

July 30, 2019

**VIA ECF**

Hon. Judge John P. Chupp  
Tom Vandergriff Civil Courts Building  
3rd Floor  
100 North Calhoun Street  
Fort Worth, Texas, 76196

Re: Cause No. 141-307474-19; *Mignogna v. Funimation, et al.* currently pending  
before the 141st District Court of Tarrant County, Texas.

Dear Judge Chupp:

I write on behalf of Monica Rial and Ron Toye to address Plaintiff's Motion to Continue Hearing on TCPA Motion to Dismiss (the "Continuance"), which the Court has set for telephonic hearing on August 1, 2019.

**A Brief Timeline**

There are three Motions to Dismiss pursuant to the Texas Citizens Participation Act ("TCPA") currently before the Court. Plaintiff, who filed this lawsuit on April 19, 2019, has between 14 and 35 days to prepare a Response before the currently set hearing on August 8.

- July 1, 2019: Funimation TCPA Motion – noticed July 3, 2019.
- July 18, 2019: Rial/Toye TCPA Motion ("Rial/Toye Motion") – noticed July 23, 2019.<sup>1</sup>
- July 18, 2019: Jamie March TCPA Motion – noticed July 24, 2019.

**Plaintiff Examines the Rial/Toye Motion Exhibits and Threatens Sanctions**

On July 25, 2019, at 9:08 a.m., Plaintiff's counsel (Ty Beard) demanded withdrawal of almost all of the exhibits attached to the Rial/Toye Motion, and attempted to identify specific legal objections to the various exhibits.<sup>2</sup> Mr. Beard also threatened to seek sanctions.

This email is included in its entirety so that the Court can compare this email to Plaintiff's assertion (yesterday) that he needs more time to respond to the TCPA Motions.

---

<sup>1</sup> On July 30, 2019, Ms. Rial and Mr. Toye filed a Supplemental Motion to Dismiss, attaching two affidavits confirming allegations against Plaintiff that Co-Defendant Funimation investigated, and two affidavits confirm that Ms. Rial and Mr. Toye had nothing to do with Plaintiff's loss of convention invites.

<sup>2</sup> A true and correct copy of this email is included in the body of this letter. The highlights are my own. I have attached a clean version as Exhibit A.

**From:** Ty Beard <ty@beardandharris.com>

**Sent:** Thursday, July 25, 2019 9:08 AM

**To:** Casey Erick (cerick@cowlesthompson.com) <cerick@cowlesthompson.com>; Sean Lemoine <sean.lemoine@wickphillips.com>; Andrea Perez <APerez@kesslercollins.com>

**Cc:** Carey Christie <carey@beardandharris.com>; Jim Bullock <jim@beardandharris.com>

**Subject:** Motion to Strike and Motion for Sanctions under TCPRC 9, 10 and/or TRCP 13

Counsel, we are planning to file a Motion to Strike most of the Exhibits attached to your TCPA Motion to Dismiss. Specifically, we believe that these Exhibits contain inadmissible evidence – hearsay, statements that cannot be not be readily controverted by opposing parties, improper statements of legal conclusions, incompetent because they state facts outside the affiants’ personal knowledge, they fail to properly authenticate exhibits attached to the exhibits, and incompetent because they contain unsubstantiated opinions or unilateral subjective determinations of facts. This is also true of most of the exhibits attached to Mr. Mignogna’s deposition.

In addition, we will very likely file a motion to have your clients sanctioned and to strike your pleadings under TCPRC Rule 9, TCPRC Rule 10 and TRCP Rule 13. As you are fully aware, your clients’ original answer and your Motion to Dismiss contains numerous factual allegations made in bad faith, that are unrelated to any issue in this case and were made solely to harass the plaintiff.

