

CAUSE NO. 141-307474-19

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

DEFENDANTS' OMNIBUS OBJECTIONS TO PLAINTIFF'S TCPA EVIDENCE

Defendants Funimation Productions, LLC, Monica Rial, Ronald Toye, and Jamie Marchi (collectively, "Defendants") hereby file these Omnibus Objections to Plaintiff's Texas Citizens Participation Act ("TCPA") Evidence, and respectfully request that the same be stricken from the record and/or disregarded.¹

On September 2, 2019, around 10:20 p.m., Plaintiff filed his Second Amended Petition. Even if the Court does not strike the Second Amended Petition, these objections apply to the new declarations of Chuck Huber, Chris Slatosch, and Vic Mignogna.²

¹ Rather than file three (3) separate set of objections that create three (3) corresponding replies, the Defendants file this Omnibus Objection for the convenience of the Court. On August 31, 2019, after the deadline set by the parties Rule 11 Agreement, Plaintiff filed his Response to Defendants' TCPA Motions to Dismiss (the "Response") and Objections to and Motion to Strike Evidence Offered in Support of Defendants' Motions to Dismiss and Defendants' Supplemental Evidence Filed in Support of Defendants' TCPA Motions to Dismiss and Supplemental ("Motion to Strike") See docket; see also Rule 11 Agreement (dated on Aug 6, 2019) ("Plaintiff will file his responses to the TCPA Motions and any objections/motions to strike on or before August 30, 2019."). Defendants do not waive their objection to timeliness by submitting these objections.

² Just prior to this filing, Plaintiff withdrew the Affidavits of Chuck Huber, Chris Slatosch, and Vic Mignogna.

I.
ARGUMENT AND AUTHORITIES

A. The Standards for General Evidentiary Objections.

This Court is well aware of the evidentiary rules and the prohibition on evidence that is not properly authenticated, constitutes hearsay, lacks personal knowledge or foundation for the alleged statements or conclusions, constitutes speculation, and/or is irrelevant. *Hall v. Douglas*, 380 S.W.3d 860, 876-77 (Tex. App.—Dallas 2012, no pet.) (holding that the trial court did not err in excluding affidavit testimony that was speculative, without foundation and personal knowledge, and conclusory); *Trejo v. Laredo Nat’l Bank*, 185 S.W.3d 43, 51 (Tex. App. – San Antonio 2005, no pet.) (factual conclusions improper and the defect is not waivable); *Paragon Gen. Contractors, Inc. v. Larco Const., Inc.*, 227 S.W.3d 876, 883 (Tex. App.—Dallas 2007, no pet.) (holding that “[a] conclusory statement is one that does not provide the underlying facts to support the conclusion”); *Souder v. Cannon*, 235 S.W.3d 841, 850–51 (Tex. App.—Fort Worth 2007, no pet.) (rejecting hearsay evidence allowed by the trial court).³ A persons beliefs about facts and/or speculative opinion is legally insufficient evidence. *See Kerlin v. Arias*, 274 S.W.3d 666, 668 (Tex. 2008);⁴ *United Way v. Helping Hands Lifeline Found.*, 949 S.W.2d 707, 711 (Tex. App. – San Antonio 1997, writ denied) (“Opinion testimony that is based on speculation or conjecture lacks probative value.”).

³ *See MVS Int’l Corp. v. Int’l Advert. Sols., LLC*, 545 S.W.3d 180, 192 (Tex. App.—El Paso 2017, no pet.) (noting application of the evidentiary rules to affidavits in the TCPA context).

⁴ (“First, the only representation Castillo makes about the truth of her affidavit is that ‘[a]ll statements contained herein are true and correct to the best of my personal knowledge and belief.’ To have probative value, an affiant ‘must swear that the facts presented in the affidavit reflect his personal knowledge.’ *In re E.I. DuPont de Nemours and Co.*, 136 S.W.3d 218, 224 (Tex.2004). An affiant’s *belief* about the facts is legally insufficient. *Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex.1996); *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex.1984).”).

Further, and as relevant as described below, “sham affidavits” are inadmissible absent an explanation of why a contradiction exists between the prior deposition and late affidavit. *See Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 87, 90 (Tex. 2018)⁵ Finally, proper evidence citation is required as trial courts and the appellate courts have neither the time nor obligation to scour a voluminous record for evidence. *See Shelton v. Sargent*, 144 S.W.3d 113, (Tex.App.—Fort Worth 2004, pet. denied).⁶

B. Plaintiff’s Evidence is Largely Inadmissible –Exhibit 28.

Plaintiff’s Response is only deceptively massive considering of the 1188 PDF pages, 1083 pages consist of three (3) full depositions with certain exhibits (including indexes for each). When the depositions and Response and Motion to Strike are subtracted, this leaves just 57 pages of “evidence” to support four causes of action versus four different Defendants. The following table breaks down the filing:

Briefing and Affidavits	Depositions
Response (PDF pages 1-35)	Deposition of Victor Mignogna (PDF pages 106-462)
Motion to Strike (PDF pages 36-48)	Deposition of Monica Rial (PDF pages 463-

⁵ (“We emphasize that this rule does not contravene the long-standing principle that the trial court is “not to weigh the evidence or determine its credibility, and thus try the case on the affidavits.” *Gulbenkian*, 252 S.W.2d at 931. Rather, the sham affidavit rule is a tool that may be used to distinguish genuine fact issues from non-genuine fact issues in service of the “underlying purpose of Rule 166a [to] eliminat[e] ... patently unmeritorious claims or untenable defenses The sham affidavit rule only provides that where the circumstances point to the likelihood of a sham rather than legitimate conflicting inferences, the trial court may insist on a sufficient explanation and may grant summary judgment if none is forthcoming.”).

