

NO. D-1-GN-18-1605

MARCEL FONTAINE,  
*Plaintiff,*

V.

ALEX E. JONES, INFOWARS, LLC,  
FREE SPEECH SYSTEMS, LLC and  
KIT DANIELS,  
*Defendants.*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, T E X A S

459th JUDICIAL DISTRICT

**DEFENDANTS’ OBJECTION TO PLAINTIFF’S AUGUST 2, 2018 NOTICE OF FILING  
SUPPLEMENTAL EXHIBIT AND AFFIDAVIT OF MARCUS TURNINI**

Defendants Alex Jones (“Jones”), Infowars, LLC (“InfoWars”), Free Speech Systems, LLC (“Free Speech”) and Kit Daniels (“Daniels”) (collectively, the “Defendants”), hereby file this Objection to Plaintiff’s August 2, 2018 Notice of Filing Supplemental Exhibit, and Affidavit of Marcus Turnini and show the Court the following in support:

1. On August 2, 2018, immediately before the Court’s hearing on the Defendants’ Motion to Dismiss brought under Section 27.001 *et. seq.* of the Texas Civil Practice & Remedies Code (the “TCPA”), Plaintiff filed its first Notice of Filing Supplemental Exhibit. In so doing, Plaintiff has attempted to submit as a Supplemental Exhibit E an affidavit from his law firm’s paralegal, purporting to identify an “archived” version of the web address <https://www.infowars.com/terms-of-service>.

2. The paralegal Mr. Marcus Turnini does not claim to be an expert nor otherwise explain the operation by which the Plaintiff has established by “clear and specific” evidence that the content attached to his affidavit is the same as that which existed at any point in the past other than August 1, 2018, the date he allegedly visited the website.

3. Nevertheless, even were Mr. Turnini qualified to opine that the documents attached to his Affidavit show a true and correct copy of the contents of a separate website at some specific date in the past, the supposed versions of “terms of service” are not “clear and specific” evidence that the publication of the Challenged Image by Mr. Daniels on the website Infowars.com (which is indisputably owned and operated by Free Speech Systems, LLC) may be ascribed to either Defendant Alex Jones or Defendant Infowars, LLC.

4. For example, the definition of the term “Website” in the Terms of Service attached to the affidavit (pgs. 5 of 25 and 4 of 21 of the service terms) specifically refer to a different website other than [www.infowars.com](http://www.infowars.com). They refer to “planet.infowars.com,” which is not an operational web address. In addition, a banner appears when launching the [www.infowars.com](http://www.infowars.com) website with a link to a “Privacy Policy.” That “Privacy Policy” expressly states that the “data controller” for the infowars.com site is Free Speech Systems LLC. A copy of the Privacy Policy is attached hereto as **Exhibit 1** (and the Court can take judicial notice of the same). Lastly, the Texas Secretary of State records show that [www.infowars.com](http://www.infowars.com) is an assumed name of Free Speech Systems, LLC. Attached as **Exhibit 2** is a hard copy print out from the Texas Secretary of State website confirming this assumed name (and the Court can take judicial notice of the same).

5. As such, despite the Plaintiff’s eleventh hour filing, there is still no “clear and specific” evidence that defendants Infowars LLC or Alex Jones, individually, published the Challenged Image or engaged in any other alleged wrongdoing in connection with Plaintiff’s legal actions.

Respectfully submitted,

**WALLER LANSDEN DORTCH & DAVIS, LLP**

100 Congress Avenue, Suite 1800

Austin, Texas 78701

Telephone: (512) 685-6400

Telecopier: (512) 685-6417

By: /s/ Eric J. Taube

Eric J. Taube

Texas State Bar No. 19679350

[eric.taube@wallerlaw.com](mailto:eric.taube@wallerlaw.com)

Kevin W. Brown

Texas State Bar No. 24045222

[kevin.brown@wallerlaw.com](mailto:kevin.brown@wallerlaw.com)

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the parties listed below via email and the Court's e-filing system on August 7, 2018:

Mark Bankston

[mark@fbtrial.com](mailto:mark@fbtrial.com)

Kaster, Lynch, Farrar & Ball, LLP

1010 Lamar, Suite 1600

Houston, Texas 77002

/s/ Eric J. Taube

Eric J. Taube

# **EXHIBIT 1**

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**Infowars.com – EU Privacy Notice**

Effective date: May 25, 2018

**Introduction:**

The data controller for Infowars.com (the “Site”) is Free Speech Systems LLC (“Free Speech Systems”, “we”, “us”, “our”). We are committed to fulfilling our responsibilities under the European Union’s General Data Protection Regulation (“GDPR”) in relation to the collection, retention, use, and other processing of personal data that is obtained when EU data subjects visit and interact with the Site. This Privacy Notice sets forth how we process EU personal data in our role as a data controller (i.e., when we are responsible for determining the purpose and means of the processing).

