

NO. D-1-GN-18-001842

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*

345<sup>th</sup> JUDICIAL DISTRICT

**DEFENDANTS’ OBJECTIONS TO  
PLAINTIFFS’ EVIDENCE SUBMITTED IN RESPONSE TO DEFENDANTS’ 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 Objections to Plaintiffs’ Evidence Submitted in Response to Defendants’ Motion to Dismiss Under the Texas Citizens Participation Act and in support thereof would respectfully show this Honorable Court as follows:

**1. OBJECTIONS TO AFFIDAVIT OF FRED ZIPP**

a. *First Opinion*

Mr. Zipp’s first opinion, stated on page 13 of his report, is that:

“[T]he statements made in the April 22, 2017 broadcast entitled “Sandy Hook Vampires Exposed” were capable of defaming Veronique De La Rosa and Leonard Pozner by impugning their reputation with false information about their honesty or integrity.”

This opinion is inadmissible because it is an opinion on a question of law.

Whether a statement is defamatory is a question of law. See, *Bently v. Bunton*, 94 S.W.3d 561, 580 (Tex. 2003); *Campbell v. Clark*, 471, S.W.3d 615, 624 (Tex. App. – Dallas 2015, no pet.); *Main v. Royall*, 348 S.W.3d 381, 389 (Tex. App. – Dallas 2011, no pet.).

Expert opinions on questions of law are not admissible. See *Mega Child Care v. Texas*

*Dep't of Protective & Regulatory Svcs.*, 29 S.W.3d 303, 307 (Tex. App. – Hou. [14<sup>th</sup> Dist.] 2000, no pet.); *Holden v. Weidenfeller*, 929 S.W.2d 124, 133 (Tex. App. – Austin 1996, writ den.)

b. *Second Opinion*

Mr. Zipp's second opinion, stated on page 22 of his affidavit is that "InfoWars' accusations about Sandy Hook and Ms. De La Rosa's interview were made with reckless disregard for truth."

Knowledge of falsity or reckless disregard for the truth are the quintessence of malice. See *Greer v. Abraham*, 489 S.W.3d 440, 444 (Tex. 2016); *Bentley*, 94 S.W.3d at 600-601. Although Zipp is careful not to use the word "malice" his opinion can only be read as an opinion that Defendants published with malice. As such, his opinion is inadmissible. See *Jianguang Wang v. Tang*, 260 S.W.3d 149,160 (Tex. App. – Houston [1<sup>st</sup> Dist.] 2008, pet. den.), cert. den. 2009 U.S. LEXIS 1581 (2009); *Gonzles v. Hearst Corp.*, 930 S.W.2d 275, 284 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1996, no pet.)

c. *Both Opinions Unreliable*

Mr. Zipp relies on snippets of prior publications many of which are not identified, as the foundation for his opinions as to both the defamatory nature of the publications at issue and reckless disregard for the truth. Tex. R. Evid. Rule 703 allows an expert to rely on data not otherwise admissible if it is of the type of data reasonably relied upon by experts in the field. Mr. Zipp's reliance on publications other than those made the basis of the defamation claims, especially those published outside the one-year limitations period, are nothing more than a "back door" attempt to get those prior publications into evidence. Further, Mr. Zipp does not lay the necessary foundation or predicate required under Tex. R. Evid. Rule 703.

The publications referred to by Mr. Zipp (at pages 13-19 of his opinion) are mentioned

because the publication at issue was “not made in isolation.” (*Id.* p. 13) The inference Mr. Zipp presses upon the court is that because the statement at issue was but one of several, going back a number of years, it is defamatory of Plaintiffs and was knowingly or recklessly made.

The earlier publications would not be admissible under Tex. R. Evid. Rules 401-403, 404, 406 and 608(b).

His stated portions and summaries of these snippets also violate Tex. R. Evid. Rule 1002.

Whether the statements at issue in 2017 were made is undisputed; thus it is unnecessary to introduce the earlier publications as proof that the statement at issue was made. Mr. Zipp argues, however, that the earlier publications somehow make it more likely than not that the statement at issue is defamatory and was made with intentional or reckless disregard for the truth. The problem, for plaintiffs and Mr. Zipp, is that he doesn’t “connect the dots,” that is, he doesn’t say how the earlier publications inform the decision that the publication at issue is defamatory or the product of mal- or mis-feasance. Either it is, or it isn’t.

A priori, Mr. Zipp’s reliance on earlier publications is inappropriate. His opinions rest almost entirely on these earlier partial publications. That the earlier publications make the defamatory nature of the publication at issue more likely than not defamatory, or was made with intentional or reckless disregard for the truth, depends alone on Mr. Zipp’s *ipse dixit*. As such, his opinions are inadmissible. See *Jelinek v. Casas*, 328 S.W.3d 526, 539 (Tex. 2010).

d. *Objections to Specific Statements*

In addition to the broader objections to the Zipp opinion, Defendants make the following specific objections to the Zipp opinion:

Affidavit Statements	Objections
Page 1, First paragraph under Scope of Review “whether assertions could	Lack of foundation/predicate

be responsibly published”	Not Relevant  Vague and Ambiguous  Hearsay
Six bullet points under Scope of Review	Lack of foundation/predicate  Lack of identification of materials reviewed  Hearsay
Page 2, First paragraph under Background Knowledge of InfoWars, second sentence	Not relevant  Hearsay
Second paragraph under Background Knowledge of InfoWars “significant amount of time”	Vague and Ambiguous  Conclusory
Second paragraph under Background Knowledge of Infowars, second sentence	Conclusory  Lack of foundation/predicate  Not relevant
Third paragraph under Background Knowledge of Infowars, second sentence	Conclusory  Violates TRE 404  Lack of foundation/predicate
Fourth paragraph under Background Knowledge of Infowars,	Not relevant  Hearsay  Lack of predicate/foundation  Conclusory

<p>Page 3, First paragraph under number 1, first sentence</p>	<p>Conclusory</p> <p>Lack of foundation/predicate</p> <p>Not relevant</p> <p>Lack of personal knowledge</p> <p>Exhibit A-26 is hearsay, lacks a foundation and predicate and is not complete</p>
<p>Page 3, middle three paragraphs</p>	<p>Violates TRE 1002</p>
<p>Last paragraph under number 1 at bottom of the page and continuing to page 4 beginning “My review...” First and second sentence.</p>	<p>Vague and Ambiguous (“suggests”)</p> <p>Lack of personal knowledge</p> <p>Lack of foundation/predicate</p> <p>Conclusory</p> <p>Not relevant</p> <p>Hearsay as to second and third sentence</p>
<p>Same paragraph, third sentence</p>	<p>Defendants incorporate the same objections to this sentence as they stated to the affidavit and conclusions of Mr. Fredericks.</p> <p>Not relevant</p> <p>Violates TRE 403</p> <p>Hearsay</p>

	Lack of foundation/predicate
Same paragraph, fourth and fifth sentence	Not relevant Not probative Improper opinion of expert on question of law Lack of personal knowledge Lack of foundation/predicate Speculation
Page 4, first paragraph under paragraph 2.	First sentence: Not relevant, violates TRE 404, conclusory, lack of foundation/predicate, hearsay, lack of personal knowledge  Second sentence: Not relevant, vague and ambiguous, conclusory, lack of foundation/predicate, lack of personal knowledge, hearsay  Third sentence: Not relevant, vague and ambiguous, conclusory, lack of foundation/predicate, lack of personal knowledge,
First paragraph under 2. A.	Not relevant Lack of persona knowledge
Second paragraph under 2. A.	Not relevant Hearsay

