8/23/2018 7:11 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-18-001835
Terri Juarez

NO. D-1-GN-18-001835

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

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SANCTIONS AND MOTION FOR EXPEDITED DISCOVERY

Defendants file this response to Plaintiff's Motion for Sanctions and his Motion for Expedited Discovery.

I. SUMMARY

Plaintiff's Motion for Sanctions and counsels' arguments are simply disingenuous considering that he and his client have sought and continue to seek the removal of Defendants' content from social media and other platforms, through numerous public statements and appearances in the media, appeals to Twitter, YouTube, Facebook and numerous other social media platforms and now the court system. Now after four twitter posts have been removed but preserved by Defendants, and after the two videos Plaintiff claims in this case were defamatory were removed by YouTube at Plaintiff's insistence, Plaintiff's counsel seeks a spoliation ruling and punitive sanctions.

First, Plaintiff's counsel has alleged four Twitter tweets that have been public for years and two videos already given to them have been destroyed by Defendants. Plaintiff's counsel is misinformed:

1. Defendants have not destroyed any relevant evidence. Defendants have preserved all relevant evidence of Defendants' publications.
2. Any comments of unknown internet users that were attached to the tweets:
    a. are not relevant evidence to Plaintiff's claims,
    b. were preserved to the best of Defendants' ability and although 17 comments in total appear to have not been recoverable because the commenter deleted the comment, the commenter's account was deleted, Twitter deleted the commenter's account or comment, or because the comment was lost from Defendants' cache, they were not intentionally deleted by Defendants and the vast majority of the comments were maintained,[1]
    c. were never requested by Plaintiff from either Defendants or Twitter,
    d. were accessible to Plaintiff and his lawyers for years at any time before August 10, 2018,

Plaintiff's motion for sanctions should be denied.

[1] The comments that were not able to be maintained were either previously deleted by the Twitter commenter or the commenter's account was deleted, which Defendants have no control over and could have been done years ago, or inadvertently lost on Defendants' cache. See attached Exhibit "C" paragraph 6. Defendants' intended only to remove the tweets from public access because of the imminent possibility, if found to be in violation of Twitter policies, of being banned completely by Twitter. See attached Exhibit "C" paragraph 5. This would have resulted in losing all posts and information permanently. See attached Exhibit "C" paragraph 5. There was absolutely no intent to destroy or hide any evidence at all and Defendants attempted to maintain as much information as possible. See attached Exhibit "C" paragraphs 6 and 11.

Second, Plaintiff's motion for TCPA pre-hearing discovery should be denied because Plaintiff has not asserted good cause as the only asserted basis to do the discovery, his motion for spoliation sanctions, is unfounded. Further, the broad and extensive discovery sought is not permitted by the statute and would defeat the purpose behind the statute, which is designed to be an efficient and cost effective safeguard of constitutional rights.

Third, Plaintiff's lawyers have breached their Rule 13 and Chapter 10 duties to make reasonable inquiry before filing their motion for sanctions and filing those sanctions for improper purposes. The Court should consider imposing appropriate sanctions upon Plaintiff's lawyers for their failure to make reasonable inquiry and filing the sanctions motion for improper purposes. As fully described in the Defendants' motions to dismiss in the Pozner and Heslin cases, Plaintiffs in both cases and their common counsel have sought and obtained wide-spread publicity in their extra-judicial attempts to silence Jones and those who agree with him on various political issues.[2] Just as with their national media appearances and letters to editors[3] designed in part to shame public use platforms such as Google, YouTube, Facebook, and Twitter into removing all of Jones' content, counsel filed their baseless motion for sanctions to stir additional negative publicity about Defendants.

II. TEST FOR SPOLIATION

To establish spoliation, Plaintiff must show: (1) Defendants had a duty to preserve the particular relevant evidence, (2) Defendants wrongfully did not preserve the relevant evidence,

[2] Mr. Bankston's letter dated May 25, 2018 makes his intentions clear when he states that they "plan to make available to the general public and media copies of all correspondence and pleading which arise in this lawsuit, including this letter." See attached Exhibit "A".
[3] See New York Times article attached as Exhibit "B".

and (3) Defendants' conduct prejudiced Plaintiff. *See Clark v. Randalls Food*, 317 S.W.3d 351,356 (Tex. App.-- Houston [1st Dist.] 2010, pet. denied).