⁶ (“The Sheltons did not cite, quote, or otherwise point out to the trial court the testimony they relied upon from Dr. Feuerberg’s deposition to create a fact issue. **The trial court was not required to search its file** for summary judgment evidence raising a genuine issue of material fact without more specific guidance from the Sheltons. *See Blake v. Intco Invs. of Tex., Inc.*, 123 S.W.3d 521, 525 (Tex.App.-San Antonio 2003, no pet.); *see also Guthrie v. Suiter*, 934 S.W.2d 820, 826 (Tex.App.-Houston [1st Dist.] 1996, no writ) (holding that **trial court did not abuse its discretion by refusing to consider a five hundred page deposition attached to the nonmovant’s response when the nonmovant did not point out to the trial court where in the deposition the issues set forth in the response were raised**.”) (emphasis added).

Affidavits of Chuck Huber (PDF pages 49-57)	567, and exhibits thereto at PDF pages 568-577)
Declaration of Erica Nicole McCord (PDG pages 58-63)	Deposition of Ron Toye (PDF pages 578-836, and exhibits thereto at PDF pages 837-1188)
Affidavit of Christopher Slatosch (PDF pages 64-88)	Exhibit 28 to the Toye Deposition runs from PDF page 847-1188, totaling 341 pages)
Affidavit of Stan Dahlin (PDF pages 89-93)	
Affidavit of Victor Mignogna (PDF pages 94-105)	

Exhibit 28 is a massive 341 pages of Mr. Toye’s tweets (put together by Plaintiff’s counsel) without the context for any surrounding comments, including an admission that they probably are not in chronological order.⁷ The failure to provide context to the tweets is fatal to libel claims based on Exhibit 28 (or any other alleged tweet) because a court does not isolate one statement, but reads them in context. *See Jackson v. NAACP Houston Branch*, 14-15-00507-CV, 2016 WL 4922453, at *12 (Tex. App.—Houston [14th Dist.] Sept. 15, 2016, pet. denied) (“Whether a publication is an actionable statement of fact is a question of law. *See Bentley*, 94 S.W.3d at 580. To make this determination, we consider the verifiability of the statement and the entire context in which the statement was made. *Id.* at 581, 583. Whether a publication is actionable depends on a reasonable person’s perception, not on the perception of the plaintiff, of the entirety of the publication and not merely individual statements.”). In particular, where the statements are contained in a twitter war. *See Feld v. Conway*, 16 F. Supp. 3d 1, 3–4 (D. Mass. 2014).

⁷ *See* Plaintiff’s Response, Toye Deposition at p. 37 (Ex. 28 is a binder introduced by Plaintiff’s counsel); p. 113 (“Q. And it was our [Plaintiff’s counsel] intention to produce these in chronological order, and I’m sure some of them probably aren’t. But, generally speaking, my question is, after April 4th, 2019, did you tweet about Vic Mignogna?”); p. 55 (context missing); p. 79 (context missing); p. 105 (can’t confirm tweets because Mr. Toye didn’t collect them); p. 110 (95 people commenting on a particular tweet); p. 125 (context missing); pp. 144-45 (explaining how twitter works and replies are to multiple different people); p. 147 (context missing); p. 156 (context missing); p. 176 (context missing); p. 182-183 (tweets are responses to people harassing him)

Sustained ____/ Denied ____

C. Objections to Inadequately Cited Footnotes and/or Inadmissible, Unattached Hyper-Links.

The following footnotes in the Response should be stricken and/or disregarded for failure to properly cite to evidence and/or for other evidentiary reasons.

The Court should strike the hyperlinks in footnotes 2-6, 11, 65-66, for the following reasons: (1) lack of authentication as to each link; (2) hearsay with regard to the particular link in printed out form; (3) double hearsay with regard to statements and/or quotes of individuals referenced therein; (5) relevance; and (6) lack of personal knowledge of statements made therein. For obvious reasons, neither the Court nor Defendants' counsel should be forced to link to external sources that Plaintiff chose not to transcribe and/or attach.

FN2 www.funimation.com/shows/panty-stocking-with-garterbelt & www.ttdila.com/2012/07/anime-expo-2012-panty-and-stocking.html (both last checked 8/30, 2019).

FN3 <https://www.funimation.com/shows/prison-school/?qid=8dfcb17fa205984>, <https://www.ranker.com/list/dirty-anime-that-is-really-raunchy/leo-reyna>, & <https://www.thetoptens.com/perverted-anime-shows/> (all last checked 8/30/2019).

FN4 www.ttdila.com/2012/07/anime-expo-2012-panty-and-stocking.html (last checked 8/30, 2019); *see also* <https://youtu.be/M3-EC3UdVps> (video of Funimation's 2012 promotion of "Panty & Stocking"; *see also* Funimation's use of Jamie and a stripper pole to promote the show (<https://www.facebook.com/funimation/photos/a.10150933484593481/10150935190178481/?type=3&theater>)).

FN5 <https://twitter.com/GameWizard02/status/1158106416252641280> (last checked 8/30/19).

FN6 <https://youtu.be/Q-HJ-1aQolk> (last checked on 8/28/2019).

FN11 Benton, M., "Police: Drama teacher who married 16-year-old girl faces charges," *Click2Houston.com* (2014), <http://click2houston.com/news/texas/police-drama-teacher-who-married-16-year-old-girl-faces-charges>; McCormack, S., "Sex Charges Dropped Against Drama Teacher Ilich Guardiola After He Married Teen," *Huffpost* (2014), https://www.huffpost.com/entry/ilich-guardiola_n_5799910; Loveridge, L., "Sexual Assault Charges Dropped Against Voice Actor Ilich Guardiola," *Anime News Network* (2014), <http://4NN.cx/79624>.

FN65 <https://twitter.com/itsdougthepug> (2.8 million followers).

