

CAUSE NO. 141-307474-19**VICTOR MIGNOGNA****Plaintiff,****V.****FUNIMATION PRODUCTIONS, LLC,
MONICA RIAL, RONALD TOYE, and
JAMIE MARCHI****Defendants.**§
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§**IN THE DISTRICT COURT****141st JUDICIAL DISTRICT****TARRANT COUNTY, TEXAS**

**REPLY IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND DOCUMENTS
OF CHRIS SLATOSCH**

Defendants Monica Rial and Ronald Toye (“Defendants” or “Rial/Toye”) file this Reply in Support of Motion to Compel Deposition and Documents of Chris Slatosch and respectfully show the Court as follows:

**I.
INTRODUCTION**

IF CHRIS SLATOSCH’S DEPOSITION IS IRRELEVANT THEN PLAINTIFF HAS NO NEED TO SHOW UP AND DOES NOT NEED TO SPEND ANY TIME OR FEES WORRYING ABOUT WHAT MR. SLATOSCH MIGHT SAY. BUT THE FEAR DRIVING THIS UNNECESSARY MOTIONS PRACTICE (INCLUDING SEEKING SANCTIONS ON A NEW OBJECTION) ONLY CONFIRMS THAT THE COURT SHOULD HEAR FROM MR. SLATOSCH. THE NEW OBJECTION SHOULD BE OVERRULED, AND IF SANCTIONS ARE IN ORDER, IT IS ONLY AGAINST PLAINTIFF’S COUNSEL.

II. ARGUMENT AND AUTHORITIES

A. The New Objection is Without Merit.¹

1. Plaintiff abandons his subpoena distance objection to advances the new and legally incorrect argument that the TCPA's suspension of discovery survives the October 4, 2019 Order. A side by side comparison of the Order and TCPA answers whether the discovery suspension is in effect:²

<u>Order at p. 5</u>	<u>TCPA § 27.003</u>
Therefore, the Court <u>GRANTS the TCPA Motions</u> . Plaintiff Victor Mignogna's claims against Defendants Funimation, Marchi, Rial and Toye are thus DISMISSED WITH PREJUDICE	(c) Except as provided by Section <u>27.006</u> (b), on the filing of a motion under this section, all discovery in the legal action <u>is suspended until the court has ruled on the motion to dismiss.</u> (emphasis added)

2. The Court has ruled on the Motion to Dismiss, therefore the suspension is over and the Moving Defendants were not required to seek relief under §27.006(b).³ This new objection has no merit and is a desperate attempt to prevent the cross examination of Mr. Slatosch.⁴

3. Having invoked Tex. Civ. Prac. & Rem. Code §10.001 *et seq*, the Court should award Moving Defendants their reasonable attorneys' fees as the prevailing party under §10.002(c)

¹ See Plaintiff's Response to Defendant's Motion to Compel Deposition and Documents of Chris Slatosch, First Amended Motion to Quash, and Motion for Sanctions ("Response").

² If, as Plaintiff now concedes, there is not a final judgment he should promptly dismiss his interlocutory appeal. See *Hollis v. ProPath Associates, PLLC*, 02-19-00167-CV, 2019 WL 3024472, at *1 (Tex. App.—Fort Worth July 11, 2019, no pet.) (order granting dismissal under the TCPA that does not resolve all claims is not subject to appeal as a final judgment or on an interlocutory basis). The cure for a trial court's violation of the discovery suspension is a mandamus to the Fort Worth Court of Appeals. This would put Plaintiff in a double bind of arguing to one panel the appeal is ripe while arguing to a different panel that no final dismissal has been ruled upon (in addition to spending thousands of dollars to avoid an allegedly irrelevant deposition).

³ Nor does Plaintiff's interpretation make sense considering if the Court had granted the Motions only in part, there is no basis to stay discovery until the Court ruled on the fees as to the dismissed claims (absent a timely filed interlocutory appeal as to the denial of a TCPA motion to dismiss).

⁴ As argued below, if leave of Court is required, the following sections lay the factual predicate for such leave, which is requested in the alternative.

