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**APPELLATE COURT  
OF THE  
STATE OF CONNECTICUT**

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**A.C. 46131**

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**ERICA LAFFERTY ET AL.,  
Plaintiffs,**

**v.**

**ALEX JONES ET AL.,  
Defendants,**

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**WATERBURY JUDICIAL DISTRICT  
COMPLEX LITIGATION DOCKET  
BARBARA M. BELLIS, J.**

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**BRIEF OF DEFENDANTS  
ALEX JONES AND FREE SPEECH SYSTEMS, LLC**

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## **2. Statement of the Issues**

- I. Whether The Trial Court's Entry of a Liability Default Was Disproportionate to the Alleged Discovery Misconduct?
- II. Whether The Manner in Which the Trial Court Construed Causation to Have Been "Established" by the Liability Default Relieved The Plaintiffs of Their Burden of Proving the Extent of the Defendants' Harm and Led to a Runaway Jury Verdict of Nearly One Billion Dollars?
- III. Whether The Trial Court's Rulings Limiting Defendant Alex Jones' Ability to Testify on Matters Relating to Sandy Hook Resulted in the Plaintiffs' Misleading the Jury in a Manner that Made a Mockery of the Jury's Fact-Finding Function?
- IV. Whether The Jury's Award of Compensatory Damages Shocks the Sense of Justice?
- V. Whether The Plaintiffs Proved a Violation Connecticut Unfair Trade Practices Act?

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#### **4. Nature of the Proceedings**

Six years after the shootings at the Sandy Hook Elementary School in December 2012 left twenty children and six adults dead, a handful of surviving family members and a law enforcement officer who responded to the shootings filed three lawsuits claiming a variety of torts. In sum, Alex Jones denied the reality the plaintiffs knew too well – loved ones had been shot and killed by a deranged gunman, Adam Lanza. By claiming that the event never occurred, Jones defamed the plaintiffs and third parties then harassed the plaintiffs, or so the allegations went. The plaintiffs sued Alex Jones and the entities through which they believed he did business. Their goal was simple: to silence him, or, in the alternative, financially to cripple him. They almost succeeded in the latter goal, driving Mr. Jones and his primary company, Free Speech Systems, LLC, into bankruptcy after securing a \$1.5 billion judgment. They did this by way of a liability default entered after alleged claims of non-compliance with discovery and a bizarre set of trial Court rulings in a hearing in damages. The proceedings made a mockery of justice, and requires reversal.

The claims asserted were: defamation, including libel per se; breach of privacy by publication of private facts; intentional infliction of emotional distress; negligent infliction of emotional distress; and, violation of the Connecticut Unfair Trade Practices Act. (Clerk Appendix, hereinafter “CA,” item 1, at 4; CA item 7, at 157; and, CA item 12, at 264<sup>1</sup>.) The cases were consolidated for trial. (CA item, 15, at 316.)

<sup>1</sup> Identical pleadings were filed in each of the three cases. In this brief, the pleadings in the first file, reflected in the docket sheets at CA pages 4 et seq. will be cited to avoid needed repetition. This string cite would therefore be reduced to CA item 1, at 4.

After entry of a default was entered in each case, the matters were tried to a verdict in a hearing in damages, and the jury returned a verdict of nearly \$1 billion dollars. (CA item 17, at 334.) An amended complaint was filed during trial. (CA item 1; Docket Entry, hereinafter “DE,” 989, Party Appendix, hereinafter, “PA” at 99. 46 et seq ).

After additional briefing and argument, the trial Court awarded CUTPA punitive damages and common law attorney’s fees of \$450 million. (CA item 1, DE 1026, PA p. 149). The defendants filed motions for remittitur and for a new trial. The trial Court denied the defendants’ requests for post-trial relief and entered judgment in favor of the plaintiffs. (CA 1, DE 1043.) Thereafter, defendants filed notices of appeal in each file, and the matters were consolidated for appeal. (CA, Item 24, at 373.) This appeal was then perfected and is submitted in accordance with the orders of this Court.

## **5. Statement of the Facts**

Immediately after the mass shooting at the Newtown Elementary School was reported on national news, Alex Jones, a conspiracy theorist and proprietor of Infowars, a nationally broadcast social media company located in Austin, Texas, took to the airwaves to decry the shooting as a hoax. He told his viewers and listeners that the event was staged, that the children were not, in fact, dead, and that grieving parents were “crisis actors.” All this was, in his view, part of a plan to gin up opposition to the individual right to bear arms, and was a prelude to a broader conspiracy to enslave the American people by members of a globalist elite. It was a message to which Mr. Jones’s audience responded by purchasing nutritional supplements he offered for sale. He returned to this theme over the years to come, although just how often is unknown.

In 2016, four years later, Mr. Jones’ and Infowars’ stock rose after the election of Donald Trump as president; a candidate supported by Mr.

Jones. The wounds associated with the shootings were reopened when Hillary Clinton renewed interest in Mr. Jones's commentary on the shootings in the 2016 presidential campaign using the shootings as a campaign issue. Mr. Jones was thereafter interviewed by NBC's Megan Kelly, who gave new life to the Sandy Hook-as-hoax narrative in a 2017 broadcast, and, by 2018, Mr. Jones and several companies associated with him were facing litigation in Connecticut and Texas courts. He was also defaulted in both for a failure to meet the defendants' expectations about the records he should have kept – including what and when he broadcast – over the years.

Mr. Jones fought back with the tools available at law – he filed an Anti-SLAPP motion to dismiss pursuant to Conn. Gen. Stat. § 52-196a (CA item 1, DE 108, 113); he sought removal in the federal courts (CA item 1, DE 110); he sought disqualification of the Court on several occasions (CA item 1, DE 124, 255, at 529); he sought a change of venue (CA, item 168); he repeatedly sought to have counsel of his choice appear to represent him pro hoc vice (CA, item 1, DE 286, 289, and 922); he argued before the trial Court that the “special discovery” sought by the defendants to oppose his anti-SLAPP motion was overbroad, (CA item 1, DE 125); and he sought review by the State Supreme Court by way of a public interest appeal of the scope of the “special” discovery ordered by the Court (CA item 1, DE 161). These motions and applications were almost uniformly denied.

The plaintiffs set their sights on sanctions and default early, complaining at every juncture and on every occasion that they could, that Mr. Jones was stonewalling, not providing adequate information, and otherwise was engaged in bad faith litigation conduct. The trial Court proved receptive to the plaintiffs' claims, first rejecting Mr. Jones' right even to have heard his anti-SLAPP motion to dismiss, a decision reviewed by our Supreme Court in a public interest appeal, *Lafferty v.*

*Jones*, 336 Conn. 332 (2020), *cert. denied*, 141 S.Ct. 2467 (2021), and then entering a default when it reached the conclusion that Mr. Jones had not satisfactorily complied with discovery, (Tr. 11/5/21, PA at pp. 150 et seq.), despite the fact that he tendered tens of thousands of electronic documents (DE 218, 219, 220, 221, 222); *see, for example*, (CA, item 1, DE 218, PA pp. 256 et seq.), answered requests to admit, (CA item 1, DE 270), had members of his staff sit for dozens of depositions and had a series of lawyers run ragged attending a bewildering series of periodic “status” conferences that became the forum for a game of litigation gotcha.

Mr. Jones continued to battle discovery requests even after the default was entered. He sat for depositions, produced documents as they became available to counsel and appeared as a subpoenaed witness at trial to endure an abusive and theatric examination. The plaintiffs were permitted to use all that they gathered during discovery at trial, but they obtained additional sanctions on the eve of trial which effectively precluded Mr. Jones from testifying or offering evidence that placed into context the material given over in discovery. (Tr. 9/6/22, PA at pp. 141 et seq.) A days-long examination of a corporate representation was replete with reference to the information the defendants had not provided to the plaintiffs. (Tr. 9/14/22, 9/15/22, 9/16/22 and 9/20/22; for example, Tr. 9/16/22, vol. 1 at 53.)

At trial, each plaintiff testified about the searing loss of loved ones and the emotional distress of the years that followed. They were not required, indeed counsel for Mr. Jones was prohibited from asking them how much they actually knew about Mr. Jones, including when they first heard his name or when and how they decided to sue him. The plaintiffs also offered a social media expert who studied international terrorism and social media. That expert told jurors that Mr. Jones’s web presence had generated at least half a billion visits since the Sandy Hook

shootings. (Tr. 9/20/22, Vol. 3 at 25.) A corporate representative for Mr. Jones estimated gross revenue for the company at somewhere between \$100 million and \$1 billion during that same period, in response to a leading question by plaintiffs’ counsel. (Tr. 9/15/22, Vol. 2 at 62.) No medical experts or treating physicians and/or records were offered by the plaintiffs. Instead, bolstered by a series of ad hoc rulings about what was and was not “established” by the liability default, the trial Court permitted foundationless narratives and multiple levels of hearsay to be offered as “proof” of damages. The jury awarded damages as follows, amounting to a total award of compensatory damages of \$965 million. An additional \$323 million in common law punitive damages and \$150 million in CUTPA damages were awarded by the Court in post-verdict proceedings. (CA item 1, DE 1026, PA at p. 149.)

