

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

IN THE DISTRICT COURT

v.

141st JUDICIAL DISTRICTFUNIMATION PRODUCTIONS, LLC,
JAMIE MARCHI, MONICA RIAL,
AND RONALD TOYE,
Defendants

TARRANT COUNTY, TEXAS

**PLAINTIFF'S MOTION FOR LEAVE TO FILE LATE RESPONSE TO
DEFENDANTS' TCPA MOTIONS TO DISMISS DUE TO TECHNICAL ISSUES**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Victor Mignogna requests that the Court grant him leave to file his response to Defendants' motions to strike roughly 30 minutes after the parties' agreed-upon August 30, 2019 deadline. Plaintiff's initial filing was rejected for a technical error (*see* Exhibit A attached); Plaintiff's counsel's IT director also surmises that the initial file size of the response (more than 35MB) might have contributed to the difficulty of the document to load into the browser-based filing portal. As Plaintiff's filing deadline is set only via a Rule 11 Agreement, Plaintiff must be given a reasonable extension of time to complete the filing due to the technical failure. *See* TEX. R. CIV. P. 21 ("If the missed deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing."). Moreover, the delay is not due to Plaintiff's negligence (or that of his counsel) but rather due technical difficulties outside their control. Plaintiff's response was accepted by the efileing system at 12:27 AM (*see* Exhibit B).

WHEREFORE, Plaintiff requests that the Court accept the 12:27 AM, August 31, 2019 filing of his response to Defendants' motions to dismiss or, alternatively, grant him leave to file his response no later than 11:59 PM on August 31, 2019, 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/ Jim E. Bullock

Ty Beard
Texas Bar No. 00796181
Carey-Elisa Christie
Texas Bar No. 24103218
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
Jim@beardandharris.com
Attorneys for Plaintiff

Certificate of Conference

Counsel for Defendants Rial and Toye made clear their objection to the relief sought herein via email and did not alter their position after being advised of the technical error (see Exhibit C). A conference was not held with counsel for Defendants Funimation or Rial on the merits, because of the extremely late hour and the urgency to file the motion.

/s/ Jim E. Bullock
Date: August 31, 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/ Jim E. Bullock
Date: August 31, 2019

Jim Bullock

From: No-Reply@eFileTexas.gov
Sent: Saturday, August 31, 2019 12:15 AM
To: Jim Bullock
Subject: Submission Failed for Envelope Number: 36452123 in Case: 141-307474-19, VICTOR MIGNOGNA VS. FUNIMATION PRODUCTIONS, LLC,ET AL



Submission Failure

Envelope Number: 36452123
Case Number: 141-307474-19
Case Style: VICTOR MIGNOGNA VS.
FUNIMATION PRODUCTIONS, LLC,ET AL

The filing below was **not** successfully submitted.

Error Details	
Filings in Error	Answer/Response
Document(s) Causing Error	Plf Response to MTDs_FINAL.pdf
Error Reason(s)	Odyssey File & Serve could not accept the pdf file because it is secured by security restrictions. The most common security restrictions include password security not allowing the copying or changing of the document. Please remove the security settings and resubmit the filing.

Filing Details	
Case Number	141-307474-19
Case Style	VICTOR MIGNOGNA VS. FUNIMATION PRODUCTIONS, LLC,ET AL
Date/Time Submitted	8/31/2019 12:15 AM CST

Note about credit card funds: Any funds related to this filing will automatically be reversed back onto the card used. Funds will become available based on your financial institution's policies (typically 3-10 business days).

Jim Bullock

From: No-Reply@eFileTexas.gov
Sent: Saturday, August 31, 2019 12:43 AM
To: Jim Bullock
Subject: Filing Submitted for Case: 141-307474-19; VICTOR MIGNOGNA VS. FUNIMATION PRODUCTIONS, LLC,ET AL; Envelope Number: 36452135



Filing Submitted

Envelope Number: 36452135
Case Number: 141-307474-19
Case Style: VICTOR MIGNOGNA VS.
FUNIMATION PRODUCTIONS, LLC,ET AL

The filing below has been submitted to the clerk's office for review. Please allow 24 - 48 hours for clerk office processing.

