

**CAUSE NO. 141-307474-19**

<b>VICTOR MIGNOGNA,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	
	§	<b>141ST JUDICIAL DISTRICT</b>
<b>FUNIMATION PRODUCTIONS, LLC,</b>	§	
<b>JAMIE MARCHI, MONICA RIAL,</b>	§	
<b>AND RONALD TOYE,</b>	§	
	§	
<b>Defendants.</b>	§	<b>TARRANT COUNTY, TEXAS</b>

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**DEFENDANTS MONICA RIAL AND RONALD TOYE’S RESPONSE TO PLAINTIFF’S  
OBJECTIONS TO AND MOTION TO STRIKE EVIDENCE OFFERED IN  
SUPPORT OF DEFENDANTS MOTION TO DISMISS**

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Defendants Monica Rial and Ronald Toye’s (“Rial/Toye”) respond to Plaintiff’s Objections to and Motion to Strike Evidence Offered in Support of Defendants’ Motion to Dismiss and Defendants’ Supplemental Evidence Filed in Support of Defendants’ TCPA Motions to Dismiss and Supplemental (“Objections and Motion to Strike”), as follows:

**I. INTRODUCTION**

The Court should overrule Plaintiff’s objections and deny Plaintiff’s Motion to Strike in its entirety. Plaintiff relies on generalized objections that do not adequately identify the specific grounds. A general objection is no objection at all. *Murphy v. Waldrip*, 692 S.W.2d 584, 591 (Tex. App.—Fort Worth 1985, writ ref’d n.r.e.). To be valid, specific grounds for the objection must be stated or must be apparent from the context of the objection. *Miller v. Kendall*, 804 S.W.2d 933 (Tex. App.-- Houston [1st Dist.] 1990, no writ); *Olson v. Harris County*, 807 S.W.2d 594 (Tex. App.--Houston [1st Dist.] 1990, writ denied); *McCormick v. Texas Commerce Bank Nat. Ass’n.*, 751 S.W.2d 887 (Tex. App.--Houston [14th Dist.] 1988, writ denied), cert. denied, 491 U.S. 910.

Plaintiff's hearsay objections should be overruled because Rial/Toye are not offering out-of-court statements to prove the truth of the matters asserted. Instead, Rial/Toye offer the referenced statements to show that Plaintiff is a public figure, to show notice Plaintiff's reputation and character within his community, and to show that Plaintiff cannot show proximate cause for any of his claims because of the prevalent and widespread statements concerning his misconduct. Plaintiff filed this lawsuit and necessarily put his character and reputation in issue.<sup>1</sup> Plaintiff is a public figure whose misconduct was a matter of public concern. He cannot now attempt to avoid evidence and testimony directly relevant to his reputation. For that reason, Plaintiff's objections are frivolous and should be rejected.

## II. RESPONSES TO PLAINTIFF'S OBJECTIONS

### A. Exhibits Attached to the Deposition of Victor Mignogna.

Plaintiff objects generally to Exhibits 1-13, 15-18, and 22 from the deposition of Victor Mignogna ("Mignogna Depo.") as hearsay. Plaintiff's objections should be overruled.

1. Ex 1: tweet from Twitter user @ActuallyAmelia
  - i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>2</sup>
  - ii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>3</sup>
  - iii. Defendants also offer the exhibit to show Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>4</sup>
  - iv. Rial/Toye also offer this exhibit for the purpose of showing other public statements made at or around the time Plaintiff alleges that Rial/Toye defamed Plaintiff, and that such statements contributed to any alleged reputational damage to Plaintiff.

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<sup>1</sup> Mignogna Depo. at 26:5-13; see TEX. R. EVID. 405(b) ("When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.").

<sup>2</sup> See *Dudrick v. Dolcefino*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14 (Tex.App.–Houston [14th Dist.] Dec. 10, 1998, rev. denied) (rejecting hearsay objections to media statements offered as public figure evidence in a defamation case).

<sup>3</sup> See *City of Austin v. Houston Lighting & Power Co.*, 844 S.W.2d 773, 791 (Tex.App.–Dallas 1992, writ denied).

<sup>4</sup> TEX. R. EVID. 803(21).

Sustained \_\_\_\_ / \_\_\_\_ Overruled

2. Ex. 2: January 25, 2019 article from Polygon.com titled “Dragon Ball Super: Broly voice actor responds to sexual harassment, homophobia claims”
3.
  - i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>5</sup>
  - ii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>6</sup>
  - iii. Defendants also offer the exhibit to show Mignogna’s reputation among his associates or in the community concerning Mignogna’s character.<sup>7</sup>
  - iv. Rial/Toye also offer this exhibit for the purpose of showing that other public statements made at or around the time Plaintiff alleges that Rial/Toye defamed Plaintiff, and that such statements contributed to any alleged reputational damage to Plaintiff.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

4. Ex. 3 Jessie Pridemore Facebook post
  - i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>8</sup>
  - ii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>9</sup>
  - iii. Defendants also offer the exhibit to show Mignogna’s reputation among his associates or in the community concerning Mignogna’s character.<sup>10</sup>
  - iv. Rial/Toye also offer this exhibit for the purpose of showing that other public statements made at or around the time Plaintiff alleges that Rial/Toye defamed Plaintiff, and that such statements contributed to any alleged reputational damage to Plaintiff.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>5</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>6</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>7</sup> TEX. R. EVID. 803(21).

