

CAUSE NO. 141-307474-19

VICTOR MIGNOGNA,  
Plaintiff

v.

FUNIMATION PROCUCTIONS, LLC,  
JAMIE MARCHI, MONICA RIAL,  
AND RONALD TOYE,  
Defendants

§ IN THE DISTRICT COURT  
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§ 141<sup>ST</sup> DISTRICT COURT  
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§ TARRANT COUNTY, TEXAS

**ORDER GRANTING DEFENDANTS’  
FUNIMATION PRODUCTIONS, LLC’S MOTION TO DISMISS UNDER THE TCPA,  
MONICA RIAL AND RON TOYE’S MOTION TO DISMISS UNDER THE TCPA, and  
JAMIE MARCHI’S MOTION TO DISMISS UNDER THE TCPA**

On September 6, 2019, this Court considered Defendant Funimation Productions, LLC’s (“Funimation”) Motion to Dismiss under the TCPA, Monica Rial (“Rial”) and Ron Toyé’s (“Toye”) Motion to Dismiss Pursuant to the Texas Citizens Participation Act, Defendant Jamie Marchi’s (“Marchi”) Motion to Dismiss Pursuant to the Texas Citizens Participation Act, the responses, the replies, the evidence, other documents on file, and the arguments of counsel. The Court finds that the three Motions should be and are **GRANTED** in full.

Plaintiff filed an Original Petition on April 18, 2019. Defendants answered and then filed Motions to Dismiss under the Texas Citizens Participation Act (“TCPA”).<sup>1</sup> The Parties agreed in a Rule 11 agreement filed with the Court on August 6, 2019, that Plaintiff’s response to the TCPA Motions would be filed on or before August 30, 2019. It appears from the arguments of counsel and documents on file that Plaintiff made a good faith attempt to file Responses according to the terms of the Rule 11 agreement but due technical errors was unable to meet the deadline; therefore, the Court **FINDS** that Plaintiff’s Response to Defendants’ TCPA Motions to Dismiss is deemed

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<sup>1</sup> TEX CIV. PRAC. & REM CODE ANN §§27.001-010.

timely filed. On September 3, 2019, Plaintiff withdrew the affidavits of Victor Mignogna, Chuck Huber and Christopher Slatosch that were attached to Plaintiff's Response to Defendants' TCPA Motions to Dismiss, therefore the Court did not consider the withdrawn affidavits. Plaintiff additionally filed Plaintiff's Second Amended Petition on September 3, 2019, which added additional evidence that was not included in Plaintiff's Response to Defendant's TCPA Motion to Dismiss. "Nothing in the [TCPA] statute prohibits claimants from amending their pleadings; however, amendment after a TCPA motion is filed would be contrary to the purpose of the statute, and possibly a violation of the Texas Rules of Civil Procedure.<sup>2</sup> Accordingly, the Court did not consider evidence submitted after the agreed upon deadline in the Rule 11 agreement with the exception of Plaintiff's Response to Defendants' TCPA Motions to Dismiss (without the withdrawn affidavits), which was deemed timely filed by this Order.

The purpose of the TCPA is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.<sup>3</sup> The TCPA shall be construed liberally to effectuate its purpose and intent fully.<sup>4</sup>

Plaintiff Mignogna has filed causes of action against all Defendants for Defamation, Tortious Interference with Existing Contracts, Tortious Interference with Prospective Business

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<sup>2</sup> See Laura Lee Prather & Robert T. Sherwin, *The Changing Landscape of the Texas Citizens Participation Act*, TEX. TECH LAW REV. 1, 18 nn. 152-53 (print version scheduled for publication Winter 2019) (available online at <https://ssrn.com/abstract=3447482>) (citation omitted).

<sup>3</sup> TEX CIV. PRAC. & REM CODE ANN §27.002.

<sup>4</sup> TEX CIV. PRAC. & REM CODE ANN §27.011(b).

Relations, and Civil Conspiracy. Plaintiff has also sued Defendant Funimation for Vicarious Liability for the conduct of Defendants Marchi, Rial, and Toye.