III. DEFENDANTS HAVE COMMITTED NO SPOLIATION AND HAVE PRESERVED ALL RELEVANT EVIDENCE.

A. Plaintiff complains of four year-old tweets and two delivered videos.

Plaintiff complains that four tweets, one from 2012, two from 2014, and one from 2015, have been deleted from public viewing on Twitter. Plaintiff complains these four tweets were deleted this month after being up for public viewing and viewing and copying by him and his lawyers for years. Plaintiff complains this removal of tweets from public viewing is spoliation of relevant evidence. Plaintiff also complains that two videos have been deleted from public viewing on YouTube, and claims that this deletion from public viewing is spoliation.

B. Defendants have destroyed no relevant evidence but have preserved all relevant evidence.

Plaintiff is confused about how social media and computers work. Stopping publication by removing a page from a computer screen accessed by the public does not destroy the file on the computers providing the screen with the file in the first place.

The four tweets have not been destroyed and have been preserved by Defendants.[4] The two videos, one of June 25, 2017[5], and one of July 20, 2017 are actually in Plaintiff's own

[4] See attached Exhibit "C" paragraph 6.
[5] The video about which Plaintiff complains did not occur on June 26, but instead on June 25, 2017.

lawyers' possession and have been since Defendants delivered copies to Plaintiff's lawyers on July 13, 2018, as evidence in support of Defendants' TCPA motion.[6]

C. Defendants did not intentionally or negligently destroy any evidence.

"[A] party must intentionally spoliate evidence in order for a spoliation instruction to constitute an appropriate remedy." *Brookshire Bros., Ltd. v. Aldridge*, 438 S.W.3d 9, 23-24 (Tex. 2014). "By 'intentional' spoliation, often referenced as 'bad faith' or 'willful' spoliation, we mean that the party acted with the subjective purpose of concealing or destroying discoverable evidence." *Id.* at 24. "[A] trial court's finding of intentional spoliation . . . is a necessary predicate to the proper submission of a spoliation instruction to the jury." *Id.* at 25. Moreover, showing that the evidence in question was not destroyed with a fraudulent purpose or intent rebuts a spoliation claim. *Buckeye Ret. Co., L.L.C. v. Bank of Am., N.A.*, 239 S.W.3d 394, 401 (Tex. App.—Dallas 2007, no pet.)

Defendants removed from publication the four Twitter posts that were years old because of concerns that they may have been in violation of Twitter's new terms of service. This was a serious and immediate concern as Defendants had just had several of its accounts banned on numerous other social media platforms after mounting media pressure.[7] If Defendants did not remove such complained-about posts, and they would have likely been found to have violated Twitter policies, the entire account could have been permanently shut down resulting in serious injury to Defendants and the potential loss of all information related to Defendants account.[8]

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[6] See July 13, 2018 Motion at footnotes 172 and 304 as well as its Exhibit B, D. Jones Affidavit at paragraph 40 for video of June 25 broadcast and footnotes 79 and 80 as well as D. Jones Affidavit at paragraph 41 for video of July 20 broadcast.
[7] See attached Exhibit "C" paragraph 5.
[8] Id.

Twitter can potentially shut down the whole Twitter site for the user, non-violating posts as well as violating posts.[9] Moreover, Plaintiff admits in his motion that Mr. Jones was open about his removal of the old tweets and admits Mr. Jones expressly stated his reasoning for the tweets being removed. Defendants have openly and previously delivered copies of the two videos to Plaintiff's lawyers.[10] There is no evidence Defendants destroyed any tweets or videos at all, much less to conceal or destroy evidence.

D. Defendants used reasonable efforts to preserve all relevant evidence

A party must exercise reasonable care in preserving evidence, but does not have to go to extraordinary measures to preserve evidence. *Miner Dederick Constr., LLP v. Gulf Chem. & Metallurgical Corp.*, 403 S.W.3d 451,466-67 (Tex. App.--Houston [1st Dist.] 2013, pet. denied).

Defendants copied the four tweets before deleting them from publication in order to avoid being in violation of Twitter policies.[11] Despite the urgency and seriousness of the situation, Defendants diligently worked to preserve all posts and comments to the posts. Although 17 comments were inadvertently lost on Defendants' cache, the vast majority of the comments were able to be maintained.[12] Moreover, Defendants have openly delivered copies of the two videos to Plaintiff's lawyers, a fact that Plaintiff's lawyers failed to inform this Court of in Plaintiff's motion for sanctions and motion for discovery.[13] No other reasonable efforts are required.