(“ . . [t]he court may award to a party prevailing on a motion under this section the reasonable expenses and attorneys fees incurred in presenting or opposing the motion .”). There is no reason to invoke sanctions other than a transparent attempt to regain the high-ground that is irretrievably now lost.⁵

B. Plaintiff Can Avoid Costs By Not Attending an “Irrelevant Deposition.”

4. Plaintiff concede he does not have to attend the deposition, and if Mr. Slatosch’s testimony is irrelevant there is no reason for him to attend. This resolves his “drive up costs” and Plaintiff can make relevancy objections to Mr. Slatosch’s testimony at the evidentiary hearing.⁶

5. The cost issue is also undermined by Plaintiff’s desire to have oral argument on this issue, which only further drives up the costs. While Moving Defendants are confident in their written argument (and would prefer a telephonic hearing to avoid unnecessary travel time), counsel will make themselves available at the Court’s direction.⁷

C. Plaintiff Has No Standing to Assert Harms to Mr. Slatosch.

6. Plaintiff concedes that he has no standing to invoke hypothetical harms (such as costs) on behalf of Mr. Slatosch. If Mr. Slatosch so chooses, he can contest the subpoena, but Mr. Slatosch’s alleged inconvenience is not a basis to avoid the deposition.

D. Plaintiff Fails to Understand the Evidentiary Hearing is About the Amount of the Sanction.

7. Unless Plaintiff is willing to stipulate to the sanction and the amount, and waive his appeal rights, Moving Defendants must lay an evidentiary predicate for the amount of sanctions

⁵ By the time an oral hearing and briefing is completed, Plaintiff will spend the same amount of time that Mr. Slatosch’s deposition would last.

⁶ The Court should also notice that Plaintiff has not proffered any evidence that any type of attorney-client or attorney-work product privilege exists that would prevent Mr. Slatosch’s testimony, including any basis for confidentiality.

⁷ The undersigned has conflicts on Thursday a.m. 9-11 a.m. (prior hearing) and Friday 9-12 p.m. (pre-scheduled family issue) but will otherwise make himself available.

they seek. The Motion to Compel’s citations to *Landrys, Inc. v. Animal Legal Def. Fund*, 566 S.W.3d 41, 71–74 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) explains the necessity of an evidentiary hearing, including providing evidence for the Court to examine on multiple factors such as whether the lawsuit was frivolous and/or brought for vindictive purposes. Unsurprisingly, the Response does not mention *Landry* (or any case law), instead it engages in wishful thinking that Mr. Slatosch will testify in Plaintiff’s favor under cross-examination. If Mr. Slatosch will only testify in favor of Plaintiff then he is safe in not attending the deposition, which further eliminates his cost objection.

E. There is Ample Evidence in the Record to Justify (i.e. Good Cause Exists for) Mr. Slatosch’s Deposition.

8. Plaintiff errs in the assertion that Moving Defendants did not lay a factual predicate for cross-examining Mr. Slatosch. Mr. Slatosch and Mr. Toye offered opposing testimony, which sets up the basis for the deposition:

Mr. Slatosch	Mr. Toye
In summary, Rial and Toye individually and jointly, told me that Vic was a sexual predator who would be criminally charged before Kameha Con and urged me to breach the contract with Vic. ⁸	Did you urge him to terminate his -- terminate Vic Mignogna’s appearance at Kameha Con? A. No. ⁹

9. Further, and absent from Mr. Slatosch’s affidavit is the causal statement as to why his company (Silvrfire) breached the contract with Plaintiff. The closest he comes is to state:

“Silvrfire did breach its contract with Vic by cancelling his appearance.”¹⁰

10. But what he does not say is **why Silvrfire breached the contract?**¹¹

⁸ See Motion to Compel (“MTC”), Ex. B at ¶ 16.

⁹ See *id.* at Ex. C, pp. 168:120-22.

¹⁰ See *id.* at Ex. B, ¶ 14.

¹¹ Which is a critical question that the non-movant must answer in TCPA litigation. See *Van Der Linden v. Khan*, 535 S.W.3d 179, 195 (Tex. App.—Fort Worth 2017, pet. denied) (“Khan did not offer affidavit testimony from

11. And if Silvrfire breached this contract because of Ms. Rial and Mr. Toye, it was a grievous oversight by the drafter not to include such a critically important statement. But, the more likely scenario is the first draft of the affidavit sent to Mr. Slatosch contained causation language which Mr. Slatosch rejected. Any such communications, including rejected drafts sent by Plaintiff and his agents to Mr. Slatosch, put Plaintiff on notice of the frivolousness of Plaintiff's tortious interference claims.

