

NO. D-1-GN-18-001835

NEIL HESLIN,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ALEX E. JONES, INFOWARS, LLC,	§	
FREE SPEECH SYSTEMS, LLC, and	§	
OWEN SHROYER,	§	
<i>Defendants</i>	§	261 <sup>st</sup> JUDICIAL DISTRICT

**DEFENDANTS’ OBJECTIONS TO PLAINTIFF’S EVIDENCE SUBMITTED IN RESPONSE TO DEFENDANTS’ MOTION TO DISMISS UNDER THE TEXAS CITIZENS PARTICIPATION ACT**

COME NOW, Defendants Alex E. Jones, Infowars, LLC, Free Speech Systems, LLC, and Owen Shroyer (collectively, the “Defendants”), and hereby file this, their Objections to Plaintiff’s Evidence Submitted in Response to Defendants’ Motion to Dismiss Under the Texas Citizens Participation Act. These objected-to affidavits and evidence should not be considered by the Court for any purpose for the reasons hereinafter stated. In support of the requested relief, Defendants present the following objections, argument and authorities.

For the Court’s convenience, the objections, argument and authorities of each objected-to affidavit and evidence begin at the page listed below:

1. Fred Zipp (*Exhibit A to Plaintiff’s Response*) – Page 2
2. Brooke Binkowski (*Exhibit B to Plaintiff’s Response*) – Page 34
3. Neil Heslin (*Exhibit C to Plaintiff’s Response*) – Page 66
4. H. Wayne Carver, II, M.D. (*Exhibit D to Plaintiff’s Response*) – Page 69
5. Scarlett Lewis (*Exhibit E to Plaintiff’s Response*) – Page 71
6. John Clayton (*Exhibit F to Plaintiff’s Response*) – Page 72
7. Marcus Turnini (*Exhibit G to Plaintiff’s Response*) – Page 74
8. Plaintiff’s proposed written discovery to Defendants (*Exhibit H to Plaintiff’s Response*) – Page 74
9. Notice of Violation (*Exhibit I to Plaintiff’s Response*) – Page 74
10. Fred Zipp [*Pozner and DeLaRosa v. Jones et al case*] (*Exhibit J to Plaintiff’s Response*) – Page 75

## 1. OBJECTIONS TO AFFIDAVIT OF FRED ZIPP

Defendants Alex E. Jones, Infowars, LLC and Free Speech Systems, LLC, (collectively, the “Defendants”), file Defendants’ Objections to Zipp Affidavit filed by Plaintiff in his Response to Defendants’ Motion to Dismiss Under the Texas Citizens Participation Act.

In *E.I. dePont de Nemours & Co., Inc. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995) the Court says “[p]rofessional expert Improper for opinion witnesses are available to render an opinion on almost any theory, regardless of its merit.” Thus we see Mr. Zipp’s opinions tendered in this case.

### a. *Zipp’s opinions on his view of questions of law are inadmissible*

An 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. *Zipp’s opinions on his view of malice or reckless state of mind of other persons are inadmissible*

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 600-60`. Expert opinion on malice 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. Zipp's opinions based on unidentified publications, or on publications that are irrelevant because of the statute of limitations or the subject matter of the instant lawsuit are inadmissible***

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. R. 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. R. 703.

The publications referred to by Mr. Zipp are mentioned because the publication at issue was "not made in isolation." (Affidavit p. 7) 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. R. 401-403, 404, 406 and 608(b).

His stated portions and summaries of these snippets also violate Tex. R. Evid. R. 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 Exhibits A-1 to A-23 attached to Zipp affidavit***

Defendants make the following objections to the admissibility of Exhibits A- 1 to A-23 attached to the Zipp affidavit:

Hearsay Tex. R. Evid. R. 802

Not relevant – Tex. R. Evid. R. 402

Prejudice outweighs relevance – Tex. R. Evid. 403

Violates best evidence rule Tex. R. Evid. R. 1002, 1003

No authentication – Tex. R. Evid. R. 901

**5. Objections to Specific Statements**

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

<b>Affidavit Statements</b>	<b>Objections</b>
Page 1, First paragraph under Scope of Review “whether assertions could be responsibly published”	Lack of foundation/predicate  Not Relevant  Vague and Ambiguous  Hearsay
8 bullet points under Scope of Review	Lack of foundation/predicate

	<p>Lack of identification of materials reviewed</p> <p>Hearsay</p>
<p>Page 2, First paragraph under Background Knowledge of InfoWars, second sentence</p>	<p>Not relevant</p> <p>Hearsay</p>
<p>Second paragraph under Background Knowledge of InfoWars “significant amount of time”</p>	<p>Vague and Ambiguous</p> <p>Conclusory</p>
<p>Second paragraph under Background Knowledge of Infowars, second sentence</p>	<p>Conclusory</p> <p>Lack of foundation/predicate</p> <p>Not relevant</p>
<p>Third paragraph under Background Knowledge of Infowars, second sentence</p>	<p>Conclusory</p> <p>Violates TRE 404</p> <p>Lack of foundation/predicate</p>
<p>Fourth paragraph under Background Knowledge of Infowars,</p>	<p>Not relevant</p> <p>Hearsay</p> <p>Lack of predicate/foundation</p> <p>Conclusory</p>
<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>Statements of what was in June 26 and July 20 videos are hearsay, lack a foundation and predicate and are not complete</p> <p>Best evidence rule</p>
Page 3, middle three paragraphs	<p>Violates TRE 1002 – best evidence rule</p> <p>Hearsay</p>
<p>Last paragraph under number 1 at bottom of page 3 and continuing to page 4 beginning “My review...”</p> <p>Paragraph beginning “My review...”</p>	<p>Statements of what was in June 26 and July 20 videos are hearsay, lack a foundation and predicate and are not complete</p> <p>Speculation</p> <p>Lack of personal knowledge</p> <p>Lack of foundation/predicate</p> <p>Conclusory</p> <p>Not relevant</p> <p>Violates TRE 403</p>
Same paragraph, fourth and fifth sentence	<p>Not relevant</p> <p>Not probative</p> <p>Improper opinion of expert on question of law</p> <p>Lack of personal knowledge</p> <p>Lack of foundation/predicate</p>

