

CAUSE NO. 141-307474-19

VICTOR MIGNOGNA,
Plaintiff,

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

v.

141st JUDICIAL DISTRICT

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

TARRANT COUNTY, TEXAS

PLAINTIFF'S AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Victor Mignogna ("Plaintiff" or "Vic") complains of Defendants Funimation Productions, LLC, Jamie Marchi, Monica Rial, and Ronald Toye, and for such purposes would show:

I. DISCOVERY CONTROL PLAN

(1) Discovery is intended to be conducted pursuant to Texas Rule of Civil Procedure 190.3 (Level 2 discovery control plan).

II. PARTIES

(2) Vic is an individual residing in Tarrant County, Texas who may be served in this matter through his attorney of record, Ty Beard, Esq., BEARD HARRIS BULLOCK HUGHES, 100 Independence Place, Suite 300, Tyler, Texas 75703.

(3) Defendant Funimation Productions, LLC ("Funimation") is a Delaware limited liability company which may be served in this matter through its attorney of record, John Volney, Esq., LYNN PINKER COX & HURST, LLP, 2100 Ross Avenue, Suite 2700, Dallas, Texas 75201.

(4) Defendant Jamie Marchi (“Jamie”) is an individual residing in Dallas County, Texas who may be served in this matter through her attorney of record, Samuel H. Johnson, Esq., JOHNSON & SPARKS PLLC, 7161 Bishop Road, Suite 220, Plano, Texas 75204.

(5) Defendant Monica Rial (“Monica”) is an individual residing in Dallas County, Texas who may be served in this matter through her attorneys of record Casey S. Erick, Esq., COWLES & THOMPSON PC, 901 Main Street, Suite 3900, Dallas, Texas 75202, Andrea Perez, Esq., KESSLER COLLINS, PC, 2100 Ross Avenue, Suite 750, Dallas, Texas 75201, and J. Sean Lemoine, Esq., WICK PHILLIPS GOULD & MARTIN, LLP, 3131 McKinney Avenue, Suite 100, Dallas, Texas 75204.

(6) Defendant Ronald Toye (“Ronald”) is an individual residing in Dallas County, Texas who may be served in this matter through his attorneys of record Casey S. Erick, Esq., COWLES & THOMPSON PC, 901 Main Street, Suite 3900, Dallas, Texas 75202, Andrea Perez, Esq., KESSLER COLLINS, PC, 2100 Ross Avenue, Suite 750, Dallas, Texas 75201, and J. Sean Lemoine, Esq., WICK PHILLIPS GOULD & MARTIN, LLP, 3131 McKinney Avenue, Suite 100, Dallas, Texas 75204.

III. JURISDICTION & VENUE

(7) The subject matter in controversy is within the jurisdictional limits of this Court. Plaintiff seeks monetary relief over \$1,000,000.00 but not exceeding \$5,000,000.00.

(8) This Court has jurisdiction over (a) Jamie, Monica and Ronald because they are residents of Texas and (b) Funimation because it has conducted business in Texas.

(9) Venue is proper in this Court under Texas Civil Practice and Remedies Code §15.017, because Vic lived in Tarrant County at the time his causes of action accrued.

IV. FACTS

(10) Vic is a voice actor who has performed the voices of animated characters for over 22 years, mainly in “anime” productions.¹ Vic does not physically appear in these productions; only his voice is used for the English dubbing (or “revoicing” of the Japanese voice actors).

(11) Monica and Jamie also are voice actors; both have worked for Funimation.² Ronald is Monica’s fiancé.

(12) Funimation primarily dubs Japanese anime properties into English for distribution within the United States and provides streaming access subscription services to those properties via their website. In June 2017, Funimation contracted with Vic to provide the voice for dubbed anime properties it was distributing within the U.S.³

(13) For example, 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.

(14) 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

¹ Anime is a style of Japanese film and television animation often dubbed for U.S. audiences.

² It is unclear whether the voice actors were serving as independent contractors to Funimation or whether they were Funimation employees, based on the test promulgated by the Texas Workforce Commission. See https://twc.texas.gov/news/efte/appx_e_twc_ic_test.html (last viewed July 12, 2019).

