

CAUSE NO. 141-307474-19VICTOR MIGNOGNA,
Plaintiff,

v.

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

IN THE DISTRICT COURT

141st JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

MOTION TO QUASH

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Victor Mignogna requests that the Court quash the “Notice of Intent to Serve Subpoena for Oral Deposition and Production of Documents on Nick Rekieta” attached hereto as Exhibit A (the “Notice”) and would show as follows:

SUMMARY

While acknowledging that the filing of Defendant Funimation’s motion to dismiss under the Texas Citizens Participation Act (“TCPA”) triggered the TCPA’s automatic suspension of discovery, thus precluding their attempt to procure Mr. Rekeita’s deposition and documents absent the Court’s permission, Defendants Monica Rial and Ronald Toye nonetheless filed their Notice on July 2, 2019 *before* obtaining the Court’s permission.

I. BACKGROUND

On July 1, 2019, Defendant Funimation filed its *Defendant Funimation Productions, LLC’s Motion to Dismiss Under the TCPA*. The following day, Monica’s and Ronald’s counsel emailed Vic’s counsel:

From: Sean Lemoine <sean.lemoine@wickphillips.com>

Sent: Tuesday, July 2, 2019 10:10 AM

In preparation of our Anti-Slapp Motion we would like to take the deposition of Nic Rekieta.

I will agree to limit my questioning to no more than 1.5 hours (assuming of course that he is honest and straightforward with his responses).

My current plan is to take the deposition using vtestify <https://www.vtestify.com/> which would allow everyone to attend the deposition from their respective offices. Mr. Rekieta will be sworn in and videoed in Minn.

Obviously, if you can get Mr. Rekieta to come to Texas we can take it in person if he is more comfortable that way. Otherwise, we will get a subpoena issued pursuant to MCR 45.01(d). If he has a place that he would like to be deposed, we will of course accommodate such a request. My plan is to notice the deposition for August 2, 2019.

Given Funimation's Anti-Slapp Motion we need agreement from the parties to avoid having to file a 27.006(b) Motion.

Also, it is not necessary (but all are certainly welcome) that anyone else attend Mr. Rekieta's deposition and I will be happy to share the transcript.

Please advise as to your position.

Exhibit B hereto at 2-3.¹ Vic's counsel replied:

From: Ty Beard <ty@beardandharris.com>

Sent: Tuesday, July 02, 2019 10:35 AM

I do not represent Mr. Rekieta, so you'll need to contact him about this.

I don't see what purpose (within the meaning of 27.006(b) – "related to the motion") this deposition would serve, so I do not agree to the deposition at this time. If you'll articulate what the valid purpose is, I'll reconsider. Since you'll have to articulate this to the court anyway, there doesn't seem to be any particular reason to not tell me now.

Also, I'm not available August 2, 2019.

Id. at 2. A few minutes later, Monica's and Ronald's counsel outlined their objective:

From: Sean Lemoine <sean.lemoine@wickphillips.com>

Sent: Tuesday, July 2, 2019 10:58 AM

Mr. Beard,

Here are a couple of purposes:

¹ Exhibit B attached hereto: July 2, 2019 email between counsel for Monica and Ronald and counsel for Vic.

(1) Mr. Rekieta can offer quasi expert testimony as to the public figure status of Mr. Mignogna, as you know, Mr. Rekieta is something of youtube personality in his own right and apparently (on his own initiative) he set up a Go Fund Me ("GFM") page that raised over \$180,000 dollars.

- a. Mr. Rekieta runs an almostly nightly youtube channel in which Mr. Mignogna is discussed, apparently this started occurring well before the lawsuit was even filed.

Would you like to stipulate that Mr. Mignogna is a public figure? That would resolve this particular issue.

(2) One of the purposes of Texas Anti-Slapp is a deterrence mechanism for people that file retaliatory lawsuit. Mr. Mignogna effectively disavowed the GFM page, including the uses of the money, with the exception that we know he is not paying you. If Mr. Mignogna is effectively insulated from legal costs in this matter and has an unlimited source of funds to fuel his litigation strategy against people that speak out about him, that magnifies the type of sanction that we are entitled to request.

- a. No one is more qualified to address that topic than Mr. Rekieta.

(3) It is obvious that Mr. Rekieta and Mr. Mignogna speak on a regular basis about this lawsuit, have communicated in writing in ways that have since been destroyed by Mr. Mignogna, and those topics are clearly relevant to Mr. Mignogna's claims. Certainly what Mr. Mignogna wanted to target with this war chest is relevant, in particular if, perhaps it was expressed that the articles in i09, Gizmodo, Anime News Network, etc, were the source of Mr. Mignogna's harm. Yet, for unknown reasons, the GFM's largesse is not being spent on those more obvious purveyors of injury to your client's reputation.

Are you available for July 23-26, 29-31, Aug 2, 5-9, 8-12, or 15-19?

Alternatively, if you are simply opposed, we will proceed accordingly and the Court can pick the date.

Id. at 1-2. Vic's counsel questioned the stated objective:

From: Ty Beard <ty@beardandharris.com>

Sent: Tuesday, July 2, 2019 11:09 AM

I don't find these reasons persuasive. Mr. Rekieta has no qualifications to testify as to Mr. Mignogna's alleged status as a public figure. Nor do I find your GoFundMe arguments and inaccurate factual assertions relevant to the Motion to Dismiss (as required by 27.006(b)).