E. Plaintiff and his lawyers have had open access to the Twitter pages for years

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[9] Id.
[10] See footnote 6.
[11] See attached Exhibit "C" paragraph 5.
[12] See attached Exhibit "C" paragraphs 6-10.
[13] See footnote 6.

and the videos were delivered to his lawyers – they are not prejudiced.

The Twitter posts that Plaintiff complains have been deleted were posted in 2012, 2014 and 2015.[14] Any Twitter user in the whole world has had access for years to those posts in their native settings and format and, for years, could copy those posts, and all the comments to those posts. Plaintiff offers no excuse of why he and his lawyers did not do so even though this suit was filed more than four months ago.

The complained of Twitter posts have been public since 2012 through 2015. Plaintiff filed his suit April 16, 2018, after the posts were available to all the world for up to six years. When Plaintiff filed this suit, he served only a request for disclosure and no request for production. Defendants answered June 18. Plaintiff has still not served a request for production or conducted any other discovery. Plaintiff has not been prejudiced in preparing his case by anything any Defendant did.

F. Plaintiff's witness's hearsay and conclusory complaints are no evidence of spoliation.

Plaintiff attaches a set of hearsay statements from a witness who writes she is an expert "in online research and the infrastructure of social media." The witness's hearsay statements do not show any spoliation of relevant evidence.

First, the witness's statements are hearsay.

Second, the witness complains that she checked a "variety of links" provided by a hearsay CNN article and she searched something called the "Internet Archive," and found the "original content" deleted from those two sources (she makes no assertion about other sources having the "content" or not), found the "primary content inaccessible" to her, and the "related

[14] See attached Exhibit "C" paragraphs 7-10.

discussion, commentary, or hyperlinks" inaccessible to her. She also says saved copies of a social media message leave the message somehow where "its meaning" may "often" be "inscrutable" to her. These statements are vague, ambiguous and conclusory without sufficient predicate or foundation to show the bases of her opinions.

Third, the witness does not have knowledge, personal or otherwise, or the bases thereof, of the content of the tweets or comments though she seems to complain that the comments of unknown persons on the Twitter pages that are not now published are somehow material and relevant to Plaintiff's defamation claim -- she complains that "related" "discussion" and "commentary" are "inaccessible" to her. Spoliation requires the claimed lost evidence must be not only in Defendants' possession or control, but that it must be material and relevant to the Plaintiff's claim. *Wal-Mart Stores v. Johnson*, 106 S.W.3d 718, 722 (Tex. 2003). Thus, even if Defendants had evidence of "related commentary," it is immaterial to spoliation -- what unknown persons on the web say is not relevant to Plaintiff's claims for defamation. The test is whether a defendant's published statement is defamatory in "an objectively reasonable reading," to a "the hypothetical reasonable reader," [*see Dallas Morning News, Inc. v. Tatum*, No. 16-0098, 2018 Tex. LEXIS 404, at *27 - 29 (May 11, 2018).], not whether the statement may be defamatory to some polling of people who give related discussion or commentary on Twitter posts, and not whether the unknown person's statement is defamatory.

Moreover, even a negligent act of destruction is spoliation allowing a presumption only if it "so prejudices the nonspoliating party that it is irreparably deprived of having any meaningful ability to present a claim or defense." *Brookshire Bros., Ltd. v. Aldridge*, 438 S.W.3d 9, 25-26

(Tex. 2014). Given the remote or lack of relevance of these "related" "commentaries," even if they are lost, there is no prejudice to Plaintiff.

In short, Plaintiff's witness tenders only her conclusions without evidentiary predicate, and she does not show the relevance of any evidence that is "inaccessible" to her, or that any relevant evidence was destroyed, or that Plaintiff is prejudiced by any of this. She further fails to describe the data on which she relies, she doesn't testify that experts such as she typically rely on these data and she references no credentials or methodology to her "testing" or conclusions thus both the data and her opinions are not reliable.

G. Plaintiff's lawyers seek to pull themselves up by their own boot straps to use a spoliation presumption to substitute for their failure to meet their evidentiary burden under TPCA.