Filing Details	
Court	Tarrant County - District Civil
Date/Time Submitted	8/31/2019 12:27 AM CST
Filing Type	Answer/Response
Filing Description	Plaintiff's Response to Defendants' TCPA Motions to Dismiss
Type of Filing	EFileAndServe
Filed By	Jim Bullock
Filing Attorney	Jim Bullock

Fee Details	
Your account is never charged until your filing is accepted. If you see any pending charges on your account prior to acceptance, this is an authorization hold to ensure the funds are available so your filing can be accepted without delay.	
If the filing is canceled or rejected these funds will be released and will return to your account according to your financial institution's policies (typically 3-10 business days).	
This envelope is pending review and fees may change.	
Case Fee Information	\$0.00
Answer/Response	\$0.00
Total: \$0.00 (The envelope still has pending filings and the fees are subject to change)	

Document Details	
Lead Document	Plf Response to MTD.pdf

Lead Document Page Count	1188
File Copy	Download Document
This link is active for 30 days.	

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Email: support@eFileTexas.gov

Please do not reply to this email. It was automatically generated.

Case # 141-307474-19 - VICTOR MIGNOGNA VS. FUNIMATION PRODUCTIO...

Envelope Information

Envelope Id 36452135	Submitted Date 8/31/2019 12:27 AM CST	Submitted User Name jim@beardandharris.com
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Case Information

Location Tarrant County - 141st District Court	Category Civil - Other Civil	Case Type Other Civil
Case # 141-307474-19		

Party Information

Party Type	Party Name	Lead Attorney
Plaintiff	VICTOR MIGNOGNA	TY BEARD
Defendant	THE FUNIMATION PRODUCTIONS LLC	JOHN VOLNEY
Defendant	JAMIE MARCHI	SAMUEL JOHNSON
Defendant	MONICA RIAL	CASEY ERICK
Defendant	RONALD TOYE	CASEY ERICK

Filings

Filing Code	Client Ref #	Filing Description
Answer/Response		Plaintiff's Response to Defendants' TCPA Motions to Dis...

Filing Details

Filing Type EFileAndServe	Filing Code Answer/Response
Filing Description Plaintiff's Response to Defendants' TCPA Motions to Dismiss	
Filing Status Submitting	

Lead Document

File Name	Description	Security	Download
Pf Response to MTD.pdf 17.90 MB	Pf Response to MTD.pdf	Default	Original File

eService Details

Status	Name	Firm	Served	Date Opened	Log
Not Sent	Ty Beard	Beard Harris Bullock Hughes	<input type="checkbox"/>	Not Opened	
Not Sent	Scott Smoot	Lynn Pinker Cox & Hurst, LLP	<input type="checkbox"/>	Not Opened	
Not Sent	John D Volney	Lynn Pinker Cox & Hurst, LLP	<input type="checkbox"/>	Not Opened	
Not Sent	Pam Oakley	Lynn Pinker Cox Hurst	<input type="checkbox"/>	Not Opened	
Not Sent	Christian Orozco	Lynn Pinker Cox & Hurst	<input type="checkbox"/>	Not Opened	
Not Sent	Terha Hooker	Lynn Pinker Cox & Hurst, LLP	<input type="checkbox"/>	Not Opened	
Not Sent	Rebecca Adams	Lynn Pinker Cox & Hurst LLP	<input type="checkbox"/>	Not Opened	
Not Sent	Samuel H Johnson	Rosenberg & Johnson, PLLC	<input type="checkbox"/>	Not Opened	
Not Sent	Fatimah Muhammad		<input type="checkbox"/>	Not Opened	