<i>Plaintiff</i>	<i>Reputational Damages (Millions)</i>	<i>Emotional Distress (Millions)</i>	<i>Total (Millions)</i>
Robbie Parker	\$60	\$60	\$120
David Wheeler	\$25	\$30	\$55
Francine Wheeler	\$24	\$30	\$54
Jacqueline Barden	\$10	\$18.8	\$28.8
Mark Barden	\$25	\$32.6	\$57.6
Nicole Hockley	\$32	\$41.6	\$73.6
Ian Hockley	\$38	\$43.6	\$81.6
Jennifer Hensley	\$52	\$21	\$31
Donna Soto	\$18	\$30	\$48
Carlee Soto Parisi	\$30	\$36	\$66

Carlos Matthew Soto	\$18.6	\$39	\$57.6
Jillian Soto-Marino	\$30	\$38.8	\$68.8
William Aldenberg	\$45	\$45	\$90
Erica Lafferty	\$18	\$58	\$76
William Sherlach	\$9	\$29	\$36

The defendants sought post-trial relief in motions for remitter and a motion for a new trial. Both motions were denied, and judgment entered. (CA item 1, DE 1043, 1045.)

## **6. Argument**

### **I. The Trial Court’s Entry of a Liability Default Was Disproportionate to the Alleged Discovery Misconduct, Especially in a Case Involving Allegations Of Libel.**

#### **A. Introduction**

The plaintiffs were never required to prove their case. Instead, they leveraged the disorganization of Mr. Jones and his companies into liability defaults that were disproportionate to the alleged discovery violations. In fact, Mr. Jones and his companies tendered tens of thousands of documents, sat for scores of depositions, provided answers to requests to admit, and otherwise made efforts to comply with discovery. *Supra*, p. 8. These efforts satisfied neither the plaintiffs nor the Court, but they were not insignificant. The entry of a default was

draconian. The partial compliance was used by the plaintiffs as a tactical weapon at trial, when they used information they produced in discovery, obtained Court orders precluding Mr. Jones from putting the evidence obtained by way of discovery in context, and then argued facts that simply are not true. Indeed, the jury was prevented from learning that this was a disciplinary default and led to believe that Mr. Jones had somehow, somewhere been found to have caused all the harm the plaintiffs could allege. Ironically, the plaintiffs, who contended they were victims of a massive hoax, perpetuated one themselves and—through counsel—misled the jury.

### **B. Standard of Review**

“In reviewing ... sanctions based on the violation of discovery orders, we consider three factors. ‘First, the order to be complied with must be reasonably clear....This requirement poses a legal question that we will review de novo. Second, the record must establish that the order was in fact violated. This requirement poses a question of fact that we will review using a clearly erroneous standard of review. Third, the sanction imposed must be proportional to the violation. This requirement poses a question of the discretion of the trial court that we will review for abuse of that discretion.’ *Millbrook Owners Assn., Inc. v. Hamilton Standard*, 257 Conn. 1, 17-18 (1998). ‘The determinative question for an appellate court is not whether it would have imposed a similar sanction but whether the trial court could reasonably conclude as it did given the facts presented.... *Usowski v. Jacobson*, 267 Conn. 73, 85, 836 A.2d 1167 (2003).’” *Lafferty, et al., v. Jones, et al.*, 336 Conn. at 374 (2020).

### **C. Preservation and Statement of Facts**

The plaintiffs repeatedly moved for sanctions, including a default, before finally obtaining their objective by way of an oral ruling on November 15, 2021. (CA at 341.) The Court recited three reasons for

entry of the default. As argued below, each reason was either a mischaracterization of the record, clearly erroneous or an abuse of discretion.

First, the Court refers to defense counsel's "cavalier actions" regarding the contents of a motion to depose Hillary Clinton that amounted, in the Court's view, to "willful misconduct." (Id. at 319.) This included an assertion that counsel had tried to "cloud issues" in a pleading by listing only three of the four defendants they represented in the pleading, thus converting a simple scrivener's error into a hammer. (Id. at 321.)

Second, alleged infirmities in attempts to correct and/or supplement disclosures in a financial affidavit called a "subsidiary ledger" by an expert retained by the defendants, Robert Roe. (Id. at 323.) The Court found Mr. Roe's affidavit "not credible in light of the circumstances," asserting that Mr. Roe had submitted a "sanitized, inaccurate" set of records. (Id. at 7-9.)

Third, claimed failure to submit analytics in the custody and control of third parties, e.g. Twitter and Facebooks. This was a reprise of the early controversy surrounding "Google Analytics." (*See, supra*, at 8.) The Court concluded the defendants had failed to provide "full and fair compliance" with a request for the data, thus willfully withholding information that was of critical importance to the plaintiffs (Id. at 316-321.)

The Court declined to consider monetary sanctions or preclusion of evidence as sanctions as inadequate. (Id. at 325.) Only a default was appropriate, the Court concluded, as the plaintiffs were prejudiced by the failure to produce complete financial and analytics data. (Id. at 332.)

**D. A Liability Default Is Never Appropriate  
In A Case Involving Speech Given The  
Importance The Connecticut  
Constitution Places On Speech.**

Our state Constitution makes clear that claims involving speech are privileged. “In all prosecutions or indictments for libels, the truth may be given in evidence, and the jury shall have the right to determine the law and the facts, under the direction of the court.” Connecticut Constitution, Article First, Sec. 6.. This is a right defendants have in criminal, but not civil, cases. *Gray v. Mossman*, 91 Conn. 430, 443 (1917). Where, as was the case here, a plaintiff seeks both compensatory and punitive damages, the quasi-criminal character of punitive damages warrants caution in relieving a plaintiff of his burden of proof. *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 434 (2001)(“punitive damages ... operate as private fines intend to punish the defendant and to deter future wrong doing.”).

This case has already been before the Connecticut Supreme Court regarding an earlier sanction involving speech and discovery abuse allegations. *Lafferty v. Jones*, 336 Conn. 332 (2020), *cert. denied*, 141 S.Ct. 2467 (2021). In that case, the trial court entered a sanction against the defendants depriving them of the right to have heard a special motion to dismiss under Connecticut’s anti- SLAPP statute, Connecticut General Statutes Section 52-196a, after Mr. Jones made vituperative comments about opposing counsel in a nationally syndicated broadcast, offering a \$1 million reward for information leading to the arrest of the individual who sent child pornography via the Internet to Free Speech Systems, LLC, employees in an effort to ensnare Mr. Jones in criminal prosecution. Although our Supreme Court did not find that Mr. Jones had threatened counsel, or incited violence against counsel, it upheld the trial Court’s use of discretion in sanctioning the defendants as

appropriate to assure the integrity of the judicial process. “[S]peech that interferes with the administration of justice cannot be tolerated.” *Id.* at 368. Mr. Jones requested review by the United States Supreme Court as his speech was extra-judicial and otherwise protected by the First Amendment. Certiorari was denied. *Id.*

The Court also held that the sanction imposed, denial of the right to have the motion to dismiss heard, was justified given a history of non-compliance with discovery as regards corporate records and, significantly, Google Analytics data. *Id.* at 383-84. The Court ignored the defendants’ claim that the sanctions were inappropriate as they were based in part on protected speech, to wit: the disparaging remarks Mr. Jones made about plaintiffs’ counsel on an Infowars broadcast, the very speech that prompted the plaintiffs to ask for the emergency relief from the trial Court. *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977)(applying mixed motive standard to claims of adverse interest against an individual engaged in protected first amendment activity).

**E. The Trial Court’s Reasons For Issuing The Default Are Unsupported By The Record.**

**1. There Was No Underlying Violation of a Protective Order; If There Were, This Court Would Surely Have Referred Counsel For Discipline, as it Was Wont to Do in this Case.**

Various protective orders were entered in this case designed and intended to protect proprietary information of the defendants and

confidential information involving the plaintiffs. Indeed, one order designated all depositions of the plaintiffs confidential/attorney's eyes only.

As the plaintiffs' depositions began, it became apparent that plaintiffs' counsel would resist any testimony about how the plaintiffs all happened to find themselves in the same law office six years after the Sandy Hook shootings. It was Mr. Jones' belief that the prosecution of him was orchestrated by those motivated to have their revenge on him for his support of Donald Trump's successful campaign – Mr. Trump appeared as a guest on one of Mr. Jones' broadcast during the campaign -- against Hillary Clinton in 2016. To that end, counsel for Mr. Jones sought a commission to take the deposition of Ms. Clinton, then a resident of New York. In his motion for a commission, counsel, the undersigned, represented that at a deposition a witness was instructed by counsel not to answer questions about choice of counsel or who was financing the litigation. The name and gender of the deponent were not mentioned; the deposition was characterized, not quoted. (CA item 1, p. 361, DE 384. PA pp. 375 et seq.)

