

NO. D-1-GN-18-001835

NEIL HESLIN,

Plaintiff,

v.

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

Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

DEFENDANTS’ MOTION FOR PROTECTIVE/CONFIDENTIALITY ORDER

Come now, Defendants Alex E. Jones, InfoWars, LLC, Free Speech Systems, LLC, and Owen Shroyer (“Defendants”) and, subject to their right of appeal, file this Motion for Protective/Confidentiality Order and would show this Honorable Court as follows:

I.

1.01 On July 13, 2018, Defendants timely filed their Motion to Dismiss Under the Texas Citizens Participation Act (the “Motion”). As required, Defendants obtained a hearing on that Motion within sixty days of its filing and the Court set it for hearing on August 30, 2018. Proper notice was given to Plaintiff’s counsel and a week prior to that hearing, Plaintiffs’ counsel announced ready. As noticed, the hearing occurred on August 30.

1.02 At the conclusion of that hearing and off the record, counsel for the Defendants discussed with the Court their concern that the Court was not be able to extend the hearing and thereby delay its decision for the period of time the Court had

granted to take discovery and continue the hearing. Defendants still believe that this Court must decide the Motion by the thirtieth day after that hearing occurred or it will be denied by operation of law pursuant to §27.005 (a) of the Texas Civil Practice & Remedies Code.¹

1.03 Nevertheless and without waiving their position that this Court must rule on the Motion or otherwise the Motion will be denied by operation of law prior to any discovery being due from Defendants, Defendants file this motion for protective/confidentiality order in order to protect and keep confidential the private, proprietary and confidential information of Defendants that may be revealed in the ordered discovery.

II.

2.01 This Court should enter an order protecting the confidential, private and proprietary information of the Defendants should discovery go forward. A court may in the interest of justice, issue a protective order to protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of person, constitutional, or property rights under Texas Rules of Civil Procedure Rule 192.6.²

2.02 The Court should enter Defendants' proposed Protective/Confidentiality Order because such an order is necessary to protect confidential information. Defendants' proposed order limits the use of confidential information to this litigation and limits the

¹ Accordingly, Defendants once again request that this Honorable Court grant their Motion to Dismiss Under the Texas Citizens Participation Act before the expiration of thirty days after the hearing.

² See *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999).

persons allowed to access confidential documents, information and testimony to those specified in the order. In absence of such an order, Defendants' production of sensitive documents and testimony, without protection, risks tremendous harm to Defendants' constitutional rights to personal and financial privacy and to their businesses and employment.

2.03 As proposed by Defendants, the restrictions on the use of confidential information comply with the Texas Rules of Civil Procedure.³ Furthermore, such restrictions protect Defendants' interests, yet impose no unnecessary burdens on Plaintiff.

2.04 Pursuant to Texas Rules of Civil Procedure Rule 192.6, Defendants request that the Court enter the proposed Protective/Confidentiality Order or one modified to the extent necessary to protect Defendants' rights and interests in at least the following general ways:

- a. That all written discovery sent as well as all responses to discovery including answers, objections, and documents produced shall be protected as "Attorneys' Eyes Only" and the contents be restricted to only Plaintiff's attorneys as currently named in this case, Defendants and their counsel.
- b. That all depositions taken, if any, be restricted and that for the Plaintiff, only currently named counsel for the Plaintiff may appear, that non-parties cannot attend or be made aware of the testimony in general or in detail and that the transcription of and any video taken of the deposition be sealed so that only

³ See Texas Rules of Civil Procedure Rule 192.6.

Plaintiff's currently named counsel and Defendants and their counsel can view and have access to such transcripts and videos.

c. That any motions, responses, transcripts, replies or other documents relating to all discovery that may be filed, be filed as sensitive material in the court's file and shall not be available for inspection or copying by anyone other than Defendants' counsel and Plaintiff's currently named counsel in this case.

2.05 Accordingly, Defendants request that the Court enter Defendants' proposed Protective/Confidentiality Order attached hereto as Exhibit "A."

III.

PRAYER

WHEREFORE PREMISES CONSIDERED, subject to their right to timely appeal this matter and without waiver of any appeal or other rights, Defendants request that the Court grant this motion and enter the Protective/Confidentiality Order attached as Exhibit "A" in the event that discovery takes place.

RESPECTFULLY SUBMITTED,

GLAST, PHILLIPS & MURRAY, P.C.

/s/ Mark C. Enoch

Mark C. Enoch

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ATTORNEY FOR DEFENDANTS

NEIL HESLIN,

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ALEX E. JONES, INFOWARS, LLC,
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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

PROTECTIVE/CONFIDENTIALITY ORDER

1. This Protection/Confidentiality Order governs all discovery, and all information disclosed, produced, or submitted by any party to any other party in connection with this lawsuit during the course of discovery. “Discovery” includes all written discovery, request for production, interrogatories, requests for admissions, requests for disclosure, oral depositions, deposition transcripts, oral or video recording of a deposition, depositions on written questions to third parties, and subpoenas to third parties, and other documents exchanged between the parties for the purpose of sharing information regarding the facts of the case. Confidential Discovery is Discovery which is marked as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

2. This Order is entered for purposes of this lawsuit and shall remain in full force and effect until such time as the Parties agree otherwise or the Court enters a different order. This Order will not be used in any manner or form, directly or indirectly,

as evidence in any trial or any hearing, other than to resolve any issue related to the enforcement of any provisions of the Order.