12. Considered in that context, Plaintiff's objection to relevance is both wrong and begs for Mr. Slatosch's deposition to get to the truth:

It is also irrelevant whether Mr. Slatosch "did not believe that either of the Moving Defendants interfered with Plaintiff's contract." Any inquiry on Mr. Slatosch's belief would call for Mr. Slatosch's legal conclusions and would not be competent evidence in determining any facts of consequence remaining in this legal proceeding.¹²

13. If Plaintiff knew (because Mr. Slatosch told him or his agents) that the Moving Defendants had nothing to do with Silvrfire's breach of the contract with Plaintiff, yet he attempted to convince this Court otherwise, it would cement the frivolousness of the tortious interference claim. *See Landry*, 566 S.W.3d 41, 71 ("We also have evidence of frivolousness in that some of Landry's claims lacked any legal or factual basis.").

14. To put it bluntly, that is exactly what Plaintiff's counsel said at the TCPA hearing:

We have the real devastating evidence, which is Mr. Slatosch with Kameha Con. In Slatosch's affidavit, he -- here it is. I've got it. No, I don't. In Slatosch's affidavit, he flatly states that **Rial and Toye** verbally urge them to dump Vic Mignogna, they threatened him with having the other voice actors pull out of the convention, they said that there were criminal charges pending, that he would --

Sheldon **[i.e Mr. Slatosch], the one person who personally knew why he refused to go forward with the alleged contract.** So, once the impermissibly speculative evidence from Khan's affidavits is disregarded, there is simply no evidence, let alone clear and specific evidence, that *but for* the Message, any contract between Khan and Sheldon would have gone forward") (emphasis added).

¹² See Response, at ¶ 16. This premature legal objection is (a) based on the assumption the deposition question is asked in an objectionable format (it won't be); and (b) is legally incorrect. *See Van Der Linden*, 535 S.W.3d at 195.

they **told him that he would be charged before the convention, and he said, okay, I'll drop him. And he dropped Mr. Mignogna.**¹³

15. In the heat of the moment, Mr. Beard may have overexaggerated. But Mr. Slatosch's affidavit **does not** say he dropped Plaintiff because of Ms. Rial and Mr. Toye's actions. Why Silvrfire dropped Plaintiff remains a mystery that is a critical piece to the sanctions hearing.

16. Finally the circumstances under which the affidavit was notarized carry the stench of falsity.¹⁴ Mr. Slatosch lives in Ector County which is over 400 miles from Mr. Beard's office in Smith County. Mr. Beard notarized Mr. Slatosch's affidavit. Perhaps Mr. Beard drove to Ector County, or Mr. Slatosch drove to Smith County, or they met somewhere in the middle. But the affidavit's sudden withdrawal, after Moving Defendants' counsel questioned the notarization, lends credence to something being "rotten in Denmark."¹⁵ Mr. Slatosch, however, can clear these issues up.

F. In that Alternative, Good Cause Exists to Determine if Plaintiff Tried and Failed to Perpetrate a Fraud on the Court.

17. Assuming arguendo that the TCPA suspension remains in place, Moving Defendants seek leave for a two hour deposition of Mr. Slatosch, along with the production of documents sought in the subpoena. Moving Defendants intend to take the deposition via teleconferencing, which will allow Plaintiff to participate without traveling to Ector County. Good cause exists (for the serious reasons articulated above) for the Court to hear Mr. Slatosch's testimony so that it can properly evaluate the amount of sanction against the Plaintiff.

¹³ See Excerpts of TCPA Transcript, 95:15-22, attached as Ex. 1.

¹⁴ It beggars belief that Mr. Beard believed he could notarize and affidavit without the witness present. If Mr. Beard had never met Mr. Slatosch and is simply talking to a voice on the phone who claims to be Mr. Slatosch, and then notarizes the affidavit. It is inexcusable.

¹⁵ See MTC, p. 3 fn.9.

18. The only harm Plaintiff can credibly assert is cost, which he can avoid by choosing not to attend.

III. CONCLUSION AND PRAYER

For these reasons, the Moving Defendants respectfully request the Court grant an Order as follows:

- 1) Overruling the Motion to Quash, denying the protective order, overruling any assertions of attorney-client privilege or attorney-work product privilege, and ordering the deposition and document production to proceed in time for its usage prior to the November 21, 2019 hearing;
- 2) Award Moving Defendants attorneys' fees incurred in responding to the Response, and such other and further relief to which they may be justly entitled; and
- 3) Alternatively, granting leave to take a two hour deposition of Chris Slatosch along with production of documents sought, in accordance with Tex. Civ. Prac. & Rem. Code §27.003(b).

Dated: November 5, 2019.

Respectfully submitted,

/s/ J. Sean Lemoine

J. Sean Lemoine

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MONICA RIAL AND RONALD TOYE**

CERTIFICATE OF SERVICE

I certify that on November 5, 2019, a true and correct copy of the foregoing was served on all counsel of record in accordance with Rule 21a of the Texas Rules of Civil Procedure.