The trial court, Bellis, J., took grave exception to this, referring to it as “frightening.” (CA item 1, p. 368, DE 394, pp. 382), She took no further action, despite having previously referred the undersigned to Disciplinary Counsel for the undersigned's handling of an amanuensis signed affidavit. The undersigned was exonerated after a full hearing. (CA item 1, DE 542, PA at pp. 383 et seq.) . The trial court also referred another lawyer in the case for discipline, and, after a hearing she conducted herself, reprimanded counsel. (CA item 1, DE 524.) Thereafter, on the eve of trial in the instant matter, she ordered a show cause hearing as to the undersigned involving counsel's sharing confidential files with counsel representing Mr. Jones in a bankruptcy related to the instant litigation. (CA 1, DE 909.) The actual hearings on

the matter took place during jury selection. (CA1, DE 946.)<sup>2</sup> The judge was no stranger to the disciplinary process; had she found the conduct involving the pleading so significant as to warrant a response, she would have referred the undersigned for discipline. Instead, the Court attributed counsel's alleged failure to his client, justifying a default on conduct over which the defendants themselves had no control, and about which, the record reflects, they knew nothing. It smacks of pretextual reasoning, a clear abuse of discretion.

If the Court genuinely believed counsel erred in the treatment of the deposition material in his motion for a commission to depose Ms. Clinton, the remedy was against counsel, not the client. The de minimis recitation of facts in the motion for a commission did not violate a court order; the suggestion that it was is clear error. If there was a violation, the decision to rely on that conduct as part of a motion to default the defendants was an abuse of discretion.

## **2. The Trial Court Made Credibility Determinations About the Sworn Affidavit of a CPA Without a Hearing.**

The plaintiffs sought financial information about the defendants and propounded discovery, including depositions and requests for production, designed and intended to determine how much money the defendants made and how they made it. As with virtually everything in this case, the issue was litigated. In pursuit of answers, the plaintiffs

<sup>2</sup> The undersigned did not seek relief under *Phillips v. Warden*, 220 Conn. 112 (1991), as both he and his client had long-since grown accustomed to what can charitably be called a tense relationship with the judge.

took the deposition of Melinda Flores, a bookkeeper at FSS. She was ordered to produce certain financial records, including “trial balances.” The documents she produced did not satisfy the plaintiffs.

The defendants retained an expert, a CPA named Robert Roe, to attempt to locate and to provide to the plaintiffs data in a form acceptable to them. His efforts failed to satisfy the plaintiffs, who filed yet another in a series of motions for sanctions. (CA item 1, DE 395.) A sworn statement by Mr. Roe stated that FSS did not maintain records in the form requested by the plaintiffs, going so far as to state that the term “subsidiary ledgers” they used in their request was not a term with an accepted meaning among accounts. (CA item 1, DE 427, PA at pp. 394 et seq.) The plaintiffs tendered a counter affidavit from their own expert, a forensic fraud examiner, who opined the “subsidiary ledgers” was, in fact, a well understood and generally accepted term. (CA item 1, DE 428, PA at pp. 540 et seq..)

The Court sided with the plaintiff’s papers and rejected Mr. Roe’s opinion on the papers. “The court rejects the statement of accountant retained by FSS that FSS does not ‘maintain or utilize’ subsidiary ledgers as not credible in light of the circumstances.” (CA item 1, DE 428.10, 428.11.) The absence of a meaningful evidentiary record to support this finding as to Mr. Roe, a finding that bore such fatal consequences for the defendants, constitutes an abuse of discretion and is yet another illustration of why the defendants made repeated motions to disqualify the judge. (CA item 1, DE 520.)

The defendants were given an additional opportunity to provide the data requested in a form acceptable to the plaintiffs. Mr. Roe submitted a different, and more detailed sworn affidavit. CA Item 1, DE 522, Ex. A, PA at pp. 561 et seq.) Mr. Roe took issue in that affidavit with certain of the assertions made by the plaintiff’s forensic fraud examiner, all to no avail in the mind of the trial court. Immediately after

this filing, the plaintiffs filed yet another motion for sanctions on an unrelated topic, this time social media and Google Analytics. (CA item 1, DE 527.) Shortly thereafter, the trial court entered the order of default which is at the center of this appeal. (CA item 1, DE 574.)

The lack of clear answers from the defendants proved fatal to their defense, but the failure to provide answers was not an example of willful misconduct. Rather, it was the result of a shocking degree of disorganization. The plaintiffs persuaded the trial judge that the plaintiffs' expectations of how the defendants should operate their business and keep records was the standard the defendants must meet. The default prevented a jury from learning the truth about the defendants' corporate organization – it is a haphazard warren of people drawn together by Mr. Jones's charisma and generosity, but almost altogether devoid of institutional structure or normal corporate governance.

The “subsidiary ledger” issue and Mr. Roe's attempt to provide the plaintiffs what they need is a case in point. The plaintiffs noticed and deposed Melinda Flores, a bookkeeper who compiled reports she thought responsive to the plaintiffs' requests. When it became apparent that the records she provided were not what the plaintiffs wanted, Mr. Roe was brought in. His task was to create, on short order, something that resembled ordinary accounting. His efforts did not satisfy the plaintiffs, or, ultimately, the trial Court. The trial Court's willful blindness to the reality of what was presented to the Court is shocking. Relying on the plaintiffs' litigation posture to establish the standard for the defendants' operating procedures was clear error.

### **3. The Trial Court Penalized the Defendants for not Producing Data in the Hands of Third Parties and Otherwise Available to the Defendants.**

The Google Analytics issue is an evidentiary thread running throughout the case, serving as a basis for the initial decision by the Court to refuse to hear the defendants' anti-SLAPP motion, (p. 21, *supra*), through the liability default, to the decision to limit what Mr. Jones could testify to at trial (p. 34, *infra*). Despite the importance of the issue, the trial Court never set forth just what it thought Google Analytics was. As such, the order was not so clear and unambiguous as to warrant a default if, in fact, the order was violated at all.

Google Analytics is proprietary data made available to subscribers on a server maintained by Google. It is described thus on Google's webpage: "Google Analytics is a web analytics service offered by Google that tracks and reports website traffic and also the mobile app traffic & events, currently inside a platform inside the Google Marketing Platform brand." ([https://www.google.com/search?q=google+analytics&rlz=1C1GCEJ\\_enUS1011US1011&oq=google+anal&aqs=chrome.0.0i512j69i57j0i131i433i512j0i512j0i433i512j0i512l3j0i433i512j0i131i433i512.4170j0j15&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=google+analytics&rlz=1C1GCEJ_enUS1011US1011&oq=google+anal&aqs=chrome.0.0i512j69i57j0i131i433i512j0i512j0i433i512j0i512l3j0i433i512j0i131i433i512.4170j0j15&sourceid=chrome&ie=UTF-8), last accessed May 19, 2023). It is not a turnkey product, accessible at a glance without training. Indeed, Google offers a certificate to users who master certain basics. There is even something called a Google Analytics Academy, that offers multi-tier training to users and customers. (<https://analytics.google.com/analytics/academy/>, last accessed on May 19, 2023). A request for "Google Analytics" in general is a request for the

data Google maintains for a customer. That data can be configured in a seemingly endless variety of ways, depending on the needs of the user. Reports are generated based on variables selected by users; it is no an encyclopedia sitting on a shelf and accessible to any user browsing the aisles of a library.

The defendants made limited and sporadic use of Google Analytics data, accessing the information on Google servers. They did not keep records of what they viewed online any more than a person surfing the Internet keeps a paper copy of the material they view in the course of a day. The defendants testified about intermittent access to the data, but did not provide the plaintiffs with a copy of their password or with complete access to the information Google maintained on their behalf – the defendants were never ordered to do so. The Court sanctioned the defendants for looking at proprietary information from time to time on a third party’s server and not providing the plaintiffs with access to the server and raw data itself.

The Court’s inability to comprehend the distinction between intermittently looking at a slice of data created by means of proprietary software on a third-party server and possession of a the third-party’s raw data is fatal to its finding of willful failure to comply with discovery. The plaintiffs seized on every stray reference to a deponent’s once having looked at something online as proof that the defendants possessed such data and failed to disclose it. The fact is that defendants no more kept such reports on file than do most folks relying on reports generated, kept and maintained on a third-party server. Asking to produce “Google Analytics” was a red-herring in this case.

The defendants testified that they did not keep the reports, did not generally or systematically rely on them, and consulted Google Analytics only haphazardly. (*See*, for example, Affidavit of Blake Roddy, (CA item 1, DE 974, PA at pp. 579 et seq.) It was clear error for the

Court to hold that the plaintiffs withheld material that they did not possess. Even if they could have provided more information, it was an abuse of discretion for the Court to enter a default on that basis: the plaintiffs apparently did not seek the information from a third party; neither did they succeed in obtaining an order to the defendants to turn over the password. At most, the plaintiffs might have been entitled to an adverse inference of some sort at trial, although just what the inference should be is difficult to fathom given the complete lack of evidence to support the theory so dear to the hearts of plaintiffs' counsel – a belief that the defendants target marketed what topics they discussed solely to increase social media exposure as part of a plan to sell nutraceutical products. The truth is that Sandy Hook was a minuscule portion of what Mr. Jones commented on in the years since 2012, however much the plaintiffs may wish it were otherwise.

