D-1-GN-18-001835

NEIL HESLIN and SCARLETT LEWIS	§ §	IN DISTRICT COURT OF
	§	TRAVIS COUNTY, TEXAS
VS.	§ §	
	§	261st DISTRICT COURT
ALEX E. JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC, and OWEN SHROYER	§ § §	

PLAINTIFFS' MOTIONS IN LIMINE

Plaintiffs Neil Heslin and Scarlett Lewis move the Court to prohibit reference to any of the following matters at trial without first approaching the bench:

1. References Claiming the Protection of the First Amendment.

A judgment of this Court has found the Defendants liable for defamation and IIED. As such, their speech was actionable as a matter of law, meaning the First Amendment did not protect their conduct. Thus, the First Amendment is irrelevant to any issue to be decided by the jury. References claiming First Amendment protection or a right to free speech will prejudice the jury by falsely implying that the jury is tasked with vindicating that right.

2. References Challenging the Elements of Mr. Heslin's Defamation Claim.

Because a judgment of this Court has found each of the Defendants liable for defamation against Mr. Heslin, none of the following references which challenge the essential elements should be permitted:

a. References disputing that each Defendant published statements. An essential element of defamation is that the defendant "published" statements to a third party. *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 434 (Tex. 2017).

b. **References disputing the falsity of claims made in the challenged statements.** An essential element of both defamation is that the challenged statements are "false." *Id.*

c. **References that the challenged statements were not defamatory as to Mr. Heslin.** An essential element of defamation is that the statement "defamed the plaintiff." *Id.*

d. **References that the challenged statements were merely opinions and not statements of fact.** "[W]hether the publication is a protected expression of opinion or an actionable statement of fact is a question of law for the court." *Carr v. Brasher*, 776 S.W.2d 567, 570 (Tex. 1989). Defendants have admitted, both through default and Requests for Admissions, that they made false statements of fact.

e. **References disputing that Mr. Heslin suffered some amount of general damages as a result of the defamation.** When a defendant is found liable for defamation per se, the statement is held to be "so obviously harmful that general damages may be presumed." *In re Lipsky*, 460 S.W.3d 579, 593 (Tex. 2015). The law "does not presume any particular amount of damages," but the fact of the Plaintiff suffering general damages is not in dispute.

3. References Challenging the Elements of Mr. Heslin's and Ms. Lewis' IIED Claim.

Because a judgment of this Court has found each of the Defendants liable for IIED against Mr. Heslin and Ms. Lewis, none of the following references which challenge the essential elements should be permitted:

a. **References that any Defendants' conduct was not extreme or outrageous under the law.** An essential element of IIED is that the "conduct was extreme and outrageous." *Hersh v. Tatum*, 526 S.W.3d 462, 468 (Tex. 2017).

b. **References disputing the falsity of claims made in the challenged statements.** An essential element of speech-based IIED is that the challenged statements are "false." *Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46, 56 (1988).

c. **References that any Defendants' conduct was not at least reckless.** An essential element of IIED is that "the defendant acted intentionally or recklessly." *Hersh,* 526 S.W.3d at 468.

d. **References that Defendants' conduct did not cause Plaintiffs to suffer emotional distress.** An essential element of IIED is that the defendant's "actions caused the plaintiff emotional distress." *Id.*

e. References that Plaintiffs' emotional distress was not severe. An essential element of IIED is that "the emotional distress was severe." *Id.*

4. References Disputing Allegations of Fact in Plaintiffs' Petition.

"Once a default judgment is taken on an unliquidated claim, all allegations of fact set forth in the petition are deemed admitted, except the amount of damages." *Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 83 (Tex. 1992). "Thus, the facts as alleged are admitted, further proof is not required at the default judgment hearing." *Steinbrecher v. Steinbrecher*, No. 03-02-00681-CV, 2003 WL 21282767, at *2 (Tex. App.—Austin June 5, 2003, pet. denied). Defendants should be prohibited from disputing those allegations.

5. References that the Defendants Should be Afforded Latitude Because Either Plaintiff is a Public Figure.

The default judgment renders public figure status irrelevant, as the Defendants are found to have acted with actual malice as alleged in the Petition. In any case, whether a plaintiff is a public figure is a question of law for the court. There has never been any evidence showing either Plaintiff is a public figure. Moreover, the Court of Appeals already rejected the argument that "the parents have involuntarily become limited purpose public figures" due to the tragedy itself. *Jones v. Pozner*, No. 03-18-00603-CV, 2019 WL 5700903, at *8 (Tex. App.—Austin Nov. 5, 2019, pet. denied).

