

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,  
MARISSA BLAIR, TYLER MAGILL, APRIL  
MUNIZ, HANNAH PEARCE, MARCUS  
MARTIN, JOHN DOE, JANE DOE 1, JANE  
DOE 2, and JANE DOE 3,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER,  
CHRISTOPHER CANTWELL, JAMES  
ALEX FIELDS, JR., VANGUARD  
AMERICA, ANDREW ANGLIN,  
MOONBASE HOLDINGS, LLC, ROBERT  
“AZZMADOR” RAY, NATHAN DAMIGO,  
ELLIOT KLINE a/k/a/ ELI MOSELY,  
IDENTITY EVROPA, MATTHEW  
HEIMBACH, MATTHEW PARROTT a/k/a  
DAVID MATTHEW PARROTT,  
TRADITIONALIST WORKER PARTY,  
MICHAEL HILL, MICHAEL TUBBS,  
LEAGUE OF THE SOUTH, JEFF SCHOEP,  
NATIONAL SOCIALIST MOVEMENT,  
NATIONALIST FRONT, AUGUSTUS SOL  
INVICTUS, FRATERNAL ORDER OF THE  
ALT-KNIGHTS, MICHAEL “ENOCK”  
PEINOVICH, LOYAL WHITE KNIGHTS OF  
THE KU KLUX KLAN, and EAST COAST  
KNIGHTS OF THE KU KLUX KLAN a/k/a  
EAST COAST KNIGHTS OF THE TRUE  
INVISIBLE EMPIRE,

Defendants.

**Civil Action No. 3:17-cv-00072-NKM**

**JURY TRIAL DEMANDED**

**DOE PLAINTIFFS’ MOTION TO STRIKE DEFENDANT FIELDS’ UNTIMELY  
OPPOSITION TO MOTION TO PROCEED UNDER PSEUDONYMS**

## PRELIMINARY STATEMENT

Four weeks after his deadline, Defendant Fields filed an untimely opposition to the Doe Plaintiffs Motion to Proceed by Pseudonym. In his opposition, Fields identifies no reason for his month's long delay. Rather, he asks the Court to accept without explanation a filing he knew—or clearly should have known—was due a month earlier. The Pretrial Order entered in this case, and fundamental rules of fairness, require that the Court strike Fields' opposition.

## FACTS

On November 13, 2017, Doe Plaintiffs filed a Motion to Proceed by Pseudonym. ECF No. 98. Defendant Fields, and all other Defendants registered with the ECF system, received notice of Doe Plaintiffs' filing immediately. Pursuant to the Pretrial Order, ECF No. 101, Defendant Fields' deadline to oppose the Doe Plaintiffs' Motion was November 28, 2017. Neither Defendant Fields, nor any other served Defendant, opposed Plaintiffs' Motion. In light of the absence of opposition to Plaintiffs motion, and pursuant to Local Rule 11(b), Plaintiffs sought Defendants' consent to proceed on the then-unopposed motion without a hearing. Ex. A. Fields withheld consent. *Id.* Plaintiffs' counsel reminded counsel for Fields that the motion was unopposed and informed him that Plaintiffs intended to file a notice with the Court informing it of certain parties' agreement to proceed without a hearing. *Id.* Three hours later, and over four weeks after his deadline to do so, Fields opposed Plaintiffs' motion.<sup>1</sup>

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<sup>1</sup> In an abundance of caution, and in no way acknowledging the propriety of Defendant Fields' untimely opposition, Plaintiffs intend to file a Reply in Support of the Doe Plaintiffs' Motion to Proceed Under Pseudonyms on January 4, 2018 (the deadline called for by this Court's rules).

## ARGUMENT

### I. THE PRETRIAL ORDER PRECLUDES CONSIDERATION OF FIELDS' UNTIMELY OPPOSITION

The Pretrial Order in this case sets forth the schedule for parties' briefing of motions, and the consequences for any failure to adhere to that schedule. The Pretrial Order provides:

If any motion, properly filed and briefed, is to be opposed, a brief in opposition must be filed within 14 days of the date of service of the movant's brief (or within 14 days of this order if a motion and supporting brief were served before this order). Except for good cause shown, *if a brief opposing a motion is not timely filed, the court will consider the motion to be unopposed.*

ECF No. 101, ¶ 7 (emphasis added). Defendant Fields' opposition was plainly untimely, and he offers no cause, let alone *good* cause, excusing his delay. For this reason alone, Defendant Fields' untimely opposition should be stricken.

### II. FIELDS 'ARGUMENT' FOR THE CONSIDERATION OF HIS UNTIMELY OPPOSITION FAILS

Nowhere in Defendant Fields' untimely opposition does he identify any reason for his untimeliness, evincing an apparent belief that no such justification is necessary. Rather, Defendant Fields offers only one argument in favor of considering his month's late opposition: that "the right to proceed under a pseudonym or fictitious name should not be granted automatically even if no opposing party objected." (Opp. 5.) Plaintiffs don't disagree, and submitted to the Court their Motion to Proceed Under Pseudonym with the expectation that the Court would consider the merit of their arguments before deciding the motion, regardless of whether Defendants opposed. That the Court should not grant motions automatically does not, though, erase a party's obligation to timely file responsive motions. And Fields' two-sentence argument fall far short from establishing the "excusable neglect" necessary in this District.