#### **4. Any Sanctions Should Have Been Limited To Permissive Adverse Inferences The Jury Should Have Been Free To Draw**

This was not a case in which the defendants failed to answer the complaint, failed to respond to discovery or otherwise failed to participate in the proceedings. In such cases, the harsh remedy of a default may well be warranted. Here, the defendants resisted discovery by every lawful means possible in lengthy proceedings. Their compliance was substantial, but, tactically unsatisfactory to the plaintiffs. A jury should have been left to determine whether any perceived difficulties were material or mere litigation posturing by plaintiffs anxious to avoid trial on the merits. The law of spoliation gave appropriate remedies. Our Supreme Court has recognized a cause of action for intentional

spoliation of evidence. *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225 (2006). The complaint in this case could easily have been amended to include such a claim. The harsh remedy of default should be reserved for those parties who fail to participate in, or respond to, judicial proceedings. Where there is a claim of substantial non-compliance with discovery obligations, spoliation would leave to jurors a determination of whether such a claim is supported by the evidence or is mere pretextual artifice, and, if so, what harm it causes. The wild verdict here is a textbook example why default is error in an actively litigated case with more than 1,000 docket entries. (CA item 1.) It stands as a cautionary warning: Heed Emerson, litigants, “When you strike at a king, you must kill him.”

The case became the plaything of constant periodic “status conferences,” at which the plaintiffs complained repeatedly that whatever they were given was not enough, was almost never in the proper form, or was otherwise deficient. A case that raised serious Constitutional issues became a game of litigation gotcha. In the end, the plaintiffs persuaded the trial Court to enter a default on liability, effectively relieving the plaintiffs of proving anything. The result was a windfall to the plaintiffs – they received data they claimed was incomplete and were free to use it to create a fictitious strawman – an evil company owned by a madman determined to target the parents of grieving children for profit.

A liability default in a case involving the extensive discovery propounded, and responded to, is unwarranted and unprecedented. In effect, the plaintiffs were able to persuade the Court that the defendants were non-cooperative because the defendants were not organized to the satisfaction of plaintiffs’ counsel. A series of corporate representatives testified at depositions and at trial as to what they knew, observed and were able to recover. The plaintiffs scoffed. The truth was not enough. The defendants were poorly organized; their disorganization cost them

more than justice requires. But that disorganization should not have cost the defendants the right to defend themselves. They did not fail to participate. They attended hearings. They propounded documents. Such difficulties with the production as plaintiffs perceived should have served as fertile grounds for cross examination. A default might be proportionate when a defendant refuses to participate in discovery; one who does so in a manner that is arguably imperfect should have the right to explain his imperfections to a jury. Put another way, the difficulties in discovery in this should have gone to the weight fact-finders would place on the defendants' contentions, hence the proportionate remedy of a spoliation claim. The default unjustly silenced the defendants altogether.

“[I]n assessing proportionality, a trial court must consider the totality of the circumstances, including, most importantly, the nature of the conduct itself.” *Ridgeway v. Mount Vernon Fire Ins. Co.*, 328 Conn. 60, 76 (2018); see also *Millbrook Owners Assn.*, 257 Conn. at 16 (“dismissal of an action is not an abuse of discretion where a party shows a deliberate, contumacious or unwarranted disregard for the court's authority” (internal quotation marks omitted)).” *Lafferty* 336 Conn. at 376. No claim was made that evidence would have supported a claim for negligent or intentional spoliation of evidence. That would have required showing the items not available were, at some point, in existence and that they had been destroyed. The plaintiffs never attempted this evidentiary exercise because they were never given reasonable grounds to believe the evidence existed.

The defendants' failure to manage their business to the satisfaction of the plaintiffs was a factor the plaintiffs should have been required to present to a jury as “proof” of whatever claims the plaintiff thought systemic disorganization would support. The plaintiffs should

not have been permitted to transform this into a default, relieving from proving, as it turns out, anything at all.

## **II. The Manner in Which the Trial Court Construed Causation to Have Been “Established” by the Liability Default Relieved The Plaintiffs of Their Burden of Proving the Extent of the Defendants’ Harm and Led to a Runaway Verdict of Nearly One Billion Dollars**

### **A. Introduction**

During opening statements, the plaintiffs announced they wanted the jury to “stop” Alex Jones. (Tr. 9/13/22, Vol. 1 at pp. 83-84.) To do this, the plaintiffs needed a record in which causation was eliminated. The trial Court delivered, ruling that causation had been “established,” and permitted, through a series of bizarre evidentiary rulings, evidence that anything harm befalling the plaintiffs from the date of their decedents’ deaths to the present and into the foreseeable future was Mr. Jones’ fault. These rulings eviscerated the requirement that plaintiffs prove the extent of their damages. The result was tens of millions of dollars of damages awarded to each of fifteen plaintiffs, not one of whom offered medical evidence of any kind about their distress. The Court’s errant rulings require reversal as they relieved the plaintiffs of any burden of proof in their pursuit of damages.

### **B. Standard of Review**

“When a party contests the burden of proof applied by the court, the standard of review is *de novo* because the matter is a question of law.” *Whitaker v. Taylor*, 99 Conn. App. 719, 734 (2007), citing and quoting, *Rollar Construction & Demolition, Inc. v. Granite Rock Associates, LLC*, 94 Conn. App. 125, 133 (2006).

### **C. Reviewability**

The trial Court never made a principled and intelligible ruling about causation in this case, instead permitting, on an ad hoc basis, the admission of evidence lacking in either evidentiary basis or foundation to be admitted because the allegations of the complaint had been “established.” The plaintiffs filed a “bench brief” on causation without invitation from the Court. (CA item 1, DE 955, PA at pp. 605 et seq.) In the end, this hearing in damages was reduced to farce, the functional equivalent of a wake with benefits. The defendants objected throughout, contending that under Connecticut law, a plaintiff, even a plaintiff operating under cloak of the luxury of a default judgment, must prove the extent of their damages. (Tr. 9/13/22 at 46.)

### **D. The Trial Court Erred by Ruling in Such a Way that the Requirement to Prove Damages Was Eliminated.**

Even in the context of a liability default, a plaintiff is required to prove the extent of the damages sought. *United National Indemnity Co. v. Zullo*, 143 Conn. 124, 129-130 (1956); *Mechanics Savings Bank v. Tucker*, 178 Conn. 640, 644 (1979). That proof must relate the damages suffered to the liability established. “Even in a hearing in damages,... a plaintiff must still prove that the damages claimed were caused by the conduct alleged.” *Murray v. Taylor*, 65 Conn. App. 300, 333 (2001). (Citation omitted). In this case, the trial court eviscerated the concept of causation and relieved the plaintiffs of any responsibility to prove, or even to attempt to prove, a linkage to the various and diffuse harms they suffered and the conduct of the plaintiffs. The result was a grotesque miscarriage of justice. The issue lingered throughout the trial, rearing its head once again at the final charge conference when counsel for Mr. Jones reminded the Court again: “There’s never been a finding about what allegations are material and there’s been suggestions along

the way that all of the complaint is deemed in effect admitted or established .... The Court has made no finding as to materiality....[N]o hearing was requested as to materiality and the case law is abundantly clear that even in the contexts of a default, all the allegations in a complaint are not deemed admitted.” (Tr. 10/6/22, Vol. 1 at 40.)

By severing that connection between harm “established” and damages caused by that harm, the plaintiffs were free to blame Mr. Jones for whatever harm they suffered involving harassment at the hands of third parties. The trial court transformed the proceeding into a bizarre example of existential strict liability, all but handing a blank check to the plaintiff’s lawyers. In weeks of testimony the plaintiffs did not prove by competent evidence that Mr. Jones ever sent anyone to harass a plaintiff, or that anyone who listened to him heeded a call from him to harass a plaintiff. The jury was instructed that liability had been “established,” a disciplinary default was transformed into a fatal impression that somewhere, someone had somehow proven that Mr. Jones did exactly what the plaintiffs alleged. The trial court told the jury. “[T]he Court has determined that causation has been established by virtue of the Court’s prior rulings to the satisfaction of the law.” (Tr. 10/6/22 at 60.) Indeed, the issue was flagged for the Court in argument over the admissibility of settlement of other claims involving the plaintiffs, with the defendants arguing that the plaintiffs were required in this case to prove both the extent of harm caused by the defendants and that the defendants, and not some third party, caused all of the harm, and the plaintiffs claiming that causation had been established, seeming to suggest that everything, without discrimination was the fault of Mr. Jones and his co-defendants. (Tr. 9/6/22 at 66-86.)

The parties filed cross-motions in limine on whether the jury should be told the truth about the default in order to avoid the jury’s being misled. (CA item 1, DE 865, 889, 893; order denying defendants

the right to present reasons for the default, DE, 865.) The Court sided with the plaintiffs, keeping the truth from the jury and permitting them to labor under the false impression that a finding of some sort had been made that Mr. Jones had, in fact, caused harm, rather than having been defaulted for failure to keep the sort of records the plaintiffs and Court wished they had kept.

