

CAUSE NO. D-1-GN-18-001835

NEIL HESLIN  
*Plaintiff*

§  
§  
§  
§  
§  
§  
§  
§  
§

IN DISTRICT COURT OF

VS.

TRAVIS COUNTY, TEXAS

ALEX E. JONES, INFOWARS, LLC,  
FREE SPEECH SYSTEMS, LLC, and  
OWEN SHROYER,  
*Defendants*

261<sup>st</sup> DISTRICT COURT

---

**PLAINTIFF’S MOTION FOR EXPEDITED DISCOVERY  
IN AID OF PLAINTIFF’S RESPONSE TO DEFENDANTS’ TCPA MOTION**

---

Pursuant to Tex. Civ. Prac. Rem. Code 27.006, Plaintiff moves this Court to allow discovery relevant to Defendants’ TCPA motion, and would show the Court as follows:

**I.**

In responding to a TCPA motion, Plaintiff must address each element of his claim, and the act provides a mechanism to secure “additional discovery to meet this burden.” *Grant v. Pivot Tech. Sols., Ltd.*, 2018 WL 3677634, at \*12 (Tex. App.—Austin Aug. 3, 2018, no pet. h.). “On a motion by a party or on the court’s own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion.” Tex. Civ. Prac. Rem. Code 27.006(b).

**II.**

That statute does not define “good cause,” but in cases where a particular statute leaves the term undefined, courts have held that good cause exists when it “is based on equity or justice.” *Barton-Rye v. State*, 2016 WL 4678963, at \*1 (Tex. App.—Amarillo Sept. 1, 2016, pet. ref’d). The definition “no doubt connotes something akin to a legitimate or substantial reason, as opposed to mere arbitrariness.” *Id.*; see also *In re Gandara*, 2017 WL 2822514, at \*4 (Tex. App.—El Paso

June 30, 2017, no pet.) (“The Amarillo Court's decision is well-reasoned and we will apply its definition of good cause in this case.”). Here, discovery will aid Plaintiff in meeting his burden, and there are several legitimate non-arbitrary reasons to grant the motion.

### **III.**

First, discovery will aid Plaintiff in securing evidence about the responsibility of the various named parties. Though extrinsic evidence makes it clear the Defendants act in concert, InfoWars is determined to contest the involvement and culpability of various Defendants. As such, discovery will help resolve various Defendants’ protestations of innocence.

### **IV.**

Discovery will also aid in developing evidence relating to Defendants’ spoliation of relevant documents. Plaintiff has filed a Motion for Sanctions concerning the deletion of social media materials and video content. These social media materials related to Mr. Jones’ statements about the Sandy Hook shooting, and they were deleted by InfoWars when a CNN journalist uncovered their existence. These materials could have supported the elements of Plaintiff’s cause of action. As such, Mr. Jones’ spoliation provides further good cause for discovery.

### **V.**

Discovery will also aid Plaintiff in securing evidence of actual malice. Though Plaintiff can prove malice through circumstantial evidence and inference, Defendants will certainly argue that Plaintiff lacks direct evidence of Defendants’ state of mind. Discovery will allow Plaintiff to develop further evidence on this point.

## VI.

Discovery will also aid in determining whether Defendants' affirmative defenses have been asserted in good faith. Discovery will show if the statutes relied upon in affirmative defenses actually apply to these Defendants.

## VII.

Discovery will also aid Plaintiff in securing evidence relevant to whether the challenged statement was an opinion or assertion of fact. Defendants' internal documents prior to the defamation will help establish the context of the video and Defendant's motivation in making a statement of fact rather than an opinion. Defendants' internal statements and testimony are also relevant to whether the defamatory remarks arose from any public participation by Plaintiff.

## VIII.

Finally, discovery will also aid in securing full copies of the challenged statements. As the Court is aware, Defendants objected to the use of transcripts and video clips in the *Pozner* matter, requiring Plaintiffs to submit a full copy of the "Sandy Hook Vampires Exposed" video. In this case, Plaintiff intended on submitting a full video copy of the June 26, 2017 and July 20, 2017 InfoWars videos at issue. Plaintiffs in the *Pozner* matter relied on the public availability of Defendants' videos on YouTube, but those videos were recently removed either by YouTube or by InfoWars. Plaintiffs' counsel wrote to InfoWars' counsel on August 9, 2018 requesting copies of these videos, but InfoWars' counsel ignored the request.<sup>1</sup> As such, Mr. Heslin should be permitted to conduct discovery on video evidence.

---

<sup>1</sup> See Exhibit 1, Plaintiff counsel's August 9, 2018 email.

**PRAYER**

For these reasons, Plaintiffs pray that this Court resets the hearing on the Defendants' TCPA Motion and allows the Plaintiff to serve written discovery as well as take the depositions of Owen Shroyer, Alex Jones, InfoWars, LLC, and Free Speech Systems, LLC.

Respectfully submitted,

**KASTER LYNCH FARRAR & BALL, LLP**



---

MARK D. BANKSTON

State Bar No. 24071066

mark@fbtrial.com

KYLE W. FARRAR

State Bar No. 24034828

WILLIAM R. OGDEN

State Bar No. 24073531

1010 Lamar, Suite 1600

Houston, Texas 77002

713.221.8300 Telephone

713.221.8301 Fax

**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2018 the forgoing document was served upon the following in accordance to Rule 21 of the Texas Rules of Civil Procedure:

**Via E-Service: fly63rc@verizon.net**

Mark C. Enoch  
Glast, Phillips & Murray, P.C.  
14801 Quorum Drive, Ste. 500  
Dallas, Texas 75254

## Eric Tellez

---

**From:** Mark Bankston  
**Sent:** Thursday, August 9, 2018 6:39 PM  
**To:** Mark Enoch  
**Cc:** Bill Ogden  
**Subject:** July 20, 2017 InfoWars Video

I write regarding the July 20, 2017 InfoWars video segment in which Mr. Jones re-airs the June 26, 2017 video segment featuring Mr. Shroyer's statements about Mr. Heslin. Plaintiff had not previously intended to introduce the June 20, 2017 video into evidence at the TCPA hearing, but given your insistence on video copies being admitted, that intention has changed.

As you know, the *Pozner* plaintiffs relied on Mr. Jones' distribution of his video content on YouTube and Facebook, and videos can be easily downloaded from these sources. However, these providers recently decided they would prefer to stop associating with your client, and his video content can no longer be accessed on their platforms.

As such, I would like you to confirm whether the June 20, 2017 video still exists, and if it does, I'd ask that you produce a copy to Mr. Heslin in the next seven days.

**Mark Bankston**  
**Kaster Lynch Farrar & Ball, LLP**  
1010 Lamar, Suite 1600  
Houston, TX 77002  
713-221-8300