³ Shortly thereafter, Sony Pictures Television, Inc., a Delaware corporation (“Sony”), acquired a 95% ownership interest in Funimation for \$143 million (Funimation was valued at \$150 million).

appearing on guest panels. By January 16, 2019, he already had accepted invitations with dozens of conventions for appearances in 2019.

(15) On January 16, 2019, the day *Dragon Ball Super: Broly* released in the U.S., Monica “liked” and “retweeted” the Tweet of someone with the Twitter handle “hanleia” that accused Vic of being “a homophobic rude asshole who has been creepy to underage female fans for over ten years....”⁴

(16) The next day, Monica liked and retweeted two Tweets by Kaylyn Saucedo (who posts under the user name “Marzgurl”) that accused Vic of “great volumes of sexual misconduct,” urged Funimation to “reconsider hiring Vic Mignogna as a voice actor in the future,” and initiated the hashtag “#KickVic.”⁵

(17) The repeated attention that Monica, Jamie, and other Funimation’s agents, employees or business partners, gave hanleia’s and Marzgurl’s accusations caused their Tweets to “go viral.”⁶ About the same time, one or more Defendants began actively defaming Vic directly to anime conventions, speaking of investigations and Vic being fired.

(18) Barely a week later, Tammi Denbow (“Denbow”), a Sony executive, informed Vic she was investigating three allegations of “sexual harassment” against him. One, Monica alleged to have occurred six years prior at a convention (not at any Funimation or Sony facility or event) when, after she wrote her name on a jelly bean and gave it to him, Vic ate

⁴ Posts on the social media platform Twitter.com are called “Tweets”; persons “follow” Twitter users to track the content posted on the user’s account. The terms “Tweet,” “retweet” and variations thereof refer to the act of posting content on one’s Twitter account. A user that “retweets” content shares another’s Tweet to her or his followers; it is commonly understood that a retweet implies approval or support for the original Tweet. Additionally, Tweets can be “liked” which indicates the person “liking” the Tweet appreciates its content. Unless a Twitter account is private, all Tweets and “retweets” are visible to anyone on the internet.

⁵ A hashtag is a word or phrase immediately preceded by the # symbol which is used to link Tweets containing the hashtag.

⁶ To “go viral” means that a video, image, or story spreads quickly and widely on the Internet through social media, e-mail, or mobile phones.

the jelly bean and joked that he “ate Monica”; Vic denied any sexual suggestion (he was joking in response to a fan’s asking if he could be poisoned by the ink). Monica also alleged inappropriate conduct between Vic and two fans (not Funimation or Sony employees) at a convention three years prior (again not at any Funimation or Sony facility or event); Vic emphatically denied any inappropriate conduct. The third allegation involved a single, consensual kiss between Vic and a Funimation employee who was Vic’s friend.

(19) Denbow’s telling Vic that her investigation was “a confidential matter” did not stop Jamie, Monica, Ronald or other Funimation employees or business partners from urging anime conventions and other studios to terminate their contracts with Vic—telling some that Funimation was conducting an “investigation” into allegations that Vic was a “sexual predator” or that charges were being filed against Vic and he would soon be arrested—or tweeting details about the “investigation”; for example, Ronald would Tweet on February 2, 2019 that Vic “is a predator” based on his (Ronald’s) “[i]nsider knowledge” about Sony’s investigation.

(20) The fallout from the Defendants’ actions was swift. On January 18, 2019, the Phoenix Fan Fusion convention cancelled Vic’s appearance. A few days later, on January 26, 2019, Ronald tweeted that Vic was “a predator” (a charge Ronald would repeat in at least 15 more Tweets); shortly after, the Rangerstop Convention cancelled Vic’s appearance.

(21) On January 29, 2019, Denbow and another Sony executive informed Vic that his employment with Funimation was terminated following Denbow’s “investigation.”

(22) On January 30, 2019, both the Anime NYC and the Anime Milwaukee conventions canceled Vic’s appearances.

(23) In January 31, 2019 Tweets, Ronald claimed to know of “at least 4 assaults” by Vic and crowed “I am glad to see conventions cancelled”; that day, Kawaiicon cancelled Vic’s appearance.