<sup>8</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>9</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>10</sup> TEX. R. EVID. 803(21).

5. Ex. 4: January 30, 2019, article from Anime News Network titled “‘Far from Perfect’: Fans Recount Unwanted Affection from Voice Actor Vic Mignogna.”
- i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>11</sup>
  - ii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>12</sup>
  - iii. Defendants also offer the exhibit to show Mignogna’s reputation among his associates or in the community concerning Mignogna’s character.<sup>13</sup>
  - iv. Rial/Toye also offer this exhibit for the purpose of showing that other public statements made at or around the time Plaintiff alleges that Rial/Toye defamed Plaintiff, and that such statements contributed to any alleged reputational damage to Plaintiff.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

6. Ex. 5: February 1, 2019 article from The Dao of Dragon Ball titled “Fixing the Staircase: Vic Mignogna’s Sexual Assault Allegations and the Voice Actors Who Speak Out”
- i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>14</sup>
  - ii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>15</sup>
  - iii. Defendants also offer the exhibit to show Mignogna’s reputation among his associates or in the community concerning Mignogna’s character.<sup>16</sup>
  - iv. Rial/Toye also offer this exhibit for the purpose of showing that other public statements made at or around the time Plaintiff alleges that Rial/Toye defamed Plaintiff, and that such statements contributed to any alleged reputational damage to Plaintiff.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>11</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>12</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>13</sup> TEX. R. EVID. 803(21).

<sup>14</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>15</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>16</sup> TEX. R. EVID. 803(21).

7. Ex. 6: Rooster Teeth statement Concerning Plaintiff

- i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>17</sup>
- ii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>18</sup>
- iii. Defendants also offer the exhibit to show Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>19</sup>
- iv. Rial/Toye also offer this exhibit for the purpose of showing that other public statements made at or around the time Plaintiff alleges that Rial/Toye defamed Plaintiff, and that such statements contributed to any alleged reputational damage to Plaintiff.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

8. Ex. 7: Funimation tweets Concerning Plaintiff

- i. Plaintiff include this in their Petition.
- ii. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>20</sup>
- iii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>21</sup>
- iv. Defendants also offer the exhibit to show Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>22</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>17</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>18</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>19</sup> TEX. R. EVID. 803(21).

<sup>20</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>21</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>22</sup> TEX. R. EVID. 803(21).

9. Ex. 8: February 19, 2019 article from Gizmodo.com titled “One of Anime’s Biggest Voices Accused of Sexual Harassment.”

- i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>23</sup>
- ii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>24</sup>
- iii. Defendants also offer the exhibit to show Mignogna’s reputation among his associates or in the community concerning Mignogna’s character.<sup>25</sup>
- iv. Rial/Toye also offer this exhibit for the purpose of showing that other public statements made at or around the time Plaintiff alleges that Rial/Toye defamed Plaintiff, and that such statements contributed to any alleged reputational damage to Plaintiff.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

10. Ex. 9: Timeline of Events

- i. This exhibit is not hearsay because this exhibit is merely a demonstrative compilation of events, and not offered for the truth of the matters asserted.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

11. Ex. 10: Kiwi Farms “Doxemon” page

- i. This is not an attached exhibit

\_\_\_\_ Overruled

12. Ex. 11: GoFundMe page created by Nick Rekieta

- i. Not hearsay because this exhibit is not offered for the truth of the matters asserted, but merely to show that Rekieta had created a GoFundMe campaign for Plaintiff’s benefit. Plaintiff admits that that the GoFundMe campaign was created for his benefit.<sup>26</sup>
- ii. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>27</sup>

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<sup>23</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>24</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>25</sup> TEX. R. EVID. 803(21).

<sup>26</sup> Mignogna Depo. at 47:12-48:15.

<sup>27</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

- iii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>28</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

13. Ex. 12: Chuck Huber email dated March 6, 2019

- i. Rial/Toye offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>29</sup>
- ii. Defendants also offer the exhibit to show Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>30</sup>
- iii. Rial/Toye also offer this statement for impeachment purposes.<sup>31</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

14. Ex. 13 Chuck Huber email dated March 6, 2019

- i. Rial/Toye offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>32</sup>
- ii. Defendants also offer the exhibit to show Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>33</sup>
- iii. Rial/Toye also offer this statement for impeachment purposes.<sup>34</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>28</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>29</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>30</sup> TEX. R. EVID. 803(21).

<sup>31</sup> TEX. R. EVID. 608(a).

<sup>32</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>33</sup> TEX. R. EVID. 803(21).

<sup>34</sup> TEX. R. EVID. 608(a).