Not one witness in the case appeared to testify that he or she harassed a plaintiff at the behest of Mr. Jones; neither did Mr. Jones himself harass a plaintiff. Indeed, Mr. Jones only ever broadcast the name of one plaintiff, Robbie Parker. One witness, an FBI agent named David Wheeler, was awarded \$90 million in reputational harm and emotional distress because Mr. Jones broadcast an image of him asserting that he and one of the murdered children's parents were the same person based on photographic likenesses. Mr. Jones never even mentioned the man's name.

The closest thing the jury saw to harassing conduct was videos of Dan Bidondi, an Infowars employee, and Wolfgang Halbig, a man who to this day denies that the Sandy Hook shootings took place, haranguing Newtown officials over their "coverup" and participation in a "hoax." No plaintiff was present at that event and no plaintiff ever testified to seeing either man. The only other testimony about an individual arguably connected to Mr. Jones "harassing" a plaintiff came in the form of testimony about a man named Matthew Mills who harangued members of the Soto family at a memorial road race. Mills was a guest on Mr. Jones' show after disrupting a Superbowl press conference to claim that 9/11 was an "inside job" by the government. Mr. Jones promised to talk to him off the air, and suggested he might like Mr. Mills to do some work for Infowars. Eighteen months later, Mr. Mills turned up in Connecticut at the road race. No evidence suggests he was sent to, or was otherwise motivated to go to, the road race by Mr. Jones. Mr.

Mills was arrested, the jury was told. (Tr. 9/13/22, Vol. 3, at pp. 41-42; Tr. 9/22/22, Vol. 3, at pp. 37-41.)

Innuendo was piled on innuendo and then asserted as an example of the sort of harassment that had been “established.” This was the best evidence of Mr. Jones’ harassment. The balance was unsourced threats, hearsay reports of the acts and activities of unnamed others, including a hearsay claim that a child’s grave had been urinated on; (Tr. 10/4/22, Vol. 1 at p. 84 (“I remember one letter [that was not produced at trial] that they were at [her son’s] grave, and they had peed on his grave....”)), and reports of notes, or other communications left, including, but not limited to: threats of rape (*e.g.* Tr. 9/21/22, Vol. 3 at p. 27); confrontations with anonymous strangers in groceries stores and on the street, (*e.g.* Tr. 9/29/22, Vol. 1 at pp. 39-40); Tr. 9/21/22, Vol. 3 at p. 33); notes left on car windshields; notes left on doors, (*e.g.* Tr. 9/13/22, Vol 3 at p. 39); answering machine messages; letters in mailboxes (*e.g.*, Tr. 9/21/22, Vol. 4 at p. 39; 10/4/22, Vol. 2 at p. 41); messages left on social media sites (*e.g.* Tr. 9/29/22 at p. 21; Tr. 9/27/22, Vol. 4 at p. 46); and other communications by anonymous third parties (*e.g.* Tr. 9/27/22 at p. 22). Almost none of this was admissible under ordinary canons of evidence as either unreliable hearsay or lacking a foundation in the form of a discernable nexus to Mr. Jones. Given the law of default imposed by the Court, these rules were unavailing: everything was Mr. Jones’ fault. The trial Court wholly abandoned its gatekeeping function and its responsibility to assure that a fair trial, conducted according to the rules of evidence, take place. The trial was transformed into a memorial service.

Running throughout this trial was an unanswered question about the impact of the default on the scope of the proceedings. The plaintiffs argued throughout that the default operated in such a manner as to “establish” the allegations of the complaint. The defendants conceded

that the operation of the default left the material allegations of the complaint established. But the Court never decided what facts were material, and therefore established. The result were rulings both incoherent and baffling. On some occasions hearsay and foundation objections were sustained (*e.g.* Tr. 9/21/22, Vol. 3 at 29-30); on other occasions, such objections were overruled – even when the form of the questions were identical (*e.g.* Tr. 9/13/22, Vol. 2 at 49).

“In an action at law, the rule is that the entry of a default operates as a confession by the defaulted defendant of the truth of the material facts alleged in the complaint which are essential to entitle the plaintiff to some of the relief prayed. It is not the equivalent of an admission of all of the facts pleaded. The limit of its effect is to preclude the defaulted defendant from making any further defense and to permit the entry of a judgment against him on the theory that he has admitted such of the facts alleged in the complaint as are essential to such a judgment. *It does not follow that the plaintiff is entitled to a judgment for the full amount of the relief claimed. The plaintiff must still prove how much of the judgment prayed for in the complaint he is entitled to receive.* (Emphasis added)” *Zullo*, 143 Conn. at 129-30; see also *Mechanics Savings Bank*, 178 Conn. at 654.

The Court held, after evidence had begun, that it was “established” by the default that Mr. Jones knew his utterances about Sandy Hook were false from the very first moment he raised a concern on air hours after the shootings took place on December 14, 2012. (Tr. 9/17/22 at 43-44; Tr. 9/14/22, Vol. 3 at 61-62.) It also took as “established” that Mr. Jones was part of a conspiracy of known and unknown persons who had the intent to harass and intimidate the plaintiffs, at times sustaining objections to questions about the acts of third parties, (Tr. 9/27/22 at 30), at other times concluding that any harm that befell the plaintiffs was the fault of Mr. Jones, (Tr. 9/13/22, Vol 3, at p. 46.) Simply put, there

was no coherent law of the case, and result was enormous prejudice to the defendants, an evidentiary windfall that the plaintiffs should not have enjoyed in the context of a disciplinary default or any other lawful proceeding. The Sandy Hook parents suffered life-defining losses; however their pursuit of money damages entitles them to no special solicitude; proof ought to mandatory in a Court of law.

### **III. The Trial Court's Rulings Limiting Defendant Alex Jones' Ability to Testify on Matters Relating to Sandy Hook Resulted in the Plaintiffs' Misleading the Jury in a Manner that Made a Mockery of the Jury's Fact-Finding Function.**

#### **A. Introduction**

On the eve of trial, the plaintiffs persuaded the Court to issue additional sanctions against Mr. Jones, again for failing to comply to their satisfaction with discovery. The Court obliged. Mr. Jones was prohibited from testifying that Free Speech Systems, LLC, was in bankruptcy; that Sandy Hook was a minor part of overall coverage of events offered on his platforms; that he did not profit from Sandy Hook coverage; that he believed he and his firm had substantially complied with discovery; that he believed the opinions he expressed were protected by the First Amendment; and he could not deny that he lied from the very beginning of his coverage of the Sandy Hook shootings. Instead, he was compelled to appear by way of a trial testimony and to testify within the straight jacket imposed by the Court's rulings. (CA Item 1, DE 931, 941, 952, 871, 893, 904, 865, 883; *see also*, DE, at 46, 54, 59, 94-108.)

Mr. Jones was faced with a cruel trilemma: comply with the Court's orders, but testify falsely as he understood the facts; disobey the Court's order, and be held in contempt; plead the Fifth Amendment, and suffer an adverse inference. (*E.g.* Tr. 9/22/22, Vol 2 at pp. 44-56.) He

chose to boycott the proceedings, not returning to the stand after an examination by plaintiffs' counsel that descended into an abusive and puerile tirade by plaintiffs' counsel during with the Court sat passively by, ignoring objections Mr. Jones' counsel shouted to a seemingly vacant bench. (Tr. 9/22/22, Vol. 4, at pp. 18-24.) This was followed by another sneering appeal to passion and prejudice when counsel asked whether Mr. Jones was "gonna be ready to pounce" in the likely event of another mass shooting. (Id. at 24.) The plaintiffs, were freed to argue that Mr. Jones offered extensive coverage of Sandy Hook and made hundreds of millions of dollars spreading what they repeatedly called lies. The proceedings became a farce, a morality play without foundation in fact.

### **B. Standard of Review**

The limitations on what Mr. Jones could and could not say while testifying were ordered as a result of motions in limine. But the limitations were not imposed as a matter of considerations of materiality, relevance and prejudice, the traditional sources of such motions. The orders were issued as sanctions. As such, they are reviewable by the standards applicable to sanctions orders as argued in Section I.B., *supra*. p. 19.

### **C. Reviewability**

The parties submitted motions and the Court heard argument regarding the scope of Mr. Jones' testimony, and the issues are therefore preserved for review. (CA Item 1, DE 931, 941, 952, 871, 893, 904, 865, 883, 974, 974.20; *see also*, DE 963, Tr. 9/8/22 at 45, 53, 58, 93-107.)

## **D. Argument**

### **1. The Truth-Finding Function of a Trial Was Aborted by the Plaintiffs' Manipulation of Sanctions Orders, Permitting the Plaintiffs to Present a Case Based on Speculative Inferences, Deception, Incompetent Evidence and Lies.**

Not content with a disciplinary default, the plaintiffs continued to seek sanctions of one sort or another up until the very day that trial began. Operating under the assumption that Free Speech Systems, LLC, was a well-organized and well-managed operation whose failure to comply with the exacting standards of discovery demanded by the plaintiffs was evidence of an intent to withhold evidence, the plaintiffs managed to persuade the Court to enter further sanctions, limiting the scope of what Mr. Jones, or his corporate representative, could testify about. This had the result of placing Mr. Jones in a cruel trilemma, resulting in his decision to boycott the proceedings, proceedings which he likened to a “kangaroo court.” (Tr. 9/22/22, Vol. 1, at p. 59.)