(24) On February 1, 2019, Ronald tweeted he personally knew that Vic was “guilty of at least 4 accounts”; that day, the Kamehacon Dallas convention cancelled Vic’s appearance (however, on March 24, 2019, Vic was re-invited to the Kamehacon Dallas convention).

(25) On February 2, 2019, Ronald tweeted that Vic needed to prove himself “not to be a predator.” The next day, Ancient City Con cancelled Vic’s appearance.

(26) On February 4, 2019, Ronald tweeted multiple times that Vic was “a predator,” called Vic a “perp,” and asserted there are “over 100 accounts and still more to come....” (*Figure 1*); that day, Denver Comicon cancelled Vic’s appearance.



Figure 1

(27) On February 5, 2019, Funimation informed Anime News Network that Vic’s employment had been terminated, and Ronald again tweeted his accusation that Vic is a “predator.” Over the next 24 hours, Florida Supercon, Raleigh Supercon, Kamicon, and Hudson Valley Comicon all canceled Vic’s appearances.

(28) On February 6, 2019, Ronald tweeted that over 100 women had made accusations “of assault,” that the allegations against Vic were “corroborated,” that “[there

were] mountains of testimony,” and that Funimation “have proof. That’s why they fired him.” Monica (Ronald’s fiancé) also tweeted on February 6 that “IT HAPPENED TO ME!” and that “I’m only one voice on a sea of many ... He’s hurt enough people. He’s a sick man and he needs help....” Later that day, Jamie attempted to rebuff those questioning the veracity of Monica’s post on Twitter. (*Figure 2*).



Figure 2

(29) Two days later, Jamie tweeted that Vic had assaulted her several years prior by grabbing her hair and whispering in her ear (what he whispered she couldn’t remember), that “[i]n the last week or so, I’ve heard accounts of him doing this exact thing to half a dozen other women that I personally know,” and that Vic is a “predator.”

(30) On February 11, 2019, Funimation made its “investigation” public via Twitter, declaring it determined Vic had engaged in “harassment or threatening behavior”; Monica responded there were “multiple investigations with testimony, proof, evidence.” (Figure 3).



Figure 3

(31) Later that day, Monica declared that Vic is “the legal definition of harassment.”

(*Figure 4*).



Figure 4

(32) Over the next week or so, Ronald tweeted “Evidence: He has been fired, there was an investigation ... these actions have corroborated testimony,” (February 13, 2019), “Their [Funimation’s] decision was on things that happened to funimation employees,” (February 18, 2019), and “let’s see who walks away a registered sex offender” (February 16, 2019).

(33) On February 19, 2019, Monica tweeted a lengthy post in which she accused Vic of “sexual harassment,” kissing her without her consent and treating others similarly at conventions; she claimed to have spoken with “investigators” to “corroborate” the “testimony” of others telling stories similar to hers and spoke of Funimation’s “investigations” (*Figure 5*); she closed by referring to Vic as a “predator.”

The investigations were incredibly thorough. Each person was interviewed, the evidence weighed, and a decision made. Each company has to look out for the safety of their employees. In this instance, these companies felt they made the best decision to protect their employees and contract workers. Also, these companies aren’t obligated to share any information with you. Many of the women who’ve come forward have chosen to remain anonymous, especially after seeing the way that I’ve been attacked. Please respect their privacy.

Figure 5

(34) Ronald continued carpet-bombing Vic on Twitter accusing him of “assaulting” Monica (February 21, 2019), of “cheat[ing] on his fiancé, assault[ing] ladies, [and] rob[bing]

fans” and assaulting “way more people” than Monica (February 23, 2019), and of “forc[ing] himself on people in a sexual manner without consent and that resulted in assault” (April 7, 2019).

(35) In fact, Ronald has tweeted more than 80 times that Vic sexually assaulted or assaulted Monica, more than 10 times that Vic sexually assaulted or assaulted three of his “very close friends,” more than 10 times that Vic has been accused of hundreds and possibly thousands of assaults, and at least 17 times that Vic is a “predator.”

(36) Vic sent written requests for “correction, clarification or retraction,” in compliance with Texas Civil Practice & Remedies Code section 73.055,⁷ to Funimation on March 8, 2019 and to Jamie, Monica and Ronald on April 12, 2019.

V. CONDITIONS PRECEDENT

(37) All conditions precedent to Plaintiff’s claims and damages have occurred or been performed.