	Lack of foundation/predicate
Third paragraph under 2. A.	First sentence: Not relevant, conclusory, speculative  Second and third sentence: Not relevant, hearsay, lack of personal knowledge, lack of foundation/predicate,
Page 5, top paragraph (under two top photos)	Not relevant, speculative, hearsay, conclusory, lack of personal knowledge, lack of foundation/predicate
Bottom paragraph (under two lower photographs)	Not relevant, speculative, hearsay, conclusory, lack of personal knowledge, lack of foundation/predicate
Page 6 , top paragraph (under two top photos)	Not relevant, speculative, hearsay, conclusory, lack of personal knowledge, lack of foundation/predicate

Bottom paragraph (under two lower photographs)	Not relevant, speculative, hearsay, conclusory, lack of personal knowledge, lack of foundation/predicate
Page 7, photo	Not relevant  Hearsay  Lack of foundation/predicate
Page 7, top paragraph (under photo and above B.)	Not relevant, speculative, hearsay, conclusory, lack of personal knowledge, lack of foundation/predicate
Paragraph B.	Not relevant  Conclusory  lack of personal knowledge, lack of foundation/predicate
Last paragraph (under B)	Not relevant  Conclusory  lack of personal knowledge, lack of foundation/predicate



	Exhibit 24 is not complete
Page 8, top photo	Not relevant Hearsay Lack of foundation/predicate
Page 8, top paragraph	Not relevant Conclusory Hearsay Lack of foundation/predicate Lack of personal knowledge Violates TRE 1002
Lower photo	Hearsay Not relevant Lack of foundation/predicate
Bottom paragraph	Not relevant Hearsay Lack of personal knowledge Lack of foundation/predicate Conclusory Violates TRE 1002
Page 9 photo	Not relevant Hearsay

	Lack of foundation/predicate
First paragraph	<p>First sentence: Not relevant, Lack of personal knowledge, Lack of foundation/predicate, conclusory</p> <p>Second sentence: Not relevant, Lack of personal knowledge, Lack of foundation/predicate, conclusory, speculative</p> <p>Third sentence: “did not reasonably suggest any cover-up or manipulation”: Not relevant, Lack of foundation/predicate, conclusory, speculative</p> <p>Fourth sentence: Not relevant, Lack of personal knowledge, Lack of foundation/predicate, conclusory</p> <p>Violates TRE 1002</p>
Paragraph C.	<p>Not relevant</p> <p>Lack of personal knowledge</p>
Last paragraph	<p>First sentence: Not relevant, Lack of personal knowledge</p> <p>Second and third sentence: Not relevant, Lack of personal knowledge, Lack of</p>

	<p>foundation/predicate, conclusory, hearsay</p> <p>Violates TRE 1002</p>
Page 10 photo	<p>Not relevant</p> <p>Hearsay</p> <p>Lack of foundation/predicate</p>
Paragraph D.	<p>Not relevant, Lack of personal knowledge</p>
First paragraph under D.	<p>First sentence: Not relevant, lack of personal knowledge</p> <p>Second sentence: Not relevant, lack of personal knowledge</p> <p>Third sentence: Not relevant, lack of personal knowledge, hearsay</p> <p>Exhibit A2 is hearsay, lacks a foundation and predicate and is not complete.</p> <p>Last sentence: Not relevant, lack of personal knowledge</p>
Bottom paragraph	<p>Not relevant</p> <p>Hearsay</p> <p>Lack of personal knowledge</p> <p>Lack of foundation/predicate</p> <p>Conclusory</p>
Page 11, photo	<p>Not relevant</p> <p>Hearsay</p>

	Lack of foundation/predicate
First paragraph (above E)	<p>First sentence: Not relevant, lack of personal knowledge, lack of foundation/predicate conclusory</p> <p>Second sentence: Not relevant, lack of personal knowledge, lack of foundation/predicate conclusory</p> <p>Last sentence: Not relevant, lack of personal knowledge, lack of foundation/predicate conclusory</p>
Paragraph E	<p>Not relevant, Lack of personal knowledge</p> <p>Violates TRE 1002</p>
First paragraph under E.	<p>Both sentences: Not relevant, Lack of personal knowledge</p> <p>Violates TRE 1002</p>
Bottom paragraph	<p>First sentence: Not relevant, Lack of personal knowledge, lack of foundation/predicate, speculative, hearsay, conclusory – Violates TRE 1002</p> <p>Second sentence: Not relevant, Lack of personal knowledge</p> <p>Third sentence: Not</p>

	<p>relevant, Lack of personal knowledge, lack of foundation/predicate, hearsay</p> <p>Fourth and fifth sentence including caption continuing on page 12: lack of foundation/predicate, hearsay</p>
Page 12, top paragraph and captions	Not relevant, Hearsay, lack of foundation/predicate
Middle paragraph	<p>First and second sentence: Not relevant, lack of foundation/predicate, lack of personal knowledge</p> <p>Third and fourth sentence: Not relevant, Hearsay. Lack of personal knowledge, lack of foundation/predicate</p> <p>Fifth and sixth sentence: Not relevant, lack of foundation/predicate, lack of personal knowledge</p> <p>Seventh through ninth sentences: Not relevant, Hearsay. Lack of personal knowledge, lack of foundation/predicate</p> <p>Tenth sentence: Not relevant, lack of foundation/predicate, lack of personal knowledge, speculation</p> <p>Eleventh sentence: Not relevant, conclusory, lack of foundation/predicate,</p>

	speculation
Last paragraph continuing to page 13	<p>First sentence: Not relevant</p> <p>Second sentence: Not relevant, vague and ambiguous, hearsay, lack of foundation/predicate</p> <p>Third sentence: Not relevant, hearsay, lack of foundation/predicate, lack of personal knowledge</p> <p>Last sentence: Not relevant, conclusory, lack of foundation/predicate, speculative</p>
Page 13, paragraph 1	Not relevant, conclusory, lack of foundation/predicate, Expert testimony not probative on matters of law
First paragraph under 1	Not relevant, conclusory, lack of foundation/predicate Expert testimony not probative on matters of law
All paragraphs under A starting on page 13 and continuing to the second to the last paragraph on page 19	<p>Not relevant, previous acts are outside of statute of limitations, violates TRE Rule 403, lack of personal knowledge, lack of foundation/predicate, hearsay</p> <p>Violates TRE 1002</p> <p>Exhibits A3-A13 and A20-25 are not relevant, contain statements outside of statute of limitations, hearsay and lack foundation and predicate.</p>