Among the limitations placed on Mr. Jones' were the following:

- He was prohibited from testifying that Free Speech Systems, LLC, is currently in bankruptcy;
- He could not testify that Sandy Hook was a minor part of overall coverage of events offered on his platforms;
- He could not testify that he did not profit from Sandy Hook coverage;(CA item 1, DE 974.2.)

- He could not testify to his belief that he and his firm had substantially complied with discovery;
- He could not testify about his belief that the opinions he expressed were protected by the First Amendment;
- He could not deny that he lied from the very beginning of his coverage of the Sandy Hook shootings.

(Tr. 9/8/22, Vol. 1 at pp. 50-58; Tr. 9/22/22, Vol. 1 at pp. 3-8; Tr. 9/13/22, Vol. 1, at pp. 10-29.)

He was nonetheless compelled to testify by a trial subpoena, and he did testify. (Tr. 9/22/22.) Prior to his testimony the court, with the consent of counsel, canvassed him to make sure that he understood the limitations on what he could and could not say. It was also made clear to him that violating the court's order could result in criminal contempt. (Id. Vol. 1 at 12-17.)

Mr. Jones was faced with a dilemma. Testify consistent with the court's order, but testify in ways that he believes to be false – and commit perjury. Free Speech Systems, LLC, was in bankruptcy, as everyone in the courtroom but the jury knew – the case was tried when the corporate entity agreed to a relief from stay as to its bankruptcy rather than litigate the issue of whether the Court could proceed, as it announced its intention to do, with Mr. Jones's trial while Free Speech was in bankruptcy. (CA Item 1, DE 902, 903, 921.) Mr. Jones would have testified under oath that Sandy Hook was a minuscule part of his coverage over the decade in question. He would have testified that his firm lost money covering Sandy Hook. He would have testified that he had complied with discovery. He would have testified that he never lied about Sandy Hook, no matter how mistaken his beliefs were. If he

testified truthfully, he would be in contempt. If he testified, in accord with the court's order, he would commit perjury. Both are criminal.

He engaged in combative cross-examination.. Even so, counsel argued in a way that suggested to the jury the very things Mr. Jones was not permitted to address in his testimony. "Q. So, you have expanded your audience, year-over-year, right – since you started. Mr. Jones: No, after the thing I am not allowed to talk about happened, the audience got a lot smaller." (Tr. 9/22/22 at p. 13.) He was effectively prevented from testifying on his own behalf, where, if asked about any of the prohibited topics he likely would have pleaded the Fifth Amendment against self-incrimination to avoid either perjury or contempt. That, of course, would have yielded yet another windfall to the plaintiffs in the form of an adverse inference. He elected not to testify rather than participate in a proceeding in which he could be penalized for telling the truth. When Mr. Jones testified, truthfully, in his view, that the trial was "rigged" and the judge was a "tyrant," the plaintiffs replayed the comments front and center in their closing argument. (Tr. 10/5/22 at pp. 31-32.)

As with the case of the default, the plaintiffs were able to use sanctions to prevent the defendants from presenting claims necessary to their defense in a hearing for damages, and to argue what they say they could not prove – the extent of Sandy Hook coverage. Plaintiffs' counsel argued that the coverage was continuous, and broadcast to millions; Mr. Jones could not say otherwise, a court order precluded that. Yet the basis for that order was that the plaintiffs could not tell how extensive the coverage was given the alleged failure by the defendants to comply with discovery. The sanctions in this case were used to do what proof could not: promote arguments unsustainable by competent evidence.

An appropriate remedy post-default would have been something far less than preclusion of testimony: to wit, an instruction to the jury that they were free to draw an adverse inference about the various topics on which the plaintiffs claimed prejudice. The law of spoliation, as argued as to the default sanction. *Supra.* p. 27; *Rizzuto*, 280 Conn. at 234, would have supported the work justice required. Instead, the trial Court's rulings were a license to the plaintiffs to present a caricature of the evidence as the truth, an abandonment of the very truth-finding goal of trial.

#### **IV. The Jury's Award of Compensatory Damages Shocks the Sense of Justice.**

##### **A. Introduction**

The plaintiffs never had any intention to attempt proof of compensatory damages. One of their trial counsel, a former federal prosecutor and sometime candidate for statewide office, told the jury what the plaintiffs wanted during opening statements: they wanted to stop Alex Jones.

And we hope that your verdict ... is resounding enough to send who've [sic] been taken in by Alex Jones that they've been lied to. But the reality is that we're never going to put this lie totally back in the bottle. We'll all be gone and that lie will still be out there. But somewhere out there right now is another family getting their kids ready for school. Fixing their lunches. Going to work thinking about picking their kid up. And there's going to be day [sic] where their child doesn't come home from school. And we know it, and it's sad, and that's reality. And the question's going to be, where is Alex Jones when that happens? Is he in his studio getting ready to pounce? **Or will you stop him? That's going to be in your hands.** And when we get all done with all the evidence, we're going to come back and we're

going to ask you stuff [sic], because that is what justice is about in this case. [Emphasis added.]

(Tr. 9/13/22, Vol. 1, at pp. 83-84.)

No expert testified about the distress the plaintiffs suffered. No medical professional or social worker talked about treatment. Indeed, plaintiffs' counsel misled the jury during closing argument, suggesting that the plaintiffs refused to turn over medical records to Mr. Jones for fear of what he'd do with them. "And if you think that we were going to let Alex Jones dig into their therapy records, then you don't understand the type of protection these people need together." (Tr. 10/6/22 at 18.) No plaintiff asked for a dollar from the jury or put before the jury any discernable basis for calculating damages. Here is the sum total of the plaintiffs' argument about damages, an argument that can most charitably be referred to as a Lotto theory of damages – the jury was left to pick a number, any number at all, so long as they multiplied it by 550 million, the minimum number of likes a social media expert testified Mr. Jones Internet sites had garnered since the school shootings:

What kind of verdict would be reasonable in a case like that?

Just one person. I don't know. Pick a number. 50,000, 10,000, a thousand, a hundred bucks. Pick a number. That's what we're talking about, okay.... And I want you to keep that number in mind. Keep that number in mind as you realize what Alex Jones did, was tell that lie to a minimum of 550 million viewers.... And if you thought it was reasonable, in your mind, for a guy like me who had been lied about once to awarded whatever the number is, then that's reasonable for them 550 million times, minimum.

(Tr. 10/6/22 at 56.) "You reap what you sew, [sic]," counsel told the jury, forgetting, for the moment, that in a civil case you only recover what you prove, even in a hearing in damages. (Id. at 57.)

The result was nearly \$1 billion in compensatory damages. This Court will be left to guess how that sum was decided. The trial court made no effort to do so in its ruling denying remittitur. (CA, Item 1, DE 1043, PA at pp 615 et seq.) The result requires reversal.

### **B. Standard of Review**

The defendants contend that the jury's award shocks the sense of justice and is therefore a violation of due process of law under both the state and federal constitutions. "Whether a party was deprived of his due process rights is a question of law to which appellate courts grant plenary review."

*Petrucelli v. City of Meriden*, 197 Conn. App. 1, 14 (2020)(citation omitted).

### **C. Reviewability**

The defendants filed timely motions for new trial and remittitur, to which the plaintiffs responded. (CA 1, DE 1015, 1016, 1030, 1031.) The trial Court denied remittitur and new trial motions in a written ruling. (CA item 1, DE 1055.) The transcript was not prepared at the time the motions were filed. The appellants rely on the trial record as sufficient for review.

### **D. Argument**

"It is important to note that *Briggs v. Becker*, 101 Conn. 62 (1924), and the cases that have followed do not require a direct showing of partiality, prejudice, mistake or corruption, but rather stand for the proposition that if the amount awarded 'shocks the sense of justice' as to what is reasonable, then the inferred conclusion is that the jury were misguided in reaching its decision." *Zarrelli v. Barnum Festival Society*, 6 Conn. App. 322, 327-28 (1986). "The ultimate test [that] must be applied to the verdict by the trial court is whether the jury's award falls somewhere within the necessarily uncertain limits of just damages or whether *the size of the verdict* so shocks the sense of justice *as to*

*compel the conclusion* that the jury [was] influenced by partiality, prejudice, mistake or corruption.” *Maldonado v. Flannery*, 343 Conn. 150, 166 (2022) (emphasis added; citations and internal quotation marks omitted).