It appears to me that you want to conduct discovery that is far broader than 27.006(b) envisions, so I am opposed. Your clients had 70+ days to conduct this kind of discovery before any motions were filed.

Id. at 1. Monica and Ronald filed the Notice that day (July 2) at 3:43 p.m. Exhibit A.

The following morning (July 3), Vic's counsel requested that Monica's and Ronald's counsel pull down the Notice:

From: Ty Beard <ty@beardandharris.com>
Sent: Wednesday, July 3, 2019 9:37 AM

If you do not withdraw your deposition notice this morning, we will file a motion to quash and for a protective order. The discovery stay is in effect and this notice is improper. Please advise whether you will comply with this request. If I don't hear from you by this afternoon, I'll assume that you aren't willing to withdraw it and proceed.

Exhibit C hereto at 3.² Monica's and Ronald's counsel replied:

From: Sean Lemoine <sean.lemoine@wickphillips.com>
Sent: Wednesday, July 3, 2019 11:20 AM

Mr. Beard,

I'm not sure I'm following you.

There isn't anything to quash/protect because the condition precedent, an Order allowing discovery under §27.006(b), hasn't been triggered. There is no subpoena going out, which is explicitly what I identified in the Notice (see highlighted sections below).

As to the discovery stay, while it is debatable whether Funimation's Anti-Slapp Motion stays discovery as to Ms. Rial/Mr. Toye, I'm not trying to end run that putative stay, hence my explicit caveat that the notice will issue upon "entry of an Order."

I would prefer to work through issues without Court intervention, which you will recall (and I have reattached for your review) that I reached out to you in an attempt to work this out. You refused. We don't need an order from the Court if all the parties agree to allow the discovery to go forward. None of the parties are even required to attend and might not attend as cost savings measures.

² Exhibit C attached hereto: July 3, 2019 email between counsel for Monica and Ronald and counsel for Vic.

I don't think a Motion to Quash/Protect is in good faith and I doubt Judge Chupp is going to appreciate you filing one or spending the GoFundMe monies on an issue that is not ripe.

That said, I cannot stop you from filing any motion, regardless of whether I consider it not in good faith or for the purpose of harassment.

Should you file a motion, please properly note in the certificate of service that we consider the issue not ripe.

Also, I am out of the office quite a bit next week. Please confer with me as to dates.

Finally, if there is some other accommodation to the taking of Mr. Rekieta's deposition other than a flat no, I am willing to listen. Perhaps Judge Chupp will have some ideas.

Id. at 2-3. In response, Vic's counsel explained that a motion for permission to undertake discovery during the automatic suspension of discovery under the Texas Citizens Participation Act (*i.e.*, the TCPA) was a prerequisite to the Notice:

From: Ty Beard <ty@beardandharris.com>

Sent: Wednesday, July 3, 2019 11:29 AM

I think your remedy is to file a motion to conduct limited discovery per TCPRC 27.006(b). However, since you have not yet filed a motion to dismiss under the TCPA, you do not qualify for such relief, as the statute very clearly states that the court may allow limited discovery "related to the motion". I also contend that Funimation's filing stays ***all*** discovery in the case.

In any case, I will quash the deposition and subpoena this afternoon. I wouldn't want the court to inadvertently sign an order authorizing the additional discovery.

You can set a hearing or file a motion to allow limited discovery as you please.

Id. at 1-2. Monica's and Ronald's counsel, however, disagreed:

From: Sean Lemoine <sean.lemoine@wickphillips.com>

Sent: Wednesday, July 3, 2019 11:40 AM

Mr. Beard,

Your remedy is to wait till we file a Motion for Leave, which is precisely what I have told you we will do.

Not only does a Court not issue an order on a non-existent Motion, in almost 19 years I've never a Court sua-sponte authorize a subpoena that it isn't being requested to issue

I assume Mr. Rekieta is pressuring you to take a strong stance. Both of you should review how subpoenas work in Texas. See Tex R Civ P 176.

I strongly caution you not to set that Motion for hearing.

Id at 1. A few minutes later, Vic's counsel cordially ended the debate:

From: Ty Beard <ty@beardandharris.com>

Sent: Wednesday, July 3, 2019 11:42 AM

Your advice is appreciated and will be given all the consideration it deserves.

Id. at 1.

II. ARGUMENT

Once a motion to dismiss is filed under the TCPA, all discovery in the case is suspended until the Court rules on the motion to dismiss. TEX. CIV. PRAC. & REM. CODE §27.003(c). Hence, the Notice is precluded by (and was filed in violation of) the suspension of discovery under CPRC §27.003(c).

Yet, on a motion by a party or on the Court's own motion and on a showing of good cause, the Court may allow specified and limited discovery relevant to the motion to dismiss before the Court. *Id.* §27.006(b). But Monica and Ronald have not filed a motion for permission under CPRC §27.006. Exhibit C at 1-2. So, the Notice is premature.