	Speculation
Under “Opinions” Page 4, first paragraph	Not relevant, violates TRE 404, violates best evidence rule, conclusory, lack of foundation/predicate, hearsay, lack of personal knowledge, speculation as to state mind and intent
p. 5, 1 <sup>st</sup> paragraph	Not relevant, violates TRE 404, violates best evidence rule, conclusory, lack of foundation/predicate, hearsay, lack of personal knowledge, speculation as to state mind and intent
p. 5, 2 <sup>nd</sup> paragraph	Not relevant, violates TRE 404, violates best evidence rule, conclusory, lack of foundation/predicate, hearsay, lack of personal knowledge, speculation as to state mind and intent
p. 6, 1 <sup>st</sup> paragraph	Not relevant, violates TRE 404, violates best evidence rule, conclusory, lack of foundation/predicate, hearsay, lack of personal knowledge, speculation as to state mind and intent
p. 6, 2 <sup>nd</sup> paragraph	Not relevant, violates TRE 404, violates best evidence rule, conclusory, lack of foundation/predicate, hearsay, lack of personal knowledge, speculation as to state mind and intent
p. 7, 1 <sup>st</sup> paragraph	Not relevant, violates TRE 404, violates best evidence rule, conclusory, lack of foundation/predicate, hearsay, lack of personal knowledge, speculation as to state mind and intent
p. 7, under A., 1 <sup>st</sup> paragraph	Not relevant, violates best

	evidence rule, conclusory, lack of foundation/predicate, hearsay, lack of personal knowledge, speculation as to state mind and intent
p. 7 second paragraph through penultimate paragraph on p. 13	Hearsay TRE 801  Violates best evidence rule TRE 1002, 1003  Repeating videos needless presentation of cumulative evidence TRE 403  Not relevant TRE 402  No predicate of personal knowledge TRE 602
p. 7, last paragraph, 1 <sup>st</sup> sentence, “numerous false and irresponsible claims”	Outside scope of expert specialty -- TRE 702  Invades province of the fact finder – TRE 702, <i>GTE</i> , 998 S.W. 2d 605, 620  Conclusory without bases – TRE 703  Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i> , No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)
p. 7, 1 <sup>st</sup> full paragraph, “false statements”	Outside scope of expert specialty -- TRE 702  Invades province of the fact finder – TRE 702, <i>GTE</i> , 998 S.W. 2d 605, 620



	<p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
<p>p. 10, 2<sup>nd</sup> paragraph, 1<sup>st</sup> sentence “false claims”</p>	<p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
<p>p. 10, last paragraph, “prior false claims”</p>	<p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides</p>

	<p>on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
<p>p. 11, last paragraph, 2<sup>nd</sup> sentence – “numerous false claims . . . made over the years”</p>	<p>Not relevant TRE 402</p> <p>No predicate of personal knowledge TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
<p>p. 12, last paragraph – “false claims . . . chilling finale”</p>	<p>Not relevant -- TRE 402</p> <p>No predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>,</p>

	<p>998 S.W. 2d 605, 620</p> <p>Violates best evidence rule - - TRE 1002, 1003</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See</i> <i>Gutierrez v. State</i>, No. 04- 03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
p. 13, 1 <sup>st</sup> full paragraph – “is the subject of a separate lawsuit . . . De La Rosa”	<p>Not relevant TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p>
p. 13, 1 <sup>st</sup> full paragraph, 2 <sup>nd</sup> sentence – “false accusation”	<p>Not relevant TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p> <p>No predicate of personal knowledge TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides</p>

	<p>on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
<p>p. 13, 2<sup>nd</sup> full paragraph, 3<sup>rd</sup> sentence – “waffled on”</p>	<p>Not relevant TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
<p>p. 14, 1<sup>st</sup> full paragraph</p>	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p>

	<p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Violates best evidence rule TRE 1002, 1003</p>
p. 14, 2 <sup>nd</sup> full paragraph	<p>Opinion not relevant -- TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>

	Violates best evidence rule TRE 1002, 1003
p. 14, 3 <sup>rd</sup> full paragraph	Opinion not relevant TRE 402  Speculation, no predicate of personal knowledge -- TRE 602  Outside scope of expert specialty -- TRE 702  Invades province of the fact finder – TRE 702, <i>GTE</i> , 998 S.W. 2d 605, 620  Conclusory without bases – TRE 703  Improper for opinion witness just choosing sides on the case outcome. <i>See</i> <i>Gutierrez v. State</i> , No. 04- 03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)  Last sentence and quote: Hearsay TRE 802 Not relevant – TRE 402 Prejudice outweighs relevance – TRE 403  Violates best evidence rule TRE 1002, 1003
p. 14, last paragraph	Hearsay TRE 802  Not relevant – TRE 402  Prejudice outweighs relevance – TRE 403  Violates best evidence rule