As Defendants show above, the four Twitter posts have been public since 2012 through 2015. Plaintiff filed his suit April 16, 2018, after the posts were available to all the world for up to six years. When Plaintiff filed this suit, he served only a request for disclosure and no request for production. Defendants answered June 18. Plaintiff still served no request for production and still did no discovery. Defendants filed their motion to dismiss under the TCPA on July 13. The statute's automatic stay on discovery became effective that day.

Under the TCPA, on July 13, the burden shifted to Plaintiff to establish "by clear and specific evidence a prima facie case for each essential element of the claim in question" in order to avoid dismissal. TEX. CIV. PRAC. & REM. CODE §27.005(c). Plaintiff still sought no leave of the Court to do any discovery for good cause or otherwise. Only now, nine days away from the Court's hearing of Defendants' TCPA motion, does Plaintiff simultaneously file a motion for

sanctions about some evidence his lawyers and those supporting his efforts have had access to for years and other evidence expressly delivered to his lawyers weeks ago, and seeks to do discovery or make reasonable inquiry. This timing suggests that Plaintiff's lawyers' have ulterior motives here.

The very purpose of the TCPA is that it "protects citizens who... speak on matters of public concern from retaliatory lawsuits that seek to intimidate or silence them," and "professes an overarching purpose of 'safeguard[ing] the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government" against infringement by meritless lawsuits. . . ." *Cavin v. Abbott*, 2017 Tex. App. LEXIS 6511, *16 (Tex. App.--Austin, July 14, 2017). The TCPA further commands us that the statute is to be "construed liberally to effectuate its purpose and intent fully" and that we pursue "any such goals chiefly by defining a suspect class of legal proceedings that are deemed to implicate free expression, making these proceedings subject to threshold testing of potential merit, and compelling rapid dismissal -- with mandatory cost-shifting and sanctions -- for any found wanting." *Id.* Plaintiff seeks to do an end-around that legislative command and substitute an unfounded spoliation motion so that his motion can supply what he lacks -- "clear and specific evidence a prima facie case for each essential element of the claim in question" as required by the statute.

IV. PLAINTIFF'S MOTION FOR EXPEDITED DISCOVERY IS WITHOUT GOOD CAUSE.

Plaintiff seeks expedited discovery based on his lawyers' motion for sanctions. As Defendants have said, the very purpose of the TCPA is protect citizens from retaliatory lawsuits and the expense and delay of such suits, and subject those suit to threshold testing of potential merit, and compelling rapid dismissal -- with mandatory cost-shifting and sanctions -- for any

found wanting. *Cavin v. Abbott*, 2017 Tex. App. LEXIS 6511, *16 (Tex. App.--Austin, July 14, 2017). The TCPA expressly stays all discovery before a defendant's TCPA motion is heard to avoid the heavy burden of a defendant having to participate in pre-hearing discovery.

Plaintiff seeks to dodge that stay and impose that statutorily-barred burden. The statute expressly declares Plaintiff can do discovery only if Plaintiff shows "good cause." TEX. CIV. PRAC. & REM. CODE §27.006(b). But, wisely, "[g]ood cause must be based on more than mere conjecture; it must have a firm foundation." *Esparza v. State*, 31 S.W.3d 338, 340 (Tex. App.—San Antonio 2000, no pet.). As Defendants show above, Plaintiff's basis for his motion seeking the statute discouraged pre-TCPA hearing discovery does not have a firm foundation, but is unfounded, relying only on hearsay and factual conclusions, not evidence. Plaintiff's motion for expedited discovery should be denied.

V. SANCTIONS UNDER RULE 13 AND CHAPTER 10, TEX. CIV. PRAC. & REM. CODE

The material facts are: (1) the June 25 and July 20 videos have not been destroyed and were previously provided to Plaintiff's lawyers, and (2) the four tweets Plaintiff alleges were destroyed that referenced Sandy Hook have not been destroyed and copies of each tweet and relevant evidence were made and have been preserved by Defendants.