Even if the automatic suspension under CPRC §27.003 did not apply and even if Monica and Ronald had complied with CPRC §27.006 before serving the Notice, the scope of the matters of inquiry sought by the deposition and document production must still be limited as prescribed by CPRC §27.006(c) — *i.e.*, relevant to the motion to dismiss before the Court; however, Monica's and Ronald's stated desire for Mr. Rekieta's deposition is to

prepare *their* motion to dismiss (which they have not filed). Exhibit B at 2; *see also* Exhibit A at p. 6 (documents which Monica and Ronald want Mr. Rekieta to produce). Thus, the Notice is threefold improper under CPRC §27.006.

Moreover, because this motion to quash is filed within three business days of the Notice being served on Vic, the Notice is automatically stayed until the Court can rule on this motion to quash. TEX. R. CIV. P. 199.4.

III. PRAYER

WHEREFORE, Victor requests that the Court quash the Notice and award him such other and further relief to which he may be entitled at law or in equity. Plaintiff prays for general relief.

Respectfully submitted,
BEARD HARRIS BULLOCK HUGHES

By: /s/ Ty Beard
Ty Beard
Texas Bar No. 00796181
Carey-Elisa Christie
Texas Bar No. 24103218
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Texas Bar No. 24069173
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Carey@beardandharris.com
Kristina@beardandharris.com
Jim@beardandharris.com

Attorneys for Plaintiff

Certificate of Conference

A conference was held via written correspondence with Sean Lemoine, counsel for Defendants Rial and Toye, on July 2-3, 2019, on the merits of the Notice and this motion. Defendants Rial and Toye contend that the dispute described above is not yet ripe for the Court's determination; Plaintiff disagrees. A reasonable effort has been made to resolve the dispute without the necessity of court intervention, and the effort failed. Therefore, it is presented to the Court for determination.

/s/ Ty Beard

Date: July 3, 2019

Certificate of Service

The undersigned certifies that the foregoing motion was electronically filed today and served via electronic filing manager on counsel of record.

/s/ Ty Beard

Date: July 3, 2019

Exhibit A

PLAINTIFF'S MOTION TO QUASH
EXHIBITS

CAUSE NO. 141-307474-19

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

**NOTICE OF INTENT TO SERVE SUBPOENA FOR ORAL DEPOSITION AND
PRODUCTION OF DOCUMENTS ON NICK REKIETA**

To: Nick Rekieta, 12565 52nd Street NE, Spicer, MN 56288-8442.

Pursuant to Texas Rule of Civil Procedure 205, please take notice that within two days from the entry of an Order allowing service of this Notice, Defendants Monica Rial (“Rial”) and Ronald Toye (“Toye”) (together “Defendants”), intend to serve on Nick Rekieta, a signed copy of the Deposition Subpoena Duces Tecum (the “Subpoena”) attached hereto, with a deposition and production date as directed by the Court, requesting the deposition of Nick Rekieta and the production of documents and things described in Exhibit A thereto.¹ The subpoena and deposition will be naturalized in accordance with Minnesota Court Rule 45.01(d).

¹ Currently a stay of all discovery is in place in accordance with Tex. Civ. Prac. & Rem. Code §27.003(c) (“Except as provided by Section 27.006(b), on the filing of a motion under this section, all discovery in the legal action is suspended until the court has ruled on the motion to dismiss.”). Defendants intend to file an appropriate motion in accordance with §27.006(b) to allow this deposition to go forward.

Dated: July 2, 2019

Respectfully submitted,

/s/ J. Sean Lemoine

J. Sean Lemoine

State Bar No. 24027443

sean.lemoine@wickphillips.com

WICK PHILLIPS GOULD & MARTIN, LLP

3131 McKinney Ave., Suite 100

Dallas, Texas 75204

Telephone: (214) 692-6200

and

Cowles & Thompson

Casey S. Erick

State Bar No.: 24028564

901 Main Street, Suite 3900

Dallas, Texas 75202

Email: cerick@cowlesthompson.com

and

Andrea Perez

State Bar No.: 24070402

Email: aperez@kesslercollins.com

Kessler Collins, P.C.