15. Ex. 15 Plaintiff's apology email to Rial dated February 8, 2019

- i. This exhibit is not hearsay because it is an email from Plaintiff, and accordingly is a statement by a party opponent.<sup>35</sup> Plaintiff admits that he sent this email.<sup>36</sup>
- ii. Rial/Toye also offer this statement for impeachment purposes.<sup>37</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

16. Ex. 16 Plaintiff's apology tweet dated February 13, 2019

- i. This exhibit is not hearsay because it is an email from Plaintiff, and accordingly is an admission and a statement by a party opponent.<sup>38</sup> Plaintiff admits that he posted this tweet.<sup>39</sup>
- ii. Rial/Toye also offer this statement for impeachment purposes.<sup>40</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

17. Ex. 17 Plaintiff's tweet regarding the GoFundMe dated February 20, 2019

- i. This exhibit is not hearsay because it is an email from Plaintiff, and accordingly is an admission and a statement by a party opponent.<sup>41</sup> Plaintiff admits that he posted this tweet.<sup>42</sup>
- ii. Rial/Toye also offer this statement for impeachment purposes.<sup>43</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

18. Ex. 18 Character Statement from Alyssa Fluty

- i. Withdrawn

Sustained \_\_\_\_

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<sup>35</sup> TEX. R. EVID. 801(e)(2)(A).

<sup>36</sup> Mignogna Depo. at 206:11-22.

<sup>37</sup> TEX. R. EVID. 608(a).

<sup>38</sup> TEX. R. EVID. 801(e)(2)(A).

<sup>39</sup> Mignogna Depo. at 214:13-16.

<sup>40</sup> TEX. R. EVID. 608(a).

<sup>41</sup> TEX. R. EVID. 801(e)(2)(A).

<sup>42</sup> Mignogna Depo. at 47:12-25.

<sup>43</sup> TEX. R. EVID. 608(a).



19. Ex. 22 TDMA Letter sent to Jamie Marchi  
i. Withdrawin

Sustained \_\_\_\_\_

**B. Exhibit B: Affidavit of Robin Michelle Blankenship McConnell.**

Plaintiff generally objects to the entirety of Exhibit B as irrelevant, and inadmissible character evidence. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>44</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>45</sup> Plaintiff's objection to Exhibit B, without specification, is invalid and should be overruled.

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of luring women into secluded places behind closed doors to force himself upon them.<sup>46</sup> Mrs. Blankenship-McConnell testifies regarding Plaintiff's motives for convincing women to follow him to secluded location in order to pressure them for sex, and is directly relevant to the issues in dispute in this litigation.<sup>47</sup> Plaintiff's character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>48</sup>

Sustained \_\_\_\_\_ / \_\_\_\_\_ Overruled

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<sup>44</sup> *Murphy*, 692 S.W.2d 591.

<sup>45</sup> *Lege v. Jones*, 919 S.W.2d 870, 874 (Tex. App.—Houston [14th Dist.] 1996, no writ).

<sup>46</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

<sup>47</sup> TEX. R. EVID. 401.

<sup>48</sup> *see* TEX. R. EVID. 405(b).

**C. Exhibit C: Affidavit of Kara Edwards.**

Plaintiff generally objects to the entirety of Exhibit C as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>49</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>50</sup> Plaintiff's objection to Exhibit C as inadmissible character evidence is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of luring women into secluded places behind closed doors to force himself upon them.<sup>51</sup> Ms. Edwards testifies regarding Plaintiff's motives for convincing women to follow him to secluded location in order to pressure them for sex, and is directly relevant to the issues in dispute in this litigation.<sup>52</sup> Plaintiff's character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>53</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>49</sup> *Murphy*, 692 S.W.2d 591.

<sup>50</sup> *Lege*, 919 S.W.2d at 874.

<sup>51</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

<sup>52</sup> TEX. R. EVID. 401.

<sup>53</sup> *see* TEX. R. EVID. 405(b).

Ms. Edwards's testimony in paragraphs 2, 3, 4, 5, 6, 7, 10, 11, 12, 14, 16, 17, 18, 20, 21, and 23 is not inadmissible opinion testimony. Ms. Edwards's testimony is rationally based on her perception, and helpful to clearly understanding her testimony or to determining a fact in issue.<sup>54</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Edwards's testimony in paragraphs 14, 17, and 18 is not hearsay. Ms. Edwards's testimony is relevant to Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>55</sup> Moreover, Ms. Edwards testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>56</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**D. Exhibit D: Affidavit of Lynn Hunt.**

Plaintiff generally objects to the entirety of Exhibit D as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>57</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>58</sup> Plaintiff's objection to Exhibit D as inadmissible character evidence is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>54</sup> TEX. R. EVID. 701.

<sup>55</sup> TEX. R. EVID. 803(21).

<sup>56</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>57</sup> *Murphy*, 692 S.W.2d 591.

<sup>58</sup> *Lege*, 919 S.W.2d at 874.

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of luring women into secluded places behind closed doors to force himself upon them.<sup>59</sup> Ms. Hunt testifies regarding Plaintiff's motives for convincing women to follow him to secluded location in order to pressure them for sex, and is directly relevant to the issues in dispute in this litigation.<sup>60</sup> Plaintiff's character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>61</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Hunt's testimony in paragraphs 2-10 is not inadmissible opinion testimony. Ms. Hunt's testimony is rationally based on her perception, and helpful to clearly understanding her testimony or to determining a fact in issue.<sup>62</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Hunt's testimony in paragraphs 5, 6, 7, 9, and 10 is not hearsay. Ms. Hunt's testimony is relevant to Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>63</sup> Moreover, Ms. Hunt testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>64</sup>

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<sup>59</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406.

<sup>60</sup> TEX. R. EVID. 401.

<sup>61</sup> *see* TEX. R. EVID. 405(b).

<sup>62</sup> TEX. R. EVID. 701.

<sup>63</sup> TEX. R. EVID. 803(21).