VI. CLAIMS

A. Defamation

(38) The preceding paragraphs are incorporated by reference.

(39) The Defendants have tweeted false, defamatory statements about Vic that were published and read by third parties. Indeed, many of the Defendants’ tweets are defamatory *per se*. The Defendants knew these statements were false or made them with negligent disregard for their truthfulness. Due to the Defendants’ defamation, Vic has suffered actual

⁷ “(a) A person may maintain an action for defamation only if: (1) the person has made a timely and sufficient request for a correction, clarification, or retraction from the defendant; or (2) the defendant has made a correction, clarification, or retraction. (b) A request for a correction, clarification, or retraction is timely if made during the period of limitation for commencement of an action for defamation.” TEX. CIV. PRAC. & REM. CODE §73.055(a)-(b).

and consequential damages in excess of the minimal jurisdictional amounts of this Court as well as damage to his reputation.

(40) The Defendants' conduct was willful, fraudulent, malicious and in wanton disregard for Vic thereby entitling him to punitive damages in an amount to be determined at trial.

B. Tortious Interference with Existing Contracts

(41) The preceding paragraphs are incorporated by reference.

(42) Vic enjoyed contracts with multiple conventions prior to the Defendants' tortious conduct. Defendants knew of these contracts. However, the Defendants willfully and intentionally interfered with these contracts proximately causing cancellation, termination, even breach, of these contracts by the convention producers thereby causing Vic actual and consequential damages in excess of the minimal jurisdictional amounts of this Court.

(43) The Defendants' conduct was willful, fraudulent, malicious and in wanton disregard for Vic thereby entitling him to punitive damages in an amount to be determined at trial.

C. Tortious Interference with Prospective Business Relations

(44) The preceding paragraphs are incorporated by reference.

(45) There was reasonable probability that Vic would have entered into agreements with other production companies and conventions, as he had in prior years. The Defendants knew of these relationships; however, the Defendants' unlawful and independently tortious actions prevented these agreements from occurring. The Defendants' actions were not merely an incidental result but were unlawful and taken without justification or cause; indeed, the

Defendants were motivated by malice. The Defendants' tortious interference proximately caused Vic actual and consequential damages, including lost profits, in excess of the minimal jurisdictional amounts of this Court.

(46) The Defendants' conduct was willful, fraudulent, malicious and in wanton disregard for Vic thereby entitling him to punitive damages in an amount to be determined at trial.

D. Civil Conspiracy

(47) The preceding paragraphs are incorporated by reference.

(48) The 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 Defendants' civil conspiracy proximately caused Vic actual and consequential damages (according to the claims alleged above), including lost profits, in excess of the minimal jurisdictional amounts of this Court for which each of the Defendants is jointly and severally liable with the other Defendants.

(49) The Defendants' conduct was willful, fraudulent, malicious and in wanton disregard for Vic thereby entitling him to punitive damages in an amount to be determined at trial for which each of the Defendants is jointly and severally liable with the other Defendants.

E. Vicarious Liability

(50) The preceding paragraphs are incorporated by reference.

(51) At all times relevant, (i) Jamie or Monica was Funimation's employee and acting in the course and scope of her employment in the conduct alleged above or,

alternatively, (ii) Jamie, Monica or Ronald was Funimation's agent with actual or apparent authority to act on behalf of Funimation in the conduct alleged above or Funimation ratified her or his actions alleged above. Accordingly, Funimation is liable for the conduct of Jamie, Monica or Ronald alleged above.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that that, on final hearing, he have judgment against the Defendants for actual, consequential and punitive damages according to the claims pled above and in amounts to be determined on final hearing, pre- and post-judgment interest at the highest rate permitted by law, and costs of court. Plaintiff prays for such other and further relief to which he may be justly or equitably entitled. 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
Kristina M. Ross
Texas Bar No. 24069173
Jim E. Bullock
Texas Bar No. 00795271
100 Independence Place, Suite 101
Tyler, Texas 75703
(903) 509-4900 [T]
(903) 509-4908 [F]
Ty@beardandharris.com
Carey@beardandharris.com
Kristina@beardandharris.com
Jim@beardandharris.com

Attorneys for Plaintiff

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 12, 2019