2100 Ross Avenue, Suite 750

Dallas, Texas 75201

Tel. (214) 379-0732

Fax. (214) 373-4714

**ATTORNEYS FOR DEFENDANTS
MONICA RIAL AND RONALD TOYE**

CERTIFICATE OF SERVICE

I certify that on July 2, 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

STATE OF TEXAS
DEPOSITION SUBPOENA DUCES TECUM
CAUSE NO. 141-307474-19

VICTOR MIGNOGNA, Plaintiff, v. FUNIMATION PRODUCTIONS, LLC, MONICA RIAL, RONALD TOYE, and JAMIE MARCHI, Defendants.	IN THE DISTRICT COURT 141ST JUDICIAL DISTRICT TARRANT COUNTY, TEXAS
TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS OR OTHER PERSON AUTHORIZED TO SERVE AND EXECUTE - GREETINGS: YOU ARE HEREBY COMMANDED TO SUMMON:	
Nick Rekieta, 12565 52 nd Street NE, Spicer, MN 56288-8442, OR WHEREVER IT MAY BE FOUND.	
<input checked="" type="checkbox"/> YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.	
PLACE OF DEPOSITION	DATE AND TIME
12565 52 nd Street NE Spicer, MN 56288-8442	TBD by the Court
<input checked="" type="checkbox"/> YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or tangible things at the place, date, and time specified below (list documents or tangible things):	
SEE "EXHIBIT A" for a listing of documents to produce and permit inspection and copying of	
PLACE	DATE AND TIME
Via electronic copy to Wick Phillips Gould & Martin, 3131 McKinney Avenue, Suite 100 Dallas, Texas 75204, or a copy service will be sent to the Place of Deposition to make copies of the documents.	TBD by the Court
<input type="checkbox"/> YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.	
PREMISES	DATE AND TIME
Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. Texas Rule of Civil Procedure 176.8(a).	
ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<u>/s/ Draft</u> Attorney for Defendants Monica Rial and Ronald Toye	July 2, 2019
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER J. Sean Lemoine State Bar No. sean.lemoine@wickphillips.com WICK PHILLIPS GOULD & MARTIN, LLP 3131 McKinney, Suite 100 Dallas, Texas 75204 Telephone: 214.692.6200 Facsimile: 214.692.6255	

PROOF OF SERVICE		
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the State of Texas that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER:

Exhibit A

Instructions and Definitions:

1. The terms “communication(s),” means any oral or written utterance, notation or statement of any nature whatsoever, by or to whomsoever made, including, but not limited to correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings, between two or more persons.
2. The term “document” is used in the broadest sense and includes, but is not limited to, all originals, non-identical copies and drafts thereof. The term “document” includes, but is not limited to, the following items, whether printed, recorded, or reproduced by mechanical or electronic process, or written or produced by hand: agreements; communications, including intercompany and intracompany communications; letters; **electronic mail, instant messages, text messages,** correspondence; **applications of any type that exchange communications,** telegrams; cables; telexes; memoranda; records; books; summaries of records or papers; graphs; charts; maps; blueprints; diagrams; tables; indices; pictures; recordings; tapes; computer storage media; accounts; analyses and analytical records; memoranda of telephone calls; minutes or records of meetings or conferences; reports or summaries of interviews; transcripts; reports; microfilm; microfiche; telecopies; faxes; computer printouts; ledgers; photographs; videotapes; photographs; schedules; wiring diagrams; logic diagrams; diaries; calendars; day-timers; logs; reports or summaries of investigations; opinions or reports of consultants; appraisals; evaluations; reports or summaries of negotiations; brochures; bulletins; pamphlets; circulars; advertising literature; magazine and newspaper articles or advertisements; trade letters; press releases; contracts; notes; drafts; projections; working papers; ledgers; checks (front and back); check stubs; receipts; and other documents, papers, or writings of whatever description including, but not limited to, any information contained in any computer or electronic information storage and retrieval device.
3. The term “You” or “Your” as used herein shall mean Nick Rekieta.
4. The term “Mignogna” as used herein shall mean Plaintiff Vic Mignogna.
5. The term “Defendants” as used herein shall mean Defendants Funimation Productions, LLC, Monica Rial, Ronald Toye, and Jamie March.
6. The term “Petition” as used herein shall mean Plaintiff’s most recent Petition on file.
7. The term “GFM” as used herein shall mean the Go Fund Me page set upon February 19, 2019, of which a snapshot is attached hereto as Exhibit 1.
8. The term “BHBH” as used herein shall mean the law firm of Beard Harris Bullock Hughes, including any of its agents, employees, or consultants, which include Ty Beard, Carey-Elisa Christie, Kristina M. Ross, and Jim E. Bullock.
9. The term “Mignogna Witnesses” shall mean the persons identified on Exhibit 2.
10. Unless otherwise indicated, the use in these requests of the name or identity of any person, business organization, or other entity (including, but not limited, to those entities and persons identified in this definitions) shall specifically include all of that entity’s or person’s present or former employees, officers, directors, agents, representatives, members, partners, attorneys, departments, sections, affiliates, subsidiaries, parents, and all others acting on its/their behalf.
11. The term “relating to” (or any variant of “relating to”) means reflecting, referring to, regarding, having any relationship to, pertaining to, evidencing, or constituting, in whole or in part, the subject matter of the particular request, as well as any document which contains, records, states, reflects, interprets, identifies, confirms, contradicts, or otherwise concerns that subject in any fashion whatsoever.

12. Pursuant to Texas Rule of Civil Procedure 196.4, for any responsive documents that are in electronic or magnet form, please produce in both (i) hard copy (with Bates-stamps) or .pdf (with Bates-stamps); and (ii) the native magnetic or electronic form.
13. Unless otherwise indicated, the use in these requests of the name or identity of any person, business organization, or other entity shall specifically include all of that entity's present or former employees, officers, directors, agents, representatives, members, attorneys, departments, sections, affiliates, subsidiaries, parents, and all other persons acting on its behalf.
14. The time period relevant to these requests is January 16, 2019 **through the date of your deposition**, unless otherwise stated and/or obvious from the context of the Request.
15. For the purpose of interpreting and construing the scope of these Requests, you are instructed to give words their most expansive and inclusive meanings, unless otherwise specifically limited by the language of an individual request. Accordingly: (a) construe the words "and" as well as "or" in the disjunctive or conjunctive, as necessary to make the request more inclusive; (b) construe the term "including" to mean "including, but not limited to;" (c) construe the singular form of a word to include the plural and the plural form to include the singular; (d) construe a masculine noun or adjective to include the feminine and vice versa; and (e) construe the words "all" and "each" to mean both all and each.
16. If, in answering a Request, you object to any part of a Request, each part of said Request shall be treated separately. If an objection is made to a portion of a Request, the remaining portion(s) shall be answered.
17. These Requests are intended to cover all documents or things that are in your possession, custody, or control. A document or thing is deemed to be in your possession, custody, or control if:
 - a. it is in your physical control; or
 - b. it is in the physical control of any other person or entity, and you, individually or otherwise:
 - (1) own the document or thing in whole or in part;
 - (2) have a right by contract, statute, or otherwise, to use, inspect, examine, or copy that document or thing on any terms; or
 - (3) have been able to use, inspect, examine, or copy that document or thing when you have sought to do so.

