

**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****DEFENDANTS' CROSS NOTICE OF APPEAL**

Defendants Monica Rial ("Rial") and Ronald Toye ("Toye") (collectively "Defendants") file this Cross Notice of Appeal, and for same would show:

1. The matter from which this cross appeal is sought was pending in the 141st Judicial District Court, Tarrant County, Texas.

2. Appeal is taken from the Order dated November 25, 2019, in which the trial court awarded attorneys' fees and sanctions to Defendants in the amount of \$100,000.00 without considering Defendants' evidence of time and labor supporting a higher award. A copy of the Final Judgment is attached hereto as Exhibit A.

3. Defendants desire to cross appeal the Order identified in paragraph 2 above.

4. This cross appeal is timely, as it is filed within 20 days of the Order in accordance with Texas Rule of Appellate Procedure 26.1.

5. Upon perfection, this appeal will be taken to the Second District Court of Appeals located in Fort Worth, Texas.

6. This cross appeal is filed by the Defendants.

Respectfully submitted,

/s/ Rusty J. O'Kane

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**COUNSEL FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record in accordance with the Texas Rules of Civil Procedure, this 13th day of December, 2019.

/s/ Rusty J. O'Kane

Rusty J. O'Kane

# EXHIBIT A

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

141<sup>ST</sup> JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

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FINAL JUDGMENT

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On October 4, 2019, the Court entered an 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, dismissing this action against Defendants with prejudice (the "Dismissal Order").

In the Dismissal Order, the Court retained jurisdiction in order to rule on an award of attorneys' fees, costs, and other expenses incurred in defending this action, and an appropriate sanction pursuant to Texas Civil Practice and Remedies Code § 27.009.

On November 4, 2019, Defendant Funimation Productions, LLC ("Funimation") filed its Motion for Reasonable Attorney's Fees, Costs and Sanctions (the "Funimation Motion").

On November 4, 2019, Defendants Monica Rial and Ronald Toye ("Rial and Toye") filed their Brief in Support of Sanctions and Attorneys' Fees Pursuant to the Texas Citizens Participation Act (the "Rial/Toye Motion").

On November 4, 2019, Defendant Jamie Marchi ("Marchi") filed her Motion to Determine Sanctions and Attorney's Fees (the "Marchi Motion" and together with the Funimation Motion and the Rial/Toye Motion, the "Motions for Fees").

FINAL JUDGMENT



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On November 21, 2019, the Court commenced the hearing on the Motions for Fees.

The Court, having reviewed the applicable law, pleadings in this action, the evidence of the parties, and the arguments of counsel, finds that Defendants herein should be awarded attorneys' fees and sanctions in this action, and that a Final Judgment should be entered in this action.

As provided by Section 27.009 of the Texas Civil Practice and Remedies Code, the Court makes the following findings:

**Reasonable and Necessary Attorneys' Fees**

**Fees to Funimation:** Funimation shall have and recover from Plaintiff Victor Mignogna the amount of \$ 50,000.00, representing Funimation's reasonable and necessary attorney's fees, plus the amount of \$ 7,504.00, representing Funimation's litigation expenses in defense of this matter through November 21, 2019.

Funimation shall also have and recover from Plaintiff Victor Mignogna the following reasonable and necessary appellate attorney's fees, in the event Plaintiff files a Notice of Appeal:

1. \$ \$50,000.00 in the event there is no modification of or change to the Judgment or the Judgment is affirmed by the Court of Appeals;
2. \$ 25,000.00 in the event a Petition for Review is filed by any party and the result is that there is no modification of or change to the Judgment;
3. \$ 15,000.00 in the event the Texas Supreme Court requests briefs on the merits and the result is that there is no modification of or change to the Judgment; and
4. \$ 10,000.00 in the event the Texas Supreme Court sets the case for oral argument and through the conclusion of the case, and the result is that there is no modification of or change to the Judgment

**Fees to Rial and Toye:** Rial and Toye shall have and recover from Plaintiff Victor Mignogna the amount of \$ 100,000.00, representing Rial's and Toye's reasonable

and necessary attorney's fees, plus the amount of \$ 15,526.96, representing Rial's and Toye' litigation expenses in defense of this matter through November 21, 2019.

