an accurate representation of what is being shown and not way to know if these pictures have been photoshopped by a third-party and therefore they lack proper foundation for relevance and admissibility. With authentication being a condition precedent of admissibility, the inability to authenticate these photos, makes these screenshots inadmissible. In addition, these photos are not only irrelevant to the Court's determination of sanctions and attorney's fees but are harassing and included as a means to attempt to prejudice Plaintiff with the Court making these photos inadmissible.

- i. Exhibit 9 from Defendants' Monica Rial and Ron Toye and Exhibit C-1 of Exhibit C from Defendant, Jamie Marchi are both hearsay under Texas Rules of Evidence Rule 801 and Rule 802 because they are an email from an unidentified person and a letter from an unidentified person which are out of court statements used to prove that Plaintiff directed/caused people to initiate threats against others including the Court.. Not only is this argument flawed and ridiculous on the part of Defendants', but it is

clearly hearsay within the definition of the Texas Rules of Evidence Rule 801. Both Exhibits lack proper foundation and cannot be properly authenticated because the person who sent this email and letter are unidentified and no Defendant provides the proof needed to properly authenticate them. Particularly the letter that Defendant Jamie Marchi claims is a threat against her because without a handwriting expert or the letter being signed, there is no way to know if this letter is fake. Finally, these Exhibits are irrelevant to the Court's determination of sanctions and attorney's fees because threats from anonymous people that can't be verified have not caused attorneys' fees to be generated. These Exhibits along with being harassing are included to attempt to prejudice Plaintiff with the Court making these Exhibits inadmissible.

- j. Exhibits 3, 7 and 8 from Defendants' Monica Rial and Ron Toye are hearsay under Texas Rules of Evidence Rule 801 and Rule 802 because they are online articles (out of court statements) being used to prove the truth of the matter asserted by these Defendants' that any fan rage has been caused by the Plaintiff thereby justifying an outrageous amount requested for sanctions against Plaintiff and to prove the Defendants' totally incredible "conspiracy" that Louis Owen, deceased grandfather of a non-party, is wealthy and thus, somehow a non-parties grandfather's wealth should be considered when ordering sanctions against Plaintiff. These articles, lack proper foundation because there is no way to authenticate if these articles are a true and accurate reflection, who authored these articles, what date these articles were written and if these articles are real or fake (created by Defendants'). Furthermore, these online articles are irrelevant to the Court's determination of sanctions and attorney's fees

because fans being enraged by the Defendants' or the Court is not controlled by the Plaintiff and to suggest otherwise is insane and an illogical argument. These online articles along with being harassing to Plaintiff, opposing counsel and non-parties are included as a means to attempt to prejudice Plaintiff with the Court causing these Exhibits to be inadmissible.

- k. Exhibit 2 and Exhibit 4 from Defendants' Monica Rial and Ron Toye are hearsay under Texas Rules of Evidence Rule 801 and Rule 802 because the obituary and Last Will and Testament of a non-party who is deceased are out of court statements being used by Defendants' to argue to the Court that a deceased person's wealth and the fact that this upstanding, philanthropic human being who is revered in Tyler, Texas happens to be the grandfather of a non-party who is the target of the Defendants' rage should have this wealth considered when the Court determines if sanctions should be awarded against Plaintiff. Exhibit 2 lacks proper foundation because it is a screenshot of an obituary on a website and as discussed previously is incapable of being properly authenticated by Defendants since there is no way to know if this obituary is a true and accurate copy, if this website is a secure website or who authored this obituary. Both Exhibits 2 and 4 are irrelevant to the Court's determination of sanctions and attorney's fees because a non-party's wealth should not be used to determine if Plaintiff should pay sanctions. Both Exhibits, along with being harassing to Plaintiff, who never knew this person, co-counsel and a non-party are included as a means to attempt to prejudice Plaintiff with the Court making these Exhibits inadmissible. These two (2) exhibits are particularly heinous and offensive because they include

information about a person who is not a party to this lawsuit and reference the deceased grandfather of a person who is not a party to this lawsuit in an attempt to create some far-fetched conspiracy to justify awarding attorneys' fees and to order Plaintiff to pay sanctions.

PRAYER

WHEREFORE, Plaintiff requests the Court consider Plaintiff's objections to the Affidavits and Exhibits submitted by Defendants', grant Plaintiff's request to strike these Exhibits and for any further and such relief the Court deems necessary, just and proper under the circumstances.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on all parties as required by Texas Rules of Civil Procedure.



Ryan Sellers