<p>Page 19, bottom paragraph</p>	<p>First sentence: Lack of personal knowledge</p> <p>Second sentence: Lack of personal knowledge, lack of foundation/predicate, speculative, conclusory, expert opinion not reliable, expert opinion not needed to assist fact finder to interpret words used in broadcast (TRE Rule 702), opinion not based on stated broadcast (TRE Rule 703) – Violates TRE 1002</p> <p>Third sentence: Not relevant; conclusory, lack of foundation/predicate, speculative, Expert opinion not probative on question of law or actual malice</p> <p>Last sentence: Not relevant; conclusory, lack of foundation/predicate, speculative, Expert opinion not probative on question of law or actual malice</p>
<p>Page 20, top paragraph</p>	<p>First sentence: Not relevant, lack of personal knowledge Violates TRE 1002</p> <p>Second and third sentence: Not relevant, lack of personal knowledge, conclusory, lack of foundation/predicate Violates TRE 1002</p> <p>Exhibit A28 is not authenticated, it is not relevant and it is not a</p>

	<p>complete transcript of that broadcast.</p> <p>Fourth sentence: Not relevant regarding accusations about a cover-up, lack of personal knowledge</p> <p>Fifth and sixth sentences: Not relevant,, lack of personal knowledge</p> <p>Exhibit A29 lacks authentication, is not relevant and is not a complete copy of the broadcast.</p>
Second paragraph, page 20	<p>Both sentences: Not relevant and lack of personal knowledge.</p> <p>Exhibit A30 lacks authentication, is not relevant and is not a complete copy of the broadcast.</p>
Third paragraph , page 20 (paragraph under B)	Not relevant, lack of foundation/predicate
Fourth paragraph, page 20	All sentences: Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, speculative
Fifth paragraph, page 20 continuing to page 21	All sentences: Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, speculative



Page 21, first paragraph	<p>First sentence: Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, speculative, conclusory, lack of personal knowledge, hearsay</p> <p>Second sentence: Not relevant, hearsay, lack of foundation/predicate</p> <p>Third sentence: Not relevant, hearsay, lack of foundation/predicate, conclusory</p> <p>Fourth sentence and quotation: Not relevant, hearsay, lack of foundation/predicate, Quotation violates TRE 1002</p>
Second paragraph, page 21	paragraph and quotation: Not relevant, hearsay, lack of foundation/predicate, violates TRE 1002
Third paragraph, page 21	<p>First sentence: Not relevant, speculative, Expert opinion not probative on question of law, conclusory, lack of foundation/predicate</p> <p>Second sentence: Not relevant, speculative, Expert opinion not probative on question of law and actual malice, conclusory, lack of foundation/predicate, vague and ambiguous</p> <p>Third sentence: Not</p>

	relevant, speculative, lack of personal knowledge, lack of foundation/predicate, conclusory.
Last paragraph, page 21	<p>First sentence: Not relevant, Expert opinion not probative on question of law, lack of foundation/predicate, speculative, conclusory</p> <p>Second sentence: Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, speculative, conclusory</p> <p>Third sentence: Not relevant, lack of personal knowledge, lack of foundation/predicate, conclusory</p> <p>Last sentence: Lack of personal knowledge</p> <p>Exhibit A26 is not authenticated, and is not a complete transcript of the broadcast</p>
Page 22, first paragraph:	Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, speculative, conclusory
Paragraph 2	Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate,

	speculative, conclusory
Second paragraph (under 2)	Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, speculative, conclusory
Paragraph A	Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, speculative, conclusory
Third paragraph, page 22 (under A)	<p>First through third sentences: Not relevant, lack of foundation/predicate, speculative, conclusory</p> <p>Fourth sentence: Defendants incorporate their objections to Mr. Fredericks affidavit, not relevant, hearsay, lack of personal knowledge, lack of foundation/predicate</p> <p>Entire paragraph is objectionable as it seeks to bolster improper expert opinion on question of law</p>
Fourth paragraph, page 22	<p>First sentence: Not relevant, speculative, lack of foundation/predicate, conclusory</p> <p>Second sentence: Not relevant, hearsay, lack of foundation/predicate, conclusory</p> <p>Last sentence and photos:</p>

	<p>Not relevant, hearsay, lack of foundation/predicate</p> <p>Photos are hearsay; lack of personal knowledge; lack of authentication; lack of foundation/predicate; violates TRE 1002</p>
Last paragraph, page 22 continuing to page 23	<p>Second sentence: Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, conclusory, speculative</p> <p>Third sentence: Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, conclusory, speculative</p> <p>Fourth sentence: Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, conclusory, speculative</p>
Page 23, paragraph B	<p>Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, conclusory, speculative; Violates TRE 403, 404 and 608(b)</p>
First paragraph (under B)	<p>Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, conclusory, speculative</p> <p>Second sentence: Not relevant, lack of personal</p>

	<p>knowledge, conclusory, lack of foundation/predicate</p> <p>Exhibit A1 is not authenticated, is not relevant and is not a complete transcript of the broadcast.</p> <p>Third sentence: Not relevant, lack of personal knowledge, conclusory, lack of foundation/predicate</p> <p>Fourth sentence: Not relevant, lack of personal knowledge, conclusory, lack of foundation/predicate,</p> <p>Last sentence: Not relevant, lack of personal knowledge, conclusory, lack of foundation/predicate</p> <p>Entire paragraph is objectionable as it seeks to bolster improper expert opinion on question of law</p>
Second paragraph, page 23	<p>First paragraph: Not relevant</p> <p>Second sentence: Not relevant, violates TRE 404, lack of foundation/predicate, lack of personal knowledge, hearsay, vague and ambiguous</p> <p>Third sentence: Not relevant, hearsay, lack of foundation/predicate,</p>

	<p>conclusory</p> <p>Entire paragraph is objectionable as it seeks to bolster improper expert opinion on question of law</p>
<p>Third paragraph, page 23 (above C)</p>	<p>First sentence Not relevant, speculative, conclusory, lack of personal knowledge, lack of foundation/predicate</p> <p>Second sentence: Not relevant, vague and ambiguous, lack of personal knowledge</p> <p>Third sentence: Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, conclusory, speculative</p> <p>Last sentence: Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, conclusory, speculative</p> <p>Entire paragraph is objectionable as it seeks to bolster improper expert opinion on question of law</p>
<p>Paragraph C</p>	<p>Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, conclusory, speculative; violates TRE 403, 404, and 608(b)</p>

Last paragraph, page 23 (under C) continuing to page 24	Each sentence: Not relevant, entire paragraph is objectionable as it seeks to bolster improper expert opinion on question of law and actual malice, violated TRE 404,403
All other paragraphs on page 24	Not relevant, violates TRE 404, 403, all paragraphs are objectionable as they seek to bolster improper expert opinion on question of law and actual malice
Page 25 photo	Not relevant, violates TRE 404, 403
Page 25, first paragraph (under photo)	Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, conclusory, speculative
Paragraph D	Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate, conclusory,
Second paragraph, page 25 (under D)	Not relevant, Defendants also incorporate herein all objections to Mr. Pozner's affidavit
Third paragraph	First sentence: Not relevant, hearsay, lack of personal knowledge,  Second sentence: Not relevant, hearsay, lack of foundation/predicate, lack of personal knowledge  Exhibit A14 is not

	<p>authenticated, is not relevant and is not a complete transcript of the broadcast.</p> <p>Last sentence: Not relevant, hearsay, lack of foundation/predicate, lack of personal knowledge</p> <p>Exhibit A15 is not authenticated, is not relevant and is not a complete transcript of the broadcast.</p> <p>Entire paragraph is objectionable as it seeks to bolster improper expert opinion on question of law and actual malice</p>
Fourth paragraph	<p>Each sentence: Not relevant, lack of personal knowledge, lack of foundation/predicate,</p> <p>Exhibit A16 is not authenticated, is not relevant and is not a complete transcript of the broadcast.</p> <p>Entire paragraph is objectionable as it seeks to bolster improper expert opinion on question of law and actual malice</p>
Page 26, first paragraph	<p>Each sentence: Not relevant, lack of personal knowledge,</p>



