

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

**OBJECTIONS TO LATE FILED DECLARATIONS OF  
LEONARD POZNER AND VERONIQUE DE LA ROSA**

COME NOW, Defendants Alex E. Jones, Infowars, LLC and Free Speech Systems, LLC, (collectively, the “Defendants”), and hereby file these, their Objections to the late filed declarations of Leonard Pozner and Veronique De La Rosa and in opposition thereto would respectfully show this Honorable Court as follows:

**OBJECTION TO LATE SUBMISSION**

In response to arguments and law presented to this Honorable Court at the hearing on Defendants’ Motion to Dismiss Under the Texas Citizens Participation Act (“Act”) that was noticed for and that occurred on August 1, 2018, Plaintiffs attempted to add to their evidence in this case the next day on August 2, 2018 by filing a declaration of Leonard Pozner and a declaration of Veronique De La Rosa.

The obvious purpose of these filings was to provide, after the fact, testimony necessary under the Act as to pecuniary damage. Defendants object to the filing of affidavits/declarations after the commencement and conclusion of the hearing.

First, only pleadings and affidavits (with exhibits attached to same) may be considered by a court at a hearing under the Act. Allowing supplementation of the evidence after the hearing is neither authorized under the Act, nor is it fair.

Under the Act, the plaintiff is required to produce clear and specific evidence of each element of each claim. That evidence can only be pleadings and affidavits and those are the only documents that may be considered by the court at the required hearing.

In this case, notice of the hearing was sent to Plaintiffs on June 29, 2018. Thus from that date until August 1, they knew what was required of them under the Act and under the case law relating to elements of their chosen causes of action.

While Plaintiffs' counsel attempted to explain that the late filings were caused by surprise at the hearing, such argument fails for the reason that Defendants have no burden under the Act to further explain or point out Plaintiffs' duties and proof under defamation law. Once Defendants show that the legal actions are based on, related to or were filed in response to their exercise of First Amendment rights, it became Plaintiffs' clear duty to provide clear and specific evidence on each element of each claim - including damages under their defamation *per quod* claims.

### **OBJECTION TO IMPROPER DECLARATIONS**

The declarations filed by Plaintiffs are neither affidavits nor are they proper declarations. They lack the required language of Chapter 132 of the Texas Civil Practice and Remedies Code in order to serve as declarations and thus are both hearsay. Section 132.001(d) of the Texas Civil Practice and Remedies Code requires that the declarations

contain a jurat in substantial compliance with the legislated form that provides that the declarant state his/her date of birth and address. It further requires that the declarant state that he/she “declare under penalty of perjury that the foregoing is true and correct.” It must also state where it was executed. There is no jurat and none of these requirements is met in the late filed declarations.

In addition, because they are not pleadings, affidavits nor even proper declarations, this Court may not consider them under the Act.

Accordingly, Defendants object to these late filed declarations as being untimely and not in proper form for consideration under the Act.

Additional objections to each declaration are set forth below:

**Leonard Pozner’s Declaration filed August 2, 2018**

<b>Statement</b>	<b>Objections</b>
Second paragraph: First sentence	Hearsay. Not relevant (because he does not say that he has paid or that he has even agreed to pay), conclusory, vague and ambiguous, lack of foundation/predicate for his opinion on value, Best evidence TRE 1002
Second paragraph: Second sentence	Hearsay, Not relevant (because he does not say that he has paid or that he has even agreed to pay), conclusory, vague and ambiguous, lack of foundation/predicate for his opinion on value, best evidence TRE 1002
Second paragraph; Third sentence	Conclusory, no factual foundation/predicate

Third paragraph: Third sentence	Hearsay, speculation (what he “knew” would occur and his speculation that Jones’ statements caused or would cause others to do things or that these statements “revived” the hoax claims), conclusory (does not state how Mr. Jones’ statements “revived” or how he knows that such revival would cause (or has caused) more intense online attacks), vague and ambiguous, lack of foundation/predicate for his opinion about more intense attacks being caused
Third paragraph: fourth sentence	Hearsay, best evidence TRE 1002
Fifth paragraph: first and second sentences (This is the fourth paragraph but is numbered as the fifth)	No factual predicate to show how alleged costs were foreseen and caused by Defendants
Fifth paragraph: last sentence	Hearsay, best evidence TRE 1002
Sixth paragraph: first sentence (this is the fifth paragraph)	Hearsay (what his wife did)
Sixth paragraph: second sentence	Hearsay (wife’s experience), conclusory (lacks factual foundation/predicate as to why Jones’ statements “revived” the hoax allegations and how if revived, those hoax allegations caused need for service)
Sixth paragraph: last sentence	Hearsay, best evidence TRE 1002
Seventh paragraph:	Entire paragraph not relevant to any issue and not relevant for defamation <i>pre quod</i> damages as paragraph does not describe any special damages, TRE 403, conclusory, lack of foundation/predicate, speculative

**Veronique De La Rosa' Declaration filed on August 2, 2018**

<b>Statement</b>	<b>Objections</b>
Second paragraph: First sentence	Hearsay. Not relevant (because she does not say that she has paid or that she has even agreed to pay), conclusory, vague and ambiguous, lack of foundation/predicate for her opinion on value, Best evidence TRE 1002
Second paragraph: Second sentence	Hearsay, Not relevant (because he does not say that he has paid or that he has even agreed to pay), conclusory, vague and ambiguous, lack of foundation/predicate for his opinion on value, best evidence TRE 1002
Second paragraph: Third sentence	Conclusory, no factual foundation/predicate
Third paragraph first through third sentence	Hearsay (what ex-husband has done)
Third paragraph: fourth sentence	Hearsay (what steps Mr. Pozner took) speculation and lack of personal knowledge or foundation (that Jones "revived" anything), hearsay (what system cost), TRE 1002, no showing of foreseeability or causation.
Fourth paragraph: First sentence This paragraph is mistakenly numbered "6"	Hearsay (what Mr. Pozner did ), lack of personal knowledge and foundation for conclusory statement that there is a renewed threat from hoax allegation, no foundation or facts to support claim that damage was foreseeable or caused by Jones' statements
Fourth paragraph: Second and third sentence	TRE 403, no personal knowledge and lack of factual foundation for implied conclusion that sleepless nights were foreseeable or caused by Defendants
Fourth paragraph: last sentence	Hearsay (what it cost and what it cost Mr. Pozner), best evidence TRE 1002

Fifth paragraph:	Entire paragraph not relevant to any issue and not relevant for defamation <i>pre quod</i> damages as paragraph does not describe any special damages, TRE 403, conclusory, lack of foundation/predicate, speculative
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These declarations also fail to address the issue of proximate cause. Nothing in these declarations states facts upon which the Plaintiffs conclude that these expenses for internet and home security were foreseeable to Defendants when the statements in the broadcast were made. Nor are there facts set forth on which the Plaintiffs base their conclusion that these security product purchases were caused by Defendants.

WHEREFORE PREMISES CONSIDERED, Defendants respectfully request that the late filed and improperly formed declarations of Leonard Pozner and Veronique De La Rosa be stricken and the Court grant them relief as may be required under the Act together with such other relief as the Court deems equitable, just and proper.

RESPECTFULLY SUBMITTED,

GLAST, PHILLIPS & MURRAY, P.C.

/s/ Mark C. Enoch

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ATTORNEY FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of August, 2018, the foregoing was sent via efilexcourts.gov's e-service system to the following:

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                  /s/ Mark C. Enoch  
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