Documents:

1. Documents and communications between you and Mignogna prior to the creation of the GFM.
2. Documents and communication between you and Mignogna regarding the GFM, including any expenditures (anticipated or actual) related thereto.
3. Documents between or among you and/or Mignogna and/or BHBH and/or the Mignogna Witnesses concerning the Defendants, the Petition, any allegations in the Petition, and/or the GFM.
4. Documents and/or communications involving any expenditures of money from the GFM related to the Petition.



5.1k

218

Vic Kicks Back

Share

Tweet

8.5k shares

Story

Updates 5

Vic Mignogna spent the past two decades building a career as a voice actor. He worked with great people, made great friends, and represented great companies.

Over the past month, all of that work and goodwill was maliciously and brutally destroyed by a dedicated group hell-bent on dragging his name and reputation into oblivion. This capped off with hurtful allegations from people Vic has worked with, and considered friends, for many years.

Now Vic has been removed from Rooster Teeth and Funimation, and disinvited from several conventions, disconnecting him from his income and from his fans and supporters.

Vic has tried to mitigate the situation with public statements, and the attacks on him and his character persist. Anyone who knows Vic knows he would never ask for this, and does not want this course of action. When your opponents leave you no choice, you eventually have to kick back.

This Fund is set up for Vic's legal defense fees. There are MANY possible defendants in different jurisdictions, from boring bloggers to multi-million, even multi-billion dollar corporations. It takes an

\$182,860 of \$200,000 goal

Raised by 5,634 people in 4 months

Donate Now

Share on Facebook

Created February 19, 2019



Nick Rekieta ✓
on behalf of Beard Harris
Other
SPICER, MN

Recent Donations

BG

\$100
Brandon Guillory
6 hours ago

\$20
Anonymous
8 hours ago

HA

\$20
Harry A
21 hours ago

\$50
Anonymous
1 day ago

AT

\$50
Ange Time
1 day ago

\$20
Anonymous
1 day ago

MG

\$74
Michelle Gorman

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

PLEASE TAKE NOTICE that Defendants Monica Rial and Ronald Toye have served notice upon the following of their obligation to preserve documents relevant to this dispute.

1. Chelsea Beard;
2. Alyssa Fluty;
3. Todd Haberkorn;
4. Lisa Hansell;
5. Chuck Huber;
6. Veronica Julian;
7. Barb Myers;
8. Nicholas Rekieta; and
9. Chris Slatosch.

A redacted copy of the Litigation Hold letter is attached hereto for reference.

Dated: July 1, 2019

Respectfully submitted,

/s/ J. Sean Lemoine

J. Sean Lemoine

State Bar No. 24027443

sean.lemoine@wickphillips.com**WICK PHILLIPS GOULD & MARTIN, LLP**

3131 McKinney Ave., Suite 100

Dallas, Texas 75204

Telephone: (214) 692-6200

Facsimile: (214) 692-6255

**ATTORNEY FOR DEFENDANTS
MONICA RIAL AND RONALD TOYE**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel pursuant to the Texas Rules of Civil Procedure on July 1, 2019.

/s/ J. Sean Lemoine

J. Sean Lemoine

July 1, 2019

Via Electronic Mail and/or First-Class Mail

Nicholas Rekieta

[REDACTED]

Barb Myers

[REDACTED]

Lisa Hansell

[REDACTED]

Chuck Huber

[REDACTED]

Todd Haberkorn

[REDACTED]

Chris Slatosch

[REDACTED]

Chelsea Beard

[REDACTED]

Veronica M. Julian

[REDACTED]

Alyssa A Fluty

[REDACTED]

Re: *Mignogna v. FUNimation Productions, LLC, et al*; Cause Number 141-307474-19, in the 431st District Court of Tarrant County, Texas; Litigation Hold Letter.

All:

This firm represents Monica Rial and Ronald Toye in connection with the above-referenced case pending in the 431st District Court of Tarrant County, Texas (the "Lawsuit"). As you are no doubt aware, Plaintiff Vic Mignogna ("Mignogna") filed the Lawsuit on April 18, 2019. Mignogna also sat for a deposition on June 26, 2019.

I send you this correspondence because I believe that you have knowledge and documents pertinent to this Lawsuit. Mignogna named you in his deposition, and informed me that he exchanged communications with you within the last year that are relevant to the Lawsuit.