	<p>lack of foundation/predicate</p> <p>Exhibits A17 and A18 are not authenticated, are not relevant and are not complete transcripts of the broadcasts.</p> <p>Entire paragraph is objectionable as it seeks to bolster improper expert opinion on question of law and actual malice</p>
Second paragraph and quotation	<p>Not relevant, lack of personal knowledge</p> <p>Exhibit A19 is not authenticated, is not relevant and is not a complete transcript of the broadcast.</p> <p>Entire paragraph is objectionable as it seeks to bolster improper expert opinion on question of law and actual malice</p>
Third paragraph	<p>First sentence: Not relevant, lack of personal knowledge, lack of foundation/predicate, conclusory</p> <p>Second sentence: Not relevant, Expert opinion not probative on question of law and actual malice, lack of personal knowledge, lack of</p>

	foundation/predicate, conclusory, speculative
Conclusion	<p>First sentence: Not relevant, Expert opinion not probative on question of law and actual malice lack of personal knowledge, lack of foundation/predicate, conclusory, speculative</p> <p>Second sentence: Not relevant, Expert opinion not probative on question of law and actual malice, lack of personal knowledge, lack of foundation/predicate, conclusory, speculative</p> <p>Third sentence: Not relevant, Expert opinion not probative on question of law and actual malice lack of personal knowledge, lack of foundation/predicate, conclusory, speculative</p> <p>Last sentence: Not relevant, Expert opinion not probative on question of law and actual malice, lack of personal knowledge, lack of foundation/predicate, conclusory, speculative</p>
All websites listed in footnotes	Lack of authentication; lack of foundation/predicate; not relevant; violate TRE 404, 608(b) and 703. In addition, footnotes 5, 6, 12, 13, 14-18, 41-43, 45 and 47 are hearsay.

## 2. OBJECTIONS TO AFFIDAVIT OF BROOKE BINKOWSKI

In *E.I. dePont de Nemours & Co., Inc. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995) the Courts says “[p]rofessional expert witnesses are available to render an opinion on almost any theory, regardless of its merit.” The Court’s ominous warning is especially applicable to the testimony of Ms. Binkowski.

### a. *Qualifications*

Ms. Binkowski does not list her credentials other than to say that she is “a multimedia journalist and professional researcher and the [Managing [e]ditor of Snopes.com.” She provides no *curriculum vitae* listing her education, training or experience. She lists no publications, grants, research projects, fellowships, theses, dissertations or any other data from which to evaluate her expertise. Plaintiffs bear the burden of establishing Ms. Binkowski’s credentials. See *Broders v. Heise*, 924 S.W.2d 148, 152-53 (Tex. 1996). Opinion testimony offered by a witness lacking the requisite expertise is no evidence at all. See *City of Keller v. Wilson*, 168 S.W.3d 802, 812-13 (Tex. 2005).

### b. *Relevance: Question of Law*

Whatever Ms. Binkowski’s qualifications may be, the expressions of opinion stated in her report are not relevant for the purpose of Tex. R. Evid. R. 703 in that they are of no assistance to the trier of fact. Ms. Binkowski expresses the opinion that Mr. Jones is stating as a matter of fact that the Anderson Cooper interview of Plaintiff De La Rosa was “fake” and the “clear ... implication” of this assertion is that Plaintiff De La Rosa “participated in a faked interview...[.]” Ms. Binkowski does not claim Mr. Jones stated as a matter of fact that Ms. De La Rosa herself staged a fake interview. In other words Ms. Binkowski contends that Mr. Jones defamed Ms. De La Rosa by *innuendo*. This is a question of law. See *Arant v. Jaffe*, 436 S.W.2d 169, 176 (Tex.

Civ. App. – Dallas 1968, no writ). Because it is a question of law, Ms. Binkowski’s opinion on the matter is irrelevant. See *Upjohn Co. v. Rylander*, 38 S.W.3d 600, 611 (Tex. App. – Austin 2000, pet. den.)

Likewise, Ms. Binkowski’s statement (last paragraph on page 2) to the effect that a viewer “could reasonably interpret these comments as asserting that the Sandy Hook shooting was staged and that [Plaintiffs] were not real parents” is an opinion on a question of law and as such is inadmissible. In addition to being an opinion on a question of law, this opinion is flawed because there is “to great an analytical gap” between the data and the opinion. In this instance, there are not merely gaps, but yawning chasms. First, Ms. Binkowski does not identify what “other statements made in the broadcast” inform her opinion. Second, even if one were to view the entire broadcast so that every other statement were taken into account, Ms. Binkowski does not say how she arrived at her conclusion. Because of these flaws, this opinion too is inadmissible. See *Exxon Pipeline Co. v. Zwzhr*, 88 S.W.3d 623, 629 (Tex. 2002).

Finally, Ms. Binkowski’s last opinion (on page 3), that “this” (whatever “this” is) “fits a larger pattern of behavior [of routinely denigrating victims of shootings]” is no more than Ms. Binkowski’s editorial comment; as such, it has no place in a forensic setting. Again, Ms. Binkowski does not identify the data; she says that because she’s an expert (in some unidentified discipline) her opinion may be trusted without more. Texas does not recognize this as a basis for admitting opinion testimony. See *Jelinek v. Casas*, 328 S.W.3d 526, 539-40 (Tex. 2010).

In addition to the broader objections to the Binkowski opinion, Defendants make the following specific objections to the Binkowski opinion:

Paragraph	Affidavit Objections
3 <sup>rd</sup>	<p>Not relevant – TRE 401, 402</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702,703</p>
4 <sup>th</sup>	<p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702,703</p>
5 <sup>th</sup>	<p>Not relevant – TRE 401, 402</p> <p>1<sup>st</sup> clause --  Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702,703</p> <p>2<sup>nd</sup> clause - Hearsay – TRE 801(d), 802;  Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>2<sup>nd</sup> clause --  Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE</p>

	701, 702,703
6 <sup>th</sup>	<p>Not relevant – TRE 401, 402</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702,703</p> <p>Hearsay – TRE 801(d), 802; Best Evidence Rule – TRE 1001, 1002, 1007</p>
7 <sup>th</sup>	<p>Not relevant – TRE 401, 402, 702</p> <p>No predicate for expert testimony – TRE 703</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702,703</p> <p>Hearsay – TRE 801(d), 802; Best Evidence Rule – TRE 1001, 1002, 1007</p>
8 <sup>th</sup>	<p>Not relevant – TRE 401, 402, 702</p> <p>No predicate for expert testimony – TRE 703</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702,703</p>

9 <sup>th</sup>	<p>Not relevant – TRE 401, 402, 702</p> <p>No predicate for expert testimony – TRE 703</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Hearsay – TRE 801(d), 802; Best Evidence Rule – TRE 1001, 1002, 1007</p>
10 <sup>th</sup>	<p>Not relevant – TRE 401, 402, 702</p> <p>No predicate for expert testimony – TRE 703</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
11 <sup>th</sup>	<p>Not relevant – TRE 401, 402, 702</p> <p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p>
12 <sup>th</sup>	<p>Not relevant – TRE 401, 402, 702</p>