	TRE 1002, 1003
p. 15, 1 <sup>st</sup> full paragraph	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Last sentence and quote: Hearsay TRE 802 Not relevant – TRE 402 Prejudice outweighs relevance – TRE 403</p> <p>Violates best evidence rule TRE 1002, 1003</p>
p. 15, 2 <sup>nd</sup> full paragraph	<p>Opinion not relevant -- TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p>

	<p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
p. 15, heading at 2.	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
p. 15, under heading 2, 1 <sup>st</sup>	Opinion not relevant TRE



<p>paragraph</p>	<p>402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
<p>p. 15, heading A</p>	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides</p>

	<p>on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
p. 15, last paragraph	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Sentences 5, 6, 7, 8, &amp; 9: Hearsay TRE 802 Not relevant – TRE 402 Prejudice outweighs relevance – TRE 403 Violates best evidence rule TRE 1002, 1003</p>
p. 16, 1 <sup>st</sup> paragraph	<p>Opinion not relevant TRE 402</p>

	<p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
p. 16, heading B	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-</p>

	03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)
p. 16, 2 <sup>nd</sup> full paragraph	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Hearsay TRE 802</p> <p>Not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p> <p>Violates best evidence rule TRE 1002, 1003</p>
p. 16, 3 <sup>rd</sup> full paragraph with indent	Opinion not relevant TRE 402 – “unhinged crank,” “disturbing,” “ridiculous,” “bizarre”

	<p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702 --  “unhinged crank,”  “disturbing,” “ridiculous,”  “bizarre”</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620 --  “unhinged crank,”  “disturbing,” “ridiculous,”  “bizarre”</p> <p>Conclusory without bases – TRE 703 -- “unhinged crank,” “disturbing,” “ridiculous,” “bizarre”</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Indent:  Hearsay TRE 802  Not relevant – TRE 402  Prejudice outweighs relevance – TRE 403  Violates best evidence rule TRE 1002, 1003</p>
p. 16, last paragraph and photo on page 17	<p>Opinion not relevant TRE 402 – “purported”</p> <p>Speculation, no predicate of</p>

	<p>personal knowledge -- TRE 602</p> <p>No authentication – TRE 901 -- photo</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p> <p>Violates best evidence rule TRE 1002, 1003</p>
<p>p. 17, 1<sup>st</sup> full paragraph with indent</p>	<p>Opinion not relevant TRE 402 – “bizarre,” “anti-Semitic rants”</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases –</p>

	<p>TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Indent:  Hearsay TRE 802  Not relevant – TRE 402  Prejudice outweighs relevance – TRE 403  Violates best evidence rule TRE 1002, 1003</p>
<p>p. 17, last full paragraph and 1<sup>st</sup> photo on p. 18</p>	<p>Opinion not relevant TRE 402 – “obsessed”</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>

	<p>Hearsay TRE 802</p> <p>Not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>No authentication – TRE 901 - photo</p>
p. 18, only paragraph and photo	<p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Conclusory without bases – TRE 703</p> <p>Hearsay TRE 802</p> <p>Not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p> <p>Violates best evidence rule TRE 1002, 1003</p>
p. 19, 1 <sup>st</sup> paragraph	<p>Opinion not relevant TRE 402 – “no rational journalist,” “for anything,” “improbable,” “uncritical,” “reckless,” “deceptive”</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p>



	<p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Hearsay TRE 802</p> <p>Statements not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p> <p>Violates best evidence rule TRE 1002, 1003</p>
p. 19, heading C	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-</p>

	<p>03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Hearsay TRE 802</p> <p>Violates best evidence rule TRE 1002, 1003</p>
<p>p. 19, 2<sup>nd</sup> full paragraph</p>	<p>Opinion not relevant TRE 402 – “wild,” falsehoods,” “debunked,” “malicious”</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Hearsay TRE 802</p> <p>Not relevant – TRE 402 – “five years”</p> <p>Prejudice outweighs relevance – TRE 403</p>

	Violates best evidence rule TRE 1002, 1003
p. 19, 3 <sup>rd</sup> full paragraph	Opinion not relevant TRE 402  Speculation, no predicate of personal knowledge -- TRE 602  Outside scope of expert specialty -- TRE 702  Invades province of the fact finder – TRE 702, <i>GTE</i> , 998 S.W. 2d 605, 620  Conclusory without bases – TRE 703  Improper for opinion witness just choosing sides on the case outcome. <i>See</i> <i>Gutierrez v. State</i> , No. 04- 03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)  Hearsay TRE 802  Not relevant – TRE 402  Prejudice outweighs relevance – TRE 403  Violates best evidence rule TRE 1002, 1003  Ambiguous and vague – “made a variety of factual allegations,” “various claims,” “wide variety”
p. 19, 4 <sup>th</sup> full paragraph	Opinion not relevant TRE 402 – “ample,” “enormous,”

