

CAUSE NO. 141-307474-19

VICTOR MIGNOGNA,
Plaintiff,

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IN THE DISTRICT COURT

v.

141ST JUDICIAL DISTRICT

**FUNIMATION PRODUCTIONS, LLC,
JAMIE MARCHI, MONICA RIAL AND
RONALD TOYE**
Defendants.

TARRANT COUNTY, TEXAS

**DEFENDANT JAMIE MARCHI’S RESPONSE TO
PLAINTIFF’S MOTION TO CONTINUE HEARING**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JAMIE MARCHI (“Jamie”), Defendant in the above-styled and numbered cause, and files this Original Answer, and would respectfully show the Court the following:

I. PROCEDURAL BACKGROUND

1. Plaintiff initiated this lawsuit on April 18, 2019. Jamie filed her original answer on May 31, 2019, well before her deadline to do so. On June 26, 2019, Plaintiff gave his deposition, which was scheduled without first conferring with Jamie or her counsel. Again, rather than asking the parties to delay, Jamie accommodated such scheduling. On July 19, 2019, Jamie filed her Motion to Dismiss Pursuant to the Texas Citizens Participation Act (the “TCPA Motion”). With the other defendants in this cause having set their own TCPA motions for hearing on August 8, 2019 and in the interest of judicial economy, Jamie set her hearing on August 8, 2019 so that the Court could take up these similar motions all at once.

II. ARGUMENT

2. Though Plaintiff complains about having to read a lot in order to prepare for the August 8th hearing and respond to the Defendants’ respective motions to dismiss, the fact of the

matter is that Jamie's TCPA Motion presented only 3 pages not already in Plaintiff's file – Jamie's sworn declaration. The other exhibits to Jamie's TCPA Motion – half of which were generated by Plaintiff's counsel - are:

- a. Jamie's Twitter statement which prompted Plaintiff's lawsuit;
- b. Plaintiff's Demand to Preserve Evidence sent by his counsel;
- c. Plaintiff's Cease and Desist/Retraction Demand sent by his counsel; and
- d. Plaintiff's Deposition.

3. Plaintiff must show that he will be prejudiced if the Court retains the current setting on Jamie's TCPA Motion. Though he alleges the supposed inconvenience of having to read a lot of pages, Plaintiff has wholly failed to claim, let alone establish, prejudice. Just because the hearing on Jamie's TCPA Motion *could* be continued does not mean it *should* be continued, and certainly not based on the record before this Court.

4. Plaintiff also ignores his burden under the Texas Citizens Participation Act ("TCPA"). Jamie's burden initially was to simply establish that the TCPA applies to Plaintiff's claims against her – a burden easily met under the circumstances in this case. *See* TEX. CIV. PRAC. & REM. CODE §§27.003, 27.005. Moreover, Plaintiff's own petition well establishes that the TCPA applies. *See Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017). The burden then shifts to *Plaintiff* to bring establish by "clear and specific evidence a prima facie case for each essential element" of his claims. TEX. CIV. PRAC. & REM. CODE §27.005(c). Plaintiff has not alleged – and cannot establish – that more time to read the 3 pages comprising Jamie's declaration will somehow impact his ability to respond to Jamie's TCPA Motion, nor that Plaintiff will be prejudiced by proceeding on August 8th.

5. Finally, to the extent a motion to continue a TCPA Motion should be held to the same standard as a motion to continue trial or a hearing on a motion for summary judgment, Plaintiff or his counsel should be required to verify the motion. *See* TEX. R. CIV. P. 251. This is particularly so where Plaintiff has represented to the Court that Plaintiff's motion is "sought so that justice may be served and not for delay."¹

WHEREFORE, PREMISES CONSIDERED, Defendant Jamie Marchi prays that the Court deny Plaintiff's Motion to Continue Hearing on TCPA Motions to Dismiss, and for such other and further relief, either at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted,

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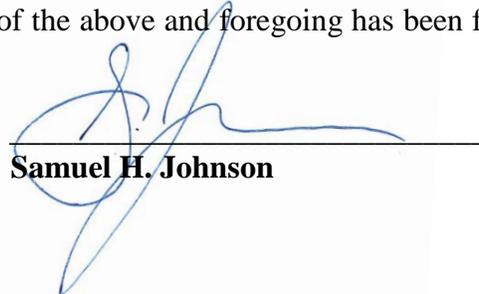
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ATTORNEY FOR DEFENDANT JAMIE MARCHI

CERTIFICATE OF SERVICE

The undersigned does hereby certify that, in accordance with Rule 21a of the *Texas Rules of Civil Procedure*, a true and correct copy of the above and foregoing has been forwarded to all counsel of record on July 30, 2019.


Samuel H. Johnson

¹ Pl.'s Mtn. p.2, §II.