	<p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
13 <sup>th</sup>	<p>Not relevant – TRE 401, 402, 702</p> <p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
14 <sup>th</sup>	<p>Both sentences:</p> <p>No predicate for expert testimony – TRE 703</p> <p>Not relevant – TRE 401, 402, 702</p>



	<p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Expert opinion testimony not probative on question of law and actual malice</p>
15 <sup>th</sup>	<p>No predicate for expert testimony – TRE 703</p> <p>Not relevant – TRE 401, 402, 702</p> <p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>

16 <sup>th</sup>	<p>Not relevant – TRE 401, 402, 702</p> <p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Expert opinion testimony not probative on question of law and actual malice</p>
17 <sup>th</sup>	<p>No predicate for expert testimony – TRE 703</p> <p>Not relevant – TRE 401, 402, 702</p> <p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Conclusory, lack of foundation/predicate,</p>

	<p>lack of personal knowledge – TRE 701, 702, 703</p> <p>Expert opinion testimony not probative on question of law and actual malice</p>
18 <sup>th</sup>	<p>Violates TRE 404(a), (b).</p> <p>No predicate for expert testimony – TRE 703</p> <p>Not relevant – TRE 401, 402, 702</p> <p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Expert opinion testimony not probative on question of law and actual malice</p>

### 3. OBJECTIONS TO AFFIDAVIT OF JOHN CLAYTON

Overall, the most that can be said for Mr. Clayton's affidavit is that he doesn't have a very high opinion of Alex Jones as a journalist. Mr. Clayton's opinion is inadmissible for these reasons:

a. *Rule 703 Relevance*

The issue before the Court is whether the 2017 publication made the basis of this case is defamatory. This is a question of law. See *Bently v. Bunton*, 94 S.W.3d 561, 580 (Tex. 2003); *Campbell v. Clark*, 471 S.W.3d 615, 624 (Tex. App. – Dallas 2015, no pet.); *Main v. Royall*, 348 S.W.3d 381, 389 (Tex. App. – Dallas 2011, no pet.). Mr. Clayton's unsupported opinions regarding Mr. Jones's fidelity to some unidentified journalistic standard(s) has no bearing on this issue.

There is no basis for Mr. Clayton's implied premise that persons who disseminate information through the use of social media (or "alternative media" in Mr. Clayton's words) are to be held to the same standards of journalism as print or electronic (radio, TV) reporters. Indeed, there is much debate and no consensus on the question. This Court is not the forum for resolving this issue.

b. *Reliability*

Mr. Clayton's tirade against his former employer is filled with conclusions, but is woefully short on facts to support his opinions. From the affidavit, it appears that Mr. Clayton last worked for or with Mr. Jones some nine years ago. (Affidavit paragraph 5) It does not appear that Mr. Clayton is familiar with the publications at issue in this case. One of the requisites of reliability is that the opinion testimony must be tied to the facts of the case. *Exxon Pipeline Co. v. Zwahr*, 88 S.W.3d 623, 629 (Tex. 2002). It is difficult to see how Mr. Clayton's

testimony can meet this test when he does not even profess to have any knowledge of those facts.

c. *Rule 404 Relevance*

The accusations that Mr. Jones “no longer had any commitment to the principles and philosophy of the independent media movement (*Id.*, paragraph 6),” “it became apparent that he made a conscious decision not to care about accuracy” (*Id.*, paragraph 8) and “it become [sic] standard practice in InfoWars to disregard basic protocols in journalism” (*Id.*, paragraph 9) violate Tex. Evid. Rules R. 404(a)(1) prohibiting evidence of a character trait to prove that in a particular instance the actor acted in accordance with that trait.

d. *Rule 406 Relevance*

For evidence of routine or habit to be admissible under Rule 406, it must establish a regular response to a repeated specific situation. See *Ortiz v. Glusman*, 334 S.W.3d 812, 816 (Tex. App. – El Paso 2011, pet. den.); *Johnson v. City of Houston*, 928 S.W.2d 251, 254 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1996 no writ). Although Mr. Clayton alludes to many occasions, he cites no examples. This Court must take his word that they exist and that the undescribed incidents are sufficiently similar.

e. *Rule 403 Relevance*

Finally, even if the Court determines that the undescribed (as to time, place, parties or substance) incidents are relevant, the prejudice of allowing Mr. Clayton’s testimony is far outweighed by the danger of unfair prejudice and confusing the issues. In order to determine admissibility, the Court would have to try each instance to determine whether it occurred and whether it evidences malice toward the truth in connection with the publication made the basis of this case. Certainly Mr. Clayton has no right to usurp the Court’s duties in this regard by substituting his judgment for the Court’s.

If the undescribed incidents are inadmissible, because Plaintiffs have failed to make any showing that they were reasonably relied upon by Mr. Clayton (Indeed, how can the Court make such a determination absent any description?) Mr. Clayton’s opinions founded upon them are not admissible.

**4. OBJECTIONS TO AFFIDAVIT OF LEONARD POZNER**

a. *Objections to Specific Statements*

Mr. Pozner’s affidavit suffers from hearsay, speculation and irrelevant and conclusory statements many of which were made without personal knowledge.

Importantly, his conclusory statements relating to damages in paragraph 17 are not relevant, and are made without description of the nature, extent or degree required under Texas law.

Defendants make the following specific objections to the Pozner opinion:

Paragraph	Affidavit Statements	Objections
All paragraphs	All statements	Does not state personal knowledge of bases for such knowledge, violates TRE 602
7	<p>First sentence: Not relevant, conclusory, confusing, vague and ambiguous (conflicts with paragraph 6 statements)</p> <p>Second sentence: Not relevant, conclusory, lack of foundation/predicate, lack of personal knowledge, violates</p>	

	TRE 404, 608 (b) and 403  Last sentence: Not relevant, conclusory, lack of foundation/predicate, lack of personal knowledge, violates TRE 404, 608 (b) and 403	
8	First and second sentence: Not relevant, conclusory, lack of foundation/predicate, lack of personal knowledge, violates TRE 404, 608 (b), 1002 and 403	
9	Each sentence: Not relevant, conclusory, lack of foundation/predicate, lack of personal knowledge, violates TRE 404, 608 (b), 1002 and 403	
10	First through third sentences: Not relevant  Last sentence: Not relevant, conclusory, lack of foundation/predicate, lack of personal knowledge, speculative	
12	First sentence: Not relevant,	

	<p>Second sentence: Not relevant, conclusory, lack of foundation/predicate, lack of personal knowledge, violates TRE 404, 608 (b), 1002 and 403</p> <p>Third sentence: Not relevant, conclusory, lack of foundation/predicate, lack of personal knowledge, violates TRE 404, 608 (b), 1002 and 403</p>	
13	<p>First sentence: Not relevant</p> <p>Second sentence: Not relevant, confusing, vague and ambiguous (the Sandy Hook hoax story)</p> <p>Third sentence: Hearsay, conclusory, lack of foundation/predicate, lack of personal knowledge</p> <p>Fourth sentence: Hearsay, lack of foundation/predicate, lack of personal knowledge</p> <p>Fifth sentence: Conclusory, lack of personal knowledge,</p>	