The Court **FINDS** that Defendants have shown by a preponderance of the evidence that all causes of action against all Defendants asserted by Plaintiff Mignogna are based on, relate to, or are in response to the Defendant's right to free speech, the right to petition, or the right to association under the TCPA.<sup>5</sup>

Additionally, the Court **FINDS** that Defendants have shown by a preponderance of the evidence that the communications related to Plaintiff's causes of action relate to a public concern, and the communications involve allegations of conduct by Plaintiff that relate to health and safety, environmental, economic or community well-being.<sup>6</sup>

### **DEFAMATION**

Plaintiff has asserted in his Petition that:

Vic is a voice actor who has performed the voices of animated characters for over 22 years, mainly in "anime" productions. In June 2017, Funimation contracted with Vic to provide the voice for dubbed anime properties it was distributing within the U.S. In 2018, Vic was cast as the English voice for "Broly," the lead character in the fantasy martial arts anime film *Dragon Ball Super: Broly*. The cast also included Monica. *Dragon Ball Super: Broly* was released in the U.S. on January 16, 2019 and was an instant financial success for Funimation, earning \$7 million on its first day and \$24 million within the first five days of its premiere." In addition to his voice work, "Vic attends fan conventions, approximately 35-40 per year. He earns a sizeable income from appearance fees guaranteed by contract with the convention producers and from signing autographs, taking photos with fans, and appearing on guest panels.

In addition to Plaintiff's assertions, Defendants provided specific evidence in their Motions and Replies that are before this Court and they have argued that Plaintiff is a Public Figure as contemplated by Texas defamation law. This Court must recognize and apply the reasoning of

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<sup>5</sup> TEX CIV. PRAC. & REM CODE ANN §§27.005.

<sup>6</sup> TEX CIV. PRAC. & REM CODE ANN §27.001(7).

the Second Court of Appeals in *Lane v Phares*, 544 S.W.3d 881, (Tex. App – Fort Worth 2018, no pet.), which has similar facts and circumstance as the instant case. Therefore, the Court **FINDS** by a preponderance of the evidence that Plaintiff Mignogna is a public figure. Additionally, the Court **FINDS** that Plaintiff has failed to establish, by clear and specific evidence, a prima facie case for each element of his **DEFAMATION** cause of action against all Defendants.

#### **TORTIOUS INTERFERENCE WITH EXISTING CONTRACTS**

The Court **FINDS** that Plaintiff has failed to establish, by clear and specific evidence, a prima facie case for each element of his **TORTIOUS INTERFERENCE WITH EXISTING CONTRACTS** cause of action against all Defendants.

#### **TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS**

The Court **FINDS** that Plaintiff has failed to establish, by clear and specific evidence, a prima facie case for each element of his **TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS** cause of action against all Defendants.

#### **CIVIL CONSPIRACY**

Plaintiff has alleged in his Petition that “Defendants conspired and acted in concert to defame Vic, unlawfully (or, alternatively, lawfully by unlawful means) interfere with his existing contracts, and unlawfully (or, alternatively, lawfully by unlawful means) interfere with his prospective business relations, and each knowingly assisted and participated in the other’s actions”. The underlying causes of action have been dismissed by this Order under the TCPA. The Court **FINDS** that Plaintiff has failed to establish, by clear and specific evidence, a prima facie case for each element of his **CIVIL CONSPIRACY** cause of action against any and all Defendants.

**VICARIOUS LIBAILITY**

Vicarious liability claims against Defendant Funimation relate to causes of action and conduct by Defendants Marchi, Rial and Toye that have been dismissed by this Order under the TCPA. The Court **FINDS** that Defendants have shown by a preponderance of the evidence that the Defendants Marchi, Rial and Toye were Independent Contractors at all times while associated with Defendant Funimation. The Court additionally **FINDS** that Plaintiff has failed to establish, by clear and specific evidence, a prima facie case for each element of his **VICARIOUS LIBAILITY** claim against Defendant Funimation.

Therefore, the Court **GRANTS** the TCPA Motions. Plaintiff Victor Mignogna's claims against Defendants Funimation, Marchi, Rial and Toye are thus **DISMISSED WITH PREJUDICE**.

The Court retains jurisdiction so that Defendants may submit evidence and briefing in support of an award of attorneys' fees, costs, and other expenses incurred in defending the action, and an appropriate sanction pursuant to TEX. CIV. PRAC. & REM. CODE § 27.009. Defendants shall file their request for fees, costs, expenses, and appropriate sanctions within 30 days of this Order.

**SIGNED on October 4, 2019.**

  
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**JUDGE JOHN P. CHUPP**  
**141<sup>ST</sup> JUDICIAL DISTRICT COURT**