FN66 *See* <https://moz.com/blog/guide-to-buying-legit-twitter-followers>, <https://buytwitterfollowersreview.org/>, <https://www.socialshop.co/twitter/buy-twitter-followers/>, <https://www.instafollowers.co/buy-twitterfollowers>, & <https://www.helpwyz.com/buy-twitter-followers/>

FN65 *See* <https://www.imdb.com/name/nm0045784/>, <https://www.imdb.com/name/nm0283170/>, & <https://www.imdb.com/name/nm0393222/>, respectively.

Sustained ____/ Denied ____

The Court should strike the following references in footnotes 24-27, 29-31, 33-49, 57-58, and 63, for Plaintiff's failure to cite to where such evidence is found within the 1083 attached pages of alleged evidence. In several instances, there is simply no citation to any Exhibit, there is no exhibit that FN 63 refers to, and the references to the Toye deposition and Exhibit 28 require the Defendants and the Court to scour 258 pages in the Toye deposition and 341 pages in Exhibit 28.

FN 24 Vic's Affidavit

FN 25 Ronald's Deposition, Exhibit 28.

FN 26 Ronald's Deposition, Exhibits 28.

FN 27 Ronald's Deposition, Exhibit 28.

FN 29 Exhibit __ attached hereto (RIAL000038-39).

FN 30 Ronald's Deposition, Exhibit 28-__.

FN 31 Exhibit __ [Monica's Feb. 3 tweet to @MorphBox, @DBZUk_kamehouse].

FN 33 Ronald's Deposition, Exhibit __ [his Feb. 4 tweet to @YuScifo].

FN 34 Ronald's Deposition, Exhibit __ [his Feb. 4 tweet to @z31r4m and @Rialisms]

FN 35 Ronald's Deposition, Exhibits __ [his Feb. 5 tweet to @MicheleFeghali], __ [his Feb. 5 tweet to @demonfire99

& @ShadowCoon], and __ [his Feb. 5 tweet to @AspingCFF & @jericollage70].

FN 36 Ronald's Deposition, Exhibit __ [his Feb. 5 tweet to @Broccolikari & @AcidAt01].

FN 37 Ronald's Deposition, Exhibit __ [his Feb. 6 tweet to @tommy_degroat & @Rialisms]. Monica is Ronald's fiancée. Monica's Deposition, pp. 22:10-20.

FN 38 Ronald's Deposition, Exhibit __ [his Feb. 6 tweet to @turbotaliz86, @McBenefit & @Rialisms].

FN 39 Ronald's Deposition, Exhibit __ [his Feb. 6 tweet to @Dosteven & @Bombastician].

FN 40 Ronald's Deposition, Exhibit __ [his Feb. 6 tweet to @Darkhunnyrabbit & @Rialisms].

FN 41 Exhibit __ attached hereto (RIAL000003-5).

FN 42 Exhibit __ attached hereto [Jamie's 2/7 tweet to @Odd_oneShawn].

FN 43 Ronald's Deposition, Exhibit __ [his Feb. 7 tweet to @Void4Zero & @McBenefit].

FN 44 Exhibit __ attached hereto (Jamie's "I want his balls" quote).

FN 46 Exhibit __ attached hereto (RIAL000001).

FN 47 Exhibit __ attached hereto (Jamie's 2/8/19 tweet).

FN 48 Funimation's Motion, Exhibit L; Monica's Deposition, Exhibit 31;

FN 49 Monica's Deposition, Exhibit 31.

FN 53 Ronald's Deposition, Exhibit 28-__.

FN 54 Ronald's Deposition, Exhibit 28-__.

FN 55 Monica's Deposition,

FN 57 Vic's Affidavit at __; Exhibit __, Affidavit of Stan Dahlin.

FN 58 Ronald's Deposition, Exhibit 28-__.

FN 63 Exhibit __, excerpts from May 31, 2019 hearing, pp. 25:25-26:1.

Neither the Defendants nor this court should be required to review 1083 pages of documents to try and figure out where Plaintiff's evidence actually is located.

Sustained ____/ Denied _____

D. Objections to the Affidavit of Vic Mignogna/Declaration of Vic Mignogna.

For the reason articulated herein, the Court should strike the following paragraphs in the Affidavit of Vic Mignogna/Declaration of Vic Mignogna (“Mignogna Dec.”) based on the application of the legal authority cited above in Paragraphs 1(A-B).

Evidence	Objections	Ruling
Mignogna Dec.		
2. I have never sexually assaulted or sexually harassed anyone or attempted to do so.	Paragraphs 2-7 are impermissible interested witness testimony and factual conclusions. ⁸	Sustained _____
3. I have never physically assaulted any woman or attempted to do so.		Denied _____
4. I have never forced (or attempted to force) anyone to kiss me, hug me, or engage in any sexual activities.	Paragraphs 2-7 are “sham affidavit” testimony to the extent such is used to contest allegations made by Ms. Marchi ⁹ or Ms. Rial in contravention of his prior deposition testimony. ¹⁰	
5. I have never fondled, kissed without consent, or otherwise inappropriately had contact with underage people or adults.		
6. I have never inappropriately touched, rubbed, stroked, struck any female fans, guests, staff or acquaintances.		
7. I have never had sexual contact with anyone without their consent.		

⁸ See *Warner Bros. Entm't, Inc. v. Jones*, 538 S.W.3d 781, 802 (Tex. App.—Austin 2017, pet. granted) (interested witness testimony insufficient).

⁹ See Plaintiff’s Response, at Mignogna Depo. at pp. 254:22-255:23.

¹⁰ See Plaintiff’s Response at Deposition of Monica Rial, at pp. 27:17-28:3; 28:16-32:14; (explaining Funimation investigation and Plaintiff’s assault that she disclosed to Sony investigators); 61:4-62:9 (additional description of the assault); See Plaintiff’s Response at Mignogna Depo. at 207:7-15; 210:1-5; 211:14-24 (no memory related to hotel room or interaction with Ms. Rial).