Not Sent Kimberley Smith



Not Opened

1

2

10 items per page

1 - 10 of 19 items

Service Contacts

Serve	Name	Email
▼ Party: VICTOR MIGNOGNA - Plaintiff		
<input checked="" type="checkbox"/>	Ty Beard	ty@beardandharris.com
▼ Party: THE FUNIMATION PRODUCTIONS LLC - Defendant		
<input checked="" type="checkbox"/>	Rebecca Adams	radams@lynnllp.com
<input checked="" type="checkbox"/>	Terha Hooker	thooker@lynnllp.com
<input checked="" type="checkbox"/>	Pam Oakley	poakley@lynnllp.com
<input checked="" type="checkbox"/>	Christian Orozco	corozco@lynnllp.com
<input checked="" type="checkbox"/>	Scott Smoot	ssmoot@lynnllp.com
<input checked="" type="checkbox"/>	John D Volney	jvolney@lynnllp.com
▼ Party: JAMIE MARCHI - Defendant		
<input checked="" type="checkbox"/>	Samuel H Johnson	sam@johnsonsparks.com
<input checked="" type="checkbox"/>	Elizabeth J. Rogatski	elizabeth@johnsonsparks.com
▶ Party: MONICA RIAL - Defendant		
▶ Party: RONALD TOYE - Defendant		
▼ Other Service Contacts		
<input checked="" type="checkbox"/>	Jim Bullock	jim@beardandharris.com
<input checked="" type="checkbox"/>	Carey Christie	carey@beardandharris.com
<input checked="" type="checkbox"/>	Casey Erick	cerick@cowlesthompson.com
<input checked="" type="checkbox"/>	Sean Lemoine	sean.lemoine@wickphillips.com
<input checked="" type="checkbox"/>	Gutierrez Lupe	lgutierrez@cowlesthompson.com
<input checked="" type="checkbox"/>	Barb Morgan	barb.morgan@wickphillips.com
<input checked="" type="checkbox"/>	Fatimah Muhammad	fatimah.muhammad@wickphillips.com
<input checked="" type="checkbox"/>	Andrea Perez	aperez@kesslercollins.com
<input checked="" type="checkbox"/>	Kristina Ross	kristina@beardandharris.com
<input checked="" type="checkbox"/>	Kimberley Smith	KSmith@kesslercollins.com

1

10 items per page

1 - 6 of 6 items

Parties with No eService

Name	Address
MONICA RIAL	
RONALD TOYE	

Fees

▼ Answer/Response

Description	Amount
Filing Fee	\$0.00
Filing Total: \$0.00	

Total Filing Fee	\$0.00
Envelope Total: \$0.00	

Party Responsible for Fees	VICTOR MIGNOGNA	Transaction Amount	\$0.00
Payment Account	LOC	Transaction Id	54430856
Filing Attorney	Jim Bullock	Order Id	
Filer Type	Attorney	Transaction Response	Authorized

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Jim Bullock

From: Sean Lemoine <slemoine@WickPhillips.com>
Sent: Saturday, August 31, 2019 12:08 AM
To: Ty Beard
Cc: Carey Christie; Jim Bullock; Christian Orozco; Ethan Minshull; sam@johnsonsparks.com; John Volney; Erick, Casey; Sean Lemoine
Subject: RE: Case No. 141-307474-19 8/1/19 Motion to Strike Supplemental Filings

Mr. Beard,

You are late in violation of the Rule 11.

We will move to strike whatever you might file, if you actually file anything.

Sean Lemoine

Partner | [Wick Phillips](#)

Direct: 214.740.4053

Email: sean.lemoine@wickphillips.com



From: Ty Beard <ty@beardandharris.com>
Sent: Wednesday, August 07, 2019 12:52 PM
To: John Volney <jvolney@lynnllp.com>
Cc: Carey Christie <carey@beardandharris.com>; Jim Bullock <jim@beardandharris.com>; Casey Erick <CErick@kesslercollins.com>; Andrea Perez <APerez@kesslercollins.com>; Christian Orozco <corozco@lynnllp.com>; Ethan Minshull <ethan.minshull@wickphillips.com>; sam@johnsonsparks.com; Sean Lemoine <slemoine@WickPhillips.com>
Subject: RE: Case No. 141-307474-19 8/1/19 Motion to Strike Supplemental Filings

John, I will attach to our motion the redline of the Rule 11 agreement where you specifically rejected any agreement about setting additional hearings in the interim.

