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2nd COURT OF APPEALS
FORT WORTH, TEXAS
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DEBRA SPISAK
Clerk

March 11, 2022

BY ELECTRONIC FILING

Debra Spisak, Clerk of the Court
Court of Appeals
Second District of Texas at Fort Worth
401 W. Belknap Street, Suite 9000
Fort Worth, Texas 76102

Re: *Mignogna v. Funimation Prods., LLC et al., 02-19-00394-CV*
Appellees/Cross-Appellants Monica Rial/Ronald Toye's
Supplemental Authorities

Dear Ms. Spisak:

This letter is to notify the panel in the referenced appellate proceeding of a relevant memorandum opinion from a different panel of this Court that was issued after the briefing in the referenced appellate proceeding was closed and after this case was submitted.¹ *Asta Partners, LLC v. Palaniswamy*, 02-20-00371-CV, 2021 WL 5133888 (Tex. App.—Fort Worth Nov. 4, 2021, no pet.), *reh'g denied* (Nov. 24, 2021). While the Court in *Asta Partners* reversed and remanded the trial court's attorney's fees award following a bench trial on the merits, the analysis undertaken in *Asta Partners* is relevant to the referenced cross-appeal, which concerns the trial court's failure to correctly calculate and award attorney's fees as to each defendant following dismissal under the TCPA.

In particular, Justice Bassel confirmed that “[a]s set forth in *Rohrmoos*, the factfinder must first perform a lodestar calculation based on reasonable hours worked multiplied by a reasonable hourly rate,” and only after first making that initial base lodestar determination, may the trial court move to step two and adjust (up or down) the base lodestar utilizing the *Arthur Andersen* considerations. *Id.* at

¹The briefing in this appeal was closed on July 9, 2020, and the case was submitted without oral argument on September 22, 2020.

*12.² Thus, *Asta Partners* affirms that the failure of a trial court to award fees based on the guiding principles set forth in *Rohrmoos* renders the award legally insufficient and constitutes an abuse of discretion.

Thank you for your assistance.

Yours truly,

/s/ Jeffrey W. Hellberg, Jr.

Jeffrey W. Hellberg, Jr.
Counsel for Appellees/Cross-Appellants
Monica Rial and Ronald Toyé

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on counsel of record by EFS on March 11, 2022.

/s/ Jeffrey W. Hellberg, Jr.
Jeffrey W. Hellberg, Jr.

² The same methodology used by Counsel for Appellees/Cross-Appellants in this underlying action was recently upheld in *Bennett v. Zucker*, No. 05-19-01445-CV, 2021 WL 3701365, at *11 (Tex. App.—Dallas Aug. 20, 2021, pet. denied), reh'g denied (Oct. 7, 2021).