8. I have never attempted to sexually assault, sexually harass, touch inappropriately, or have any nonconsensual contact with Monica Rial or Jamie Marchi.	Paragraph 8 is impermissible interested witness testimony and factual conclusions; fails to establish basis for his personal knowledge as to their consent.	Sustained _____ Denied _____
9. I have read Jamie Marchi's July 18, 2019 affidavit, attached as Exhibit A to her Motion to Dismiss. I have (a) never grabbed her hair and pulled it down; (b) never whispered sexually suggestive or violent statements to her; and (c) never pressed my lips to ears, as [sic] she claims in the affidavit.	Paragraph 9 is an impermissible sham affidavit testimony, and in contradiction to his deposition testimony; ¹¹ fails to establish basis for his personal knowledge as to what Ms. Marchi considered sexually suggestive statements.	Sustained _____ Denied _____
16. By mid-January, 2019, I had valid contracts with dozens of conventions to appear as a guest in 2019. At least a dozen cancelled my appearance by the time I filed this lawsuit and they are listed in my Amended Petition. Emerald City Comic Con, Fan Expo Toronto, Fan Expo Orlando (aka MegaCon) and Planet Comic Con also cancelled my appearances, despite having contracts with me to appear.	<p>Paragraph 16 is impermissible hearsay offered for the truth of the allegation that Plaintiff had valid contracts that were cancelled.</p> <p>Paragraph 16 should be excluded because it is conclusory. It does not identify when the alleged contracts were entered and when, how and why the contracts were allegedly cancelled.</p> <p>Further, the paragraph includes improper legal conclusions to the effect that Plaintiff had "valid" contracts that were somehow improperly cancelled.</p> <p>Finally, the statements in the paragraph about the alleged existence and cancellation of contracts violate the best evidence rule at Texas Rule of Evidence 1002.</p>	<p>Sustained _____ Denied _____</p> <p>Sustained _____ Denied _____</p> <p>Sustained _____ Denied _____</p> <p>Sustained _____ Denied _____</p>

¹¹ See Plaintiff's Response at Mignogna Depo. pp. 254:22-255:23.

<p>17. I have appeared at a number of conventions in 2019. They are listed below, along with the amounts I earned at each (all amounts rounded down to the nearest thousand dollars):</p> <ul style="list-style-type: none"> a. Kamehacon - \$37,000 b. Savannah - \$13,000 c. Central PA - \$5,000 d. Puerto Rico - \$11,000 e. BakAnime - \$5,000 f. Anime Matsuri - \$30,000 g. Super World Con - \$5,000 h. Ireland - \$12,000 i. Liberty - \$14,000 j. Jacksonville NC - \$12,000 k. Bubba Fest - \$17,000 	<p>Paragraph 17 should be excluded because the statements therein violated the best evidence rule. Texas Rule of Evidence 1002.</p>	<p>Sustained _____</p> <p>Denied _____</p>
<p>18. Five of the conventions that cancelled me were as large or larger than Anime Matsuri. These were: Emerald City Comic Con, Florida Super Con, Fan Expo Toronto, Fan Expo Orlando (aka MegaCon) and Planet Comic Con. It is reasonable to expect that I would have earned similar amounts at each of these conventions that I earned at Anime Matsuri (\$30,000), but I would have earned a minimum of \$20,000 per convention because they were all larger in attendance than Anime Matsuri. I would have expected to earn at least \$5,000 at each of the smaller conventions that cancelled my appearances, extrapolating from similar sized conventions that I did attend (i.e., the conventions listed in the previous paragraph other than Anime Matsuri).</p>	<p>Paragraph 18 should be excluded because it is conclusory and because it contains impermissible speculation. It does not identify when the alleged contracts were entered and when, how and why the contracts were allegedly cancelled, or the amounts (if any) to be earned under the alleged contracts.</p> <p>Finally, the statements in the paragraph about the alleged existence and cancellation of contracts violate the best evidence rule at Texas Rule of Evidence 1002.</p>	<p>Sustained _____</p> <p>Denied _____</p> <p>Sustained _____</p> <p>Denied _____</p>
<p>19. The owners or managers of the conventions that cancelled me all stated that the cancellation was due to the allegations of sexual assault being made by defendants. Several also mentioned the Funimation investigation as motivating the cancellation.</p>	<p>Paragraph 19 is impermissible hearsay offered for the truth of the allegation that some unknown individuals stated to Plaintiff the reason for cancellation of conventions was the acts of one or more Defendants.</p> <p>Further, the statement is factually conclusory as it fails to identify any of the individuals that allegedly</p>	<p>Sustained _____</p> <p>Denied _____</p>

	<p>relayed this information to him, when these conversations occurred, or even who was present.</p>	<p>Sustained _____</p> <p>Denied _____</p>
<p>21. I have no memory of anyone named Robin Michelle Blankenship or Robin Michelle Blankenship-McConnell and no memory of any of the events she described in her affidavit that was attached to Rial and Toye's Motion to Dismiss.</p>	<p>Paragraph 21 is irrelevant as Plaintiff can neither admit or deny the allegations made by Ms. Blankenship-McConnell</p>	<p>Sustained _____</p> <p>Denied _____</p>

E. Objections to the Affidavit of Stan Dahlin.

For the reason articulated herein, the Court should strike the following paragraphs in the Affidavit of Stan Dahlin (“Dahlin Aff.”) based on the application of the legal authority cited above in Paragraphs 1(A-B).