<sup>64</sup> *See Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**E. Exhibit E: Affidavit of Faisal Ahmed.**

Plaintiff generally objects to the entirety of Exhibit E as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>65</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>66</sup> Plaintiff's objection to Exhibit E as inadmissible character evidence is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of assaultive conduct at conventions, and his practice of being abusive to personnel at conventions.<sup>67</sup> Mr. Ahmed testifies regarding Plaintiff's conduct at conventions, and refutes his claim that Defendants interfered with Plaintiff's attendance at Kawaii Kon and Anime Weekend Atlanta, which is directly relevant to the issues in dispute in this litigation.<sup>68</sup> Plaintiff's character or character traits are essential elements of his claims, and the

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<sup>65</sup> *Murphy*, 692 S.W.2d 591.

<sup>66</sup> *Lege*, 919 S.W.2d at 874.

<sup>67</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

<sup>68</sup> TEX. R. EVID. 401.

defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>69</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Mr. Ahmed's testimony in paragraphs 3-7 is not inadmissible opinion testimony. Mr. Ahmed's testimony is rationally based on his perception, and helpful to clearly understanding his testimony or to determining a fact in issue.<sup>70</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Mr. Ahmed's testimony in paragraphs 3-7 is not hearsay. Mr. Ahmed's testimony is relevant to Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>71</sup> Moreover, Mr. Ahmed testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>72</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Plaintiff's objection that Mr. Ahmed's testimony in paragraph 4 is "contradicted by the Affidavit of Erica McCord" is invalid, and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>69</sup> *see* TEX. R. EVID. 405(b).

<sup>70</sup> TEX. R. EVID. 701.

<sup>71</sup> TEX. R. EVID. 803(21).

<sup>72</sup> *See Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

Rial/Toye also offer this statement for impeachment purposes.<sup>73</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**F. Exhibit F: Affidavit of Mary Reese.**

Plaintiff generally objects to the entirety of Exhibit F as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>74</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>75</sup> Plaintiff's objection to Exhibit F as inadmissible character evidence is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of assaultive conduct at conventions, and his practice of being abusive to personnel at conventions.<sup>76</sup> Ms. Reese testifies regarding Plaintiff's conduct at conventions, and corroborates Ms. Edwards's testimony, which is directly relevant to the issues in dispute in this litigation.<sup>77</sup> Plaintiff's character or character traits are essential elements of his

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<sup>73</sup> TEX. R. EVID. 608(a).

<sup>74</sup> *Murphy*, 692 S.W.2d 591.

<sup>75</sup> *Lege*, 919 S.W.2d at 874.

<sup>76</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

<sup>77</sup> TEX. R. EVID. 401.

claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>78</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Reese's testimony in paragraphs 3-15 and 17 is not inadmissible opinion testimony. Ms. Reese's testimony is rationally based on her perception, and helpful to clearly understanding her testimony or to determining a fact in issue.<sup>79</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Reese's testimony in paragraphs 8-11 is not hearsay. Ms. Reese's testimony is relevant to Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>80</sup> Moreover, Ms. Reese testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>81</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Rial/Toye also offer this statement for impeachment purposes.<sup>82</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>78</sup> see TEX. R. EVID. 405(b).

<sup>79</sup> TEX. R. EVID. 701.

<sup>80</sup> TEX. R. EVID. 803(21).

<sup>81</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>82</sup> TEX. R. EVID. 608(a).



**G. Exhibit G: Affidavit of Whitney Falba.**

Plaintiff generally objects to the entirety of Exhibit G as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>83</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>84</sup> Plaintiff's objection to Exhibit G as inadmissible character evidence is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of assaultive conduct at conventions, and his practice of being abusive to personnel at conventions.<sup>85</sup> Ms. Falba testifies regarding Plaintiff's conduct at conventions, which is directly relevant to the issues in dispute in this litigation.<sup>86</sup> Ms. Falba also testifies regarding Plaintiff's motives for convincing women to follow him to secluded location in order to pressure them for sex, and is directly relevant to the issues in dispute in this litigation.<sup>87</sup> Plaintiff's character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>88</sup>

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<sup>83</sup> *Murphy*, 692 S.W.2d 591.

<sup>84</sup> *Lege*, 919 S.W.2d at 874.

<sup>85</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

<sup>86</sup> TEX. R. EVID. 401.

<sup>87</sup> TEX. R. EVID. 401.

<sup>88</sup> *see* TEX. R. EVID. 405(b).

Ms. Falba's testimony in paragraphs 3-10 is not inadmissible opinion testimony. Ms. Falba's testimony is rationally based on her perception, and helpful to clearly understanding her testimony or to determining a fact in issue.<sup>89</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Falba's testimony in paragraphs 8 and 9 is not hearsay. Ms. Reese's testimony is relevant to Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>90</sup> Moreover, Ms. Falba testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>91</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Rial/Toye also offer this statement for impeachment purposes.<sup>92</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

#### **H. Exhibit H: Affidavit of Neysha Perry.**

Plaintiff generally objects to the entirety of Exhibit H as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff's objections are without merit and should be overruled.

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<sup>89</sup> TEX. R. EVID. 701.

<sup>90</sup> TEX. R. EVID. 803(21).

<sup>91</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>92</sup> TEX. R. EVID. 608(a).