	<p>extreme,” “outcry,”  “unlikely,” “intentionally,”  “reasonable,” “entertain  serious doubts,” “desire to  mislead”</p> <p>Speculation, no predicate of  personal knowledge -- TRE  602 -- “ample,”  “enormous,” extreme,”  “outcry,” “unlikely,”  “intentionally,”  “reasonable,” “entertain  serious doubts,” “desire to  mislead”</p> <p>Outside scope of expert  specialty -- TRE 702 --  “ample,” “enormous,”  extreme,” “outcry,”  “unlikely,” “intentionally,”  “reasonable,” “entertain  serious doubts,” “desire to  mislead”</p> <p>Invades province of the fact  finder – TRE 702, <i>GTE</i>,  998 S.W. 2d 605, 620</p> <p>Conclusory without bases –  TRE 703</p> <p>Improper for opinion  witness just choosing sides  on the case outcome. <i>See</i>  <i>Gutierrez v. State</i>, No. 04-  03-00396-CR, 2005 Tex.  App. LEXIS 1430, at *7  (App.—San Antonio Feb.  23, 2005)</p> <p>Not relevant – TRE 402</p> <p>Prejudice outweighs</p>
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	<p>relevance – TRE 403</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Vague and ambiguous -- “ample,” “enormous,” “extreme,” “outcry,” “unlikely,” “intentionally,” “reasonable,” “entertain serious doubts,” “desire to mislead”</p>
<p>p. 19, heading D</p>	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Hearsay TRE 802</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Ambiguous and vague</p>

<p>p. 19, last paragraph, continuing to p. 20 – “rise to notoriety,” coincided,” “boast,” “considered by many”</p>	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Hearsay TRE 802</p> <p>No authentication or predicate for documentary cites – TRE 902, TRE 802</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Statements not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p>
<p>p. 20, 1<sup>st</sup> full paragraph</p>	<p>Hearsay TRE 802</p> <p>No authentication or predicate for documentary</p>

	<p>cites – TRE 902, TRE 802</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Statements not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p>
p. 20, 2 <sup>nd</sup> full paragraph	<p>Hearsay TRE 802</p> <p>Statements not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p>
p. 20, 3 <sup>rd</sup> full paragraph	<p>Hearsay TRE 802</p> <p>No authentication or predicate for documentary cites – TRE 902, TRE 802</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Statements not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p>
p. 20, last paragraph and photo on p. 21	<p>Opinion not relevant TRE 402 – “similar”</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p>

	<p>Conclusory without bases – TRE 703</p> <p>Hearsay TRE 802</p> <p>No authentication or predicate for photo – TRE 902, TRE 802</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Statements not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p>
p. 21, 1 <sup>st</sup> full paragraph	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>



	<p>Statements not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p>
<p>p. 21, after Conclusion – “evidence I have reviewed,” “failed to use reasonable care,” “entertained serious doubts,” “acting with intent to deceive,” “reckless disregard,” “falsity,” “harmful,” “subject him to public contempt, hate or ridicule”</p>	<p>Opinion not relevant TRE 402</p> <p>Speculation, no predicate of personal knowledge -- TRE 602</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without bases – TRE 703</p> <p>Vague and ambiguous.</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p> <p>Hearsay TRE 802</p> <p>Statements not relevant – TRE 402</p> <p>Prejudice outweighs relevance – TRE 403</p> <p>Vague and ambiguous</p>

## 2. OBJECTIONS TO AFFIDAVIT OF BROOKE BINKOWSKI

Defendants file their Objections to the Brooke Binkowski Affidavit submitted in response to Defendants' Motion to Dismiss Under the Texas Citizens Participation Act.

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. If the issue is whether Defendants defamed Plaintiff 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:

<b>Paragraph</b>	<b>Affidavit Objections</b>
11	<p>Not relevant TRE 402</p> <p>No assistance to fact finder -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory without</p>

	bases – TRE 703
14	<p>Not relevant TRE 402</p> <p>No predicate of personal knowledge TRE 602</p> <p>No assistance to fact finder -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Conclusory without bases – TRE 703</p>
16	<p>Not relevant TRE 402</p> <p>Outside scope of expert specialty -- TRE 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>“significant:” Conclusory without bases – TRE 703</p>
17	Not relevant – TRE 401, 402

18	<p>Not relevant TRE 402</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>“notable,” “not consistently” -- Conclusory without bases – TRE 703</p>
19	<p>Violates best evidence rule TRE 1002, 1003</p>
20	<p>Not relevant TRE 402</p> <p>No assistance to fact finder -- TRE 702</p> <p>“ambiguous,” “reasonably” --</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Violates best evidence rule TRE 1002, 1003</p> <p>Conclusory without bases – TRE 703</p>
21	<p>Not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>No predicate for</p>

	<p>expert testimony – TRE 703</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
22	<p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p>
23	<p>Not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</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>
24	<p>Not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p>

	<p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</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>
25	<p>Not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</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</p>

	701, 702, 703
27	<p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p>
28	<p>Not relevant &amp; no assistance to fact finder – 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>
29	<p>Not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Hearsay – TRE 801(d), 802</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication –</p>



	TRE 901
30	<p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
31	<p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</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>
32	<p>“callously,” “sickening,” and “own opinion” -- Opinion not relevant &amp; no assistance to</p>

	<p>fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</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>
33	<p>“own assertion,” “false,” “not contradicted” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</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</p>