Evidence	Objections	Ruling
Dahlin Aff.		
<p>(5) I have no memory of the events described in bullet point 4 of the Response.</p> <p>(6) If had noticed Monica Rial being distressed leaving Victor Mignogna's room, I am certain that I would remember it.</p> <p>For the Court’s reference, the Response and bullet point 4 is included herein, and highlighted below.</p> <p>INTERROGATORY NO. 4. Identify the instance in “the mid-2000s”—including the name of the convention—when Plaintiff “grabbed [you] and kissed [you] in his hotel room” as you alleged in the tweet you posted to @Rialisms on February 19, 2019.</p> <p>ANSWER: Defendant objects to this Interrogatory because it seeks information that is in the possession of Plaintiff and equally accessible to Plaintiff. Defendant further objects to this Interrogatory because it assumes facts not in evidence.</p> <p>Subject to, and without waiving, the aforementioned objections, Defendant answers as follows:</p> <ul style="list-style-type: none">Plaintiff grabbed and kissed Defendant without Defendant’s consent on Sunday, November 4th, 2007 while Plaintiff and Defendant were both attending Izumicon in Oklahoma City, Oklahoma.After several other guests had left Oklahoma City, Stan Dahlin, one of the convention chairmen, invited Plaintiff and Defendant to dinner. Plaintiff requested that Defendant accompany Plaintiff to Plaintiff’s hotel room to view Plaintiff’s fan film called “Fullmetal	<p>Paragraph 6 is inadmissible speculation. Once Mr. Dahlin establishes he has no memory of the events in paragraph 5, he is speculating as to his memory and that he would remember such an incident.</p> <p>Further, it is a factual conclusion and Mr. Dahlin has not laid any predicate concerning the accuracy of his memory or why he would remember this event.</p>	<p>Sustained _____</p> <p>Denied _____</p> <p>Sustained _____</p> <p>Denied _____</p>

<p>Fantasy.” Mr. Dahlin stated that he would collect us both for dinner from Plaintiff’s hotel room.</p> <ul style="list-style-type: none"> • Plaintiff played the video as promised while Defendant stood to watch the video. But Plaintiff soon grabbed Defendant by the upper arms and began aggressively kissing Defendant. Defendant attempted to resist, but Plaintiff physically restrained Defendant and pushed Defendant backward toward the bed. Plaintiff climbed on top of Defendant and held her down as he continued to aggressively kiss Defendant. • Plaintiff continued in this fashion for several minutes, despite Defendant’s fear and shock, until Mr. Dahlin knocked on Plaintiff’s hotel door. Plaintiff left Defendant on the bed, and hurriedly answered the door. Mr. Dahlin inquired whether Defendant was ok, clearly noticing distress. Defendant, however, was too shocked and afraid to admit to what had occurred. • Following dinner, Plaintiff forced Defendant to speak with Plaintiff’s longtime fiancée on the telephone, and Plaintiff spoke with his fiancée as if nothing had happened. • <i>See also</i> RIAL 000001-112. 		
<p>(7) In subsequent years, I invited Monica Rial and Victor Mignogna back to my conventions several times. I would never have done this if I had been informed of any problems between Monica Rial and Victor Mignogna.</p>	<p>Irrelevant as Ms. Rial never asserted she told Mr. Dahlin about the interaction with Plaintiff.¹²</p>	<p>Sustained _____ Denied _____</p>

¹² *See* Plaintiff’s Response, at Rial Depo. at pp. 27:17-28:3; 28:16-32:14.

F. Objections to the Affidavit of Chuck Huber/Declaration of Chuck Huber

For the reason articulated herein, the Court should strike the following paragraphs in the Affidavit of Chuck Huber/Declaration of Chuck Huber (“Huber Dec.”) based on the application of the legal authority cited above in Paragraphs 1(A-B).

Evidence	Objections	Ruling
Huber Dec.		
5.I have been a voice actor for Funimation since 1998 and am intimately familiar with the work environment at Funimation.	Factual conclusion and lack of personal knowledge with regard to his assertion that he is familiar with the work environment. He does not describe what a “voice actor” does, what role such person has at Funimation, or how that gives him personal knowledge to opine about the work environment at Funimation.	Sustained —— Denied ——
12.In that conversation, Chris Sabat verbally disparaged Vic’s Christian faith and speculated that Vic was “actually gay” based on the way he dressed.	Lack of relevance and deliberately designed to be prejudicial.	Sustained —— Denied ——
13. In that conversation, Chris Sabat stated that Vic was a pedophile who liked “little girls”. Despite these statements, he did not express concerns about risks to fans, which I thought was odd.	Not sure I want to object to this	Sustained —— Denied ——
16. Other voice actors (Jamie Marchi, Monica Rial and Chris Sabat) and other Funimation employees initially described that practice as “stealing from fans,” “using fans,” or “being an asshole.” We all later adopted the	Lack of foundation and speculation as to whether certain voice actors or others were “Funimation	

same practices and currently follow those practices at conventions.	employees.” Fails to specify parties to alleged conversations, when they occurred, or where they occurred. Direct quotes directly attributed to party-defendants are too ambiguous to be readily contradicted.	Sustained _____ Denied _____
17. This behavior by voice actors (including Jamie Marchi, Monica Rial and Chris Sabat) and other Funimation employees toward Vic’s successful business tactics demonstrates longstanding negative opinions about Vic.	<p>Unsupported speculation and improper opinion, as Huber ties one instance of “successful business tactics” as generating longstanding negative opinions by multiple named and unnamed people.</p> <p>Lack of foundation and speculation as to whether certain voice actors or others were “Funimation employees.”</p> <p>Double hearsay with regard to Chris Sabat and unspecified others.</p>	<p>Sustained _____ Denied _____</p> <p>Sustained _____ Denied _____</p>
18. In virtually all conversations I had with these voice actors when Vic was not present, disparaging remarks were made about Vic. Typical statements included “he’s a prima dona, he’s a douche, he’s a diva, his clothes are gay,” plus comments of his purported infidelity, dislike of his conservative Christian beliefs and personal attacks for his support of Donald Trump. All of these comments were made at one time or another by Monica Rial, Jamie Marchi, Chris Sabat, and others. All of them, however, conceded his ability to do his job.	<p>Fails to specify parties to alleged conversations, when they occurred, or where they occurred. Direct quotes directly attributed to party-defendants are too ambiguous to be readily contradicted.</p> <p>Double hearsay with regard to Chris Sabat and unspecified others.</p>	<p>Sustained _____ Denied _____</p> <p>Sustained _____</p>