This letter hereby notifies you that you must preserve any documents,¹ information, tangible things, or electronically stored information in your possession, custody, or control that may be relevant to the Lawsuit (“Materials”). We request that you take immediate steps to ensure all relevant Materials are not inadvertently or purposefully destroyed and/or deleted.

Such Materials include, but are not limited to:

- Documents and communications (emails/texts/other) with Mignogna about Monica Rial, Ronald Toye, Jamie Marchi, FUNimation, Tammi Denbow, Rooster Teeth, or any other matters concerning this Lawsuit;
- Documents and communications (emails/texts/other) between or among you and Monica Rial;
- Documents and communications (emails/texts/other) between or among you and Ronald Toye;
- Documents and communications (emails/texts/other) between or among you and Mignogna’s litigation counsel in this Lawsuit, Beard Harris Bullock Hughes;
- Documents and communications (emails/texts/other) between or among yourselves about Mignogna or this Lawsuit;
- Documents, donations, and accounting information concerning the “Vic Kicks Back” GoFundMe campaign found at this URL: <https://www.gofundme.com/f/vic-kicks-back>;
- Your communications to any person in which you exchange personal or identifying information concerning the Defendants in the lawsuit, any witnesses to Mignogna’s behavior at fan conventions, and any individuals who testify in the Lawsuit; this request specifically includes your communications (emails/texts/direct messages/posts) to individuals associated with Kiwi Farms and the Risembool Rangers.

¹ “Documents” as used in this letter is defined broadly. It includes hard copy files that you or your agents and representatives maintain at your home or office. It also includes “electronically stored information” or ESI. ESI includes any information maintained on any computer, including emails, Word, Excel, Dropbox, PowerPoint, .PDF, .TIF, or .JPG files. These files should be maintained in electronic form, and all steps should be taken to ensure they are not deleted through a routine backup or “purge” process. If you use a web-based email solution (i.e., gmail, Hotmail) that contains relevant information, this hold requires you to take all steps to ensure that information is not deleted or purged. ESI also includes any information maintained on a smart phone (i.e., iPhone, Android, or Blackberry), including memos, files, or text messages. “Documents” also include any audio or video recordings.

With regards to the forgoing, any and all of your automatic or routine document destruction policies or habits must be suspended. Therefore, until further notice:

DO NOT DESTROY, DISCARD, ALTER, OR ERASE ANY DOCUMENT OR ELECTRONIC INFORMATION, WHETHER ALREADY EXISTING OR CREATED IN THE FUTURE, THAT RELATES IN ANY WAY TO THE LAWSUIT OR THE MATERIALS. ALL DOCUMENTS AND ELECTRONIC INFORMATION RELATING TO THE LAWSUIT MUST BE PRESERVED UNTIL FURTHER NOTICE FROM COUNSEL.

The date range of Materials to be preserved is at least January 1, 2018 through trial or final dismissal of this matter, but do not limit preservation to those dates if you have relevant Materials that fall outside of the range.

Please forward this Litigation Hold Letter to your legal counsel, if any, and to any individual or agent who may be in possession of any documents or materials relating to the Lawsuit, or to any individual who has responsibility or control over any areas or devices where documents relating to the Lawsuit may be maintained or stored.

Your compliance is expected and appreciated.

Should you have any questions, you may contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Sean Lemoine', with a stylized, flowing script.

J. Sean Lemoine

Exhibit B

PLAINTIFF'S MOTION TO QUASH
EXHIBITS

From: Ty Beard
Sent: Tuesday, July 2, 2019 11:09 AM
To: Sean Lemoine
Cc: Andrea Perez; Laci Stovall; Jim Bullock; Carey Christie; Erick, Casey; John Volney; Sam Johnson
Subject: RE: Deposition of Nick Nekieta

I don't find these reasons persuasive. Mr. Rekieta has no qualifications to testify as to Mr. Mignogna's alleged status as a public figure. Nor do I find your GoFundMe arguments and inaccurate factual assertions relevant to the Motion to Dismiss (as required by 27.006(b)).

It appears to me that you want to conduct discovery that is far broader than 27.006(b) envisions, so I am opposed. Your clients had 70+ days to conduct this kind of discovery before any motions were filed.

--Ty

From: Sean Lemoine <sean.lemoine@wickphillips.com>
Sent: Tuesday, July 2, 2019 10:58 AM
To: Ty Beard <ty@beardandharris.com>
Cc: Andrea Perez <APerez@kesslercollins.com>; Laci Stovall <laci.stovall@beardandharris.com>; Jim Bullock <jim@beardandharris.com>; Carey Christie <carey@beardandharris.com>; Erick, Casey <cerick@cowlesthompson.com>; John Volney <jvolney@lynnp.com>; Sam Johnson <sam@johnsonsparks.com>; Sean Lemoine <sean.lemoine@wickphillips.com>
Subject: RE: Deposition of Nick Nekieta

Mr. Beard,

Here are a couple of purposes:

(1) Mr. Rekieta can offer quasi expert testimony as to the public figure status of Mr. Mignogna, as you know, Mr. Rekieta is something of youtube personality in his own right and apparently (on his own initiative) he set up a Go Fund Me ("GFM") page that raised over \$180,000 dollars.

a. Mr. Rekieta runs an almostly nightly youtube channel in which Mr. Mignogna is discussed, apparently this started occurring well before the lawsuit was even filed.