To avoid our Motion to Strike, you will need to agree to withdraw the following exhibits from your Motion to Dismiss:

Exhibits 1-13, 15-18, and 21 of Exhibit A (hearsay)

Exhibit B (hearsay)

Exhibits C, D, F (hearsay; unsubstantiated opinions or unilateral subjective determinations of facts/statements that cannot be not be readily controverted by opposing parties)

Exhibits E, G, K (hearsay; unsubstantiated opinions or unilateral subjective determinations of facts/statements that cannot be not be readily controverted by opposing parties; fails to properly authenticate exhibits to the affidavit)

Exhibit H (unsubstantiated opinions or unilateral subjective determinations of facts/statements that cannot be not be readily controverted by opposing parties))

Exhibit J (states legal conclusion; hearsay; unsubstantiated opinions or unilateral subjective determinations of facts/statements that cannot be not be readily controverted by opposing parties)

Exhibit M (hearsay; unsubstantiated opinions or unilateral subjective determinations of facts/statements that cannot be not be readily controverted by opposing parties; contains contradictory statements)

Exhibit P (improper foundation for exhibits attached to affidavit; hearsay)

Exhibit R (improper statements of legal conclusions; not in proper form; TCPRC 132.001(a) only allows unsworn declarations to substitute for affidavits if the affidavits “required by statute or required by a rule, order, or requirement adopted as provided by law.”)

To avoid our Motion for Sanctions, you will need to agree to withdraw your Motion to Dismiss and agree to amend your Original Answer and delete the numerous irrelevant and harassing statements.

Please advise whether (a) you will agree to withdraw the listed exhibits from your Motion to Dismiss; (b) whether you agree to amend your Original Answer and delete the numerous irrelevant and harassing statements; and (c) whether you will oppose our motions.

--Ty

A little over an hour later, Plaintiff’s counsel asserted he would file a motion to strike on

July 27 or 28.<sup>3</sup>

**The Basis for a Continuance**

I ask that the Court compare the specificity of the foregoing email with the conclusory assertion in the Continuance that:

Plaintiff needs additional time to review nearly 750 pages of material attached to Defendants' motions (over 600 pages of which were filed within the past 6 business days) and prepare a response to Defendants' motions.<sup>4</sup>

As shown by the detail above, not only has Plaintiff's counsel comprehensively reviewed the Rial/Toye Motion, Plaintiff was prepared last week to file a Motion to Strike the exhibits Plaintiff now complains of, as well as a Motion for Sanctions on July 29, 2019. Moreover, almost all of the "750 pages of material attached to Defendants' motions" were exhibits to depositions that occurred in June, or have been in the public domain for months, and admittedly reviewed by Plaintiff and his counsel.

Why has Plaintiff not filed his planned Motions to Strike and for Sanctions?

Because filing these Motions would undermine his Continuance.

Plaintiff and his counsel have had ample time to review the Motions to Dismiss. In fact, Mr. Beard has even taken time to appear on YouTube to discuss the Motions and the depositions in this case.<sup>5</sup> Plaintiff will suffer no prejudice from this Court's denial of the Continuance, as Plaintiff and his counsel have shown that they have reviewed all of the exhibits in the Motions to Dismiss, and have admitted that they would be ready for a hearing on a week's notice.

**The Procedure Going Forward**

Ms. Rial and Mr. Toye agree with Funimation that evidentiary objections (subject to the Court's preference obviously) may be decided via submission. The benefit to having all three TCPA Motions decided at the same time is that several issues before the Court do not need multiple movants rehashing the same legal or factual arguments, as the Court's determination will be the same for all Defendants. For example:

---

<sup>3</sup> See email from Ty Beard to Sean Lemoine, dated July 26, 2019 at 10:27 a.m. ("Assuming Rial/Toye's counsel opposes, we will file a similar motion to strike Rial/Toye's evidence today or tomorrow. We haven't evaluated filing a motion to strike Marchi's evidence. But if we do, they will likely be filed by Monday."). See Exhibit B attached hereto. The highlights are mine.

<sup>4</sup> Continuance, at p. 2.

<sup>5</sup> See <https://www.youtube.com/watch?v=ZI9F-Zrpo-8>, Mr. Beard's latest appearance on Nick Rekieta's YouTube channel on July 18, 2019 (at the 1:12:14 mark, Mr. Beard even states that Ms. Rial and Mr. Toye "could try to set a hearing as early as the very next week. And we'll be ready to go if they do that. We haven't been just kind of sitting around just going oh my gosh what are they gonna do? We've been doing our work, too.").

- (1) Whether discussion about Plaintiff's alleged inappropriate actions (both sexual and non-sexual) are a matter of public concern;
- (2) Whether Plaintiff is a public figure, limited public figure, or private citizen; and
- (3) Whether Plaintiff is libel proof.

**Prejudice to Ms. Rial and Mr. Toye**

The TCPA exists to expedite frivolous, bullying litigation intended to chill citizen speech. Plaintiff filed this lawsuit over four months ago. If Plaintiff cannot establish a prima facie case for each element of his claims by now, it is unlikely that three weeks would change that.