	Relevance as the statements are not asserted in Petition nor do they relate to timeline of complained-of statements in Petition.	Denied _____
29. In my opinion, the voice actors and Funimation employees described above were overly preoccupied with disparaging Vic.	Speculation, lack of foundation, and factual conclusion as to unnamed voice actors and Funimation employees. Huber has not identified any Funimation employees who have commented on Plaintiff.	Sustained _____ Denied _____
31. Until January 2019 negative discussions about Vic Mignogna in my presence were accompanied by laughter and derision but never included concern for any alleged victims or named specific victims. Vic has always been a joke to a certain clique of influential Funimation employees for decades but never a threat.	Lack of foundation, and factual conclusion as to unnamed Funimation employees. Huber has not identified any Funimation employees who have commented on Plaintiff. Nor does Huber identify any personal knowledge to allow him to testify that any particular individual is an employee of Funimation.	Sustained _____ Denied _____ Sustained _____ Denied _____
32. Vic indicated to me that in 20 years of working at Funimation he had never been warned of any complaints about his behavior.	Inadmissible double hearsay as to what Plaintiff discussed with Huber.	Sustained _____ Denied _____
33. Vic told me he had a meeting with a producer at Funimation, in approximately 2018 specifically to discuss any issues with his behavior. He stated that there was no mention in this meeting of his having committed sexual harassment, sexual assault or his having behaved in an	Inadmissible double hearsay as to what Plaintiff discussed with Huber.	Sustained _____ Denied _____

inappropriate manner at Funimation or at any conventions. He stated that she told him that he was “difficult to work with” because he sometimes asked directors to do additional takes when the director was satisfied with his initial take.		
34.Senior Funimation directors have described the work environment at Funimation to me as a “Den of Poison,” “Kafka Nightmare,” and “Orwellian Slave Factory.”	Lack of foundation, and factual conclusion as to unnamed Funimation employees. Huber has not identified any Funimation employees who have commented on Plaintiff.	Sustained _____ Denied _____
37.Funimation did not provide an employee handbook to me, Vic, Jamie Marchi and Monica Rial.	Lack of foundation, personal knowledge, and speculation as to what Funimation provided to anyone but Huber.	Sustained _____ Denied _____
38.In the twenty (20) years I worked at Funimation, it was very common for employees, voice actors, writers, producers, directors to hug and kiss each other at the Funimation offices. Raunchy and sexual comedy was extremely common. Sexual relationships between Funimation employees and voice actors was common. No one was ever disciplined or terminated for this conduct.	Lack of foundation, personal knowledge, and factual conclusion as to what unnamed Funimation employees, voice actors, writers, producers, directors do as Huber has not identified any such individuals.	Sustained _____ Denied _____
40.Funimation employees talked and flirted freely at Funimation on a regular basis, though this did become less common after Sony instituted the “no hugs” policy.	Lack of foundation, personal knowledge, and factual conclusion as to what unnamed “Funimation employees” did. Further, lack of foundation for failing to identify the speakers and lack of foundation to be able to testify that speakers were “Funimation employees.”	Sustained _____ Denied _____
41.When the Dragonball Kai was being recorded in 2007, I heard rumors that actresses had been recast at Funimation for refusing sexual advances by Funimation	Double hearsay as to the statements allegedly made to him. Further, lack of	Sustained _____

employees. I consider these rumors credible based on my experience working at Funimation and from direct messages received from a former DBZ cast member.	foundation for failing to identify the speakers and lack of foundation to be able to testify as the business relationship between Funimation and the alleged speakers.	Denied _____
42.I also heard that actresses who participated in sex with Funimation/Okatron5000 employees were cast in roles. I consider these rumors credible based on my experience working at Funimation [sic no period]	<p>Double hearsay as to the statements allegedly made to him.</p> <p>Further, lack of foundation for failing to identify the speakers.</p> <p>Improper opinion and lack of factual predicate based on the exclusion of prior testimony above.</p> <p>Lack of foundation as to whether the unnamed individuals were Funimation/Okatron 5000 employees.”</p>	<p>Sustained _____</p> <p>Denied _____</p> <p>Sustained _____</p> <p>Denied _____</p> <p>Sustained _____</p> <p>Denied _____</p> <p>Sustained _____</p> <p>Denied _____</p>
48. The voice actors employed by Funimation generally consider Chris Sabat to be a de facto manager at Funimation and they believe his approval and support is vitally beneficial to succeeding at Funimation and the conventions and the converse regarding his disapproval.	Double hearsay as to any statements allegedly made to him. Further, lack of foundation for failing to identify the speakers. Improper opinion and lack of factual predicate based on the exclusion of prior testimony above.	<p>Sustained _____</p> <p>Denied _____</p>

	Legal conclusion and lack of foundation or personal knowledge as to the alleged employment status of unnamed voice actors and Funimation.	Sustained _____ Denied _____
57.I was aware of no rumors or statements that identified any purported victims of sexual assault or sexual harassment by Vic until January- February 2019 on the internet.	Irrelevant as no Defendant has alleged anything about Huber's knowledge, other than his willingness to describe his friend of ten years as a sex addict. ¹³	Sustained _____ Denied _____
58.Jamie Marchi and I have been close friends and writing partners since 2009. She never mentioned the hair-pulling incident at Funimation that she alleges occurred between Vic and her.	Irrelevant as Ms. Marchi has made no allegations that she told Huber about the assault on her by Plaintiff. Does not establish basis for knowing that Marchi never mentioned the incident at all. Statement is not limited to <i>his</i> conversations with Ms. Marchi.	Sustained _____ Denied _____ Sustained _____ Denied _____
60.I believe Jamie Marchi would have mentioned the hair-pulling incident, if it had bothered her, since she is typically very outspoken.	First sentence: Improper speculation and opinion/belief testimony, and lack of factual predicate that Ms. Marchi has ever revealed any details of her life to Huber such that he is competent	Sustained _____ Denied _____