The facts establish that no relevant evidence has been destroyed and Plaintiff has not been prejudiced in the ability to present his case. Plaintiff's counsels' unsupported arguments, misstatements and omission of vital facts shows that this motion and Plaintiff's motion for expedited discovery have no basis in law or fact and were filed in bad faith and for an improper purpose. One of those purposes, in addition to delaying the TCPA hearing and substituting a

spoliation finding for otherwise absent evidence, is Plaintiff's counsel's desire for media coverage and publicity.[15]

The evidence and the Court's file show Plaintiff's lawyers filed this motion and the motion for expedited discovery and in both made statements that they knew or should have known were unfounded if they had made the reasonable inquiry as required of them under Rule 13 and should not have filed the motions for the improper purpose of delay, increasing costs and expenses to Defendants, and seeking to avoid their failure to meet their burden under the TCPA. Plaintiff relies heavily on the failure of Defendants' counsel to respond to his emails in the days preceding these motions, despite being fully aware that Defendants' counsel was on vacation.[16] Defendants therefore seek sanctions against Plaintiff's lawyers under Rule 13 and Section 10.004, TEX. CIV. PRAC. & REM. CODE, in a form and amount the Court may find just.

VI. RELIEF REQUESTED

Defendants request that upon hearing hereof, Plaintiff's Motion for Sanctions be denied, that Plaintiff's Motion for Expedited Discovery be denied, the Court award Defendants attorneys' fees against Plaintiff's lawyers for Defendants responding to this motion, and general relief.

---

[15] Mr. Bankston's letter dated May 25, 2018 makes his desire to create a media frenzy around himself and this case clear when he states that they "plan to make available to the general public and media copies of all correspondence and pleading which arise in this lawsuit, including this letter." See attached Exhibit "A".

[16] Plaintiff's counsel did not copy or otherwise send either of the emails on which he relies to Defendants counsel's legal assistant.

RESPECTFULLY SUBMITTED,

GLAST, PHILLIPS & MURRAY, P.C.

/s/ Mark Enoch

Mark C. Enoch
State Bar No. 06630360

14801 Quorum Drive, Suite 500
Dallas, Texas 75254-1449

Telephone: 972-419-8366
Facsimile: 972-419-8329
fly63rc@verizon.net

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 2018, the foregoing was sent via email and via Texas Online electronic service to the following:

Mark Bankston
Kaster Lynch Farrar & Ball
1010 Lamar, Suite 1600
Houston, TX 77002
713-221-8300
mark@fbtrial.com

/s/ Mark C. Enoch
Mark C. Enoch

KASTER LYNCH FARRAR & BALL LLP

TEXAS | FLORIDA

May 25, 2018

Via Facsimile: 512-472-5248

Mr. Eric Taube
Registered Agent for Free Speech Systems, LLC
Waller Lansden Dortch & Davis, LLP
100 Congress Ave., Ste. 1800
Austin, Texas 78701

Re: Cause No. D-1-GN-18-001842, *Leonard Pozner and Veronique De La Rosa vs. Alex E. Jones, et al.*, In the 345th District Court of Travis County, Texas.

Dear Mr. Taube,

I understand from discussions with my associate Mr. Ogden that you contacted my office today asking that my clients grant a favor to Mr. Jones and Infowars by allowing them an extension of time to file an answer to the lawsuit brought by the Pozners. It is my understanding that Mr. Jones has requested we grant him this favor because he has not yet been able to secure counsel to defend him against these claims.

Frankly, Mr. Jones' failure to secure legal representation is none of our concern. We expect Mr. Jones and Infowars to file a timely answer regardless of when he is able to locate an attorney willing to defend him. Additionally, in light of the years of torment Mr. Jones has inflicted on my clients, and in light of his continuing slander against my clients and our law firm, we have absolutely no inclination to do any favors for Mr. Jones. Indeed, during Mr. Jones' unhinged rant broadcast yesterday on Infowars, Mr. Jones referred to the members of my law firm as "devil-people." His request for an extension is therefore denied.

Furthermore, Mr. Jones needs to understand that the only focus of our law firm is to safeguard the interests and well-being of our clients. We will never take any action in this suit which provides Mr. Jones any benefit at their detriment. As such, there will be no favors or extensions in this case. This case will proceed according to the Texas Rules of Civil Procedure, and we expect Mr. Jones to comply with the commands of the law.

Finally, I would like to note that for the record that our law firm is committed to transparency through the pendency of these lawsuits. For that reason, we plan to make available to the general public and media copies of all correspondence and pleadings which arise in this lawsuit, including this letter.