	<p>lack of foundation/predicate, violates TRE 1002</p> <p>Sixth sentence: Conclusory, lack of personal knowledge, lack of foundation/predicate, violates TRE 1002</p>	
14	<p>First sentence: Conclusory, lack of foundation/predicate, lack of personal knowledge</p> <p>Second sentence: Not relevant, conclusory, lack of foundation/predicate, lack of personal knowledge, violates TRE 404, 608 (b), 1002 and 403</p> <p>Third and fourth sentence: Not relevant</p> <p>Fifth sentence: Not relevant, conclusory, confusing, vague and ambiguous, violates TRE 1002</p> <p>Sixth through eighth sentence: Not relevant, conclusory, confusing, vague and ambiguous, violates TRE 403, 1002</p>	
15	<p>First sentence: Not relevant, lack of</p>	

	<p>personal knowledge, conclusory, lack of foundation/predicate, speculative</p> <p>Second sentence: Not relevant, lack of personal knowledge, conclusory, lack of foundation/predicate, speculative, hearsay</p> <p>Third sentence: Not relevant, lack of personal knowledge, conclusory, lack of foundation/predicate, speculative, hearsay</p> <p>Fourth sentence: Not relevant, lack of personal knowledge, conclusory, lack of foundation/predicate, speculative, hearsay, violates TRE 1002</p>	
16	<p>Not relevant, lack of personal knowledge, conclusory, lack of foundation/predicate, violates TRE 403</p>	
17	<p>First sentence: Not relevant, confusing, vague and ambiguous (reviving the Sandy Hook hoax conspiracy), lack of personal knowledge, conclusory, lack of foundation/predicate, violates TRE 403</p> <p>Second through last</p>	

	<p>sentence: Not relevant, conclusory, lack of foundation/predicate</p> <p>Entire paragraph: not relevant</p>	
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## 5. OBJECTIONS TO AFFIDAVIT OF ENRIQUE ARMIJO

Professor Armijo’s *amicus curiae* declaration is a poorly disguised attempt by Plaintiffs to avoid having Mr. Armijo enter an appearance *pro hac vice* (presumably he is not licensed in Texas) and more importantly coat his opinion on the law with a patina of credibility which would adhere to the disinterested assistance provided by an *amicus curiae*. Mr. Armijo ought to call his “declaration” by its true name: a brief. He ought to move for admission *pro hac vice*, and if granted, sign the brief and submit to the jurisdiction of this Court over his conduct.

Mr. Armijo is no more an *amicus curiae* than any of the existing parties or their counsel. “The office of *amicus curiae* is to aid the Court and it cannot be subverted to the sue of a litigant in the case.” *Booth v. State*, 499 S.W.2d 129, 136 (Tex. Crim. App. 1973). An *amicus curiae* cannot act for a party. See *Burger v. Burger*, 293 S.W.2d 122, 123 (Tex. Civ. App. - El Paso 1956) rev’d on other grounds 298 S.W.2d 119 (Tex. 1957). Mr. Armijo declines to state how he became interested in the case or whether he is being paid for his work. If he in fact became interested in the case fortuitously, he is presenting his views without compensation; he does not say. In the absence of such a declaration, the Court may assume he is not what he purports to be.

But if his “declaration” is not a brief, then he has an equally serious problem: his declaration is from beginning to end an opinion on a question of law: whether Plaintiffs are public figures or limited-purpose public figures for the purpose of determining whether they must prove malice. Just as whether a statement is defamatory or was uttered with malice,

whether a person is a public figure is a question of law. See *Klentzman v. Brady*, 312 S.W.3d 886, 904 (Tex. App. – Houston [1<sup>st</sup> Dist.] 2009, no pet.)

Mr. Armijo’s opinion is functionally equivalent for the opinions disallowed in *Greenberg Traurion of N.Y. v. Moody*, 161 S.W.3d 56, 94-96 (Tex. 2004) in which a distinguished professor and former Texas Supreme Court Justice opined, respectively, that the defendant law firm breached fiduciary duties and ethical duties to the plaintiffs.

In addition, Armijo’s opinion is defective in the following aspects:

*Paragraph 10:* The Supreme Court’s opinion in *Gertz v. Welch* speaks for itself and is best evidence of its contents. Armijo’s opinion as to what the case held is of no benefit to the fact finder.

*Paragraph 11:* The views expressed in this paragraph are purely speculative, hypothetical and not tied to the facts of the case. Even with the adverb “clearly” the last sentence is a legal conclusion not a factual one, and is merely the unsupported *ipse dixit* of the declarant.

*Paragraph 12:* Paragraph 12 is again a purely speculative, hypothetical argument not founded on the facts or grounded in any scientific knowledge and rests alone on the declarant’s *ipse dixit*. There is no way to test his hypotheses.

*Paragraph 13:* This paragraph misses the issue entirely; the question is whether Plaintiffs were public figures in 2017 when the statements made the basis of this case were published. The opinion expressed in this paragraph is unreliable because it does not take into account Plaintiffs’ activities in the intervening years when they made themselves public figures.

*Paragraph 14:* A continuation of paragraph 13 and objectionable on the same basis.

*Paragraphs 15 – 17:* Speculation; not tied to the facts of the case or grounded in

scientific knowledge; no way to test the hypotheses.

*Paragraphs 18 and 19:* Unreliable; not tied to any identifiable facts in the case. What material did declarant review to reach his conclusion and what methodology did he apply?

*Paragraph 20:* Since declarant does not share his data or methodology, whether he found no reasonable basis is of no consequence.

*Paragraphs 22 and 23:* Declarant does not show how his conclusion is derived from the facts of the case; thus there's too great an analytical gap.

*Paragraph 24:* An opinion on a pure question of law.

*Paragraphs 25 – 29:* The scope of the “controversy” is an element of whether Mrs. De La Rosa is a public figure; as such it is a question of law for the Court.

*Paragraphs 30 – 34:* These paragraphs merely reiterate what the declarant said in the previous cases and are improper opinions on questions of law. Thus, and to the extent that they depend on the earlier paragraphs they suffer from the same flaws and as such should not be considered.

## 6. OBJECTIONS TO AFFIDAVIT OF GRANT FREDERICKS

Defendants make the following specific objections to the Grant Fredericks opinion:

<b>Paragraph, Page or line</b>	<b>Objections</b>
p. 5, l. 3-26;	Not relevant – TRE 401, 402  No authentication – TRE 901  Best Evidence Rule – TRE 1001, 1002  Hearsay – TRE

	<p>801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701, 702,703</p>
p. 6, l. 1 -4	<p>Not relevant – TRE 401, 402</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701, 702,703</p>
p. 6, l. 9 – 11	<p>Not relevant – TRE 401, 402</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701, 702,703</p>
p. 6, l. 13 -14	<p>Not relevant – TRE 401, 402</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701, 702,703</p>
p. 6, l. 21 – 25, 1 <sup>st</sup> and 2 <sup>nd</sup> sentences	<p>Not relevant – TRE 401, 402</p>

	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701, 702,703</p> <p>Expert failed to offer evidence or opinion in order to rule out other plausible potential causes</p>
p. 7, l. 9	<p>Not relevant – TRE 401, 402</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701, 702,703</p>
p. 7, l. 11 – 12	<p>Not relevant – TRE 401, 402</p> <p>No authentication – TRE 901</p>