Would you like to stipulate that Mr. Mignogna is a public figure? That would resolve this particular issue.

(2) One of the purposes of Texas Anti-Slapp is a deterrence mechanism for people that file retaliatory lawsuit. Mr. Mignogna effectively disavowed the GFM page, including the uses of the money, with the exception that we know he is not paying you. If Mr. Mignogna is effectively insulated from legal costs in this matter and has an unlimited source of funds to fuel his litigation strategy against people that speak out about him, that magnifies the type of sanction that we are entitled to request.

a. No one is more qualified to address that topic than Mr. Rekieta.

(3) It is obvious that Mr. Rekieta and Mr. Mignogna speak on a regular basis about this lawsuit, have communicated in writing in ways that have since been destroyed by Mr. Mignogna, and those topics are clearly relevant to Mr. Mignogna's claims. Certainly who Mr. Mignogna wanted to target with this war chest is relevant, in particular if,

perhaps it was expressed that the articles in i09, Gizmodo, Anime News Network, etc, were the source of Mr. Mignogna's harm. Yet, for unknown reasons, the GFM's largesse is not being spent on those more obvious purveyors of injury to your client's reputation.

Are you available for July 23-26, 29-31, Aug 2, 5-9, 8-12, or 15-19?

Alternatively, if you are simply opposed, we will proceed accordingly and the Court can pick the date.

Sean Lemoine

Partner | [Wick Phillips](#)

Direct: 214.740.4053

Email: sean.lemoine@wickphillips.com



From: Ty Beard <ty@beardandharris.com>

Sent: Tuesday, July 02, 2019 10:35 AM

To: Sean Lemoine <sean.lemoine@wickphillips.com>

Cc: Andrea Perez <APerez@kesslercollins.com>; Laci Stovall <laci.stovall@beardandharris.com>; Jim Bullock <jim@beardandharris.com>; Carey Christie <carey@beardandharris.com>; Erick, Casey <cerick@cowlesthompson.com>; John Volney <jvolney@lynnllp.com>; Sam Johnson <sam@johnsonsparks.com>

Subject: RE: Deposition of Nick Nekieta

I do not represent Mr. Rekieta, so you'll need to contact him about this.

I don't see what purpose (within the meaning of 27.006(b) – "related to the motion") this deposition would serve, so I do not agree to the deposition at this time. If you'll articulate what the valid purpose is, I'll reconsider. Since you'll have to articulate this to the court anyway, there doesn't seem to be any particular reason to not tell me now.

Also, I'm not available August 2, 2019.

--Ty

From: Sean Lemoine <sean.lemoine@wickphillips.com>

Sent: Tuesday, July 2, 2019 10:10 AM

To: Ty Beard <ty@beardandharris.com>

Cc: Andrea Perez <APerez@kesslercollins.com>; Laci Stovall <laci.stovall@beardandharris.com>; Jim Bullock <jim@beardandharris.com>; Carey Christie <carey@beardandharris.com>; Erick, Casey <cerick@cowlesthompson.com>; John Volney <jvolney@lynnllp.com>; Sam Johnson <sam@johnsonsparks.com>; Sean Lemoine <sean.lemoine@wickphillips.com>

Subject: Deposition of Nick Nekieta

Mr. Beard,

In preparation of our Anti-Slapp Motion we would like to take the deposition of Nic Rekieta.

I will agree to limit my questioning to no more than 1.5 hours (assuming of course that he is honest and straightforward with his responses).

My current plan is to take the deposition using vtestify <https://www.vtestify.com/> which would allow everyone to attend the deposition from their respective offices. Mr. Rekieta will be sworn in and videoed in Minn.

Obviously, if you can get Mr. Rekieta to come to Texas we can take it in person if he is more comfortable that way. Otherwise, we will get a subpoena issued pursuant to MCR 45.01(d). If he has a place that he would like to be deposed, we will of course accommodate such a request. My plan is to notice the deposition for August 2, 2019.

Given Funimation's Anti-Slapp Motion we need agreement from the parties to avoid having to file a 27.006(b) Motion.

Also, it is not necessary (but all are certainly welcome) that anyone else attend Mr. Rekieta's deposition and I will be happy to share the transcript.

Please advise as to your position.

Sean Lemoine

Partner | [Wick Phillips](#)

Direct: 214.740.4053

Email: sean.lemoine@wickphillips.com



Exhibit C

PLAINTIFF'S MOTION TO QUASH
EXHIBITS

From: Ty Beard
Sent: Wednesday, July 3, 2019 11:42 AM
To: Sean Lemoine
Cc: Andrea Perez; Laci Stovall; Jim Bullock; Carey Christie; Erick, Casey; John Volney; Sam Johnson
Subject: RE: Deposition of Nick Nekieta

Your advice is appreciated and will be given all the consideration it deserves.