A general objection is no objection at all.<sup>93</sup> An objection that evidence is “immaterial and irrelevant” is an invalid general objection.<sup>94</sup> Plaintiff’s objection to Exhibit H as inadmissible character evidence is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff’s pattern of assaultive conduct at conventions, and his practice of grabbing women by their hair without consent and whispering in their ears.<sup>95</sup> Ms. Perry testifies regarding Plaintiff’s conduct at conventions, which is directly relevant to the issues in dispute in this litigation.<sup>96</sup> Plaintiff’s character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff’s conduct are admissible.<sup>97</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Perry’s testimony in paragraphs 3-4 is not inadmissible opinion testimony. Ms. Perry’s testimony is rationally based on her perception, and helpful to clearly understanding her testimony or to determining a fact in issue.<sup>98</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>93</sup> *Murphy*, 692 S.W.2d 591.

<sup>94</sup> *Lege*, 919 S.W.2d at 874.

<sup>95</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 (“Evidence of a person’s habit or an organization’s routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.”).

<sup>96</sup> TEX. R. EVID. 401.

<sup>97</sup> *see* TEX. R. EVID. 405(b).

<sup>98</sup> TEX. R. EVID. 701.

Ms. Perry’s testimony in paragraphs 4 and 5 is not hearsay. Ms. Perry’s testimony is relevant to Mignogna’s reputation among his associates or in the community concerning Mignogna’s character.<sup>99</sup> Moreover, Ms. Perry testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>100</sup>

Rial/Toye also offer this statement for impeachment purposes.<sup>101</sup>

**I. Exhibit F: Affidavit of Mary Reese [sic]**

Plaintiff’s objections are without merit and should be overruled, as stated above in Section II.F.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**J. Exhibit J: Affidavit of Adam Sheehan.**

Plaintiff generally objects to the entirety of Exhibit J as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff’s objections are without merit and should be overruled.

A general objection is no objection at all.<sup>102</sup> An objection that evidence is “immaterial and irrelevant” is an invalid general objection.<sup>103</sup> Plaintiff’s objection to Exhibit J as inadmissible character evidence is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>99</sup> TEX. R. EVID. 803(21).

<sup>100</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>101</sup> TEX. R. EVID. 608(a).

<sup>102</sup> *Murphy*, 692 S.W.2d 591.

<sup>103</sup> *Lege*, 919 S.W.2d at 874.

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of assaultive conduct at conventions and at Funimation, and his practice of being abusive to personnel at conventions.<sup>104</sup> Mr. Sheehan testifies regarding Plaintiff's conduct at conventions, and specifically testifies regarding Plaintiff's contract status at Funimation, which is directly relevant to the issues in dispute in this litigation.<sup>105</sup> Plaintiff's character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>106</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Mr. Sheehan's testimony in paragraphs 4, 7, 8, 10 and 11 is not inadmissible opinion testimony. Mr. Sheehan's testimony is rationally based on his perception, and helpful to clearly understanding his testimony or to determining a fact in issue.<sup>107</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Mr. Sheehan's testimony in paragraphs 4, 6, 7, 8, and 10 is not hearsay. Mr. Sheehan's testimony is relevant to Mignogna's reputation among his associates or in the community

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<sup>104</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

<sup>105</sup> TEX. R. EVID. 401.

<sup>106</sup> *see* TEX. R. EVID. 405(b).

<sup>107</sup> TEX. R. EVID. 701.

concerning Mignogna's character.<sup>108</sup> Moreover, Mr. Sheehan testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>109</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Plaintiff's objection that Mr. Sheehan's testimony in paragraph 5 contains inadmissible legal conclusion is invalid, and should be overruled. Mr. Sheehan testifies only to the fact that Plaintiff was an independent contractor while at Funimation, and does not opine on any legal conclusions concerning that fact.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Rial/Toye also offer this statement for impeachment purposes.<sup>110</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**K. Exhibit K: Affidavit of Kelly Loftus.**

Plaintiff's objections are without merit and should be overruled.

Plaintiff generally objects to the entirety of Exhibit K as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff's objections are without merit and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>108</sup> TEX. R. EVID. 803(21).

<sup>109</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>110</sup> TEX. R. EVID. 608(a).

A general objection is no objection at all.<sup>111</sup> An objection that evidence is “immaterial and irrelevant” is an invalid general objection.<sup>112</sup> Plaintiff’s objection to Exhibit K as inadmissible character evidence is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff’s pattern of assaultive conduct at conventions.<sup>113</sup> Ms. Loftus testifies regarding Plaintiff’s conduct at conventions, which is directly relevant to the issues in dispute in this litigation.<sup>114</sup> Plaintiff’s character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff’s conduct are admissible.<sup>115</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Loftus’s testimony in paragraphs 3-5 is not inadmissible opinion testimony. Ms. Loftus’s testimony is rationally based on her perception, and helpful to clearly understanding her testimony or to determining a fact in issue.<sup>116</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>111</sup> *Murphy*, 692 S.W.2d 591.

<sup>112</sup> *Lege*, 919 S.W.2d at 874.

<sup>113</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 (“Evidence of a person’s habit or an organization’s routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.”).

<sup>114</sup> TEX. R. EVID. 401.

<sup>115</sup> *see* TEX. R. EVID. 405(b).