In any case, we are not objecting to the admissibility of your evidence (yet).

Rather we are arguing that adding additional evidence and briefing after the TCPA filing deadline is improper. You should have filed a motion for leave to supplement your motion to dismiss, which would have required good cause.

I don't think you have a vacation letter on file and given the time urgency of our motion, we have no choice but to set the hearing as soon as possible. I am sure that you could participate by phone and we would have no problem with that. However, if defendants agree to extend all deadlines by 7 days, we can set the hearing week after next. (That would mean bumping the hearing to September 13, our filing deadline to September 6 and your deadline to September 9).

--Ty

Jim Bullock

From: Jim Bullock
Sent: Saturday, August 31, 2019 12:10 AM
To: Sean Lemoine; Ty Beard
Cc: Carey Christie; Christian Orozco; Ethan Minshull; sam@johnsonsparks.com; John Volney; Erick, Casey
Subject: RE: Case No. 141-307474-19 8/1/19 Motion to Strike Supplemental Filings

We are having technical difficulties loading the document into the efilings system due to the file size. Not our fault; but go ahead and make that argument.
Sweet dreams.

From: Sean Lemoine <slemoine@WickPhillips.com>
Sent: Saturday, August 31, 2019 12:08 AM
To: Ty Beard <ty@beardandharris.com>
Cc: Carey Christie <carey@beardandharris.com>; Jim Bullock <jim@beardandharris.com>; Christian Orozco <corozco@lynnllp.com>; Ethan Minshull <ethan.minshull@wickphillips.com>; sam@johnsonsparks.com; John Volney <jvolney@lynnllp.com>; Erick, Casey <cerick@cowlesthompson.com>; Sean Lemoine <slemoine@WickPhillips.com>
Subject: RE: Case No. 141-307474-19 8/1/19 Motion to Strike Supplemental Filings

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Sean Lemoine

Partner | [Wick Phillips](#)
Direct: 214.740.4053
Email: sean.lemoine@wickphillips.com



From: Ty Beard <ty@beardandharris.com>
Sent: Wednesday, August 07, 2019 12:52 PM
To: John Volney <jvolney@lynnllp.com>
Cc: Carey Christie <carey@beardandharris.com>; Jim Bullock <jim@beardandharris.com>; Casey Erick <CErick@kesslercollins.com>; Andrea Perez <APerez@kesslercollins.com>; Christian Orozco <corozco@lynnllp.com>; Ethan Minshull <ethan.minshull@wickphillips.com>; sam@johnsonsparks.com; Sean Lemoine <slemoine@WickPhillips.com>
Subject: RE: Case No. 141-307474-19 8/1/19 Motion to Strike Supplemental Filings

John, I will attach to our motion the redline of the Rule 11 agreement where you specifically rejected any agreement about setting additional hearings in the interim.

Jim Bullock

From: Jim Bullock
Sent: Saturday, August 31, 2019 12:17 AM
To: Sean Lemoine; Ty Beard; Carey Christie; Christian Orozco; Ethan Minshull; sam@johnsonsparks.com; John Volney; Erick, Casey
Subject: FW: Submission Failed for Envelope Number: 36452123 in Case: 141-307474-19, VICTOR MIGNOGNA VS. FUNIMATION PRODUCTIONS, LLC,ET AL

FYI.

From: No-Reply@eFileTexas.gov <No-Reply@eFileTexas.gov>
Sent: Saturday, August 31, 2019 12:15 AM
To: Jim Bullock <jim@beardandharris.com>
Subject: Submission Failed for Envelope Number: 36452123 in Case: 141-307474-19, VICTOR MIGNOGNA VS. FUNIMATION PRODUCTIONS, LLC,ET AL



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