--Ty

From: Sean Lemoine <sean.lemoine@wickphillips.com>
Sent: Wednesday, July 3, 2019 11:40 AM
To: Ty Beard <ty@beardandharris.com>
Cc: Andrea Perez <APerez@kesslercollins.com>; Laci Stovall <laci.stovall@beardandharris.com>; Jim Bullock <jim@beardandharris.com>; Carey Christie <carey@beardandharris.com>; Erick, Casey <cerick@cowlesthompson.com>; John Volney <jvolney@lynnllp.com>; Sam Johnson <sam@johnsonsparks.com>; Sean Lemoine <sean.lemoine@wickphillips.com>
Subject: Re: Deposition of Nick Nekieta

Mr. Beard,

Your remedy is to wait till we file a Motion for Leave, which is precisely what I have told you we will do.

Not only does a Court not issue an order on a non-existent Motion, in almost 19 years I've never a Court sua-sponte authorize a subpoena that it isn't being requested to issue

I assume Mr. Rekieta is pressuring you to take a strong stance. Both of you should review how subpoenas work in Texas. See Tex R Civ P 176.

I strongly caution you not to set that Motion for hearing.

Sean Lemoine

Partner

Wick Phillips

3131 McKinney Avenue

Suite 100

Dallas, Texas 75204

Direct: 214.740.4053

Email: sean.lemoine@wickphillips.com

www.wickphillips.com

On Jul 3, 2019, at 11:29 AM, Ty Beard <ty@beardandharris.com> wrote:

I think your remedy is to file a motion to conduct limited discovery per TCPRC 27.006(b). However, since you have not yet filed a motion to dismiss under the TCPA, you do not qualify for such relief, as the statute very clearly states that the court may allow limited discovery "related to the motion". I also contend that Funimation's filing stays ***all*** discovery in the case.

In any case, I will quash the deposition and subpoena this afternoon. I wouldn't want the court to inadvertently sign an order authorizing the additional discovery.

You can set a hearing or file a motion to allow limited discovery as you please.

--Ty

From: Sean Lemoine <sean.lemoine@wickphillips.com>
Sent: Wednesday, July 3, 2019 11:20 AM
To: Ty Beard <ty@beardandharris.com>
Cc: Andrea Perez <APerez@kesslercollins.com>; Laci Stovall <laci.stovall@beardandharris.com>; Jim Bullock <jim@beardandharris.com>; Carey Christie <carey@beardandharris.com>; Erick, Casey <cerick@cowlesthompson.com>; John Volney <jvolney@lynnllp.com>; Sam Johnson <sam@johnsonsparks.com>; Sean Lemoine <sean.lemoine@wickphillips.com>; Ethan Minshull <ethan.minshull@wickphillips.com>
Subject: RE: Deposition of Nick Nekieta

Mr. Beard,

I'm not sure I'm following you.

There isn't anything to quash/protect because the condition precedent, an Order allowing discovery under §27.006(b), hasn't been triggered. There is no subpoena going out, which is explicitly what I identified in the Notice (see highlighted sections below).

As to the discovery stay, while it is debatable whether Funimation's Anti-Slapp Motion stays discovery as to Ms. Rial/Mr. Toye, I'm not trying to end run that putative stay, hence my explicit caveat that the notice will issue upon "entry of an Order."

I would prefer to work through issues without Court intervention, which you will recall (and I have reattached for your review) that I reached out to you in an attempt to work this out. You refused. We don't need an order from the Court if all the parties agree to allow the discovery to go forward. None of the parties are even required to attend and might not attend as cost savings measures.

I don't think a Motion to Quash/Protect is in good faith and I doubt Judge Chupp is going to appreciate you filing one or spending the GoFundMe monies on an issue that is not ripe.

That said, I cannot stop you from filing any motion, regardless of whether I consider it not in good faith or for the purpose of harassment.

Should you file a motion, please properly note in the certificate of service that we consider the issue not ripe.

Also, I am out of the office quite a bit next week. Please confer with me as to dates.

Finally, if there is some other accommodation to the taking of Mr. Rekieta's deposition other than a flat no, I am willing to listen. Perhaps Judge Chupp will have some ideas.

<image001.jpg>

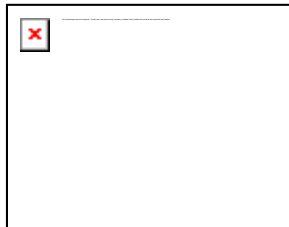
Sean Lemoine

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Direct: 214.740.4053
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<image002.jpg>

From: Ty Beard <ty@beardandharris.com>
Sent: Wednesday, July 03, 2019 9:37 AM
To: Sean Lemoine <sean.lemoine@wickphillips.com>
Cc: Andrea Perez <APerez@kesslercollins.com>; Laci Stovall <laci.stovall@beardandharris.com>; Jim Bullock <jim@beardandharris.com>; Carey Christie <carey@beardandharris.com>; Erick, Casey <cerick@cowlesthompson.com>; John Volney <jvolney@lynnllp.com>; Sam Johnson <sam@johnsonsparks.com>
Subject: Re: Deposition of Nick Nekieta

If you do not withdraw your deposition notice this morning, we will file a motion to quash and for a protective order. The discovery stay is in effect and this notice is improper. Please advise whether you will comply with this request. If I don't hear from you by this afternoon, I'll assume that you aren't willing to withdraw it and proceed.

—Ty



Ty Beard, Senior Partner

Beard and Harris, Attorneys at Law

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[Tyler, Texas 75703](#)

(o) [903-509-4900](#)

(f) [903-509-4908](#)

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