Rial's and Toye' shall also have and recover from Plaintiff Victor Mignogna the following reasonable and necessary appellate attorney's fees, in the event Plaintiff files a Notice of Appeal:

1. \$ 55,000.00 in the event there is no modification of or change to the Judgment or the Judgment is affirmed by the Court of Appeals;
2. \$ 12,500.00 in the event a Petition for Review is filed by any party and the result is that there is no modification of or change to the Judgment;
3. \$ 22,500.00 in the event the Texas Supreme Court requests briefs on the merits and the result is that there is no modification of or change to the Judgment; and
4. \$ 15,000.00 in the event the Texas Supreme Court sets the case for oral argument and through the conclusion of the case, and the result is that there is no modification of or change to the Judgment.

Fees to Marchi: Marchi shall have and recover from Plaintiff Victor Mignogna the amount of \$ 48,137.50, representing Marchi's reasonable and necessary attorney's fees, plus the amount of \$ 1,873.96, representing Marchi's litigation expenses in defense of this matter through November 21, 2019.

Marchi shall also have and recover from Plaintiff Victor Mignogna the following reasonable and necessary appellate attorney's fees, in the event Plaintiff files a Notice of Appeal:

1. \$ 37,500.00 in the event there is no modification of or change to the Judgment or the Judgment is affirmed by the Court of Appeals;
2. \$ 22,500.00 in the event a Petition for Review is filed by any party and the result is that there is no modification of or change to the Judgment;
3. \$ 12,500.00 in the event the Texas Supreme Court requests briefs on the merits and the result is that there is no modification of or change to the Judgment; and
4. \$ 10,000.00 in the event the Texas Supreme Court sets the case for oral argument and through the conclusion of the case, and the result is that there is no modification of or change to the Judgment.

**Mandatory Sanctions**

IT IS FURTHER ORDERED that, as required by § 27.009 of the Texas Civil Practice and Remedies Code, Funimation shall have and recover from Plaintiff sanctions in the amount \$ 5,000.00 which the Court determines is sufficient to prevent Plaintiff Victor Mignogna from bringing similar actions in the future.

IT IS FURTHER ORDERED that, as required by § 27.009 of the Texas Civil Practice and Remedies Code, Rial and Toye shall have and recover from Plaintiff sanctions in the amount \$ 5,000.00 which the Court determines is sufficient to prevent Plaintiff Victor Mignogna from bringing similar actions in the future.

IT IS FURTHER ORDERED that, as required by § 27.009 of the Texas Civil Practice and Remedies Code, Marchi shall have and recover from Plaintiff sanctions in the amount \$ 5,000.00 which the Court determines is sufficient to prevent Plaintiff Victor Mignogna from bringing similar actions in the future.

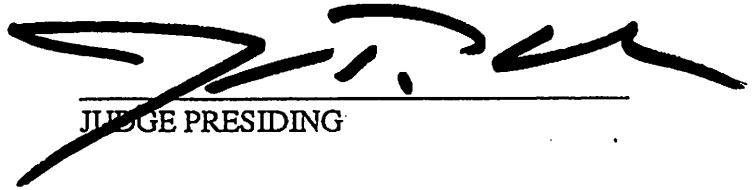
IT IS FURTHER ORDERED all amounts awarded in this Final Judgment shall bear post-judgment interest at the rate of 5% per annum, pursuant to §304.002 of the Texas Finance Code, from the date this Final Judgment until the date this Final Judgment is paid.

IT IS FURTHER ORDERED that all costs of court be taxed against Plaintiff, Victor Mignogna.

IT IS FURTHER ORDERED that all writs and processes necessary for enforcement of collection of this judgment or the costs of court may issue as are necessary.

All other relief requested and not expressly granted herein is hereby denied. This judgment finally disposes of all parties and all claims and is appealable.

SIGNED this 25 day of November, 2019.

  
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JUDGE PRESIDING

11/25/19 emailed to all attorneys of record *JD*

FINAL JUDGMENT

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