Sincerely,

Mark D. Bankston
Kaster Lynch Farrar & Ball

1010 Lamar St. | Suite 1600 | Houston, Texas 77002 | p 713.221.8300 | 800.311.1747 | f 713.221.8301

The New York Times

Alex Jones of Infowars Destroyed Evidence Related to Sandy Hook Suits, Motion Says

By Elizabeth Williamson

Aug. 17, 2018

WASHINGTON — Lawyers for the families of two Sandy Hook shooting victims are accusing the conspiracy theorist Alex Jones and his Infowars media business of intentionally destroying evidence relevant to the defamation cases against him, according to a motion filed on Friday in a Texas court.

Mr. Jones is being sued by the families of nine Sandy Hook victims for spreading false claims that the 2012 shooting at the elementary school in Newtown, Conn., that killed 20 first graders and six adults was a government-backed hoax, and that the families of the dead were actors.

Mr. Jones said on his broadcast last week that he had told his staff to delete material after CNN cited Infowars content that violated Twitter's policies, according to the motion filed on Friday.

[Read a copy of the motion.]

Mr. Jones has been protesting an unprecedented effort this month by Apple, Facebook, YouTube and other services to remove Infowars content from their platforms for violating policies on hate speech, child endangerment and inciting violence.

At least some of the deleted content was considered evidence in the Sandy Hook cases, and Mr. Jones had been informed in writing in April that he was obligated by law to preserve all relevant material, according to the court filing in District Court in Travis County in Austin.

"As pressure mounted from pending defamation lawsuits and growing public indignation, Mr. Jones chose to destroy evidence of his actual malice and defamatory conduct," the motion filed on Friday said. "Infowars deleted critical evidence at the precise moment plaintiff and his experts were attempting to marshal that evidence."

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The suit said that it was not known how much content had been deleted, but that it included written social media materials and videos. The motion was filed on behalf of Neil Heslin, father of Jesse Lewis, a 6-year-old killed at Sandy Hook, by Mark Bankston, Kyle Farrar and William Ogden of Farrar & Ball in Houston.

Over the five years since the shooting, families of the Sandy Hook victims have been stalked, threatened and subjected to online abuse by Mr. Jones's followers, after he spread false claims about the mass shooting, calling it "synthetic, completely fake with actors, in my view, manufactured," according to court documents.

Friday's allegations come amid difficult times for Mr. Jones and Infowars, which has become symbolic of a national conversation about online standards in a so-called post-truth era, in which false information spreads online to millions in minutes.

Mr. Jones peddles diet supplements, survivalist gear and gun-related paraphernalia on radio broadcasts and videos that spread outlandish claims like the government is trying to infringe on Americans' rights, destroy their health or control their minds.

On Tuesday, Twitter suspended Mr. Jones for a week after he posted a link to a video calling for supporters to get their "battle rifles" ready for a fight against the press and others, violating the company's rules against inciting violence.

Also this week, the Federal Communications Commission shut down a pirate radio station that served as Infowars' flagship outlet, and which has operated without a federal license since at least 2013, The Austin American-Statesman reported.

Friday's motion is the latest legal salvo in three separate defamation lawsuits filed by Sandy Hook families, which seek tens of millions of dollars in damages and pose an existential threat to Mr. Jones's business. Should the court find that Mr. Jones and Infowars willfully destroyed evidence, he, and possibly his lawyer, could be assessed thousands of dollars in fines and be subject to punitive action. Most important, the material that was destroyed could be presumed by the court as supporting Mr. Heslin's claims against Mr. Jones, bolstering his case.

Besides the two cases in Texas, the families of seven more Sandy Hook victims and an emergency medical worker subjected to harassment filed a separate defamation suit against Mr. Jones and his associates in May in Connecticut. The families in the larger case are represented by Koskoff, Koskoff & Bieder, a Bridgeport, Conn., firm that also represents Sandy Hook families in a lawsuit against Remington, the maker of the AR-15-style weapon used in the shooting.

The first court appearance in the Sandy Hook lawsuits was in Texas this month, when the court heard arguments in Mr. Jones's motion to dismiss the defamation case brought by Leonard Pozner and Veronique De La Rosa, the parents of Noah Pozner, a 6-year-old killed at Sandy Hook. A decision is expected early next month. A hearing is scheduled for Aug. 30 in Mr. Jones's motion to dismiss the second Texas case, brought by Mr. Heslin.

A ruling on Friday's motion alleging destruction of evidence is expected before the Aug. 30 hearing.

