

Cause No. 141-307474-19

VICTOR MIGNOGNA

*Plaintiff,*

v.

FUNIMATION PRODUCTIONS LLC,  
JAMIE MARCHI, MONICA RIAL, AND  
RONALD TOYE,*Defendants.*§  
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IN THE DISTRICT COURT

141<sup>ST</sup> JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

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**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO COMPEL DEPOSITION  
AND DOCUMENTS OF CHRIS SLATOSCH,  
FIRST AMENDED MOTION TO QUASH, AND  
MOTION FOR SANCTIONS**

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TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, Victor Mignogna, and files his *Plaintiff's Response to Defendant's Motion to Compel Deposition and Documents of Chris Slatosch, First Amended Motion to Quash, and Motion for Sanctions* ("Motion"), asking this Honorable Court to deny Defendants' *Motion to Compel Deposition and Documents of Chris Slatosch*, quash Defendants' *Notice of Intent to Subpoena Christopher Slatosch*, and award sanctions to Plaintiff in connection therewith. In support thereof, Plaintiff would respectfully show the following:

1. Plaintiff asks the Honorable Court to quash Defendants' *Notice of Intent to Subpoena Christopher Slatosch*, which seeks the deposition of non-party Christopher Slatosch. Plaintiff seeks to quash the deposition on the grounds that the discovery is sought in clear violation of Sections 27.003(c) of Texas Civil Practice & Remedies Code, which suspends all discovery until the Court has ruled on a motion to dismiss.

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2. In addition to the grounds asserted above, the deposition sought is not relevant to a determination of whether Plaintiff's action "was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation", a matter already decided by this Court. Further, the deposition sought is not relevant to "Plaintiff's and his counsel's culpability in bringing and prosecuting the dismissed claims." Specifically, the testimony at issue was offered as a declaration in response to Defendants' *Motion to Dismiss*.

3. Plaintiff asks the Court to deny Defendants' *Motion to Compel Deposition and Documents of Chris Slatosch*. Plaintiff further asks the Court to award Plaintiff sanctions pursuant to Rules 13 and 215 of Texas Rules of Civil Procedure, and Chapter 10 of Texas Civil Practice & Remedies Code, on the grounds that Defendants' *Motion to Compel Deposition and Documents of Chris Slatosch*, on the grounds that Defendants' Motion is frivolous, has not basis in law or fact, and because Defendants' have unnecessarily caused Plaintiff to incur costs and attorney's fees in responding to the baseless Motion.

## I. BACKGROUND

4. Plaintiff initiated this proceeding seeking relief from Defendants' on the basis that Defendants committed torts against Plaintiff based on defamation, tortious interference with prospective business relations, civil conspiracy, and vicarious liability. Defendants responded seeking dismissal pursuant to Chapter 27 of Civil Practice Remedies Code, also known as Texas Citizens Participation Act ("TCPA").

5. In its order dated October 4, 2019, the Court granted Defendants' *Motion to Dismiss* in full, stating therein that "[...] the Court GRANTS the T CPA Motions. Plaintiff Victor Mignogna's

claims against Defendants Funimation, Marchi, Rial and Toye are thus DISMISSED WITH PREJUDICE.

6. On October 23, 2019, Defendants served Plaintiff with their *Notice of Intent to Subpoena Christopher Slatosch*, seeking deposition and production of documents from the same. At the time of serving the *Notice*, the Court had made no finding of good cause for Defendants to seek such discovery, nor had the Court signed any order to allow specified and limited discovery relevant to the motion to dismiss.

## II. ARGUMENT AND AUTHORITIES

7. The pivotal question is whether Defendants were permitted, at the time of serving their *Notice of Intent to Subpoena Christopher Slatosch*, to seek said discovery. The answer to this question is no.

*Defendants are not allowed discovery absent a court order*

8. Section 27.003(c) of Texas Civil Practice & Remedies Code, provides, in relevant part. “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.” The exception referenced, Section 27.006(c), provides “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.”

9. While the Court has granted Defendants’ *Motion to Dismiss* in full, the Court “retain[ed] 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.” By the language of the order, the Court has not

made a final ruling on Defendants' *Motion to Dismiss* because it must determine an appropriate award.