This Privacy Notice covers:

- Personal Data We Collect
- How and Why We Use Your Personal Data
- How We May Share Your Personal Data
- How We Protect Your Personal Data
- How Long We Retain Your Personal Data
- How We Use Cookies and Other Similar Technologies
- How We Transfer Your Personal Data
- Your Rights and Choices
- How to Contact Us

**Personal Data We Collect**

Free Speech Systems may collect and process the following information when you visit the Site.

- **Contact data.** You may provide us with your contact details, such as name, email address, physical address, phone number, email address, or other similar information, which we may use to respond to you or for administrative purposes.

- **Log data.** As with most websites and technology services delivered over the Internet, our servers automatically collect information when you access or use our Site and record that data in log files. This log data may include your Internet Protocol (IP) address, the address of the web page visited before using the Site, browser type and settings, the date and time the Site was used, information about browser configuration and plugins, language preferences, and cookie data.
- **Device Information.** Free Speech Systems may obtain information about devices that access the Site, including the type of device, its operating system, device settings, unique device identifiers, and crash data.
- **Authentication Data.** To verify the identity of registered users on the Site we may collect a user name, password, password hint(s), and other similar authentication information.
- **Other Information You Provide.** This includes emails and other communications that you send us or otherwise contribute, such as customer support inquiries and reviews. If you purchase a product, this will include information that is necessary to complete your purchase such as your credit card information. Please be aware that information you post on public parts of our website may be visible to anyone.

Note that our Site is dynamic. We may introduce new features, which may involve new or different personal data processing activities. If we make a material change to how we process your personal data, we will notify you and may also modify this Privacy Notice.

**How and Why We Use Your Personal Data**

We may use the personal data we obtain to:

- Communicate with you
- Provide you with customized services
- Ensure the security and integrity of our Site
- Maintain and promote the Site
- Analyze and learn about how the Site is accessed and used
- Manage our customer and partner relationships
- Enforce our legal terms and policies
- Protect our and others' interests, rights, and property
- Comply with applicable legal requirements.

We process your personal data pursuant to the following legal bases:

- You have consented to the use of your personal data. When you consent, you can change your mind at any time.
- The processing is necessary for us to provide you with the services and products you request, or to respond to your inquiries.
- We have a legal obligation to process your personal data, such as to comply with applicable tax and other government regulations or to comply with a court order or binding law enforcement request.
- To protect your vital interests, or those of others.
- We have a legitimate interest in using your personal data. In particular, we have a legitimate interest in the following cases:
  - To analyze and improve the safety and security of our Site. This includes implementing and enhancing security measures and protections and protecting against fraud, spam, and abuse.
  - To maintain and improve the Site.
  - To operate the Site and provide you with certain tailored advertising and communications to develop and promote our business.
  - To anonymize personal data and subsequently use the anonymized information.

#### **How We May Share Your Personal Data**

We may share your personal data:

- With our affiliates or business partners when it is reasonably necessary or desirable, such as to help provide services to you or analyze and improve the Site.
- With our service providers that perform services on our behalf. For example, we may use third parties to help us provide customer support, ship your order, provide loyalty rewards, authorize and process your payments, manage our advertisements on other websites, send marketing and other communications on our behalf, or assist with data storage.
- In order to follow the law or protect rights and interests. For example, we may disclose your personal data if we determine that such disclosure is reasonably necessary to comply with the law, protect our or others' rights, property or interests (such as enforcing our Terms of Use), or prevent fraud or abuse. In particular, we may disclose your personal data in response to lawful requests by public authorities, such as to meet national security or law enforcement requirements.
- If we are involved in a reorganization, merger, acquisition, or sale of some or all of our assets.



**How We Protect Your Personal Data**

We maintain appropriate technical and organizational safeguards designed to help protect personal data from unauthorized disclosure or access and accidental or unlawful destruction, loss, or alteration. Although we use reasonable efforts to safeguard personal data, we cannot guarantee the security of your information obtained through the Site.

**How Long We Retain Your Personal Data**

We will store your personal data for no longer than is necessary for the performance of our obligations or to achieve the purposes for which the information was collected, or as may be permitted under applicable law. To determine the appropriate retention period, we will consider the amount, nature, and sensitivity of the data; the potential risk of harm from unauthorized use or disclosure of the data; the purposes for which we process the data and whether we can achieve those purposes through other means; and the applicable legal requirements. Unless otherwise required by applicable law, at the end of the retention period we will remove personal data from our systems and records or take appropriate steps to properly anonymize it.

