

CAUSE NO. 141-307474-19

VICTOR MIGNOGNA,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	141ST JUDICIAL DISTRICT
FUNIMATION PRODUCTIONS, LLC,	§	
JAMIE MARCHI, MONICA RIAL,	§	
AND RONALD TOYE,	§	
	§	
Defendants.	§	TARRANT COUNTY, TEXAS

**FUNIMATION PRODUCTIONS, LLC'S RESPONSE TO PLAINTIFF'S
MOTION TO CONTINUE HEARING ON TCPA MOTIONS**

The Court should deny Plaintiff Vic Mignogna's Motion to Continue the hearing on Defendant Funimation Productions, LLC's TCPA Motion to Dismiss ("TCPA Motion") for the following reasons:

First, Plaintiff has had more than five weeks to respond to Funimation's TCPA Motion. Funimation filed its TCPA Motion on July 1, 2019, within the statute's 60-day deadline, and served its notice of hearing on July 3, 2019. Tex. Civ. Prac. & Rem. Code § 27.003(b). There are 36 days between the July 3rd notice and the August 8th hearing date. Because Plaintiff has had plenty of time to draft its response, and Plaintiff has made no specific showing that it needs additional time to respond to Funimation's motion, Funimation's TCPA Motion should go forward as originally scheduled.

Second, the Court should not hold multiple hearings for evidentiary rulings and the disposition of Funimation's TCPA Motion, which is what Plaintiff is asking the Court to do by requesting that the Court continue Funimation's TCPA Motion but keep Plaintiff's Motion to Strike Funimation's Evidence on the Court's docket for August 8th. Just like a summary judgment

hearing, the Court and the parties can address both the substantive components of Funimation's TCPA Motion and Plaintiff's evidentiary objections (by submission or oral argument) at the hearing on August 8th. The Court should not allow Plaintiff to derail the hearing on Funimation's TCPA Motion by quibbling about evidentiary matters that the Court can easily resolve without longwinded arguments from either side.¹

Finally, any supplementation of the record by Funimation before August 8th does not warrant or require a continuance. None of the facts put into the record by Funimation are new to Plaintiff; nor has Plaintiff made any showing that he is unable to file a response to Funimation's TCPA Motion before August 8th due to the supplementation. Moreover, Plaintiff is now at the point in his case where he must show the Court that he has clear and specific evidence for each of the elements of his claims pleaded against Funimation. Under Texas Supreme Court precedent, the facts alleged in Plaintiff's amended petition clearly establish that the TCPA applies to Plaintiff's lawsuit against Funimation and thus the burden has shifted to Plaintiff to provide clear and specific evidence for each of the elements of his claims. *See Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017) ("Indeed, it would be impossible to determine the basis of a legal action, and thus the applicability of the Act, without considering the plaintiff's petition When it is clear from the plaintiff's pleadings that the action is covered by the Act, the defendant need show no more."). Accordingly, Plaintiff should be worried about his evidentiary burden under the TCPA and not be trying to derail the August 8th hearing on Funimation's TCPA Motion.

¹ Plaintiff's evidentiary objections should be overruled, as will be shown in Funimation's response to Plaintiff's motion to strike, which Funimation intends to file by Monday, August 5, 2019. To the extent necessary, Funimation's response may include supplemental affidavits to address the form objections made by Plaintiff.

For all of these reasons, Funimation respectfully requests that the Court deny Plaintiff's motion to continue. The Court should hear Funimation's TCPA Motion on August 8th, as originally noticed.

Dated: July 30, 2019

Respectfully Submitted,

/s/ John Volney

John Volney

Texas Bar No. 24003118

jvolney@lynnllp.com

Christian A. Orozco

State Bar No. 24107886

corozco@lynnllp.com

LYNN PINKER COX & HURST, LLP

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

Telephone: (214) 981-3800

Facsimile: (214) 981-3839

**ATTORNEYS FOR DEFENDANT
FUNIMATION PRODUCTIONS, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of foregoing has been served upon counsel of record via the court's e-filing service on July 30, 2019.

Ty Beard
ty@beardandharris.com
Carey-Elisa Christie
carey@beardandharris.com
Kristina M. Ross
kristina@beardandharris.com
Jim E. Bullock
jim@beardandharris.com
BEARD HARRIS BULLOCK HUGHES
100 Independence Place, Suite 101
Tyler, Texas 75703

ATTORNEYS FOR PLAINTIFF

Samuel H. Johnson
sam@johnsonsparks.com
JOHNSON SPARKS, PLLC
7161 Bishop Road, Suite 220
Plano, Texas 75024

ATTORNEY FOR DEFENDANT JAMIE MARCHI

Casey S. Erick
cerick@cowlesthompson.com
COWLES & THOMPSON, PC
901 Main Street, Suite 3900
Dallas, Texas 75202

Andrea Perez
aperez@kesslercollins.com
KESSLER COLLINS, PC
2100 Ross Avenue, Suite 750
Dallas, Texas 75201

ATTORNEYS FOR DEFENDANTS MONICA RIAL AND RONALD TOYE

/s/ John Volney

John Volney