In a recent interview, Mr. Jones said he had previously considered removing Sandy Hook-related material from Infowars' archives. Turning to Rob Dew, another Infowars personality, Mr. Jones asked him, "How many years ago did I say, 'Take all the Sandy Hook videos down because I was tired of them'" — meaning his critics — "'editing them out of context'?"

"We had a big serious meeting about that, actually," Mr. Dew replied. "But then I think in the end we made the decision to leave the stuff up there, because then we could go back and use it as our defense later and say, 'Look, this is what we really said.'"

A version of this article appears in print on Aug. 17, 2018, on Page A16 of the New York edition with the headline: Conspiracy Theorist Faces Claim of Destroying Evidence

NO. D-1-GN-18-001835

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

AFFIDAVIT OF ROB DEW

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary public, on this day personally appeared Rob Dew, known to me to be the person whose name is subscribed below, and who on his oath, deposed and stated as follows:

1. My name is Rob Dew. I am over the age of 21 years, have never been convicted of a felony or crime involving moral turpitude, am of sound mind, and am fully competent to make this affidavit. I am directly in charge and oversee all news media and social media for Defendants. I have personal knowledge of the facts herein stated and they are true and correct.

2. The June 25, 2017[1] broadcast about which Plaintiff complains was not deleted from YouTube or destroyed by any of the Defendants. Defendants have preserved this video. In fact, this video was provided to Plaintiff as attachment B-36 to Defendants' Motion to Dismiss Under the Texas Citizens Participation Act.

1 The video about which Plaintiff complains did not occur on June 26, but instead on June 25, 2017.

3. The July 20, 2017 broadcast about which Plaintiff complains was not deleted from YouTube or destroyed by any of the Defendants. Defendants have preserved this video. In fact, this video was provided to Plaintiff as attachment B-37 to Defendants' Motion to Dismiss Under the Texas Citizens Participation Act.

4. The four tweets referenced in the August 9, 2018 CNN article cited in Plaintiff's Motion for Sanctions for Intentional Destruction of Evidence and were dated December 19, 2012, September 24, 2014, December 2, 2014, and July 7, 2015.

5. Those tweets were removed out of an immediate and serious concern they may have violated Twitter's terms of service as argued in the article. I believed this was a valid concern and important given that several social media accounts had just recently been banned on Aug. 6. I believe that it was highly likely that after the CNN article cited by Plaintiff was published, Twitter, like many others such as YouTube, Facebook and Apple, would succumb to the public pressure and ban the twitter account permanently. I believed that this would have resulted in the permanent loss by Defendants of access to every post ever made under the account.

6. Defendant did not intend to destroy any evidence nor did it destroy any evidence regarding these tweets. Defendants have preserved copies of each of the 4 tweets. They also attempted to preserve copies of each of the comments posted on each tweet and were able to preserve the vast majority of them. However, despite these efforts 17 comments were not able to be retrieved, because they were either deleted by the users who made the comments or those users accounts have been deleted or removed by Twitter, which are the most likely causes and something that Defendants have no control

over and could have happened at any time since the posting, or were inadvertently lost from Defendant's cache.

7. The tweet posted December 19, 2012 had only 23 comments since it was posted in 2012. Defendants were able to preserve 18 of those 23 comments.

8. The tweet posted September 24, 2014 had only 18 comments since it was posted in 2014. Defendants were able to preserve 16 of those 18 comments.

9. The tweet posted December 2, 2014 had on 5 comments since it was posted in 2014. Defendants were able to preserve 3 of those 5 comments.

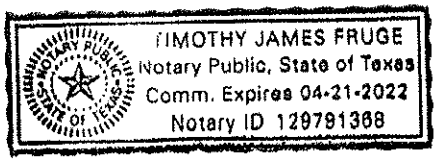
10. The tweet posted July 7, 2015 had only 8 comments since it was posted in 2015. All of the 8 comments to this tweet were unfortunately lost.

11. The loss of these few comments was completely unintentional and Defendants in no way intended to destroy evidence.

12. The four tweets removed from the twitter account regarding Sandy Hook do not mention or reference Plaintiff or his son in any manner.

Further Affiant Sayeth Not.

SWORN TO and SUBSCRIBED before me by Rob Dew on August 23, 2018.



Notary Public in and for
the State of Texas

My Commission Expires:

4-21-2022