

LEONARD POZNER AND
VERONIQUE DE LA ROSA
Plaintiffs,

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IN THE DISTRICT COURT OF

V.

TRAVIS COUNTY, TEXAS

ALEX E. JONES, INFOWARS, LLC,
AND FREE SPEECH SYSTEMS, LLC
Defendants

345th JUDICIAL DISTRICT

**DEFENDANTS’ FIRST SUPPLEMENT TO MOTION TO DISMISS
UNDER THE TEXAS CITIZENS PARTICIPATION ACT**

COME NOW, Defendants Alex E. Jones, Infowars, LLC and Free Speech Systems, LLC, (collectively, the “Defendants”), and hereby file this, their First Supplement to Motion to Dismiss Under the Texas Citizens’ Participation Act and in support thereof would respectfully show this Honorable Court as follows:

In Plaintiffs’ Response to Defendants’ Motion to Dismiss under the Texas Citizens Participation Act, they once again attempt to demonize Defendants by referring to irrelevant statements made by Jones and others made long ago, for which defamation claims are no longer available because of applicable statute of limitations pleaded as a defense. Their obvious hope is to “revive” stale defamation claims to overcome their failure to timely bring claims related to those past statements. If they were successful in this attempt, they would effectively negate long standing Texas law protecting free speech and requiring defamation plaintiffs to bring their claims within one year of the alleged defamation.

Plaintiffs also attempt to avoid their public figure status by claiming that they were merely responding to controversies started by Mr. Jones’ opinions on Sandy Hook. This attempt fails for at least three reasons.

First, Mr. Jones did not start or initiate the ‘conspiracy theories’ about Sandy Hook.¹ They existed before any of his remarks on the subject, they exist independently of him and will remain in existence irrespective of the actions of Defendants.

Second, Plaintiffs’ public participation in the national gun debate was not in response to Mr. Jones’ opinions. Indeed, their public participation in the gun debate began immediately after the shootings in response to the death of their child by one using an assault rifle which they immediately sought to ban. And, as the evidence already shows, both Plaintiffs previously claimed that other “conspiracy theorists’ were to blame.²

Third, contrary to what Plaintiffs now claim, the national controversy and debate into which both Plaintiffs’ voluntarily stepped was not whether or not a “hoax” occurred and whether or not victims were murdered at Sandy Hook. Instead, they both voluntarily publicly participated in the national debates and controversies involved over gun rights/restrictions and whether Sandy Hook should be used as the spark or impetus for additional gun control as advocated by both Plaintiffs and as opposed by many American, including Mr. Jones.

1. *Right of Association*

Plaintiffs’ claims center not only upon Defendants’ free speech but also the Defendants’ communications as they promote and pursue their common interests of promoting a truthful, transparent, and unbiased reporting of the news with regard to controversies surrounding the government and national tragedies. Likewise, Plaintiffs’ claims are also based upon Defendants’ political viewpoints and the influence that Defendants have over their viewers and listeners, including what Plaintiffs and their counsel claim is influence with the President of the United States.

¹ See Exhibit A, Alex Jones Supplemental affidavit, paragraph 2.

² As demonstrated in the Motion and attached evidence, Plaintiffs previously blamed Professor Tracy and others.

The TCPA's definition of "right of association" has a broad application. The facts in this case fall clearly within the TCPA's definition and meaning.

As is made clear by the broadcasts of Defendants, the style of the broadcasts is not just a traditional media outlet. Although Defendants are "media," they share their platform with guests, as well as listeners, who are invited to call in and engage in the topic of discussion. In each of the complained of broadcasts, Jones and others were communicating with others "who joined together to collectively express, promote, pursue or defend common interests."

2. *Right to Petition*

The "right to petition under the federal Constitution... 'is cut from the same cloth as the other guarantees of [the First Amendment], and is an assurance of a particular freedom of expression' of the People in a specific context- seeking remedy for grievances and otherwise communicating their will to government officials."³ The "right to petition" is "also said to be 'implicit in [the] very idea of government, republican in form.'"⁴

As the Austin Court of Appeals stated:

"The text of the TCPA as a whole confirms, rather than refutes, that the Legislature intended to incorporate this established understanding of this constitutional 'right to petition' when defining the 'exercise of the right to petition,' as opposed to creating some sort of *sui generis* innovation. Subparagraphs (B), (C), and (D) of the 'exercise of the right to petition' definition explicitly contemplate either the direct petitioning of government for action or redress on particular 'issues' or the sorts of collateral actions aimed at influencing public opinion in support of petition that which the U.S. Supreme Court has long been held to be within the First Amendment right to petition. Further confirmation of the Legislature's intent is found in subparagraph (E) of the definition, the final one, which states that 'exercise of the right to petition' includes... any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the constitution of this state."⁵

³ *Serafine v. Blunt*, 466 S.W.3d 352, 380 (Tex. App.- Austin 2015, no pet.).