10. Under Tex. Civ. Prac. & Rem. Code §§ 27.003(c) and 27.006(b), Defendants are required to seek permission from the Court prior to seeking any discovery. Pursuant to such request, Defendants must then obtain a finding of good cause in order to seek any desired discovery. Further, the order from the Court would only allow "specified and limited discovery relevant to the motion." In this case, the Defendants failed to seek an order from the Court allowing for discovery and thus Defendants had no authority to seek the deposition of Christopher Slatosch at the time of filing their *Notice of Intent*, nor do Defendants have the authority to request the Court compel said deposition at this time.

*The discovery sought is irrelevant to the issues currently before the Court*

11. Even assuming the Defendants had authority to seek discovery, the discovery sought by Defendants is irrelevant to the issues currently before the Court. Specifically, the only issues remaining before the Court are related to attorney fees, costs, and , the amount of sanctions "sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter." Tex. Civ. Prac. & Rem. Code § 27.009(a)(2).

12. Because the Court has already ruled on Defendants' TCPA motion, no good cause exists for conducting the deposition of non-party Christopher Slatosch regarding any issues related to Defendants' TCPA motion. Put another way, because his testimony is not relevant to the only remaining fact of consequence in this action, Defendants have no need to conduct Mr. Slatosch's deposition.

13. Defendants' own pleadings establish the frivolousness of their request. First, Defendants' argue, without providing any foundation for their baseless allegations, that Mr. Slatosch's

testimony will be that “he was threatened with a lawsuit following his decision to retract Plaintiff’s invitation to Kameha Con, that he was threatened with exposure of his personal information by Plaintiff’s agents (and/or individuals who Plaintiff was aware were operating on his behalf), and—prior to this lawsuit—[Slatosch] did not believe that either of the Moving Defendants interfered with Plaintiff’s contract. Mr. Slatosch will also testify concerning the conduct of Plaintiff, his counsel, and his agents throughout the litigation, up to and including the [allegedly] fraudulent affidavit.” Defendants assert that Mr. Slatosch’s testimony on these subjects is relevant to the alleged culpability of Plaintiff in bringing this legal action.

14. Taking these arguments in turn, and considering each individually, it is clear that the subjects identified by Defendants for Mr. Slatosch’s testimony are not relevant to the determination of what amount of sanctions is sufficient. It is not disputed that Mr. Slatosch breached his contract with Plaintiff for retracting his invitation to Plaintiff to attend Kameha Con. It is also not disputed that Mr. Slatosch re-invited Plaintiff to attend the convention and Plaintiff did so. Whether, in the interim, Plaintiff threatened legal action against Mr. Slatosch for breach of contract is not relevant to Plaintiff’s purpose or alleged culpability in bringing this suit.

15. Defendants allege that Mr. Slatosch will offer testimony about Plaintiff’s conduct in this litigation, “up to and including the [allegedly] fraudulent affidavit.” It is not the case, nor is it alleged, that Plaintiff procured Mr. Slatosch’s affidavit by threat or that Plaintiff asked Mr. Slatosch to lie in his affidavit. The statements in Mr. Slatosch’s affidavit were made under oath and, in relevant part, are not even in dispute. Summarily, Mr. Slatosch’s affidavit states that Mr. Slatosch withdrew Plaintiff’s invitation to Kameha Con because Defendants asked him to rescind said invitation on the grounds that Plaintiff committed “sexual misconduct.” It is well-known and established that

Defendants were making such accusations publicly and that, for a period of time, Mr. Slatosch did rescind Plaintiff's invitation.

16. Defendants offer no evidence, by affidavit or otherwise, that Mr. Slatosch's testimony at deposition would be inconsistent in any way with the statements in his affidavit. 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.

17. Further, in the Court's Order granting Defendants' Motion to Dismiss, the Court expressly stated that the Court did not consider Mr. Slatosch's affidavit in its determination. The Court's determination was based on its conclusion that the supporting evidence offered was not properly brought before the Court for failure to follow technical rules regarding the time for presentation of evidence and the requirements for admissibility of supporting affidavits. Allowing Defendants to depose affiants whose testimony was not even considered by the Court would serve no purpose.

18. None of the alleged arguments for taking Mr. Slatosch's deposition would have any bearing on the Court's determination of attorney fees, costs, and/or sanctions. As such, Plaintiff can think of no reason, other than to frivolously drive up attorney fees, for Defendants to seek such discovery.

19. Accordingly, for the reasons stated and outlined here, Plaintiff asks the Court to deny Defendants' *Motion to Compel Deposition and Documents of Chris Slatosch* and to grant Plaintiff's *Motion to Quash*.