To be sure, the plaintiffs testified about the searing loss they had suffered because of the murder of a child or loved one; Mr. Aldenberg, who arrived on the scene shortly after the shootings testified that he’d never forget what he saw on December 12, 2012. (Tr. 9/13/22, Vol. 2, at p. 40.) But compensation for the harm caused by Adam Lanza, the shooter, was not before the jury. The harm here was the proximate result of Mr. Jones’ conduct. Relieved of the burden of proving proximate cause, the plaintiffs argued that everything they suffered since 2012 was Mr. Jones’ fault – every slight, whether real or imagine, every hostile comment. But the plaintiffs offered no evidence to assist the jury in deciding what level of compensation would be fair, just and reasonable. Their counsel presented a punitive damages case under cloak of a compensatory damages case. Hence the critical importance of obtaining a default judgment and related trial sanctions. If they could silence Mr. Jones at trial, deprive him of the right to challenge their liability and damages claims, they might hit the jackpot and silence him in the years to come.

The plaintiffs’ tipped their hand when they asked the Court to submit to the jury an “advisory request” verdict on punitive damages, realizing, of course, that CUTPA punitive damages were for the Court to determine and that common law damages were simple attorney’s fees. (CA item 1, D.E. 973, PA at pp. 62 et seq.) The Court rejected the request for an advisory verdict. (Id.)

The jury was inspired by sympathy after hearing from sympathetic accounts of how each plaintiff was educated, how they met their spouses, or, in the case of one teacher, how much the teacher loved

books, life, and her siblings. Each plaintiff who lost a loved one testified extensively about their lives before the murders -- some for as long as half an hour -- before even getting to the issues for which this hearing in damages was held. (See testimony of Carlee Soto Parisi, Tr. 9/13/20, Vol. 3 at 6-16; testimony of David Wheeler, Tr. 9/21/22, Vol. 1 at 13-25; testimony of Erica Lafferty, Tr. 9/21/22, Vol. 2 at 31-43; Tr. 9/21/22, Vol 3 at 3-8; testimony of Jennifer Hensel, Tr. 9/21/22, Vol 4 at 7-22; testimony of Ian Hockley, 9/27/22, Vol. 1 at 12-26; testimony of Nicole Hockley, Tr. 9/27/22, Vol. 2 at 27-43; Tr. 9/27/22, Vol. 3 at 10-14; testimony of Jillian Soto-Marino, Tr. 9/27/22, Vol. 4, at 2-14; testimony of William Sherlach, Tr. 9/28/22, Vol. 1 at 7-31; testimony of Robbie Parker, Tr. 9/28/22, Vol. 3, at 30-49; Testimony of Matthew Soto, Tr. 9/29/22, Vol. 2 at 3-13; testimony of Donna Soto, Tr. 9/29/22, Vol. 2 at 29-39; testimony of Francine Wheeler, Tr. 10/4/22, Vol. 1 at 10-24; testimony of Jacqueline Barden, Tr. 10/4/22, Vol. 4 at 52-67; testimony of Mark Barden, Tr. 10/4/22, Vol. 2 at 6-20.)

As they testified, other plaintiffs in the audience murmured in appreciation of anecdotes well delivered. When the testimony turned to Mr. Jones it was usually brief. Most knew nothing of his or Infowars until after the death of their loved one. Indeed, mid-trial, the plaintiff's moved to prohibit questions of the plaintiffs about their knowledge of Mr. Jones on the theory that it had been "established" that he was responsible for whatever they suffered. The motion was granted. Then came tales of harassment at the hands of third parties, and tearful testimony about their fear and grief. It was well-choreographed by counsel and moving. Indeed, after one witness testified, the witness left the stand and was embraced in a sympathetic hug by plaintiffs' counsel in the well of the court.

Arguing that Mr. Jones must be stopped is not an argument for compensatory damages. Neither is it an argument that he must be held

accountable. It is the responsibility of plaintiffs to meet the burden of proving that a sum will compensate the plaintiffs for the harm they have endured and likely will endure. The plaintiffs never did this in this case, focusing instead on arousing sympathy, directing anger, and anchoring a large number before the jury with the hope that jurors would do what they did in this case – award a fortune.

The defendants contend that due process requires some form of notice not just as to the nature of the injury and type of damages, but some notice as to the magnitude of harm. Plaintiffs may protest that such a proceeding requires them to “bid against themselves” at trial. But trial is not a gaming table. It is the plaintiffs’ burden to prove their damages; it ought to be their responsibility to estimate what they think it will take to make them whole. The failure to do so results, in the defendants’ view, in a fundamental failure of proof. If the plaintiffs or their witnesses can’t, or won’t say, what their suffering is worth, the jury ought not to be left to assign a value absent far more than was shown here.

The case law on remittitur and damages focuses primarily on punitive damages and the need to avoid a due process violation for an excessive fine. Due process also required tethering causation to proof. Where, as here, the plaintiffs argue for punitive damages under the guise of seeking compensatory damages, a reviewing court is entitled to pierce the rhetorical veil offered by counsel. The plaintiffs argued that it was necessary to stop Mr. Jones from hurting another family on another day. Counsel abandoned its responsibility to put before the jury any principled basis for its award of damages. This Court should evaluate this verdict for what it is – a punitive damages award.

There should be no doubt that the size of this verdict “so shocks the sense of justice *as to compel the conclusion* that the jury [was] influenced by partiality, prejudice, mistake or corruption.” *Maldonado*,

343 Conn. at 166. That it did not shock the trial judge is hardly surprising. Her hostility to the defendants and their counsel was palpable and obvious throughout the proceedings.

Punitive damages are tethered to limits so as to avoid excessive fines and a violation of due process. “The Due Process Clause of the Fourteenth Amendment prohibits a state from imposing a ‘grossly excessive’ punishment on a tortfeasor. *TXO Production Corp. v. Allied Resources Corp.*, 509 U.S. 443, 454 (1993).” *BMW North America, Inc. v. Gore*, 517 U.S. 559 (2006). Due process imposes an outer limit that Courts struggle to discern. *Exxon Shipping Co. v. Baker*, 128 S.Ct. 2605, 2626 (2008)(suggesting that a ratio analysis of punitive damages and punitive damages imposes an outer limit on what punitive damages are consistent with the requirements of due process). “It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendants’ culpability, after having paid compensatory damages, is so reprehensible as to warrant imposition of further sanctions to achieve punishment or deterrence.” *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003).

The defendants understand that the almost \$1 billion in damages awarded as compensatory damages are distinguishable from the punitive damages later awarded by the Court in post-verdict proceedings. They also understand that a tortfeasor takes his victim as he finds him, and is responsible for the harm he causes. An extraordinary result may be warranted in the case of an exceptionally vulnerable victim. And certainly those plaintiffs who lost loved ones in this case were vulnerable. But every plaintiff, even the most sympathetic plaintiff, must prove the damages they hope to recover; absolving them of that responsibility is a recipe for injustice.

The courts offer little guidance on what to do in cases such as this, where juries are left entirely without guidance, and are left to rely wholly on arguments of counsel, in determining what order of magnitude to consider in imposition of damages. The defendants contend that due process requires adequate notice and a meaningful opportunity to be heard. A plaintiff seeking a fortune should, at a minimum, be required to offer evidence as to why it will take a fortune, and not some lesser sum, to compensate them. In a case in which hundreds of millions of dollars, even a billion dollars, are at stake, isn't a defendant entitled to more than a game of Russian Roulette at trial?

*Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), offers some guidance. Its tripartite test counsels that the requirements of due process are flexible and determined by “the importance of the private interest affected, the risk of erroneous deprivation under the system challenged, the protective value of the different procedures proposed, and the... interests, including any ‘fiscal and administrative burdens’ created by different procedures.”

Here, the plaintiffs could have, and should have, made a claim that could be tested or challenged by the defendant as to the amount of loss they sought. Leaving it for argument left it a mystery until the closing argument. Would this court enter an alimony award in a process that amounts to blind bidding? The plaintiffs sought to hold Mr. Jones accountable. But accountable for what?

Simply for the harm he caused. All they could obtain was money damages. On the *Eldridge* factors this should require some evidence of what is sought. This verdict exceeds any reasonable estimate of the defendants' worth. The importance of the interests affected here is enormous both for the defendants and their employees. The risk of erroneous deprivation is obvious – these judgments stand not just to push the defendants into bankruptcy but to keep them tethered as

judgment creditors to the civil justice system for decades. Requiring the plaintiffs to offer a mere scintilla of evidence as to what they seek places the burden of proving their claim where it belongs, on the plaintiffs, and leaves to counsel the freedom to argue for more or less.

One studies the verdict in vain to find an algorithm to decode how damages were assessed. The jury had reasons, assuredly. It simply cannot be said whether those reasons had anything to do with the evidence or were the product of passion and prejudice.

## **V. The Plaintiffs' Neither Pleaded Nor Proved a Violation Connecticut Unfair Trade Practices Act.**

### **A. Introduction**

Mr. Jones supports his broadcasting by the sale of health supplements. The plaintiffs contended at trial that his reckless speech about public affairs – his “lies,” they intoned as often as they could utter the words – were intended to generate social media clicks. Once a person went to his web page or his broadcasts, they would be directed to his sales sites. (Tr. 10/5/22 at 45-48.) There was no evidence that Mr. Jones ever uttered a false or deceptive word about the supplements. The plaintiffs passed this off as a violation of the Connecticut Unfair Trade Practices Act, their only avenue toward open-ended punitive damages. The trial Court obliged, awarding CUTPA punitive damages of \$150 million. (CA Item 1, DE, 1026, PA at p. 149. Simply put, CUTPA has never before been used as a means of attacking speech about public affairs, even defamatory speech. The result requires reversal.

