

CAUSE NO. D-1-GN-18-001842

LEONARD POZNER AND VERONIQUE
DE LA ROSA
Plaintiffs

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IN DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th DISTRICT COURT

VS.

ALEX E. JONES, INFOWARS, LLC, AND
FREE SPEECH SYSTEMS, LLC,
Defendants

**PLAINTIFFS' OBJECTION TO AFFIDAVIT AND SUPPLEMENTAL AFFIDAVITS IN
SUPPORT OF DEFENDANTS' MOTION TO DISMISS UNDER THE TEXAS CITIZENS
PARTICIPATION ACT**

Plaintiffs hereby object to various affidavits filed in connection with Defendants' TCPA motion. First, Plaintiffs object to the documents attached to the affidavit and supplemental affidavits of David Jones. All of these documents are inadmissible hearsay. Second, Plaintiffs object to the supplemental affidavits of David Jones and Alex Jones, as they are untimely.

I.

David Jones is Alex Jones' father and the director of human resources as InfoWars. Mr. Jones submitted an affidavit and two supplemental affidavits in which he attached a variety of materials he found on the internet. He stated in his affidavits that he "downloaded these articles and videos and/or printed them directly from the internet websites."

II.

The articles to attached to David Jones' affidavits are unauthenticated hearsay containing facts beyond the personal knowledge of the affiant. David Jones has not shown

that he is an expert who relies on this type of hearsay in reaching conclusions. *See Wood v. State*, 299 S.W.3d 200, 212 (Tex. App.—Austin 2009, pet. ref'd) (“An expert may base an opinion solely on inadmissible hearsay.”). Nor has InfoWars shown that any exception to the hearsay rule applies.

III.

Virtually every document attached to David Jones’ affidavits have been offered to prove the truth of matters asserted within the article, matters that are not within the personal knowledge of David Jones. Defendants have extensively quoted from these articles in their briefing, urging the court to accept certain contentions in the hearsay documents as true. The exhibits are inadmissible for this purpose. Likewise, Defendants are not permitted to establish that any given event occurred simply based upon a hearsay report, and the documents are incompetent for this purpose as well. For these reasons, Plaintiffs object to the consideration of David Jones’ affidavit and supplemental affidavits based on the hearsay rule.

IV.

Finally, all of the supplemental affidavits submitted by Defendants are untimely and deeply prejudicial. A motion under the TCPA “must be filed not later than the 60th day after the date of service of the legal action.” *See* Tex. Civ. Prac. & Rem. Code 27.003. That sixty-day deadline has long since passed. Defendants have no basis to add substance to their motion after their deadline. Any other interpretation would render the deadline meaningless, as Defendants could simply file a boilerplate motion as a marker, only to supplement with evidence on the eve of the hearing. This would result in dismissal by ambush. For this reason, Plaintiffs object to the supplemental affidavits as untimely.

PRAYER

Plaintiffs pray that this Court strike the affidavit of David Jones, and strike the supplemental affidavits of David Jones and Alex Jones.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2018 the forgoing document was served upon the following in accordance to Rule 21 of the Texas Rules of Civil Procedure:

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