But there is significant prejudice to the Defendants should the Court grant this Continuance. Plaintiff's counsel regularly appears on YouTube to discuss the case and raise money for the GoFundMe campaign that continues to insulate Plaintiff from paying legal fees. It is in his interest to further delay this case and force Defendants to expend fees combating unnecessary evidentiary motions, threatened motions for sanctions, or strategic motions for continuance.

Finally, Ms. Rial and Mr. Toye request that the Court hear the Rial/Toye Motion as expeditiously as possible. The Court may not be aware of it yet, but there is a disgusting level of online vitriol directed at Ms. Rial, Mr. Toye, Ms. Marchi, and other witnesses who have provided testimony against Plaintiff.<sup>6</sup> Plaintiff and his legal counsel should not be given more time to weaponize this case against the Defendants.

Regards,



J. Sean Lemoine

Attachments

cc: All counsel of record *via* ECF.

---

<sup>6</sup> See Declaration of Monica Rial, ¶ 3 ("Since Plaintiff filed this lawsuit, Ron Toye and I have been harassed by Plaintiff's supporters. I have been a victim of doxing by his fans online on a website called Kiwi Farms. Kiwi Farms is a website that is known for encouraging the harassment, bullying, and stalking of individuals. Information about where I live, my date of birth, and other information about me has been posted on Kiwi Farms in attempts to incite others to stalk, bully, harass, and intimidate me. Plaintiff's fans have contacted us directly, sending us emails and calling our places of employment."), attached as Ex. R to Rial/Toye Motion.

# EXHIBIT A

**From:** Ty Beard <[ty@beardandharris.com](mailto:ty@beardandharris.com)>

**Date:** July 25, 2019 at 9:08:12 AM CDT

**To:** "Casey Erick ([cerick@cowlesthompson.com](mailto:cerick@cowlesthompson.com))" <[cerick@cowlesthompson.com](mailto:cerick@cowlesthompson.com)>, Sean Lemoine <[sean.lemoine@wickphillips.com](mailto:sean.lemoine@wickphillips.com)>, Andrea Perez <[APerez@kesslercollins.com](mailto:APerez@kesslercollins.com)>

**Cc:** Carey Christie <[carey@beardandharris.com](mailto:carey@beardandharris.com)>, Jim Bullock <[jim@beardandharris.com](mailto:jim@beardandharris.com)>

**Subject: Motion to Strike and Motion for Sanctions under TCPRC 9, 10 and/or TRCP 13**

Counsel, we are planning to file a Motion to Strike most of the Exhibits attached to your TCPA Motion to Dismiss. Specifically, we believe that these Exhibits contain inadmissible evidence – hearsay, statements that cannot be not be readily controverted by opposing parties, improper statements of legal conclusions, incompetent because they state facts outside the affiants' personal knowledge, they fail to properly authenticate exhibits attached to the exhibits, and incompetent because they contain unsubstantiated opinions or unilateral subjective determinations of facts. This is also true of most of the exhibits attached to Mr. Mignogna's deposition.

In addition, we will very likely file a motion to have your clients sanctioned and to strike your pleadings under TCPRC Rule 9, TCPRC Rule 10 and TRCP Rule 13. As you are fully aware, your clients' original answer and your Motion to Dismiss contains numerous factual allegations made in bad faith, that are unrelated to any issue in this case and were made solely to harass the plaintiff.

To avoid our Motion to Strike, you will need to agree to withdraw the following exhibits from your Motion to Dismiss:

Exhibits 1-13, 15-18, and 21 of Exhibit A (hearsay)

Exhibit B (hearsay)

Exhibits C, D, F (hearsay; unsubstantiated opinions or unilateral subjective determinations of facts/statements that cannot be not be readily controverted by opposing parties)

Exhibits E, G, K (hearsay; unsubstantiated opinions or unilateral subjective determinations of facts/statements that cannot be not be readily controverted by opposing parties; fails to properly authenticate exhibits to the affidavit)

Exhibit H (unsubstantiated opinions or unilateral subjective determinations of facts/statements that cannot be not be readily controverted by opposing parties))

Exhibit J (states legal conclusion; hearsay; unsubstantiated opinions or unilateral subjective determinations of facts/statements that cannot be not be readily controverted by opposing parties)

Exhibit M (hearsay; unsubstantiated opinions or unilateral subjective determinations of facts/statements that cannot be not be readily controverted by opposing parties; contains contradictory statements)

Exhibit P (improper foundation for exhibits attached to affidavit; hearsay)  
Exhibit R (improper statements of legal conclusions; not in proper form; TCPRC  
132.001(a) only allows unsworn declarations to substitute for affidavits if the affidavits  
“required by statute or required by a rule, order, or requirement adopted as provided  
by law.”)