	<p>knowledge – TRE 701, 702, 703</p>
34	<p>“deceptively edited” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</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>
34	<p>“deceptively” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication –</p>

	<p>TRE 901</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
35	<p>“reinforces” --</p> <p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</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>
36	<p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002,</p>

	<p>1007</p> <p>No authentication – TRE 901</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge, speculation – TRE 701, 702, 703</p>
37	<p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>“continuously debunked”-- Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
38	<p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE</p>

	<p>702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
39	<p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
40	<p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
41	<p>“likewise traffics fake news” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W.</p>

	<p>2d 605, 620</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>
42	<p>Not relevant – TRE 401, 402</p> <p>Hearsay – TRE 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>
43	<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</p>

	701, 702, 703
44	<p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
45	<p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
46	<p>Not relevant – TRE 402</p> <p>Relevance outweighed by unfair prejudice, confusion,</p>



	<p>&amp; misleading – TRE 403</p> <p>Hearsay – TRE 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>
47	<p>“fake news items” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
48 and two photos	<p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication –</p>

	<p>TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
49	<p>“fake news” --</p> <p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge, speculation – TRE 701, 702, 703</p>
50	<p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
51	<p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</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>
52	<p>“fake news,” “dangerous,” “conspiracy” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge, speculation as to intent – TRE 701, 702, 703</p>
53	<p>“intentionally deceptive,” “recklessly disregarded,” “deceptive” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p>

	<p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge, speculation – TRE 602, 701, 702, 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
54	<p>“outlandish,” “inherently improbable,” “obviously dubious” - - Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Improper for opinion witness just choosing</p>

	<p>sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
55	<p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge, speculation as to state of mind – TRE 701, 702, 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
56	<p>Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p>

	<p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
57	<p>“directly contradicts” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of</p>

	<p>foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
58	<p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Relevance outweighed by unfair prejudice, confusion, misleading and cumulative – TRE 403</p>
59	<p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Relevance outweighed by unfair prejudice, confusion, misleading and cumulative – TRE 403</p>
60	<p>“too suggest” some</p>

	<p>fact -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Relevance outweighed by unfair prejudice, confusion, misleading and cumulative – TRE 403</p>
61	<p>“dishonest” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p>



	<p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Relevance outweighed by unfair prejudice, confusion, misleading and cumulative – TRE 403</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
62	<p>“clear” “chose not to do so” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p>

	<p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge, speculation as to state of mind – TRE 701, 702, 703</p> <p>Relevance outweighed by unfair prejudice, confusion, misleading and cumulative – TRE 403</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
63	<p>“clear” “deceptively edited” “give the appearance” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p>

	<p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
64	<p>“abundance of primary sources” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule –</p>

	<p>TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
65	<p>“no reasonable basis” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
66	<p>“only way a journalist</p>

	<p>could support”  “intentionally  distorting” “source  material demonstrates  that is exactly what  occurred in this case”  -- Opinion not  relevant &amp; no  assistance to fact  finder – TRE 401,  402, 702</p> <p>Invades province of  the fact finder – TRE  702, <i>GTE</i>, 998 S.W.  2d 605, 620</p> <p>Conclusory, lack of  foundation/predicate,  lack of personal  knowledge – TRE  701, 702, 703</p> <p>Improper for opinion  witness just choosing  sides on the case  outcome. <i>See</i>  <i>Gutierrez v. State</i>,  No. 04-03-00396-CR,  2005 Tex. App.  LEXIS 1430, at *7  (App.—San Antonio  Feb. 23, 2005)</p>
67	<p>“video contains no  such statements” --  Opinion not relevant  &amp; no assistance to  fact finder – TRE  401, 402, 702</p> <p>Invades province of  the fact finder – TRE  702, <i>GTE</i>, 998 S.W.</p>

	<p>2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>
68	<p>“injurious motive” “clearly an attack” “pleaded” “false” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p>

	<p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
69	<p>“clearly provoked a retaliation” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>No authentication – TRE 901</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge, speculation as to state of mind – TRE 701, 702, 703</p> <p>Improper for opinion witness just choosing sides on the case</p>

	<p>outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
70	<p>“clear” “part of ongoing effort to support and justify” “vile five-year lie” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>



71	<p>“in horror”  “repeatedly”  “systematically”  “distorted”  “misrepresented”  “false” -- Opinion not relevant &amp; no assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Best Evidence Rule – TRE 1001, 1002, 1007</p> <p>Hearsay – TRE 802</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
72	<p>“clear” “in bad faith”  “utter contempt for the truth” -- Opinion not relevant &amp; no</p>

	<p>assistance to fact finder – TRE 401, 402, 702</p> <p>Invades province of the fact finder – TRE 702, <i>GTE</i>, 998 S.W. 2d 605, 620</p> <p>Conclusory, lack of foundation/predicate, lack of personal knowledge – TRE 701, 702, 703</p> <p>Improper for opinion witness just choosing sides on the case outcome. <i>See Gutierrez v. State</i>, No. 04-03-00396-CR, 2005 Tex. App. LEXIS 1430, at *7 (App.—San Antonio Feb. 23, 2005)</p>
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### 3. OBJECTIONS TO AFFIDAVIT OF NEIL HESLIN

Defendants object to consideration of the Neil Heslin affidavit for the follows reasons:

**a. Paragraph 2**

Mr. Heslin’s assertion, without specifying what publications he claims constitute “lies” make his assertion irrelevant and thus inadmissible under Tex. R. Evid. R. 401. The assertion also violates the “best evidence” rule (Tex. R. Evid. R. 1002). Mr. Heslin’s assertion without specifying what “occasions” make his assertion irrelevant and thus inadmissible under Tex. R. Evid. R. 401. The assertion also violates the “best evidence” rule (Tex. R. Evid. R. 1002).