	<p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701, 702,703</p>
p. 7, l. 15	<p>Not relevant – TRE 401, 402</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701, 702,703</p>
p. 7.l. 17 -19	<p>Not relevant – TRE 401, 402</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal</p>



	<p>knowledge – TRE 602, 701, 702,703</p>
p. 7, l. 21- 24	<p>Not relevant – TRE 401, 402</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701, 702,703</p>
p. 8, l. 1 – 8	<p>Not relevant – TRE 401, 402</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701, 702,703</p>
p. 8, l. 10 -11	<p>Not relevant – TRE 401, 402, 702</p> <p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule –</p>

	TRE 1001, 1002, 1007
	No authentication – TRE 901
	Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703

## 7. OBJECTIONS TO AFFIDAVIT OF VERONIQUE DE LA ROSA

Defendants make the following specific objections to the Veronique De La Rosa affidavit:

<b>Paragraph, sentence, clause</b>	<b>Objections</b>
3, 1 <sup>st</sup> sentence 1 <sup>st</sup> clause	Assumes facts not in evidence, no predicate & conclusory – TRE 602, 701
1 <sup>st</sup> sentence, 2 <sup>nd</sup> clause	Conclusory – TRE 701
2 <sup>nd</sup> & 3 <sup>rd</sup> sentence	Conclusory – TRE 701
4 <sup>th</sup> sentence	Conclusory – TRE 701; Lack of personal knowledge – TRE 602
4, 1 <sup>st</sup> sentence	No predicate, lack of personal knowledge & conclusory – TRE 602, 701
2 <sup>nd</sup> sentence	Conclusory – TRE 701

3 <sup>rd</sup> sentence, 2 <sup>nd</sup> clause	Conclusory – TRE 701
6, 1 <sup>st</sup> clause	Conclusory – TRE 701
9	Hearsay – TRE 801(d), 802; No predicate & conclusory – TRE 602, 701
10	Conclusory – TRE 701  Hearsay – TRE 801(d), 802  No authentication – TRE 901  Best Evidence Rule – TRE 1001, 1002  Lack of foundation/predicate, lack of personal knowledge – TRE 602
11, 2 <sup>nd</sup> sentence	Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701
12, 1 <sup>st</sup> clause	Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701
2 <sup>nd</sup> clause	Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701

13, 1 <sup>st</sup> sentence, 2 <sup>nd</sup> clause	Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701
2 <sup>nd</sup> sentence	Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701  Assumes facts not in evidence, no predicate & conclusory – TRE 602, 701
14, 1 <sup>st</sup> sentence	Not relevant – TRE 401, 402
2 <sup>nd</sup> sentence	Not relevant – TRE 401, 402
3 <sup>rd</sup> sentence	Not relevant – TRE 401, 402 Conclusory – TRE 701
15, 1 <sup>st</sup> & 2 <sup>nd</sup> clauses	No authentication – TRE 901  Best Evidence Rule – TRE 1001, 1002  Hearsay – TRE 801(d), 802
Last clause	Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701

	Assumes facts not in evidence – TRE 602, 701
16, 1 <sup>st</sup> sentence, 1 <sup>st</sup> clause	No authentication – TRE 901  Best Evidence Rule – TRE 1001, 1002  Hearsay – TRE 801(d), 802
1 <sup>st</sup> sentence, 2 <sup>nd</sup> clause	Assumes facts not in evidence – TRE 602, 701  Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701
2 <sup>nd</sup> sentence	No authentication – TRE 901  Best Evidence Rule – TRE 1001, 1002  Hearsay – TRE 801(d), 802  Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701  Assumes facts not in evidence – TRE 602, 701
3 <sup>rd</sup> sentence	Conclusory, lack of foundation/predicate,

	<p>lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
17	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
18, 1 <sup>st</sup> sentence	<p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p>
2 <sup>nd</sup> sentence	<p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Lack of expert predicate – TRE 702, 703, 705</p>
3 <sup>rd</sup> sentence	<p>Conclusory, lack of foundation/predicate,</p>

<p>7<sup>th</sup> sentence</p> <p>8<sup>th</sup> sentence</p>	<p>lack of personal knowledge – TRE 602, 701</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p>
<p>19, 1<sup>st</sup> sentence</p> <p>2<sup>nd</sup> sentence</p>	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p>

	<p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
20, 1 <sup>st</sup> sentence	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
2 <sup>nd</sup> sentence	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p>



	Assumes facts not in evidence – TRE 602, 701
21	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
22, 1 <sup>st</sup> sentence	Assumes facts not in evidence – TRE 602, 701
2 <sup>nd</sup> sentence	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>

3 <sup>rd</sup> sentence	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
23, 2 <sup>nd</sup> sentence	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
24, 1 <sup>st</sup> sentence	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p>

<p>2<sup>nd</sup> sentence</p>	<p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
<p>3<sup>rd</sup> sentence</p>	<p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate,</p>

	<p>lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
25, 1 <sup>st</sup> sentence	Conclusory, lack of foundation/predicate, – TRE 602, 701
2 <sup>nd</sup> sentence	<p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
3 <sup>rd</sup> sentence	<p>Not relevant – TRE 401, 402</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
26, 1 <sup>st</sup> sentence	<p>Conclusory, lack of foundation/predicate, – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
2 <sup>nd</sup> sentence	Conclusory, lack of foundation/predicate,

	<p>– TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
27, 1 <sup>st</sup> sentence	<p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
2 <sup>nd</sup> sentence	<p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
3 <sup>rd</sup> sentence	<p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p>
4 <sup>th</sup> sentence	<p>Hearsay – TRE 801(d), 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p>

	Assumes facts not in evidence – TRE 602, 701
28, 1 <sup>st</sup> clause	<p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p> <p>Hearsay – TRE 801(d), 802</p>
29, 1 <sup>st</sup> sentence	<p>Conclusory, not relevant, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701</p> <p>Assumes facts not in evidence – TRE 602, 701</p> <p>Hearsay – TRE 801(d), 802</p> <p>Lack of predicate for expert – TRE 702, 703</p>
2 <sup>nd</sup> sentence	Not relevant – TRE 401, 402
3 <sup>rd</sup> sentence	Conclusory, not relevant, lack of foundation/predicate, lack of personal knowledge – TRE 602, 701

	Assumes facts not in evidence – TRE 602, 701
	Hearsay – TRE 801(d), 802
4 <sup>th</sup> sentence	Conclusory, not relevant, lack of foundation/predicate, – TRE 701
5 <sup>th</sup> sentence	Conclusory, not relevant, lack of foundation/predicate, – TRE 701, 702, 703
6 <sup>th</sup> sentence	Conclusory, not relevant, lack of foundation/predicate, – TRE 701, 702, 703

**8. OBJECTIONS TO AFFIDAVIT OF H. WAYNE CARVER, II, M.D.**

Defendants make the following specific objections to the H. Wayne Carver, II, M.D. affidavit:

<b>Paragraph, sentence, clause</b>	<b>Affidavit Statements</b>	<b>Objections</b>
9	I am aware of prior statements by Mr. Jones in which he has asserted that the Sandy Hook massacre was staged.	Assumes facts not in evidence, no predicate & conclusory – TRE 602, 701, 702, 703  Hearsay – TRE 801(d), 802  No authentication – TRE 901  Best Evidence Rule – TRE 1001, 1002