¹³ See Exhibits 12 and 13 to the Rial/Toye MTD, supplemented as optional completeness to the Deposition of Vic Mignogna, attached to the Response.

	to opine what she might tell him. Offering mere guesses as to (i) Ms. Marchi's likely behavior in general, (ii) reasons for alleged animosity toward Plaintiff	Sustained _____ Denied _____
In addition, while Jamie Marchi, Monica Rial and other Funimation employees often expressed animosity towards Vic, they never claimed he had sexually harassed or sexually assaulted anyone.	Second sentence: Irrelevant as Ms. Marchi, Ms. Rial, and the unnamed Funimation employees have made no allegations that anyone discussed any such claims with Huber. Factual conclusion that such individuals would even discuss such things with Huber. Does not establish basis for averment that any Defendants expressed animosity toward Plaintiff	Sustained _____ Denied _____
Their animosity was primarily due to his personality, his sexual promiscuity, his Christian faith and claims that he was difficult to work with.	Third sentence: Speculation and improper opinion/belief as to their motive, and lack of foundation that these named and unnamed individuals would have such discussions with him.	Sustained _____ Denied _____
61. In 2009, Jamie Marchi and I worked with Chris Sabat on CONdotcom.com, which was a website where voice actors could provide content for fans. Vic was a digital guest on that website and our primary marketing force because of his prolific convention schedule. In dozens of specific conversations about Vic there was never any concern about pedophilia or other criminal sexual behavior.	Irrelevant as Ms. Marchi, Ms. Rial have made no allegations that anyone discussed any such claims of pedophilia or criminal sexual behavior with Huber. Factual conclusion that such individuals would even discuss such things with Huber.	Sustained _____ Denied _____

	Does not establish basis for knowing that Ms. Marchi never had concerns about pedophilia or other criminal sexual behavior of Plaintiff.	Sustained _____ Denied _____
63.Although voice actors and other Funimation employees called Vic a pedophile and accused him of liking underage girls for years, they never said these things to Vic and never expressed any concerns about working with Vic or doing panels at conventions with Vic until 2019. Nor did they express concern for the convention fans until 2019.	Factual conclusion and lack of personal knowledge as to what unnamed voice actors and unnamed Funimation employees have said. Speculation as to what they have done or said to anyone other than Huber. Further, lack of foundation for failing to identify the speakers and lack of foundation to be able to testify that the unnamed speakers were “Funimation employees.”	Sustained _____ Denied _____ Sustained _____ Denied _____
64.The sexual assault and sexual harassment allegations by the Defendants and Funimation employees have seriously damaged Vic’s career by inducing numerous conventions to cancel his appearances, by inducing producers and directors to not consider him or terminate him from projects.	Factual conclusion, lack of personal knowledge, and speculation as to (a) any statements or actions by Defendants or unnamed Funimation employees have said or done; or (b) the impact such alleged statements have had. To the extent Huber actually talked to conventions, directors, or producers, lack of personal knowledge, and any such statements to him are double hearsay.	Sustained _____ Denied _____ Sustained _____ Denied _____

	Further, lack of foundation for failing to identify the speakers and lack of foundation to be able to testify that the unnamed speakers were “Funimation employees.”	Sustained _____ Denied _____
67. I was initially supportive of what Jamie and Monica were doing because my understanding was that they were, with inflated versions of their stories, attempting to help the alleged underage victims of rape and sexual assault by Vic, which they along with Michelle Specht directly told me existed, who would otherwise be too afraid to speak out. I never considered Jamie and Monica to be victims of attempted rape or sexual assault by Vic.	Speculation, lack of personal knowledge, and improper opinion as to Huber’s understanding of what happened to the three women identified, or his absurd “consideration” of what happened to them.	Sustained _____ Denied _____
76. I have known Vic for many years, and I do not believe he has ever sexually approached anyone past the point of them telling him no.	Speculation, lack of personal knowledge, and improper opinion/belief as to Huber’s belief as to what Plaintiff does when he sexually approaches any person.	Sustained _____ Denied _____
79. Funimation employees, including Jamie Marchi, Monica Rial and Michelle Specht have advised me more than once since February 2019 that criminal charges are coming against Vic. In response I encouraged them to help these alleged underage victims of rape and sexual assault to come forward. When asked to provide specifics to these allegations they couldn’t or refused to do so.	Speculation, lack of personal knowledge, and legal conclusion with regular to Ms. Marchi or Ms. Rial being Funimation employees. Huber has not established any basis for the knowledge or whether Ms. Marchi or Ms. Rial are employees of Funimation. Factual conclusion and failure to provide context as to the alleged conversations with Ms. Marchi and Ms. Rial	Sustained _____ Denied _____ Sustained _____ Denied _____

	regarding the “criminal charges” against Plaintiff.	
80. When I was told about the contents of the "confidential" investigation undertaken by Tammie Denbow on behalf of Funimation, my opinion was that Funimation, Jamie Marchi and Monica Rial acted together and with encouragement from Chris Sabat and Sean Schemmel, to destroy Vic's career and life.	<p>Double hearsay with regard to the unknown person that “told” Huber about the investigation.</p> <p>Failure to lay foundation or personal knowledge as to what Huber was allegedly told, what investigation was undertaken, or the purpose of such investigation.</p> <p>Improper belief, opinion, and pure speculation as to what any of the Defendants or unnamed individuals believed, intended, or even did.</p>	<p>Sustained _____</p> <p>Denied _____</p> <p>Sustained _____</p> <p>Denied _____</p> <p>Sustained _____</p> <p>Denied _____</p>
81. I believe that the purported incidents investigated by Tammi Denbow occurred off Funimation property and not at Funimation events. The one incident that purportedly occurred on Funimation property occurred prior to Sony's acquisition of Funimation, thus the "no hugs" policy from Sony was not in effect (i.e. there were no signs about the policy hung around the Funimation office).	<p>Double hearsay with regard to the unknown person that provided information to Huber about the investigation.</p> <p>Failure to lay foundation or personal knowledge as to what Huber was allegedly told, what investigation was undertaken, what Sony’s “no hugs” policy was, or the purpose of such investigation.</p> <p>Improper belief, opinion, and pure speculation as to what incidents were</p>	<p>Sustained _____</p> <p>Denied _____</p> <p>Sustained _____</p> <p>Denied _____</p> <p>Sustained _____</p>