**b. Paragraph 4**

This paragraph is evidently calculated to portray Mr. Heslin as not a public figure or quasi-public figure. As such it is irrelevant under Tex. R. Evid. R. 401 and R. 701 because whether someone is a public figure is a question of law for the Court. See *Klantzman v. Brady*, 312 S.W.3d 886, 904 (Tex. App. - Houston [1<sup>st</sup> Dist.] 2009, no pet.) Also Mr. Heslin's subjective intent is irrelevant; whether he is a public figure can only be determined by compiling and analyzing objective facts. Accordingly this paragraph is irrelevant under Tex. R. Evid. R. 401 and R. 701.

**c.     *Paragraphs 5, 6***

Relevance (Tex. R. Evid. R. 401). Whether Mr. Heslin was invited or sought out the public fora doesn't matter. No one told him he had to give interviews; he was not under subpoena. As long as he was not coerced, only the fact that he made public appearances matters.

**d.     *Paragraphs 7 - 14***

Relevance, Tex. R. Evid. R. 401. Mr. Heslin's subjective feelings, motive and intent are irrelevant; it's what he did that matters.

**e.     *Paragraph 15***

The authentic record of the interview is the best evidence of what was said or not said. Mr. Heslin's summation violates the best evidence rule (Tex. R. Evid. R. 102).

**f.     *Paragraph 16***

Relevance, Tex. R. Evid. R. 401. This is Mr. Heslin's own summary of his actions and reactions.

**g.     *Paragraph 17***

Relevance, Tex. R. Evid. R. 401. Mr. Heslin's subjective feelings, motive and intent are irrelevant; it's what he did that matters. The authentic record of the interview is the best evidence of what was said or not said. Mr. Heslin's summation violates the best evidence rule

(Tex. R. Evid. R. 1002).

**h. Paragraphs 18 - 21**

The authentic record of the interview is the best evidence of what was said or not said. Mr. Heslin's summation violates the best evidence rule (Tex. R. Evid. R. 1002).

**i. Paragraphs 22 - 27**

In these paragraphs Mr. Heslin attempts to present evidence to establish mental anguish as an element of damages. These paragraphs are irrelevant and inadmissible under Tex. R. Evid. R. 401 because the substantive law applicable to such damages, and in defamation cases in particular, makes the averments irrelevant.

- Mental anguish damages may not be recovered in a *per quod* case. Mr. Heslin has alleged – but has produced no evidence to establish-defamation *per se*.
- Perhaps words cannot describe the mental anguish Mr. Heslin has sustained as a result of the death of his son, but that does not mean it does not exist. However, Mr. Heslin does not take this into account. In paragraphs 26 and 27 he attempts to attribute his alleged mental anguish to the June 26, 2017 publication alone and provides no evidence of how this was caused by that video.
- In the entirety of paragraphs 21 -27 Mr. Heslin fails to account for other actors who may have caused his alleged mental anguish. Mr. Heslin is attributing to this publication the criminal activity of others over whom Defendants have no control and provides no evidence of how this was caused by that video.
- As for out-of-pocket expenses (paragraphs 28-31) Mr. Heslin's declaration does not amount to legally sufficient evidence because (1) the evidence that the publication at issue was a producing cause or a proximate cause is legally insufficient to establish that Mr. Heslin's need for counseling was a result of the

publication and not something else; the evidence is legally insufficient to establish a temporal nexus between the publication and the counseling thus raising the inference that the counseling was a result of the publication and not something else (paragraph 28). The same is true of the other expenses (paragraphs 29-31): even assuming that Mr. Heslin's security concerns were justified, the evidence that the publication – and not the actions of others – was a producing cause is legally insufficient; (2) There is no evidence that these out-of-pocket expenditures were reasonable in amount.

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

Defendants object to consideration of the H. Wayne Carver, II, M.D. affidavit for the following reasons:

##### **a. *Paragraphs 3 – 10: Relevance***

The averments of these paragraphs do not make any relevant fact more likely than not and do not aid the fact-trier in resolving any issue. Thus these statements are irrelevant under Tex. R. Evid. R. 401 and 701.

##### **b. *Paragraph 11***

Dr. Carver's professed "familiar[ity]" with Defendants is irrelevant under Evid. Rules 401 and 701. He does not state the source of his averred familiarity. Is he a regular viewer? Or is his "familiar[ity]" based on what others have told him? (In which case his averment is inadmissible hearsay.) The second sentence of paragraph 11 is objectionable for the same reasons. The third sentence is objectionable because (a) Newtown, Connecticut's at-large population is not a party to this case so any community feeling of angst is irrelevant (Tex. R. Evid. R. 401); (b) Dr. Carver does not state his qualifications to express an opinion on public sentiment in Newtown, Connecticut; and (c) Dr. Carver does not state the underlying basis for

his opinion.