⁴ *Serafine*, 466 S.W.3d at 380.

⁵ *Serafine*, 466 S.W.3d at 380-381.

Likewise, the Petition Clause of the Texas Constitution “reserves the right to petition the government for a redress of grievances” as follows:

“RIGHT OF ASSEMBLY; PETITION FOR REDRESS OF GRIEVANCES. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those vested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.”⁶

The TCPA’s definition of the right to petition includes a “communication in or pertaining to” a “judicial proceeding.”⁷ The alleged defamatory April 28 broadcast was a press conference that Mr. Jones held regarding his child custody case. Plaintiffs claim that the April 28 broadcast was “false, both in their particular facts and in the main point, essence, or gist in the context in which they were made.”⁸ Thus, from the face of Plaintiff’s petition, is clear that their claims regarding the April 28 broadcast are, at least in part, based upon Defendants’ right to petition because Jones’ statements constitute “communications... pertaining to... a judicial proceeding,” which in this case, was Jones’ child custody case. Thus, the TCPA is applicable. Additionally, Mr. Jones’ statements were made in connection with promoting the idea of free thought and questioning the government and MSM.

Likewise, the April 22 broadcast that Plaintiffs also claim was defamatory fall within the TCPA’s definition of the right to petition because, as is clear from the broadcast itself, Jones’ communications within that broadcast were made in connection with promoting the idea of free thought and questioning the government and MSM.

These statements within the April 22 Broadcast fall within the statutory definition of “right to petition” as defined by the TCPA.⁹ The gun control issue is at the forefront of the national debate. Thus, the April 22 Broadcast and its statements were “communications” that

⁶ *Clark v. Jenkins*, 248 S.W.3d 418, 428 (Tex. App.- Amarillo 2008, pet. denied).

⁷ Tex. Civ. Prac. & Rem. Code §27.001(4)(A)(i).

⁸ Plaintiff’s Original Petition, at ¶62.

⁹ Tex. Civ. Prac. & Rem. Code §27.001(4)(B-E).

were: made “in connection with an issues under consideration or review by a legislative, executive, judicial, or other governmental body;” “reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body;” “reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial, or other governmental body;” and “fall[] within the protection of the right to petition government under the Constitution of the United States or the constitution of this State.” Of course, one of the primary issues that Jones’ statements were made in connection with were the controversies surrounding gun rights and free speech. Thus, Plaintiff’s lawsuit is also, at least in part, “based on, related to, and is in response to” Jones’ right to petition.

3. *Attorneys’ Fees*

The TCPA requires the trial court to award court costs, reasonable attorney’s fees, and other expenses to the movant upon dismissal of a “legal action” under the TCPA.¹⁰ The TCPA defines a “legal action” as, among other things, a single cause of action.¹¹ Thus, should any one of the numerous causes of action brought by Plaintiffs be dismissed, an attorneys’ fees award is mandatory.

Defendants further request that upon dismissal of Plaintiff’s claims, the Court award them attorney fees and costs¹² incurred in defending this civil action.¹³

¹⁰ Tex. Civ. Prac. & Rem. Code §27.009(a)(1); *Hawxhurst v. Austin’s Boat Tours*, 2018 Tex. App. LEXIS 2081, *22-23 (Tex. App.- Austin Mar. 22, 2018, no pet. h.).

¹¹ Tex. Civ. Prac. & Rem. Code §27.001(6).

¹² See Affidavit of Mark C. Enoch attached hereto as Exhibit B.

¹³ Tex. Civ. Prac. & Rem. Code § 27.009.

PRAYER

WHEREFORE PREMISES CONSIDERED, Defendants respectfully requests that the Motion be granted and the Court grant them such other and further relief as the Court deems equitable, just and proper.

RESPECTFULLY SUBMITTED,

GLAST, PHILLIPS & MURRAY, P.C.