/s/J. Sean Lemoine
J. Sean Lemoine

EXHIBIT 1

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME

CAUSE NO. 141-307474-19

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

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HEARING

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BE IT REMEMBERED that on the 6th day of
 September, 2019, the following proceedings came on to
 be heard in the above-entitled and -numbered cause
 before the Honorable John P. Chupp, judge presiding,
 held in Fort Worth, Tarrant County, Texas.

The proceedings were reported by machine
 shorthand.

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P R O C E E D I N G S

(Friday, September 6, 2019, 10:00 a.m.)

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THE COURT: Good morning. We have three motions to dismiss, I believe, and then some other stuff. Does that sound right?

MR. LEMOINE: Yes.

MR. HSU: Yes.

THE COURT: All right. What do we want to do first?

MR. LEMOINE: Your Honor, Sean Lemoine on behalf of Monica Rial and Ronald Towe. I think that probably with the Court's indulgence, what would be appropriate to do would be that we need to have a finding over the second amended petition or the first amended petition and the response.

There's cross motions to strike the response being untimely, and then the second amended petition for not being in accordance, I think, with the rules and unfair surprise.

And then the plaintiff has a corresponding let it in, so I think that would probably be it. From a -- from a kind of a timekeeping standpoint, Judge, do you have any idea of how long -- I know we're set for two hours, but we

1 that respectfully, that when two people engage in
2 numerous tweets attacking someone, defaming, calling
3 them predators, pedophiles, you name it, I believe
4 it's rational, rational to infer that they're in a
5 conspiracy.

6 THE COURT: Okay. Is that the only
7 thing you have for Ms. Rial?

8 MR. BEARD: No, no, not at all.

9 THE COURT: Okay.

10 MR. BEARD: No, no.

11 THE COURT: Let's do defamation for
12 her.

13 MR. BEARD: All right. Yes, sir.

14 THE COURT: I mean, it's almost 12:00.

15 MR. BEARD: Yes. All right.

16 So we have the following defamatory
17 tweets that -- from Ms. Rial that we can start with.

18 Okay. In response to Vic, and I could
19 put that on the screen if you want to see it or
20 whatever, but she's responding to comments about Vic,
21 and Vic is named. She says the truth will come out
22 now, all of it.

23 She says, you know, and the context
24 here is very clear about sexual assault allegations.
25 That is in Funimation's motion to dismiss, as well as

1 ours.

2 In addition, we have her saying --
3 let's see. (Reading) And just so we're clear, he is
4 the legal definition of harassment. Harassment is
5 governed by state laws that is generally defined as a
6 course of act of conduct, which annoys, threatens,
7 intimidates, alarms or puts a person in fear of their
8 safety.

9 She later goes on to say harassment
10 laws, which vary by state, are defined as a course of
11 conduct, which annoys, threatens, intimidates, alarms,
12 or puts another person -- okay. That's saying sort of
13 the same thing.

14 Here. This is a really good one.
15 There were investigations conducted by multiple
16 companies with evidence, testimony, and truth. There
17 were dozens of men and women who participated. The
18 companies don't have to share that information with
19 you because you're not an attorney or law enforcement.

20 There has been no evidence whatsoever
21 from any of the parties that that is the case. Again,
22 that was attached not just to our documents.

23 In Chuck Huber's affidavit or sworn
24 declaration, he testifies that she made statements,
25 and I'll get to it right here. In Chuck Huber's

1 affidavit, which I remind the Court we're supposed to
2 take at this stage as truthful, you know, I mean, so
3 he says Funimation employees, including Jamie Marchi,
4 Monica Rial, and Michelle Speck have advised me more
5 than once since February 19 that criminal charges are
6 coming against Vic. In response, I encouraged them to
7 help these alleged under-aged victims of rape and
8 sexual assault come forward. When asked to provide
9 specifics of these allegations, they couldn't or
10 refused to do so.

11 All right. We have the real
12 devastating evidence, which is Mr. Slatosch with
13 Kameha Con. In Slatosch's affidavit, he -- here it
14 is. I've got it. No, I don't.

15 In Slatosch's affidavit, he flatly
16 states that Rial and Toye verbally urge them to dump
17 Vic Mignogna, they threatened him with having the
18 other voice actors pull out of the convention, they
19 said that there were criminal charges pending, that he
20 would -- they told him that he would be charged before
21 the convention, and he said, okay, I'll drop him. And
22 he dropped Mr. Mignogna.

