

CAUSE NO. D-1-GN-18-001605

MARCEL FONTAINE,
Plaintiff

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IN DISTRICT COURT OF

VS.

TRAVIS COUNTY, TEXAS

ALEX E. JONES, INFOWARS, LLC,
FREE SPEECH SYSTEMS, LLC, and
KIT DANIELS,
Defendants

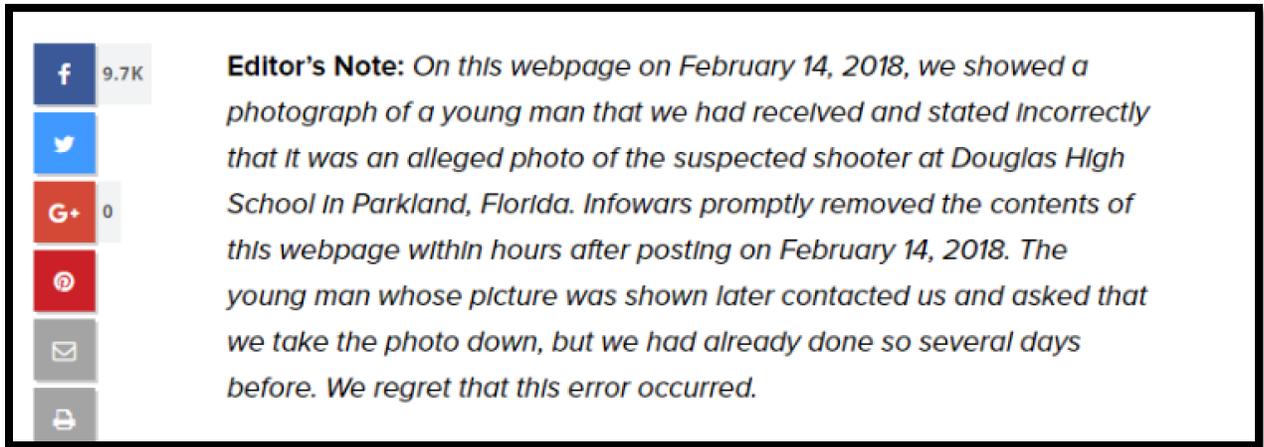
459th DISTRICT COURT

**PLAINTIFF’S STATEMENT OF NO OPPOSITION TO DEFENDANTS’ INTENT TO
RELY ON RETRACTION UNDER TEX. CIV. PRAC. & REM. CODE 73.057(b)(1),
AND OBJECTION TO ANY OTHER USE.**

Comes now, Plaintiff Marcel Fontaine, and files this statement of no opposition to Defendants’ intent to rely on retraction under Tex. Civ. Prac. & Rem. Code 73.057(b)(1), and objection to any other use, and would show the Court as follows:

1. Plaintiff Marcel Fontaine brought suit against Defendants due to an article on the InfoWars website which published his image and claimed that it depicted the alleged perpetrator of the school shooting at Stoneman Douglas High School in Parkland, Florida. In truth, Mr. Fontaine has never visited Florida and was never suspected of being the Parkland shooter.

2. Under Tex. Civ. Prac. & Rem. Code. Sec. 73.055, “a person may maintain an action for defamation only if the person has made a timely and sufficient request for a correction, clarification, or retraction from the defendant.” Plaintiff made a timely request delivered on March 1, 2018. In correspondence on May 11, 2018, Defendants provided notice that they intend to rely on a correction issued on April 2, 2018. That correction reads as follows:



3. If a defendant intends to rely on a retraction, it must serve notice of its intention and the text of the retraction before the 60th day after service of citation. *See* Tex. Civ. Prac. & Rem. Code 73.058. Here, Defendants served notice by way of letter on May 11, 2018. Plaintiff does not contest that Defendants notice and retraction were timely.

4. Furthermore, Plaintiff does not contest that Defendants' retraction was sufficient under the Section 75.057(b)(1) of the statute, as it was a "publication of an acknowledgment that the statement specified as false and defamatory is erroneous." Tex. Civ. Prac. & Rem. Code 73.057(b)(1).

5. Yet an important caveat must be made. Plaintiff does not agree that Defendants' retraction would be sufficient to satisfy any other of the alternative subsections of Tex. Civ. Prac. & Rem. Code 73.057(b). The statute deems a retraction as sufficient if it meets any of the following four conditions:

- (1) is publication of an acknowledgment that the statement specified as false and defamatory is erroneous;
- (2) is an allegation that the defamatory meaning arises from other than the express language of the publication and the publisher disclaims an intent to communicate that meaning or to assert its truth;

- (3) is a statement attributed to another person whom the publisher identifies and the publisher disclaims an intent to assert the truth of the statement; or
- (4) is publication of the requestor's statement of the facts, as set forth in a request for correction, clarification, or retraction, or a fair summary of the statement, exclusive of any portion that is defamatory of another, obscene, or otherwise improper for publication.

6. Plaintiff does not dispute that 73.057(b)(1) applies, as Defendants' retraction admits the publication "stated incorrectly that it was an alleged photo of the suspected shooter."

7. Subsection (b)(2) cannot apply, as Plaintiff's claim arises from the express content of the publication, and InfoWars' retraction does not disclaim any meaning arising outside the express content of the publication.

8. Subsection (b)(3) cannot apply, because InfoWars did not attribute the statement to a third party and did not identify any third party. Moreover, even if InfoWars had identified a third party, InfoWars did not disclaim an intent to assert the truth of the statement. Rather, it admitted that it stated incorrectly that Mr. Fontaine's image was an alleged photo of the suspected shooter.

9. Subsection (b)(4) cannot apply because there was never any submission of a requestor's statement of the facts, nor did InfoWars publish any requested statement of facts.

10. As such, Plaintiff does not object to the sufficiency of the retraction under Tex. Civ. Prac. & Rem. Code 73.057(b)(1), but Plaintiff does object to the sufficiency of the retraction under any other subsection of 73.057(b). Because this objection is being made less than 20 days after service of the notice of intent to rely on the correction, it is timely under Tex. Civ. Prac. & Rem. Code 73.058(b).

Respectfully submitted,

**KASTER LYNCH
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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2018 the forgoing document was served upon the following in accordance to Rule 21 of the Texas Rules of Civil Procedure:

Via E-File

Mr. Eric Taube
Waller Lansden Dortch & Davis, LLP
100 Congress Avenue, Ste. 1800
Austin, Texas 78701



MARK D. BANKSTON