**c. Paragraphs 12 and 13: Relevance (Tex. R. Evid. R. 401); Authenticity (Tex. R. Evid. R. 1002)**

Dr. Carver does not adequately establish that what he viewed is the original publication or some other iteration. Whether the statements referred to the Plaintiff is a matter of law for the Court. *Newspapers, Inc. v. Matthews*, 339 S.W.2d 890, 893 (Tex. 1960).

**d. Paragraphs 14 – 17: Relevance (Tex. R. Evid. R. 401)**

Whether a statement is defamatory is a question of law for the Court. His opinion is therefore not probative. See *Bingham v. Southwestern Bell Yellow Pages, Inc.*, 2008 Tex. App. LEXIS 463 \*9 - \*10 (Tex. App. – Ft. Worth 2001, no 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 the statements referred to the Plaintiff is a matter of law for the Court. *Newspapers, Inc. v. Matthews*, 339 S.W.2d 890, 893 (Tex. 1960).

Whether Dr. Carver is an “average reasonable person,” or falls in some other category, his idiosyncratic spin on the broadcast at issue is irrelevant because it usurps the function of the Court.

**e. Paragraph 18: Relevance (Tex R. Evid. R. 401, 701 and 703)**

Dr. Carver does not state any facts that support his opinion. His “personal involvement” is too vague to comprise an adequate basis for his opinion.

**f. Paragraphs 19 – 21: Relevance (Tex. R. Evid. R. 401)**

Whether a statement is defamatory is a question of law for the Court. His opinion is therefore not probative. See *Bingham v. Southwestern Bell Yellow Pages, Inc.*, 2008 Tex. App.

LEXIS 463 \*9 - \*10 (Tex. App. – Ft. Worth 2001, no 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 Dr. Carver is an “average reasonable person,” or falls in some other category, his idiosyncratic spin on the broadcast at issue is irrelevant because it usurps the function of the Court. Whether the statements referred to the Plaintiff is a matter of law for the Court. *Newspapers, Inc. v. Matthews*, 339 S.W.2d 890, 893 (Tex. 1960).

## 5. OBJECTIONS TO AFFIDAVIT OF SCARLETT LEWIS

Defendants object to consideration of the Scarlett Lewis affidavit for the follows reasons:

In bullet points 5-10, Ms. Lewis sets out her “understanding[s]” derived from watching a youtube video. None of her alleged understandings is relevant under Tex. R. Evid. R. 401 because whether a statement is defamatory is a question of law. Whether a statement is defamatory is a question of law for the Court. Her “understanding” (*ie.* opinion) is therefore not probative. See *Bingham v. Southwestern Bell Yellow Pages, Inc.*, 2008 Tex. App. LEXIS 463 \*9 - \*10 (Tex. App. – Ft. Worth 2001, no 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 the statements referred to the Plaintiff is a matter of law for the Court. *Newspapers, Inc. v. Matthews*, 339 S.W.2d 890, 893 (Tex. 1960).

Whether Ms. Lewis 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. Whether the statements referred to the Plaintiff is a matter of law for the Court.

*Newspapers, Inc. v. Matthews*, 339 S.W.2d 890, 893 (Tex. 1960).

## **6. 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. R. Evid. 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.

## **7. OBJECTIONS TO AFFIDAVIT OF MARCUS TURNINI**

Defendants object to consideration of the exhibits attached to the Marcus Turnini affidavit for the follows reasons:

1. The exhibits were unlawfully obtained in that they were evidently obtained for use in the litigation in violation of §9.1 of the Infowars terms of service which provides:

“You may not copy or otherwise attempt to benefit or assist others to benefit, directly or indirectly, from use of our Licensed Materials or intellectual property of third parties other than through normal use of the Website.”

2. Relevance (Evid. R. 401). The material deals with use by licensed subscribers of the Infowars Website. It has nothing to do with whether the publication made the basis of this case is defamatory or any of the sub-issues (i.e. public or quasi:-public figure, malice).

## **8. OBJECTIONS TO PLAINTIFF'S PROPOSED WRITTEN DISCOVERY TO DEFENDANTS**

Defendants will provide objections if and when Plaintiff is allowed to issue discovery. However, it is initially apparent that none of the requested discovery is aimed at the false claim of destroyed documents and instead is overbearing discovery seeking, among other things, tax returns.

## **9. OBJECTIONS TO EXHIBIT I**

The “Notice of Violation to Infowars, LLC” (the “Notice”) is not admissible for these reasons:

1. It is not authenticated as required by Tex. R. Evid. R. 901.
2. It is not self-authenticating as permitted under Tex. R. Evid. R. 902(2);
3. It is not relevant under Tex. R. Evid. R. 401.
4. Any relevancy is far outweighed by the prejudice engendered by the document under Tex. R. Evid. R. 403.
5. It is hearsay and contains hearsay within hearsay.

## **10. OBJECTIONS TO EXHIBIT J**

### **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. R. 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. R. 401-403, 404, 406 and 608(b).