6. References Implying the Trial is Unfair or Unjust.

Given recent statements by Mr. Jones both in deposition and on his show, Plaintiffs anticipate that Mr. Jones or his attorneys will argue variations of the following:

- The trial is unfair, unjust, rigged, a stacked deck, a show trial, a kangaroo court, or other similar expression.
- The Court acted improperly in granting default, or Plaintiffs acted improperly in moving for default.

- Mr. Jones has been denied his constitutional right to jury trial.

Any such references are irrelevant and prejudicial, and the Court should prohibit such statements in front of the jury.

7. References to Undisclosed Information about the Plaintiffs.

This Court should prohibit any references to information or evidence concerning the Plaintiffs which was not disclosed during discovery. Plaintiffs are especially troubled by comments made on March 22nd on Mr. Jones' show indicating his intent to violate this Court's orders in limine:

> MR. JONES: The groups around Sandy Hook tragedy have brought in hundreds of millions of dollars of donations. Some of the people involved rake in up to a million a year themselves personally, and when we got to trial, all that is coming out one way or another. These judges, that aren't judges, think they can contain this and control all this, it's going to be their Waterloo.[1]

There is no evidence along the lines of Jones' accusation, yet Mr. Jones' views are divorced from reality, and he has now telegraphed his intention to defy the Court's authority during trial. Defendants were ordered in discovery and depositions to produce information relating to their knowledge of the Plaintiffs, but they failed to do so. As such, references to any such undisclosed allegations about the Plaintiffs should be strictly prohibited, and Mr. Jones' should be made personally aware of the severe consequences of violating the Court's orders in limine.

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[1] "Sandy Hook Mafia Calls For Alex Jones' Arrest: Legendary Talk Show Host Responds." *InfoWars*. March 24, 2022, at 5:05.

Available at: https://www.banned.video/watch?id=623ca951c133101b87fee13b

8. References Implying Evidence of Net Worth.

On November 5, 2021, this Court ordered Defendants to provide answers to net worth interrogatories, requests for production, and deposition testimony in *Heslin, Lewis,* and *Pozner*. The parties later agreed the discovery order would also govern *Fontaine* without the necessity for a separate motion.

Defendants failed to comply with the net worth discovery order in every respect. Defendants failed to fully answer net worth interrogatories, provided no information about transfers of assets, produced redacted bank records, and did not provide an audited or certified balance sheet. By failing to comply with the Court's order, Defendants should not be permitted to make any argument or introduce any testimony asserting their net worth.

Similarly, in the net worth deposition, Defendants' designee was unable to give meaningful testimony about its net worth. Under this scenario, a corporate representative's "'I don't know' answers" are "deemed fully binding," and the corporation "may not proffer any testimonial evidence regarding [its] collective position on the notice topics contrary to or in addition to what [the designee] answered on [its] behalf." *Wausau Underwriters Ins. Co. v. Danfoss, LLC*, 310 F.R.D. 683, 687 (S.D. Fla. 2015). "When a corporation's designee legitimately lacks the ability to answer relevant questions on listed topics and the corporation cannot better prepare that witness or obtain an adequate substitute, then the 'we-don't-know' response can be binding on the corporation and prohibit it from offering evidence at trial on those points." *QBE Ins. Corp. v. Jorda Enterprises, Inc.,* 277 F.R.D. 676, 690 (S.D. Fla. 2012). "Phrased differently, the lack of knowledge answer is itself an answer which will bind the corporation at trial." *Id.*

Finally, the corporate representative reviewed numerous unproduced documents relating to net worth. Despite multiple requests by the Plaintiffs, Defendants refused to produce those documents. For all of these reasons, Defendants should be precluded from offering evidence or argument as to its net worth.

Respectfully submitted,

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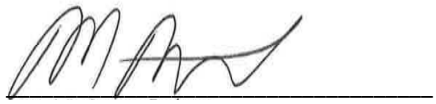
CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2022, the forgoing document was served upon all counsel of record via electronic service.



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