23 Now, he breached his contract. There
24 was a dispute between Mignogna and Kameha Con and they
25 got it worked out. Mr. Mignogna goes back to the

1 convention, but under a number of -- a number of
2 limitations that were not imposed on the other voice
3 actors. Rial did more or less pull out. She wound up
4 going to another location, and several other voice
5 actors canceled.

6 Slatosch testifies to all of that, and
7 in addition, we have text messages from Mr. Toye that
8 flat -- that says all of those very things. And we
9 have Rial and Toye, the voice conversation that he had
10 with Rial, he testifies that Toye was on the line
11 behind her adding in to the conversation.

12 So Slatosch establishes a conspiracy
13 between the two of them, tortious interference, and he
14 also testified that they urged him not to do business
15 with Vic ever again.

16 So I find it curious that we have
17 actual evidence and testimony that they did it. And
18 opposing counsel says, well, you know, but there's no
19 proof that they did it to any others. I believe it's
20 a rational inference that this was a pattern of
21 conduct. This is just the only one we were able to
22 turn over before the discovery stay kicked in.

23 In addition, Rial exchanged something
24 like 25 emails with Funimation after Mignogna had
25 already been terminated, discussing things like, you

1 know, what to say, what to do. The emails were very,
2 very, very, you know, I'm sorry you are going through
3 this, this kind of stuff. Very curious conduct for
4 someone who is alleged to be an independent
5 contractor.

6 And, oh, by the way, Funimation did not
7 attach a copy of her contract. They just simply say,
8 well, she's an independent contractor. Well,
9 independent contractor status is a matter -- is a
10 question of facts and law.

11 THE COURT: Let me ask you this. Is
12 there a -- do you have a breach of contract case
13 against Funimation?

14 MR. BEARD: Do we have? No, we don't.

15 THE COURT: Or do you have a breach of
16 contract case against the Comic Con?

17 MR. BEARD: It's Kameha Con, and we --

18 THE COURT: Kameha Con.

19 MR. BEARD: Yes, Your Honor, we would
20 have. We would have.

21 THE COURT: But why didn't you?

22 MR. BEARD: But we worked it out, you
23 know, we --

24 THE COURT: So you didn't have any
25 damages?

1 cancel him until this year. The big difference was
2 the people who worked close to him and companies he
3 worked for terminated. We didn't sue Rooster Teeth,
4 because all Rooster Teeth said was we terminated him.

5 And that's all Funimation said
6 initially. On the 26th of January, they said we
7 terminated him. That was it. If they had stopped
8 there, we wouldn't be in this lawsuit with him. It
9 was that extra step. But I submit that that extra
10 step also indicates a conspiracy and collusion to
11 destroy this guy. At least I think it's rational to
12 infer that.

13 And, you know, as far as -- as far as
14 Mr. Volney's other statements about there's just no --
15 that the statements are true, but we've gone over that
16 ground already. You make two completely true
17 statements that together are defamatory. That's
18 defamation by implication. So that's, I think, all
19 I've got on vicarious liability, Your Honor.

20 THE COURT: Okay. I'm dismissing the
21 tortious interference with existing contract, tortious
22 interference with constructive business relations,
23 civil conspiracy, and vicarious liability.

24 I'm going to rule on the defamation for
25 Funimation Productions, LLC; the defamation for Monica

1 Rial and the civil conspiracy for her. And I'll rule
2 on the defamation of Ronald Toye and the civil
3 conspiracy on him.

4 So that's where we're at. And I have
5 30 days from today, I guess, to do something or
6 they're overruled, right?

7 MR. VOLNEY: Yes, sir.

8 THE COURT: Okay.

9 MR. VOLNEY: Thank you, Your Honor.

10 THE COURT: Y'all have a good day.

11 (End of proceedings)

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C E R T I F I C A T E

THE STATE OF TEXAS X

COUNTY OF TARRANT X

I, Christina Fett, Official Court Reporter in and for the 141st District Court, State of Texas, County of Tarrant, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the reporter's record in the aforementioned cause, all of which occurred in open court or in chambers and were reported by me.

I FURTHER CERTIFY that this reporter's record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I FURTHER CERTIFY that I have no financial interest in the matters shown herein, and that I am not related to any of the parties or their counsel.

I FURTHER CERTIFY that the total cost for the preparation of this reporter's record of the proceedings is \$1,170.00, and was paid by Mr. T. Greg Doucette.

WITNESS MY OFFICIAL HAND this the 13th day of September, 2019.

/s/Christina Fett

Christina Fett, Texas CSR 4590

CSR Expires 12-31-19

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