<sup>116</sup> TEX. R. EVID. 701.

Ms. Loftus's testimony in paragraphs 5-7 is not hearsay. Ms. Loftus's testimony is relevant to Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>117</sup> Moreover, Ms. Loftus testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>118</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Rial/Toye also offer this statement for impeachment purposes.<sup>119</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**L. Exhibit L: Affidavit of Michelle Specht.**

Plaintiff generally objects to the entirety of Exhibit L as irrelevant, and one exhibit as inadmissible character evidence. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>120</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>121</sup> Plaintiff's objection to Exhibit L as irrelevant is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>117</sup> TEX. R. EVID. 803(21).

<sup>118</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>119</sup> TEX. R. EVID. 608(a).

<sup>120</sup> *Murphy*, 692 S.W.2d 591.

<sup>121</sup> *Lege*, 919 S.W.2d at 874.



Moreover, Rial/Toye offer this statement and attached exhibits pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of using his position of power as a celebrity guest at conventions to convince fans to have sex.<sup>122</sup> Ms. Specht testifies regarding Plaintiff's conduct at conventions, his infidelities, and creation of an elaborate secret life to hide his misconduct, all of which is directly relevant to the issues in dispute in this litigation.<sup>123</sup> Plaintiff's character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>124</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Exhibit B attached to Ms. Specht's statement is not inadmissible opinion evidence. This Exhibit B is an email from Plaintiff to Ms. Specht, and is an adoptive admission of the email attached as Exhibit A to Ms. Specht's statement because it Exhibit A was sent to Plaintiff, Plaintiff understood the statements contained in Exhibit A, Exhibit A called for a reply, and Plaintiff remained silent or acquiesced to the statements in Exhibit A.<sup>125</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>122</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

<sup>123</sup> TEX. R. EVID. 401.

<sup>124</sup> *see* TEX. R. EVID. 405(b).

<sup>125</sup> TEX. R. EVID. 801(e)(2)(B); *see also Miller v. Dyess*, 137 Tex. 135, 145, 151 S.W.2d 186, 191 (1941).

Rial/Toye also offer this statement and its exhibits for impeachment purposes.<sup>126</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**M. Exhibit M: Affidavit of John Prager.**

Plaintiff generally objects to the entirety of Exhibit M as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>127</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>128</sup> Plaintiff's objection to Exhibit M as inadmissible character evidence is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of assaultive conduct at conventions, and his practice of being abusive to personnel at conventions.<sup>129</sup> Mr. Prager testifies regarding Plaintiff's conduct at conventions, which is directly relevant to the issues in dispute in this litigation.<sup>130</sup> Plaintiff's

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<sup>126</sup> TEX. R. EVID. 608(a).

<sup>127</sup> *Murphy*, 692 S.W.2d 591.

<sup>128</sup> *Lege*, 919 S.W.2d at 874.

<sup>129</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

<sup>130</sup> TEX. R. EVID. 401.

character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>131</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Mr. Prager's testimony in paragraphs 3, 5 and 9 is not inadmissible opinion testimony. Mr. Prager's testimony is rationally based on his perception, and helpful to clearly understanding his testimony or to determining a fact in issue.<sup>132</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Mr. Prager's testimony in paragraphs 3, 4 and 7 is not hearsay. Mr. Prager's testimony is relevant to Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>133</sup> Moreover, Mr. Prager testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>134</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Rial/Toye also offer this statement for impeachment purposes.<sup>135</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>131</sup> *see* TEX. R. EVID. 405(b).

<sup>132</sup> TEX. R. EVID. 701.

<sup>133</sup> TEX. R. EVID. 803(21).

<sup>134</sup> *See Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>135</sup> TEX. R. EVID. 608(a).

**N. Exhibits Attached to the Deposition of Monica Rial.**

i. Withdrawn

Sustained \_\_\_\_\_

**O. Exhibits Attached to the Deposition of Ronald Toye.**

Plaintiff generally objects to all exhibits attached to Exhibit O as hearsay. Plaintiff's objections are without merit and should be overruled because there are no exhibits attached to Exhibit O.

\_\_\_\_\_ Overruled

**P. Exhibit P: Affidavit of Sean Lemoine.**

Plaintiff generally objects to all exhibits attached to Exhibit P as hearsay. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>136</sup> Plaintiff's objection to the exhibits attached to Exhibit P as generally inadmissible as hearsay, without specification as to what exhibits or portions of those exhibits constitute hearsay, is invalid and should be overruled. An objection that evidence is "immaterial and irrelevant" is an invalid general objection, and should also be overruled.<sup>137</sup>

Sustained \_\_\_\_\_ / \_\_\_\_\_ Overruled

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<sup>136</sup> *Murphy*, 692 S.W.2d 591.

<sup>137</sup> *Lege*, 919 S.W.2d at 874.

There are eight exhibits attached to Exhibit P.