3. All Discovery shall be confidential and shall not be used or disclosed to any third party (except as provided herein). No Discovery shall be filed with the Court without filing under seal. The use or disclosure of Confidential Discovery in unsealed filings with the Court or the disclosure of Confidential Discovery to third parties shall be considered a violation and may be considered contempt of the Court's order punishable by the Court's authority to sanction the offending person.

INSPECTION OF CONFIDENTIAL INFORMATION

4. Except as provided herein, each person to whom Confidential Discovery containing confidential information is disclosed or made available shall first be advised of the existence and the contents of this Order. Confidential Discovery may only be inspected or revealed by the Parties to the persons listed in paragraph 11 and 12 herein, provided that the disclosing Party is responsible to ensure that any person or entity who receives such Confidential Discovery shall maintain the document as confidential as set forth in this Order. Discovery can also be revealed to court reporters and videographers at depositions. Use or disclosure of any Confidential Discovery other than pursuant to the terms of this Order by an individual or entity provided by a disclosing Party shall be considered a violation and may be considered contempt of the Court's order punishable by the Court's authority to sanction the offending disclosing Party. Any mediator in this case may be provided Confidential Discovery so long as the discovery is being disclosed

pursuant to confidential settlement negotiations and the mediator returns the Confidential Discovery at the end of the mediation without making duplications/copies.

FILINGS OR HEARINGS IN THE PUBLIC RECORD

5. In all filings, hearings, or other interaction with the Court that is part of the public record, the Parties shall maintain the confidentiality of the Discovery and shall not file any document disclosing confidential information.

6. Reference to Plaintiff, Defendants, or the Parties to this Protective/Confidentiality Order also includes reference to any other person or entity acting on any Party's behalf or in concert or in participation with any Party, directly or indirectly, to the extent that any discovery in this lawsuit requires a person or entity other than Plaintiff or Defendants to produce documents or tangible things or give testimony. "Producing Party" shall mean a Party to this lawsuit that produces documents, information and/or tangible things.

7. Any Party or third party required to produce documents or tangible things or give testimony or whose information is being produced may designate documents and tangible things produced and/or exhibits as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." In the event a Producing Party inadvertently fails to mark a confidential document as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," that Producing Party may: (1) notify counsel of record for every other Party in writing specifically identifying the material, and (2) provide a replacement copy of the document(s) marked "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

8. Testimony and information disclosed at a deposition of a Party or any other witness may be designated “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” during the deposition and within thirty (30) days following the depositions, any Party may designate any information disclosed during a deposition as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” For the thirty (30) days following any deposition the Parties must treat all of the deposition testimony and exhibits as “ATTORNEYS’ EYES ONLY.”

9. Any Party may contest the designation of any document, information or tangible things as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” by requesting in writing that the Producing Party change the designation. If the Parties are unable to reach an agreement on the designation of such challenged documents within five (5) calendar days, the Party challenging the designation may at any time thereafter seek an order to alter the status of the challenged designation.

10. Until any dispute under this paragraph is ruled upon by the presiding Judge, the designation will remain in full force and effect, and the documents, tangible things, testimony and information will continue to be accorded the confidential treatment required by this Protective Order.

11. Except as noted in this paragraph 11, any documents, tangible things, testimony or other information designated as “CONFIDENTIAL” shall be used solely for the purposes of this lawsuit and shall not be disclosed or made available to any person(s) other than those persons specified herein. Persons who may have access to

documents or other information designated as “CONFIDENTIAL” shall include only the following persons:

- a. The Parties, and the Producing Party, if other than Plaintiff or Defendants;
- b. Counsel of record for the Parties, and counsel for the Producing Party, if other than Plaintiff or Defendants;
- c. Consultants or experts retained in connection with this lawsuit provided that such consultant or expert shall acknowledge and accept the terms of this Protective/Confidentiality Order by first signing the attached Exhibits “A” and “B”;
- d. Court personnel, but only through sealed filings; and
- e. Court reporters and videographers who first acknowledge and accept the terms of this Protective/Confidentiality Order by signing the attached Exhibit “A” and “B.”

12. Any documents, testimony, information or tangible things designated as “ATTORNEYS’ EYES ONLY” shall be used solely for the purpose of this lawsuit and shall not be disclosed or made available to any person(s) other than those persons specified in this paragraph. Persons who may have access to documents or other information designated as “ATTORNEYS’ EYES ONLY” shall include only the following persons:

- a. Currently named Counsel of record for Plaintiff, Counsel for Defendants and the Producing Party; and
- b. Employees of the Parties’ counsel referenced above.