### III. MOTION FOR SANCTIONS

20. Plaintiff asks the Court to award sanctions against Defendants and their counsel pursuant to Rules 13 and 215.1(d) of Texas Rules of Civil Procedure, and Chapter 10 of Texas Civil Practice & Remedies Code, on the grounds that Defendants' *Motion to Compel Deposition and Documents of Chris Slatosh* is frivolous, has not basis in law or fact, and because Defendants' have unnecessarily caused Plaintiff to incur costs and attorney's fees in responding to the baseless Motion.

21. Sanctions under Rule 13. Plaintiff seeks sanctions against Defendants pursuant to Rule 13 of Texas Rules of Civil Procedure. Rule 13 provides, "The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment.[...] If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215 upon the party who signed it, a represented party, or both." Rule 13 further provides, "'Groundless' for purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law." As detailed *supra*, Defendants' attempts to compel the deposition of Christopher Slatosch are in clear violation of the plain language in Chapter 27 of Texas Civil Practice & Remedies Code, which suspends all discovery absent specific allowance by the Court for limited and specific discovery. Defendants' conduct has damaged Plaintiff in connection with opposing the improper deposition.

22. Sanctions under Rule 215. Plaintiff seeks sanctions against Defendants pursuant to

Rule 215 of Texas Rules of Civil Procedure. Rule 215 provides, “If the motion [to compel discovery] is denied, the court may, after opportunity for hearing, require the moving party or attorney advising such motion to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.” Tex. R. Civ. P. 215.1(d). Additionally, Rule 215 further provides, “If the court finds a party is abusing the discovery process in seeking, making or resisting discovery or if the court finds that any interrogatory or request for inspection or production is unreasonably frivolous, oppressive, or harassing, or that a response or answer is unreasonably frivolous or made for purposes of delay, then the court in which the action is pending may, after notice and hearing, impose any appropriate sanction authorized by paragraphs (1), (2), (3), (4), (5), and (8) of Rule 215.2(b).”

23. Defendants, in seeking the deposition of Christopher Slatosch, have indisputably violated the discovery suspension provided for by TCPA. Even if Mr. Slatosch’s testimony could be relevant (as discussed above, it is not), the discovery would not be permitted without an order allowing said discovery. Thus, Defendants actions should be appropriately sanctioned.

24. Defendants’ *Motion to Compel* should be denied and costs and attorney’s fees awarded to Plaintiff for having to oppose the baseless discovery request and motion to compel.

25. Sanctions under Chapter 10. Plaintiff further seeks sanctions pursuant to Chapter 10 of Texas Civil Practice and Remedies Code, which provides:

The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:

- (1) the pleading or motion is not being presented for any improper purpose,

including to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Tex. Civ. Prac. & Rem. Code § 10.001.

26. “A court that determines that a person has signed a pleading or motion in violation of Section 10.001 may impose a sanction on the person, a party represented by the person, or both.”

Tex. Civ. Prac. & Rem. Code § 10.004.

27. Defendants’ *Motion to Compel Deposition and Documents of Slatosch* is brought in violation of TCPA discovery suspension. As discussed in detail above, the discovery was not permitted, and Defendants’ *Motion* is not warranted by an existing law or nonfrivolous argument for the extension, modification, or reversal of existing law or establishment of new law. The *Motion* is, however, brought for the improper purpose of needlessly increasing costs and subjecting Plaintiff and a third-party to harassment. Accordingly, Plaintiff asks the Court to award sanctions under Chapter 10 of Texas Civil Practice and Remedies Code against Defendants and their counsel.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff asks the Court to deny Plaintiff’s *Motion to Compel Deposition and Documents of Chris Slatosch*, grant Plaintiff’s *Motion to Quash* and quash the

deposition of Christopher Slatosch, and further to award sanctions against Defendants under Texas Rules of Civil Procedure and Texas Civil Practice & Remedies Code and any other and further relief to which Plaintiff may be entitled.

Dated: November 4, 2019

Respectfully submitted

BEARD HARRIS BULLOCK HUGHES  
and MARTINEZ HSU

By:  \_\_\_\_\_

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ATTORNEYS FOR PLAINTIFF  
VICTOR MIGNOGNA

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on all parties as required by Texas Rules of Civil Procedure.



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Ryan Sellers