### **B. Standard of Review**

Whether a CUTPA claim can advance based solely on speech not directly related to the sale of products is a question of law, and is therefore subject to de novo review. *Petrucelli*, 197 Conn. App. at 23.

### **C. Reviewability**

The defendants filed a motion to strike alleging the plaintiffs lacked standing to raise a CUTPA claim. (CA item 1, DE 417.) The trial Court denied that motion. (CA item 1, DE 593, PA at pp. 626 et seq.) . At trial, the defendants moved for a directed verdict on the CUTPA claim on somewhat different grounds: the plaintiffs did not plead or prove ascertainable loss; a claim which the defendants renewed in their new trial motion. The Court rejected these claims as well. (Tr. 10/5/22 at 1-11.) The defendants also raise here a claim of sufficiency of the evidence.

### **D. CUTPA Does Not Support a Claim Against a Person Uttering Noncommercial Speech.**

In sum, the plaintiffs' CUTPA claims come down to this: Mr. Jones lies to stir fear in consumers; he then sells products – primarily dietary supplements -- to consumers to address their fear. In the case of the Sandy Hook families, Mr. Jones lied about the shootings to drive folks to his web sites, where banner ads led them to product sites. He intended to drive folks to those sites by spreading lies about public events and private persons. He used defamation about events unrelated to products to increase sales. The statements at issue in this case, that Sandy Hook was a hoax, the parents were crisis actors and the hoax was a plot inspired motivate policy makers to limit the right to possess firearms are not commercial speech. The comments may be defamatory, and therefore unprotected, but they are not comments about the sale or use of products Mr. Jones offered for sale. No court has ever recognized noncommercial speech as sufficient to support a CUTPA violation.

As reflected in the trial Court's decision in its motion to strike, mere defamation is, in the trial Court's mind, enough to support a CUTPA claim: "In the present case, the plaintiffs alleged that the

defendants ‘broadcast outrageous, cruel and malicious lies about the plaintiffs’ and that ‘these acts of the defendants resulted in damages to the plaintiffs.’ Therefore, the plaintiffs have set forth a colorable claim of direct injury such that they have standing to maintain their CUTPA cause of action.” (PA at p. 649)

Nothing in the appellate court cases of this state supports such a conclusory “analysis.” *Soto v. Bushmaster Firearms Int’l, LLC*, 331 Conn. 53 (2019) comes close, but not close enough, to saving this case. In *Soto*, firearms manufacturers marketed military grade weapons to civilians, glorifying their destructive capacity. When a civilian used such a weapon to slaughter school children and educators, the manufacturer was held liable for its unscrupulous ad. *Soto* held that the plaintiffs’ decedents had standing to raise claims despite the lack of a consumer relationship with the firearms’ manufacturer. *Id.* at 109-110. *Soto* did not hold that a lie told for the sake of indirect commercial gain transforms ordinary defamation into a CUTPA claim, however. One needs to lie about a product or otherwise to engage in unscrupulous advertising about a product.

In *Soto*, unscrupulous means were used to market a product that was then used to slaughter innocents. There is no analog here. Mr. Jones lied about Sandy Hook. He lied to attract attention. That attention drove people to his product pages and sales of those products, presumably, increased. No one died or was injured or even harmed from purchasing any, or too much, of a dietary supplement. Indeed, no effort was made in this case to show any of the products’ lacked efficacy.

The Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110g (a) creates a private right of action for persons injured by unfair trade practices and provides in relevant part: “*Any person* who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by

section 42-110b, may bring an action . . . to recover actual damages...” (Emphasis added.) On its face, the statute plainly and unambiguously authorizes *anyone* who has suffered an ascertainable financial loss as a result of an unfair trade practice to bring a CUTPA action. Nothing in the text of the statute indicates that the right afforded by Sec. 42-110g(a) is enjoyed only by persons who have done business of some sort with a defendant.” *Soto*, 331 Conn. at 89-90. *Soto* rejected the requirement that a plaintiff have a business relationship with a defendant to have standing to raise a CUTPA claim. But its holding was limited to situations in which unscrupulous advertising about a product foreseeably lead a third party to use to the product to injure a plaintiff. The Court noted the extremely narrow window it had opened to a plaintiff hoping to bring such a CUTPA claim, calling matters of proof at trial “Herculean.”

“We need not decide today whether there are other contexts or situations in which parties who do not share a consumer, commercial, or competitor relationship with an alleged wrongdoer may be barred, for prudential or policy reasons, from bringing a CUTPA action. What is clear is that none of the rationales that underlie the standing doctrine, either generally or in the specific context of unfair trade practice litigation, supports the denial of standing to the plaintiffs in this case. Standing...is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticable interests and that judicial decisions [that] may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.” (Internal quotation marks omitted.) *Slimp v. Dept. of Liquor Control*, 239 Conn. 599, 609 (1996). *Ganim v. Smith & Wesson Corp.*, 258 Conn. 313 (2001), in fact, provides an instructive contrast to the present case. In *Ganim*, the mayor and the city of Bridgeport brought an action against handgun manufacturers, trade associations,

and retail gun sellers to recoup various municipal costs associated with gun violence, including increased police and emergency services, loss of investment, and victimization of Bridgeport's citizens. *Id.* at 325-17, 336-28. The court concluded that the municipal plaintiffs lacked standing under CUTPA because the “harms claimed . . . [were too] indirect, remote and derivative with respect to the defendants' conduct . . . .”

*Id.* at 363.

In the present case, by contrast, the plaintiffs allege that the defendants' wrongful advertising magnified the lethality of the Sandy Hook massacre by inspiring Lanza or causing him to select a more efficiently deadly weapon for his attack. Proving such a causal link at trial may prove to be a Herculean task. But if it can be proven—and the posture in which this case reaches us requires that we assume it can—the link between the allegedly wrongful conduct and the plaintiffs' injuries would be far more direct and less attenuated than in *Ganim. Soto*, 331 Conn. at 106-108.

The sole reason for pleading CUTPA in addition to the other claims was simply to have access to a larger pot of punitive damages than the common law counts afford. The trial Court, and not a jury, awards punitive damages under CUTPA, whereas punitive damages are limited to attorneys' fees and costs for the common law claims. Nothing in the plaintiffs' pleadings specifies which alleged “lie” about Sandy Hook amounted to a violation of CUTPA. One suspects that is because the plaintiffs believe that all of the defendants' utterances did so. The trial Court certainly did so, ruling that the defendants' mere defamatory utterances were legally sufficient to withstand a motion to strike.

The protection of speech, even unpopular speech, has long been recognized by our Courts. “Freedom of speech presupposes a willing speaker. But where a speaker exists, as is the case here, the protection

afforded is to the communication, to its source and to its recipients both. This is clear from the decided cases. In *Lamont v. Postmaster General*, 381 U.S. 301 (1965), the Court upheld the First Amendment rights of citizens to receive political publications sent from abroad. *Virginia State Bd. Of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 756-757 (1976). Thus Mr. Jones is free to spout whatsoever conspiracy theory he pleases, subject to the common law limitations of defamation and related torts. His listeners are likewise free to listen to, and to believe, whatsoever they like, whether defamatory or not.

Mr. Jones is not contending, in this section of the brief, that his speech was protected on First Amendment grounds. As argued elsewhere in the brief, those issues were never reached by virtue of disciplinary default. He contends here that whatever valid limitations the common law may impose on speech, CUTPA imposes no restriction on speech that is neither directly commercial in character, e.g., warranties to a purchaser at the point of sale, nor, as in *Soto*, indirectly commercial in character, e.g. unscrupulously advertising that an item offered for sale can be used in a matter that violated public policy.

## **7. Conclusion and Statement of Relief Requested**

For all of the reasons stated herein, the defendants request that this Court vacate the judgment and remand the case as to the claims of defamation, breach of privacy and intentional infliction of emotional distress. The defendants request dismissal of the CUTPA count.

Dated: June 2, 2023

Respectfully submitted,

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## **8. Certification of Compliance**

The undersigned hereby certifies the following:

That the electronically submitted brief has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided, pursuant to PB § 67-2(b); and

That the electronically submitted brief has been redacted or does not contain any names or personal identifying information that is prohibited from disclosure by rule, statute, court order or case law, pursuant to PB § 67-2(b)(2).

That a copy of the brief has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, pursuant to PB § 67-2(b), to wit:

That the brief being filed with the appellate clerk is a true copy of the brief that was submitted electronically, pursuant to PB § 67-2(b);

That the brief has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law, pursuant to PB § 67-2(i)(3);

That, pursuant to the Mandatory Electronic Briefing in Appeals Filed On or After October 1, 2021 requirements, that this brief contains

13465 words as counted by the word counting feature of Microsoft Word 2016, excluding the parts exempted by the rules;

That no deviations were requested from any rules; and

That the brief complies with all other applicable provisions of the Practice Book.

/s/ Norman A. Pattis  
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