13. If a Party wishes to use documents designated as “CONFIDENTIAL” in any affidavit, brief, memorandum of law, deposition transcript, or other paper filed with

this Court in this lawsuit, or as an exhibit to such paper, then such Party must file any document that contains such information under seal. The Clerk of this Court shall maintain the paper under seal pending further order from this Court.

14. If a Party is required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to produce documents or information that have been designated “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” such Party will provide written notice immediately to every other Party, and the Producing Party in order to allow time to object to such production and otherwise seek protection.

15. This Protective/Confidentiality Order shall not be deemed a waiver of (i) any right to object to any discovery requests on any grounds; (ii) any right to seek an order compelling discovery with respect to any discovery request; (iii) any right at any proceeding in this lawsuit to object to the admission of evidence on any ground; (iv) any right of a Party to use its own documents and translate them with complete discretion and/or (v) the right to seek a modification of this Protective/Confidential Order.

16. Designation of a document or other information as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” is not evidence that the document, other information or tangible thing is in fact confidential. A party’s failure to object to another Party’s designation of any document or other information as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” shall not be evidence or an admission that the designated document, tangible things or information is in fact confidential.

17. Within thirty (30) days after the conclusion of this lawsuit including all appeals, the Parties as well as anyone who has executed Exhibits “A” and “B” are hereby Ordered to return to the Producing Party all testimony, including deposition transcripts, and all other documents or information that was produced to them and designated “CONFIDENTIAL” and all copies thereof. It will be a direct violation of this Order if anyone retains any Confidential Discovery or any portion thereof after this thirty (30) day period.

18. Persons or entities receiving any documents, tangible things or information shall be subject to this Court’s jurisdiction and before being provided such documents, things, testimony or information, all persons who are referenced in paragraph 11(c) and (e) must first sign both Exhibit “A” and Exhibit “B” to this Order. All such signed Exhibits “A” and “B” shall be immediately served on all Defendants’ and Plaintiff’s counsel.

SIGNED this _____ day of _____ 2018.

PRESIDING JUDGE

AGREED IN ACCORDANCE WITH TEXAS RULE OF CIVIL PROCEDURE 11:

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ATTORNEYS FOR PLAINTIFF

EXHIBIT "A"

I _____ have read the attached Protective/Confidentiality Order (hereinafter "Protective/Confidentiality Order") entered by the Judge in Cause No. D-1-GN-18-001835 pending in 261st District Court, Travis County, Texas) hereinafter the "Lawsuit"). I agree to all the terms and conditions in the Protective/Confidentiality Order.

I agree that any dispute regarding my alleged violation of the Protective/Confidentiality Order shall be exclusively resolved by the 261st District Court, Travis County, Texas.

I agree to sole and exclusive jurisdiction and venue in the 261st District Court, Travis County, Texas for resolution of any alleged violation of the Protective/Confidentiality Order and /or regarding any of my actions or inactions that are in dispute. I understand the serious nature and important privacy rights of the confidential information that I will receive by virtue of me signing this Affidavit.

Affiant's Signature: _____

Affiant's Printed Name: _____

STATE OF _____

COUNTY OF _____

Before me, a Notary Public, on this date personally appeared _____ known to be the person whose name is subscribed above on the foregoing instrument and upon his/her oath deposed and stated to me that he/she executed the same on behalf of himself/herself for the purpose of consideration therein expressed.

Given my hand and seal of office this _____ day of _____, 20____.

Notary Public in and for the State of _____

My Commission Expires: _____

EXHIBIT “B”

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 st JUDICIAL DISTRICT

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, declare and state under penalty of perjury that:

1. I have received a copy of the Protective/Confidentiality Order in this lawsuit, which Order was entered on _____, 2018, and which copy is attached to this document. I have been provided with a copy of this document.
2. I have carefully read and understand all of the provisions of the Protective/Confidentiality Order.
3. I will comply with all of the provisions of the Protective/Confidentiality Order.
4. I will hold in confidence, will not disclose to anyone not qualified under the Protective/Confidentiality Order, and will use only for the purposes of this lawsuit, any material designated “CONFIDENTIAL” (hereafter “Confidential Material”) as defined in the Protective/Confidentiality Order, that is supplied to me.
5. I will return each item of Confidential Material to the attorney who provided such document or tangible thing to me on the attorney’s request. Moreover, I will deliver any copies, abstracts, summaries, notes or other records regarding the

contents of any Confidential Material to the attorney who provided such Confidential Material to me on the attorney's request. I will not thereafter retain any Confidential Material or any portion or excerpts thereof.

6. I understand that if I violate the provisions of the Protective/Confidentiality Order, I will be in violation of a Court Order and subject to sanctions, contempt or other remedies that may be imposed by the Court and potentially liable in a civil lawsuit for damages.

7. I hereby submit to the jurisdiction of the 261st Judicial District of Travis County, Texas for the purposes of enforcement of the Protective/Confidentiality Order.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: _____

Signature

Title or Position

Attachment: Copy of the Signed
Protective/Confidentiality Order