1. List of Nick Rekieta cases

- i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show Rekieta is a practicing attorney. This exhibit is a public record of Rekieta's cases.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

2. Plaintiff's resume

- i. This exhibit is not hearsay because it is Plaintiff's resume made available on his own website, and accordingly is a statement by a party opponent.<sup>138</sup>
- ii. Rial/Toye also offer this statement for impeachment purposes.<sup>139</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

3. Screenshot from "Voice" section of Plaintiff's website

- i. This exhibit is not hearsay because it is a true and correct image taken from Plaintiff's own website, and accordingly is a statement by a party opponent.<sup>140</sup>
- ii. Rial/Toye offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>141</sup>
- iii. Rial/Toye also offer this statement for impeachment purposes.<sup>142</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

4. Screenshot from "Music" section of Plaintiff's website

- i. This exhibit is not hearsay because it is a true and correct image taken from Plaintiff's own website, and accordingly is a statement by a party opponent.<sup>143</sup>
- ii. Rial/Toye offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>144</sup>
- iii. Rial/Toye also offer this statement for impeachment purposes.<sup>145</sup>

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<sup>138</sup> TEX. R. EVID. 801(e)(2)(A).

<sup>139</sup> TEX. R. EVID. 608(a).

<sup>140</sup> TEX. R. EVID. 801(e)(2)(A).

<sup>141</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>142</sup> TEX. R. EVID. 608(a).

<sup>143</sup> TEX. R. EVID. 801(e)(2)(A).

<sup>144</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>145</sup> TEX. R. EVID. 608(a).

Sustained \_\_\_\_ / \_\_\_\_ Overruled

5. Screenshot from homepage of Star Trek Continues website

- i. This exhibit is not hearsay because it is a true and correct image taken from Plaintiff's own website, and accordingly is a statement by a party opponent.<sup>146</sup>
- ii. Rial/Toye offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>147</sup>
- iii. Rial/Toye also offer this statement for impeachment purposes.<sup>148</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

6. Screenshots from Mignogna's Internet Movie Database Profile

- i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>149</sup>
- ii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>150</sup>
- iii. Rial/Toye also offer this statement for impeachment purposes.<sup>151</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

7. Screenshots from Mignogna's Mother's LiveJournal

- i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>152</sup>
- ii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>153</sup>
- iii. Rial/Toye also offer this statement for impeachment purposes.<sup>154</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>146</sup> TEX. R. EVID. 801(e)(2)(A).

<sup>147</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>148</sup> TEX. R. EVID. 608(a).

<sup>149</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>150</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>151</sup> TEX. R. EVID. 608(a).

<sup>152</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>153</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>154</sup> TEX. R. EVID. 608(a).

8. April 19, 2019 article from Variety.com titled “Accused of Sexual harassment, Vic Mignogna Sues Funimation.”
- i. Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>155</sup>
  - ii. The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>156</sup>
  - iii. Defendants also offer the exhibit to show Mignogna’s reputation among his associates or in the community concerning Mignogna’s character.<sup>157</sup>
  - iv. Rial/Toye also offer this exhibit for the purpose of showing that other public statements made at or around the time Plaintiff alleges that Rial/Toye defamed Plaintiff, and that such statements contributed to any alleged reputational damage to Plaintiff.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**Q. Exhibit Q: Timeline.**

Plaintiff generally objects to Exhibit Q as inadmissible opinion testimony and hearsay.

**i. This is a demonstrative exhibit.**

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**Exhibit R: Affidavit of Monica Rial.**

Plaintiff generally objects to the entirety of Exhibit R as inadmissible opinion testimony and as hearsay. Plaintiff’s objections are without merit and should be overruled.

A general objection is no objection at all.<sup>158</sup> An objection that evidence is “immaterial and irrelevant” is an invalid general objection.<sup>159</sup> Plaintiff’s objections to Exhibit R as inadmissible

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<sup>155</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>156</sup> See *City of Austin*, 844 S.W.2d at 791.

<sup>157</sup> TEX. R. EVID. 803(21).

<sup>158</sup> *Murphy*, 692 S.W.2d 591.

<sup>159</sup> *Lege*, 919 S.W.2d at 874.

opinion testimony or hearsay, without specifying what portions of the statement are inadmissible, are invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Rial's testimony in Exhibit R is not inadmissible opinion testimony. Ms. Rial's testimony is rationally based on her perception, and helpful to clearly understanding her testimony or to determining a fact in issue.<sup>160</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Rial's testimony in Exhibit R is not hearsay. Ms. Rial's testimony is relevant to Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>161</sup> Moreover, Ms. Rial testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>162</sup> Ms. Rial further testifies to the campaign of harassment and abuse currently directed to her by Plaintiff's supporters online, and therefore concerns her state of mind.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>160</sup> TEX. R. EVID. 701.

<sup>161</sup> TEX. R. EVID. 803(21).

<sup>162</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.



**R. Exhibit S.**

Plaintiff generally objects to the entirety of Exhibit S as inadmissible hearsay. Plaintiff's objection is without merit and should be overruled.

A general objection is no objection at all.<sup>163</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>164</sup> Plaintiff's objections to Exhibit S as inadmissible hearsay, without specifying what portions of the exhibit are inadmissible, is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Rial/Toye do not offer this exhibit for the truth of the matters asserted, but instead offer the exhibit to show that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>165</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

The hearsay rule does not preclude this exhibit because Rial/Toye offer this statement to show that it was made rather than to show its truth or falsity.<sup>166</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>163</sup> *Murphy*, 692 S.W.2d 591.

<sup>164</sup> *Lege*, 919 S.W.2d at 874.

<sup>165</sup> *See Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>166</sup> *See City of Austin*, 844 S.W.2d at 791.