/s/ Mark C. Enoch

Mark C. Enoch
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14801 Quorum Drive, Suite 500
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Telephone: 972-419-8366
Facsimile: 972-419-8329
fly63rc@verizon.net

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July, 2018, the foregoing was sent via efiletxcourts.gov's e-service system to the following:

Mark Bankston
Kaster Lynch Farrar & Ball
1010 Lamar, Suite 1600
Houston, TX 77002
713-221-8300
mark@fbtrial.com

/s/ Mark C. Enoch

Mark C. Enoch

LEONARD POZNER AND
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Plaintiffs,

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

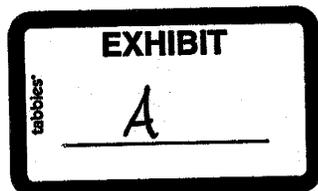
FIRST SUPPLEMENTAL AFFIDAVIT OF ALEX E. JONES

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary public, on this day personally appeared Alex E. Jones, known to me to be the person whose name is subscribed below, and who on his oath, deposed and stated as follows:

1. My name is Alex E. Jones. I am over the age of 21 years, have never been convicted of a felony or crime involving moral turpitude, am of sound mind, and am fully competent to make this affidavit. I have personal knowledge of the facts herein stated and they are true and correct.

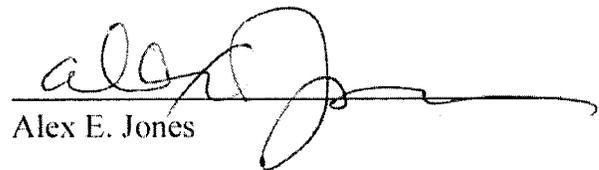
2. Plaintiffs claim that I started the controversy and/or conspiracy theory about Sandy Hook being a hoax. This is not true. Before I ever publicly commented on any issues relating to Sandy Hook, I learned that others with whom I have no affiliation or



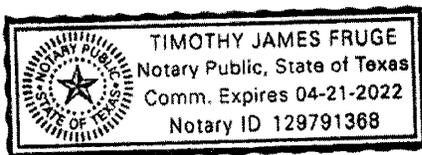
relationship had already posted articles online making this claim and questioning the events as were reported. What the Plaintiffs allege to be the "conspiracy theory" about Sandy Hook being a "hoax" was not started by me or any of the Defendants. Instead it became a public topic in various media before I made any comments on it. Since the shootings at Sandy Hook, many, many others with whom I have no affiliation or relationship have also questioned Sandy Hook events and reports.

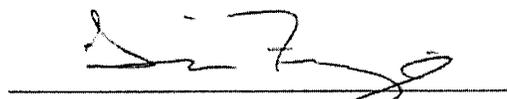
3. At the time of my statements on April 22, 2017 which Plaintiffs claim were defamatory, I did not know that my stated opinion that Anderson Cooper was standing in front of a blue/green screen was false. Nor did I have serious doubts as to that stated opinion. I have used blue/green screens before in my work and have noticed on occasions anomalies similar to Anderson Cooper's disappearing nose. I know that when such a screen is not properly aligned, similar anomalies can and do happen.

Further Affiant Sayeth Not.


Alex E. Jones

SWORN TO and SUBSCRIBED before me by Alex E. Jones on July 27 , 2018.




Notary Public in and for
the State of Texas

My Commission Expires: 4-21-2022

LEONARD POZNER AND
VERONIQUE DE LA ROSA,

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ALEX E. JONES, INFOWARS, LLC,
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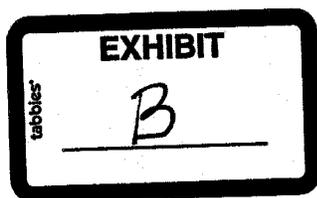
345th JUDICIAL DISTRICT

AFFIDAVIT OF MARK C. ENOCH

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

I, Mark C. Enoch, do hereby declare under penalty of perjury that the following is true and correct.

1. My name is Mark C. Enoch. I am fully competent and capable in all respects to make this Affidavit. As lead counsel in this case, I have become familiar with the facts by reviewing documents and speaking with witnesses, I have read the pleadings and discovered and reviewed evidence and have studied the statutory and common law relating to the causes of action alleged by Plaintiffs, the law relating to the defenses and the law relating to application of the Texas Citizens Participation Act. Based upon my role as lead counsel in this case and the work that I have done, I have personal knowledge of all of the facts stated in this Affidavit, and they are true and correct. This Affidavit is



submitted in connection with Defendants' Motion to Dismiss filed in the above-styled litigation.