**How We Use Cookies and Other Similar Technologies**

To improve our Site, Free Speech Systems may use the following "cookies" to track your visit:

<u>Provider</u>	<u>Purpose</u>
Quantcast	To tracking and log user actions for advertising purposes.
DoubleClick	To tracking and log user actions for advertising purposes and managing ad operations.
AppNexus	To tracking and log user actions for advertising purposes.
Yahoo DOT Tag	To communicate website events and track performance of advertisements
Facebook Impressions	To measure effectiveness of advertising.
Disqus	To enable comment and discussion features on our website.
Typekit by Adobe	To enable certain website features.
Google Analytics	To measure effectiveness of advertising and users' interaction with content.
Yahoo Analytics	To measure effectiveness of advertising and users' interaction with content.
Alexa Metrics	To measure effectiveness of advertising and users' interaction with content.
New Relic	Site analytics.
Quantcount	To tracking and log user actions for advertising purposes.
Facebook Connect	To enable functionality with social media features.
RevContent	To tracking and log user actions for advertising purposes.
Google Publisher Tags	To tracking and log user actions for advertising purposes and managing ad operations.
Pinterest	To enable functionality with social media features.
Facebook Social Graph	To enable functionality with social media features.
Twitter Syndication	To enable functionality with social media features.
Addshoppers	To enable functionality with social media features.
Google Adwords Conversion	To measure effectiveness of advertising.
Facebook Custom Audience	To tracking and log user actions for advertising purposes.

Google Tag Manager	To manage cookies and tags on our website.
Twitter Button	To enable functionality with social media features.

**Personal Data Transfers**

If we transfer your personal data out of the European Economic Area (“EEA”) to countries not deemed by the European Commission to provide an adequate level of personal data protection, the transfer will be based on one of the following safeguards recognized by the European Commission as providing adequate protection for personal data, where required by EU data protection legislation:

- Contracts approved by the European Commission which impose data protection obligations on the parties to the transfer.
- The EU - U.S. Privacy Shield Framework (for transfers to third parties in the United States that have self-certified to the Framework).

Please contact us if you want further information on the specific mechanism we have used to transfer your personal data.

**Your Rights and Choices**

The GDPR provides EU data subjects with certain rights regarding their personal data. Subject to certain conditions, you may ask Free Speech Systems to take the following actions in relation to your personal data that we hold:

- Provide you with information about our processing of your personal data and give you access to your personal data.
- Update or correct inaccuracies in your personal data.
- Delete your personal data.
- Transfer a machine-readable copy of your personal data to you or a third party of your choice.
- Restrict the processing of your personal data.
- Object to our processing of your personal data for direct marketing purposes.
- Object to reliance on our legitimate interests as the basis for processing of your personal data.

You can submit these requests by email to [dpo@freespeechsystems.com](mailto:dpo@freespeechsystems.com) or our postal address provided below. We may request specific information from you to help us confirm your identity prior to processing your request. Applicable law may require or permit us to decline your request. If we decline your request, we will tell you why, subject to legal restrictions. If you would like to submit a complaint about our use of your personal data or our response to your requests regarding your personal data, you may contact us at [dpo@freespeechsystems.com](mailto:dpo@freespeechsystems.com) or submit a complaint to the data protection regulator in your jurisdiction. You can find information about your data protection regulator here.

**How to Contact Us**

Free Speech Systems can be contacted via e-mail sent to [dpo@freespeechsystems.com](mailto:dpo@freespeechsystems.com) or at the following address:

Free Speech Systems LLC

ATTN: PRIVACY INQUIRY

3005 S Lamar Blvd.

Austin, TX 78704

United States of America



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# **EXHIBIT 2**

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## BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

<b>Filing Number:</b>	800898797	<b>Entity Type:</b>	Domestic Limited Liability Company (LLC)
<b>Original Date of Filing:</b>	November 16, 2007	<b>Entity Status:</b>	In existence
<b>Formation Date:</b>	N/A	<b>FEIN:</b>	
<b>Tax ID:</b>	32034156953		
<b>Duration:</b>	Perpetual		
<b>Name:</b>	Free Speech Systems, LLC		
<b>Address:</b>	3005 S LAMAR BLVD STE D109-317 AUSTIN, TX 78704-8864 USA		

<a href="#">REGISTERED AGENT</a>	<a href="#">FILING HISTORY</a>	<a href="#">NAMES</a>	<a href="#">MANAGEMENT</a>	<a href="#">ASSUMED NAMES</a>	<a href="#">ASSOCIATED ENTITIES</a>																		
				<table border="1"> <thead> <tr> <th>Assumed Name</th> <th>Date of Filing</th> <th>Expiration Date</th> <th>Inactive Date</th> <th>Name Status</th> <th>Counties</th> </tr> </thead> <tbody> <tr> <td>www.PrisonPlanet.TV</td> <td>November 2, 2009</td> <td>November 2, 2019</td> <td></td> <td>Active</td> <td>All Counties</td> </tr> <tr> <td>www.infowars.com</td> <td>November 2, 2009</td> <td>November 2, 2019</td> <td></td> <td>Active</td> <td>All Counties</td> </tr> </tbody> </table>	Assumed Name	Date of Filing	Expiration Date	Inactive Date	Name Status	Counties	www.PrisonPlanet.TV	November 2, 2009	November 2, 2019		Active	All Counties	www.infowars.com	November 2, 2009	November 2, 2019		Active	All Counties	
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