Defendants also offer the exhibit to show Mignogna's reputation among his associates or in the community concerning Mignogna's character.<sup>167</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Rial/Toye also offer this exhibit for the purpose of showing that other public statements made at or around the time Plaintiff alleges that Rial/Toye defamed Plaintiff, and that such statements contributed to any alleged reputational damage to Plaintiff.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Rial/Toye also offer this statement for impeachment purposes.<sup>168</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**S. Exhibit T: Affidavit of Elizabeth Yost.**

Plaintiff generally objects to the entirety of Exhibit T as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>169</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>170</sup> Plaintiff's objection to Exhibit T as inadmissible character evidence is invalid and should be overruled.

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<sup>167</sup> TEX. R. EVID. 803(21).

<sup>168</sup> TEX. R. EVID. 608(a).

<sup>169</sup> *Murphy*, 692 S.W.2d 591.

<sup>170</sup> *Lege*, 919 S.W.2d at 874.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of luring women into secluded places behind closed doors to force himself upon them.<sup>171</sup> Ms. Yost testifies regarding Plaintiff's motives for convincing women to follow him to secluded location in order to pressure them for sex, and is directly relevant to the issues in dispute in this litigation.<sup>172</sup> Plaintiff's character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>173</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Yost's testimony in paragraphs 4, 8, 9, 10, 12, 13, 16, 17, 18 is not inadmissible opinion testimony. Ms. Yost's testimony is rationally based on her perception, and helpful to clearly understanding her testimony or to determining a fact in issue.<sup>174</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Yost's testimony in paragraphs 9 and 10 are not hearsay. Ms. Yost's testimony is relevant to Mignogna's reputation among his associates or in the community concerning

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<sup>171</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

<sup>172</sup> TEX. R. EVID. 401.

<sup>173</sup> *see* TEX. R. EVID. 405(b).

<sup>174</sup> TEX. R. EVID. 701.

Mignogna's character.<sup>175</sup> Moreover, Ms. Yost testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>176</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Rial/Toye also offer this statement for impeachment purposes.<sup>177</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

**T. Exhibit U: Affidavit of Theresa Yost.**

Plaintiff's objections are without merit and should be overruled.

Plaintiff generally objects to the entirety of Exhibit T as inadmissible character evidence, and certain paragraphs as inadmissible opinion testimony or hearsay. Plaintiff's objections are without merit and should be overruled.

A general objection is no objection at all.<sup>178</sup> An objection that evidence is "immaterial and irrelevant" is an invalid general objection.<sup>179</sup> Plaintiff's objection to Exhibit T as inadmissible character evidence is invalid and should be overruled.

Sustained \_\_\_\_ / \_\_\_\_ Overruled

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<sup>175</sup> TEX. R. EVID. 803(21).

<sup>176</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>177</sup> TEX. R. EVID. 608(a).

<sup>178</sup> *Murphy*, 692 S.W.2d 591.

<sup>179</sup> *Lege*, 919 S.W.2d at 874.

Moreover, Rial/Toye offer this statement pursuant to Texas Rule of Evidence 404(b)(2) and 406 as it exhibits Plaintiff's pattern of luring women into secluded places behind closed doors to force himself upon them.<sup>180</sup> Ms. Yost testifies regarding Plaintiff's motives for convincing women to follow him to secluded location in order to pressure them for sex, and is directly relevant to the issues in dispute in this litigation.<sup>181</sup> Plaintiff's character or character traits are essential elements of his claims, and the defenses brought by Rial/Toye, and accordingly, specific instances of Plaintiff's conduct are admissible.<sup>182</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Yost's testimony in paragraphs 4, 8, 9, 10, 12, 13, 16, 17, 18 is not inadmissible opinion testimony. Ms. Yost's testimony is rationally based on her perception, and helpful to clearly understanding her testimony or to determining a fact in issue.<sup>183</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Ms. Yost's testimony in paragraphs 9 and 10 are not hearsay. Ms. Yost's testimony is relevant to Mignogna's reputation among his associates or in the community concerning

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<sup>180</sup> TEX. R. EVID. 404(b)(2); TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

<sup>181</sup> TEX. R. EVID. 401.

<sup>182</sup> *see* TEX. R. EVID. 405(b).

<sup>183</sup> TEX. R. EVID. 701.

Mignogna's character.<sup>184</sup> Moreover, Ms. Yost testifies that Mignogna is a public figure and that statements about him involved a matter of public concern.<sup>185</sup>

Sustained \_\_\_\_ / \_\_\_\_ Overruled

Rial/Toye also offer this statement for impeachment purposes.<sup>186</sup>

### III. CONCLUSION AND PRAYER

For the reasons stated here, the Court should overrule Plaintiff's objections and deny Plaintiff's motion to strike.

Dated September 3, 2019

Respectfully Submitted,

/s/J. Sean Lemoine

J. Sean Lemoine

Texas State Bar No. 24027443

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AND RON TOYE

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<sup>184</sup> TEX. R. EVID. 803(21).

<sup>185</sup> See *Dudrick*, No. 14-96-01181-CV, 1998 WL 856236, \*13-\*14.

<sup>186</sup> TEX. R. EVID. 608(a).

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing instrument was served on counsel of record via electronic service pursuant to the Texas Rules of Civil Procedure on September 3, 2019.

/s/J. Sean Lemoine

J. Sean Lemoine