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

<b>Affidavit Statements</b>	<b>Objections</b>
Page 1, First paragraph under Scope of Review "whether assertions could be responsibly published"	Lack of foundation/predicate  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	Not relevant

Knowledge of InfoWars, second sentence	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
Page 3, First paragraph under number 1, first sentence	Conclusory Lack of foundation/predicate Not relevant Lack of personal knowledge Exhibit A-26 is hearsay, lacks a foundation and predicate and is not complete
Page 3, middle three paragraphs	Violates TRE 1002

<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”) Lack of personal knowledge Lack of foundation/predicate Conclusory Not relevant 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. Not relevant Violates TRE 403 Hearsay Lack of foundation/predicate</p>
<p>Same paragraph, fourth and fifth sentence</p>	<p>Not relevant Not probative Improper opinion of expert on question of law Lack of personal knowledge Lack of foundation/predicate Speculation</p>
<p>Page 4, first paragraph under paragraph 2.</p>	<p>First sentence: Not relevant, violates TRE 404,</p>

	<p>conclusory, lack of foundation/predicate, hearsay, lack of personal knowledge</p> <p>Second sentence: Not relevant, vague and ambiguous, conclusory, lack of foundation/predicate, lack of personal knowledge, hearsay</p> <p>Third sentence: Not relevant, vague and ambiguous, conclusory, lack of foundation/predicate, lack of personal knowledge,</p>
First paragraph under 2. A.	<p>Not relevant</p> <p>Lack of personal knowledge</p>
Second paragraph under 2. A.	<p>Not relevant</p> <p>Hearsay</p> <p>Lack of foundation/predicate</p>
Third paragraph under 2. A.	<p>First sentence: Not relevant, conclusory, speculative</p> <p>Second and third sentence: Not relevant, hearsay, lack of personal knowledge, lack of foundation/predicate,</p>
Page 5, top paragraph (under two top photos)	<p>Not relevant,</p> <p>speculative,</p> <p>hearsay,</p> <p>conclusory,</p> <p>lack of personal knowledge,</p>



	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,

	<p>hearsay,</p> <p>conclusory,</p> <p>lack of personal knowledge,</p> <p>lack of foundation/predicate</p>
Paragraph B.	<p>Not relevant</p> <p>Conclusory</p> <p>lack of personal knowledge,</p> <p>lack of foundation/predicate</p>
Last paragraph (under B)	<p>Not relevant</p> <p>Conclusory</p> <p>lack of personal knowledge,</p> <p>lack of foundation/predicate</p> <p>Exhibit 24 is not complete</p>
Page 8, top photo	<p>Not relevant</p> <p>Hearsay</p> <p>Lack of foundation/predicate</p>
Page 8, top paragraph	<p>Not relevant</p> <p>Conclusory</p> <p>Hearsay</p> <p>Lack of foundation/predicate</p> <p>Lack of personal knowledge</p> <p>Violates TRE 1002</p>

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	First sentence: Not relevant, Lack of personal knowledge, Lack of foundation/predicate, conclusory  Second sentence: Not relevant, Lack of personal knowledge, Lack of foundation/predicate, conclusory, speculative  Third sentence: “did not reasonably suggest any cover-up or manipulation”: Not relevant, Lack of foundation/predicate,

	<p>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 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> <p>Lack of foundation/predicate</p>
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.	Both sentences: Not relevant, Lack of personal knowledge  Violates TRE 1002
Bottom paragraph	First sentence: Not relevant, Lack of personal knowledge, lack of foundation/predicate, speculative, hearsay, conclusory – Violates TRE 1002  Second sentence: Not relevant, Lack of personal knowledge  Third sentence: Not relevant, Lack of personal knowledge, lack of foundation/predicate, hearsay  Fourth and fifth sentence including caption continuing on page 12: lack of foundation/predicate, hearsay
Page 12, top paragraph and captions	Not relevant, Hearsay, lack of foundation/predicate
Middle paragraph	First and second sentence: Not relevant, lack of foundation/predicate, lack of personal knowledge  Third and fourth sentence: Not relevant, Hearsay. Lack of personal knowledge, lack of foundation/predicate  Fifth and sixth sentence: Not relevant, lack of

	<p>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, speculation</p>
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

<p>All paragraphs under A starting on page 13 and continuing to the second to the last paragraph on page 19</p>	<p>Not relevant, previous acts are outside of statute of limitations, violates TRE Rule 403, lack of personal knowledge, lack of foundation/predicate, hearsay 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</p>



	not probative on question of law or actual malice
Page 20, top paragraph	<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 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	First sentence: Not relevant,

	<p>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 relevant, speculative, lack of personal knowledge, lack of foundation/predicate, conclusory.</p>
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</p>

	authenticated, and is not a complete transcript of the broadcast
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>

<p>Fourth paragraph, page 22</p>	<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: 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>
<p>Last paragraph, page 22 continuing to page 23</p>	<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>
<p>Page 23, paragraph B</p>	<p>Not relevant, Expert opinion not probative on question of law and actual malice, lack of foundation/predicate,</p>

	conclusory, speculative; Violates TRE 403, 404 and 608(b)
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 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</p>

	<p>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, 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</p>

	opinion on question of law
Paragraph C	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)
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



	<p>knowledge,</p> <p>Second sentence: Not relevant, hearsay, lack of foundation/predicate, lack of personal knowledge</p> <p>Exhibit A14 is not 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</p>

	objectionable as it seeks to bolster improper expert opinion on question of law and actual malice
Page 26, first paragraph	<p>Each sentence: Not relevant, lack of personal knowledge, 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	First sentence: Not relevant, lack of personal knowledge, lack of foundation/predicate, conclusory

	<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>
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	<p>Lack of authentication; lack of foundation/predicate; not relevant; violate TRE 404, 608(b) and 703. In</p>