To avoid our Motion for Sanctions, you will need to agree to withdraw your Motion to  
Dismiss and agree to amend your Original Answer and delete the numerous irrelevant  
and harassing statements.

Please advise whether (a) you will agree to withdraw the listed exhibits from your  
Motion to Dismiss; (b) whether you agree to amend your Original Answer and delete  
the numerous irrelevant and harassing statements; and (c) whether you will oppose  
our motions.

--Ty

# EXHIBIT B



**From:** Ty Beard <[ty@beardandharris.com](mailto:ty@beardandharris.com)>

**Sent:** Thursday, July 25, 2019 10:27 AM

**To:** Sean Lemoine <[sean.lemoine@wickphillips.com](mailto:sean.lemoine@wickphillips.com)>; Jim Bullock <[jim@beardandharris.com](mailto:jim@beardandharris.com)>; Carey Christie <[carey@beardandharris.com](mailto:carey@beardandharris.com)>; [cerick@cowlesthompson.com](mailto:cerick@cowlesthompson.com); [APerez@kesslercollins.com](mailto:APerez@kesslercollins.com); [jvolney@lynnllp.com](mailto:jvolney@lynnllp.com); [sam@johnsonsparks.com](mailto:sam@johnsonsparks.com)

**Subject:** Reschedule Hearing Date

Counsel, as you know, we've filed a Motion to Strike Evidence Offered in Support Of Defendant Funimation's Motion to Dismiss.

Assuming Rial/Toye's counsel opposes, we will file a similar motion to strike Rial/Toye's evidence today or tomorrow. We haven't evaluated filing a motion to strike Marchi's evidence. But if we do, they will likely be filed by Monday.

Assuming Rial/Toye opposes, we also intend to file a Motion for Sanctions and to Strike Pleadings under TRCP 13, TCPRC 9 and/or TCPRC 10. We haven't evaluated whether we will do the same regarding Jamie Marchi. But if we do, these motions will likely be filed by Monday.

The earliest date Jeff has is August 8, so we've set our Motion to Strike Evidence Offered in Support Of Defendant Funimation's Motion to Dismiss. We will set our other motions for the same time and date once they're filed.

Since the court's ruling on these motions will obviously affect our response to the Motions to Dismiss, will you agree to reschedule the August 8 hearing on the Motions to Dismiss?

I think a three week extension is all that would be required.

If you aren't willing to agree to an extension of time, please let me know and I'll file a motion with the court and set a hearing.

--Ty

**From:** Jeff E. Fisher <[JEFisher@TarrantCounty.com](mailto:JEFisher@TarrantCounty.com)>

**Sent:** Thursday, July 25, 2019 9:40 AM

**To:** Ty Beard <[ty@beardandharris.com](mailto:ty@beardandharris.com)>

**Subject:** RE: Hearing Setting Cause No. 141-307474-19

I am setting for same time as others. August 8 at 130. That is the first date I have available

**Jeff Fisher**

Court Coordinator  
141<sup>st</sup> District Court  
100 N. Calhoun St  
Fort Worth, TX 76102

817-884-1992  
[JEFisher@TarrantCounty.com](mailto:JEFisher@TarrantCounty.com)



**From:** Ty Beard <[ty@beardandharris.com](mailto:ty@beardandharris.com)>  
**Sent:** Thursday, July 25, 2019 9:23 AM  
**To:** Jeff E. Fisher <[JEFisher@TarrantCounty.com](mailto:JEFisher@TarrantCounty.com)>  
**Subject:** Hearing Setting Cause No. 141-307474-19

**EXTERNAL EMAIL ALERT! Think Before You Click!**

---

Hey Jeff. I would like to set a hearing on our Plaintiff's Objections to And Motion to Strike Evidence Offered in Support Of Defendant Funimation's Motion to Dismiss. What availability does the court have for Friday August 2 or Monday-Wednesday of the following week?

--Ty