	investigated.	Denied _____
81. I do not believe that Vic kissed Sarah Bachmeyer without her consent. I have never heard rumors of Vic behaving sexually inappropriate at Funimation.	Improper belief, opinion, and pure speculation as to what happened between Plaintiff and Sarah Bachmeyer.	Sustained _____ Denied _____
82. Funimation has supported the accusations made by Defendants' that Vic is a sexual predator, pedophile and rapist by supporting the accusations directly with their own public statements (I, as a member of the public, viewed the Tweets made on February 11, 2019 by Funimation as supporting the accusations against Vic and asserting Vic was fired for sexual harassment and threats).	Double hearsay with regard to the unknown and undisclosed statements that Plaintiff is a sexual predator, pedophile, and rapist, which are offered for the truth that they were made by Defendants. Lack of foundation or personal knowledge as to the same. Improper belief, opinion, and pure speculation as to Funimation's support for such allegations which Huber fails to lay a proper foundation.	Sustained _____ Denied _____ Sustained _____ Denied _____
83. It appears to me that Ron Toye, Monica Rial and Jamie Marchi have been speaking with Funimation's tacit or overt consent in tweets that have been made by them since January 2019.	Lack of foundation or personal knowledge as to alleged (unidentified) tweets made by Mr. Toye, Ms. Rial, and Ms. Marchi. Double hearsay to the extent this information was provided to him by someone other than the foregoing. Improper belief, opinion, and pure speculation as to whether Mr. Toye, Ms. Rial, and Ms. Marchi have	Sustained _____ Denied _____ Sustained _____

	spoken to Funimation, or that Funimation has provided any type of consent to the alleged tweets and failure to lay a proper foundation re. the same.	Denied _____
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G. Objections to the Affidavit of Chris Slatosch and/or Declaration of Chris Slatosch.

For the reason articulated herein, the Court should strike the following paragraphs in the Affidavit of Chris Slatosch/Declaration of Chris Slatosch (“Slatosch Dec.”) based on the application of the legal authority cited above in Paragraphs 1(A-B).

Evidence	Objections	Ruling
Slatosch Dec.		
7. In these conversations, Toye repeatedly asserted that Vic was a sexual predator and that criminal charges, would soon be filed against Vic. Toye urged me repeatedly to terminate Vic's appearance. I told him that this would breach the contract with Vic. He urged me to do it anyway, emphasizing that criminal charges would be filed before April 12-14, 2019.	Irrelevant – Plaintiff is not bringing claims for defamation based on slander. ¹⁴ Factual conclusion without context to the statements of “sexual predator” and “criminal charges.” ¹⁵	Sustained _____ Denied _____
9. I participated in a telephone conversation. with Rial in which she repeatedly asserted that Vic was a sexual predator and that criminal charges would soon be filed against him. She implied (and I inferred) that she would convince numerous other voice actors to cancel their appearances at Kameha Con. I heard Toye in the background talking to her and she periodically responded in agreement with him.	Irrelevant – Plaintiff is not bringing claims for defamation based on slander. Factual conclusion without context to the statements of “sexual predator” and “criminal charges.”	Sustained _____ Denied _____
14. Silverfire did breach its contract with Vic by cancelling his appearance. After, being threatened with litigation from Vic's counsel, and after long negotiations and legal expenses, Silverfire agreed that Vic could attend Kameha Con under numerous restrictions that were not part of the original agreement and that were not imposed on other guests, including Vic paying for additional security, not participating in panel	Hearsay as to any alleged changes to the “original agreement,” and best evidence rule as the new agreement is not attached. Hearsay as to the contents of other agreements with	Sustained _____ Denied _____

¹⁴ See Amended Petition, ¶ 39 (“The Defendants have tweeted false, defamatory statements about Vic that were published and read by third parties. Indeed, many of the Defendants’ tweets are defamatory *per se*.”).

¹⁵ While Ms. Rial and Mr. Toye dispute these statements occurred and contend they are perjurious, the Court need not delve into that to grant the Motion to Dismiss.

discussions, signing in at different locations from the other guests, etc.	unnamed guests, and best evidence rule.	
16 In summary, Rial and Toye individually and jointly, told me Vic was a sexual predator who would be criminally charged before Kameha Con and they urged me to breach the contract with Vic. They threatened to lead a boycott of Kameha Con and they threatened to withdraw significant sponsorship money that had been promised unless Silverfire breached its contract with Vic. Finally, they urged me to never do business with Vic in the future.	Irrelevant – Plaintiff is not bringing claims for defamation based on slander. Factual conclusion without context to the statements of “sexual predator” and “criminally charged.”	Sustained _____ Denied _____

As a result of the deficiencies identified herein, the referenced evidence submitted by Plaintiff is inadmissible and should be stricken.

II. CONCLUSION

For the reasons stated, Defendant respectfully request that his objections be sustained, his Motion to Dismiss be granted in its entirety, and for any additional relief to which they may be justly entitled.

Respectfully Submitted,

/s/J. Sean Lemoine

J. Sean Lemoine

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on counsel of record via electronic service pursuant to the Texas Rules of Civil Procedure on September 3, 2019.

/s/ J. Sean Lemoine

J. Sean Lemoine