	<p>These comments have generated significant pain in the Newtown community.</p>	<p>Lack of foundation/predicate, lack of personal knowledge – TRE 602</p> <p>Assumes facts not in evidence, no predicate &amp; conclusory – TRE 602, 701, 702, 703</p> <p>Hearsay – TRE 801(d), 802</p> <p>TRE 403</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Lack of foundation/predicate, lack of personal knowledge – TRE 602</p>
11	<p>These segments make various claims about the Sandy Hook massacre, including a discussion of an interview between Veronique De La Rosa and Anderson Cooper.</p>	<p>Assumes facts not in evidence, no predicate &amp; conclusory – TRE 602, 701, 702, 703</p> <p>Hearsay – TRE 801(d), 802</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule –</p>



		TRE 1001, 1002  Lack of foundation/predicate, lack of personal knowledge – TRE 602
12	After watching these segments, I understood Info Wars was claiming that Mrs. De La Rosa conducted a fraudulent interview in front of a blue-screen, and that the interview was not actually in Newtown in front of the Edmond Town Hall.	Not relevant – TRE 401, 402  Assumes facts not in evidence, no predicate & conclusory – TRE 602, 701, 702, 703  Hearsay – TRE 801(d), 802  No authentication – TRE 901  Best Evidence Rule – TRE 1001, 1002  Lack of foundation/predicate, lack of personal knowledge – TRE 602  Improper opinion on question of law
13	I also understood from the video that InfoWars was accusing Mrs. De La Rosa of engaging in a fraud or cover-up of the truth regarding the Sandy Hook massacre and the death of her child.	Not relevant – TRE 401, 402  Assumes facts not in evidence, no predicate & conclusory – TRE 602, 701, 702, 703  Hearsay – TRE

		<p>801(d), 802</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Lack of foundation/predicate, lack of personal knowledge – TRE 602</p> <p>Improper opinion on question of law</p>
14	<p>By logical implication, I also understood Mr. Jones to be accusing Leonard Pozner, who was Mrs. De La Rosa's husband, of engaging in a fraud or cover-up of the truth regarding the death of their child.</p>	<p>Not relevant – TRE 401, 402</p> <p>Assumes facts not in evidence, no predicate &amp; conclusory – TRE 602, 701, 702, 703</p> <p>Hearsay – TRE 801(d), 802</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Lack of foundation/predicate, lack of personal knowledge – TRE 602</p> <p>Improper opinion on question of law</p>
15	<p>After viewing the</p>	<p>Not relevant – TRE</p>

	<p>statements, it was my understanding that the broadcast was intended to reinforce the validity of Mr. Jones' prior statements about Sandy Hook, serving as further evidence that the event was staged.</p>	<p>401, 402</p> <p>Assumes facts not in evidence, no predicate &amp; conclusory – TRE 602, 701, 702, 703</p> <p>Hearsay – TRE 801(d), 802</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p> <p>Lack of foundation/predicate, lack of personal knowledge – TRE 602</p> <p>Improper opinion on question of law</p>
16	<p>16. Given the nature of InfoWars' allegations, I also understood the broadcast to implicate Mr. Pozner and Mrs. De La Rosa in criminal conduct, such as making false statements to government officials or engaging in other forms of criminal misrepresentation.</p>	<p>Not relevant – TRE 401, 402</p> <p>Assumes facts not in evidence, no predicate &amp; conclusory – TRE 602, 701, 702, 703</p> <p>Hearsay – TRE 801(d), 802</p> <p>No authentication – TRE 901</p> <p>Best Evidence Rule – TRE 1001, 1002</p>

		Lack of foundation/predicate, lack of personal knowledge – TRE 602  Improper opinion on question of law
17	After viewing the video segments, 1 also drew the conclusion that Info Wars was accusing other families and state officials, including myself, of engaging in a fraud or cover-up of the truth regarding the Sandy Hook massacre, since I understood the underlying point of InfoWars' argument about Sandy Hook was that the event was staged.	Not relevant – TRE 401, 402  Assumes facts not in evidence, no predicate & conclusory – TRE 602, 701, 702, 703  Hearsay – TRE 801(d), 802  No authentication – TRE 901  Best Evidence Rule – TRE 1001, 1002  Lack of foundation/predicate, lack of personal knowledge – TRE 602

**9. OBJECTIONS TO THE AFFIDAVIT OF ANDREA DISTEPHAN**

It appears that Ms. DiStephan’s affidavit is submitted to establish that the publication at issue is defamatory by innuendo. Ms. DiStephan’s purported interpretation of the publication is objectionable for the following reasons:

*Paragraphs 3 and 4:* The alleged version of the broadcast is not established as authentic – that is the original, unaltered version.

*Paragraphs 2, 5 – 10:* Ms. DiStephan does not identify the source of her “general[] familiar[ity]” with what she characterizes as “prior [hoax] allegations.” These so called “allegations” are irrelevant to the issue, which is whether the April 17, 2017 broadcast defames either Plaintiff by innuendo. The same is true of her purported acquaintance with Plaintiffs. Whether a statement is defamatory is a question of law for the Court. Her opinion is therefore not probative. See *Bingham v. Southwestern bell Yellow Pages, Inc.*, 2008 Tex. App. LEXIS 463 \*9 - \*10 (Tex. App. – Ft. Worth 2008, o pet.) (citing *Musser v. Smith Protective Svcs., Inc.*, 723 S.W.2d 653, 655 (Tex. 1987). The test is how the statement would be construed by the average reasonable person or the general public. See *Arant v. Jaffe*, 436 S.W.2d 169, 176 (Tex. App. – Dallas 1968, no writ).

Whether Ms. DiStephan is an “average reasonable person,” or falls in some other category, her idiosyncratic spin on the broadcast at issue is irrelevant because it usurps the function of the Court. (If she is offering her opinions as an expert, they are still irrelevant for this reason, and suffer from the further defect that the Court knows nothing about whether she is qualified to express an opinion as an expert.)

It is also fair to questions Ms. DiStephan’s credibility. She does not say when or why she viewed the purported April 17<sup>th</sup> broadcast. Was it in April 2017? Or did she view it recently for the purpose of lending credence to her affidavit? Has she ever expressed the opinions expressed in her affidavit to anyone else? Or did she her opinions originate with someone else and she is merely endorsing them?

Because Ms. DiStephan's opinions as to the inferences to be drawn from the broadcast are irrelevant and of dubious provenance, they should not inform the Court's decision on Defendants' motion.

**9. OBJECTIONS TO EXHIBIT J**

Exhibit J is not relevant, has not been authenticated, is hearsay, contains hearsay within hearsay, and violates TRE 403.

**10. OBJECTIONS TO EXHIBIT K**

Exhibit K is not relevant, has not been authenticated, is hearsay, contains hearsay within hearsay, and violates Tex. R. Evid. Rule 403.

**11. CONCLUSION**

None of the purported expert and lay opinions tendered by Plaintiffs in opposition to Defendants TCPA Motion to Dismiss can properly be considered by the Court in ruling on Defendants' motion. Defendants pray that each of their objections be sustained.

RESPECTFULLY SUBMITTED,

GLAST, PHILLIPS & MURRAY, P.C.

*/s/ Mark C. Enoch*

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