2. I am an attorney duly licensed to practice law in the State of Texas and have been continuously licensed and have practiced civil trial and appellate law since 1979. I am with the law firm of Glast, Phillips & Murray, P.C. which represents the Defendants in the above-styled litigation. My practice has been devoted to civil litigation such as this in state and federal court. I have been continuously certified in civil trial law by the Texas Board of Legal Specialization since 1988. I have also been involved in civil appeals and have prepared appellate briefs and arguments.

3. My standard hourly billing rate and my hourly billing rate for this matter is \$535. The associates and paralegal who have worked on this matter also have billed at the firm's standard hourly billing rates for each such associate and paralegal. The hourly billing rates for these two associates are \$290 and \$300 respectively. The firm's standard hourly billing rate for the paralegal who has worked on this matter is \$110.

4. I am familiar with rates charged by attorneys and paralegals in Dallas and surrounding counties as well as rates charged by attorneys and paralegals in Travis and surrounding counties for civil litigation matters and these hourly rates are reasonable when compared to customary and typical hourly rates charged in those areas of Texas for attorneys with similar education, experience, training and abilities.

5. The total of fees billed by Glast, Phillips & Murray and incurred by Defendants through June 30, 2018 in connection with this matter is \$85,700.75. Based on my education, experience and training, it is my opinion that a.) the law firm's hourly

rates are reasonable and typical and customary for similar legal services in Travis and Dallas Counties and b.) that the total fees billed as of June 30, 2018 were and are both reasonable and necessary to properly defend Plaintiffs' claims. It is my further opinion based upon my education, training and experience that the time expended on each individual task completed by Glast, Phillips & Murray in this matter was appropriate, reasonable and necessary and that the lawyer and/or paralegal was appropriately assigned to each task. The total amount incurred by Defendants includes fees associated with, among other things, reviewing the lawsuit pleadings, reviewing broadcasts and videos relevant to Plaintiffs' claims and the defenses, investigating the allegations, interviewing witnesses, drafting a response to the lawsuit, researching the Motion to Dismiss, drafting, editing and revising the Motion to Dismiss, determining what evidence is appropriate, researching Plaintiffs and their public activities, editing and revising affidavits for evidence, researching appropriate defenses, drafting the First Amended Answer, and reviewing and responding to communications with counsel and others.

6. Furthermore, I estimate that further legal work will be reasonable and necessary to supplement the Motion to Dismiss and affidavits, receive, review and respond to additional filings by Plaintiffs, prepare for the hearing on the Motion to Dismiss, travel to Travis County for the hearing and argue the motion and prepare correspondence and draft orders regarding the hearing and the Court's rulings. For this anticipated legal work, I estimate, and my opinion is, based on my education, experience and training that Defendants will incur additional reasonable and necessary attorney fees in an amount of approximately \$42,275.

7. Additionally, I estimate, and my opinion is, that in the event of an appeal by either Plaintiffs or Defendants from a decision of this Honorable Court to the Court of Appeals, Defendants will incur an additional amount of at least \$28,000 in reasonable and necessary attorney fees. If Plaintiffs appeal to the Supreme Court of Texas and briefing is not requested, I estimate, and my opinion is, that Defendants will incur additional reasonable and necessary attorney fees in the amount of \$5,000. If the Texas Supreme Court requests briefing, I estimate, and my opinion is, that Defendants will incur additional reasonable and necessary attorney fees in an amount of at least \$25,000. Finally if Defendants appeal to the Supreme Court of Texas, I estimate, and my opinion is, that Defendants will incur additional reasonable and necessary attorneys fees in an amount of at least \$30,000.

8. Based upon my education, experience and training, it is my opinion that the above rates and amounts are reasonable and necessary for the services rendered and to be rendered considering, among other things, the novelty and difficulty of the issues involved, the skill and training of the lawyers involved and the skill required to provide the legal services properly, the time and labor involved to perform the legal services properly, the fee customarily charged in the community for similar services, time constraints placed on the lawyers by the clients and circumstances of the case and the issues and amounts involved and the results obtained.

Executed in Dallas County, State of Texas.


Mark C. Enoch

SWORN TO and SUBSCRIBED before me by Mark C. Enoch on July 27th,
2018.


Notary Public in and for
the State of Texas

My Commission Expires:
7/3/21