*McLean v. Broadfoot*, No. 4:10-CV-00019, 2011 WL 1833302, at \*8-9 (W.D. Va. May 13, 2011).

### CONCLUSION

For the foregoing reasons, the Court should strike Defendant Fields untimely Opposition to Plaintiffs' Motion to Proceed Under Pseudonyms.

Dated: December 29, 2017

Respectfully submitted,

*s/ Robert T. Cahill*

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*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2017, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

Justin Saunders Gravatt  
David L. Hauck  
David L. Campbell  
Duane, Hauck, Davis & Gravatt, P.C.  
100 West Franklin Street, Suite 100  
Richmond, VA 23220  
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*Counsel for Defendants Jeff Schoep, Nationalist Front, National Socialist Movement, Matthew Parrott, Matthew Heimbach, Robert Ray, Traditionalist Worker Party, Elliot Kline, Jason Kessler, Vanguard America, Nathan Damigo, Identity Europa, Inc., and Christopher Cantwell*

I further hereby certify that on December 29, 2017, I also served the following non-ECF participants, via U.S. mail, First Class and postage prepaid, addressed as follows:

Loyal White Knights of the Ku Klux Klan  
a/k/a Loyal White Knights Church of the  
Invisible Empire, Inc.  
c/o Chris and Amanda Barker  
P.O. Box 54  
Pelham, NC 27311

Richard Spencer  
1001-A King Street  
Alexandria, VA 22314

Michael Peinovich  
a/k/a Michael "Enoch" Peinovich  
PO Box 1069  
Hopewell Junction, NY 12533

Moonbase Holdings, LLC  
c/o Andrew Anglin  
6827 N. High Street, Suite 121  
Worthington, OH 43085

Andrew Anglin  
6827 N. High Street, Suite 121  
Worthington, OH 43085

East Coast Knights of the Ku Klux Klan  
a/k/a East Coast Knights of the True  
Invisible Empire  
26 South Pine St.  
Red Lion, PA 17356

Fraternal Order of the Alt-Knights (c/o  
Proud Boys)  
c/o LegalCorp Solutions, LLC  
11 Broadway, Suite 615  
New York, NY 10004

Augustus Sol Invictus  
206 N. Mills Avenue  
Orlando, FL 32801

*s/ Robert T. Cahill*  
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Email: rcahill@cooley.com

*Counsel for Plaintiffs*

158721086

## Christopher Greene

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**From:** Mike Peinovich <mpeinovich@gmail.com>  
**Sent:** Thursday, December 28, 2017 3:40 PM  
**To:** Christopher Greene  
**Cc:** David Campbell; Elmer Woodard; Kim Davis; James Kolenich; Bryan Jones; David Hauck; Justin Gravatt; Julie Fink; Philip Bowman; Levine, Alan; Joshua Libling  
**Subject:** Re: Sines v. Kessler

All,

As far as the hearing on the motion regarding the right of certain plaintiffs to proceed under pseudonyms, while I will be unable to attend such a hearing due to my geographical distance, I support the position of Mr. Fields' attorney and believe that if he does not consent to the matter being decided without a hearing that he has a good reason for this, and if he wants to argue the matter in front of the court then he should have the opportunity to do so.

As far as the confidentiality order, I had told you before that my main concern was that should I disclose any documents that I have the right to redact the names or personal information of anyone that is not named in this suit. Since your draft order stipulates that any party can designate certain information as "highly confidential" I think that this satisfies my concerns in that regard.

For the record I did not decline to comment on the confidentiality order, I was simply busy and traveling during the Christmas season and did not have the opportunity to look at things in detail. I was also trying to be magnanimous to all other parties involved in this and give everyone a bit of time to relax and enjoy their Christmas. In any case, I think the order is fine.

Thanks and Happy New Year,

Mike Peinovich

On Thu, Dec 28, 2017 at 2:06 PM, Christopher Greene <[cgreene@kaplanandcompany.com](mailto:cgreene@kaplanandcompany.com)> wrote:

Mr. Campbell,

As no defendant opposed Plaintiffs' motion, we fail to see why a hearing on that motion would be necessary. We will be filing with the Court a notice that Plaintiffs and certain defendants believe the motion may be decided without a hearing.

- Other counsel/parties – Please let us know by 4 pm if you **do not** consent to joining a notice to the Court indicating that Plaintiffs and Defendants (excepting Mr. Fields) consent to proceeding without a hearing. We will be filing the notice this evening.



As for the confidentiality order, we await Mr. Peinovich's comments. Should you and other defendants wish you proceed without him, Plaintiffs are prepared to file on January 2 the draft circulated among the group on with a note to the Court that Mr. Peinovich had three weeks to provide comments and declined to do so.

Regards,

Christopher B. Greene

Kaplan & Company, LLP

[\(929\) 294-2528](tel:9292942528)

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**From:** David Campbell [mailto:[DCampbell@dhdglaw.com](mailto:DCampbell@dhdglaw.com)]

**Sent:** Thursday, December 28, 2017 10:37 AM

**To:** Christopher Greene <[cgreene@kaplanandcompany.com](mailto:cgreene@kaplanandcompany.com)>; Mike Peinovich <[mpeinovich@gmail.com](mailto:mpeinovich@gmail.com)>; Elmer Woodard <[isuecrooks@comcast.net](mailto:isuecrooks@comcast.net)>; Kim Davis <[KDavis@dhdglaw.com](mailto:KDavis@dhdglaw.com)>; James Kolenich <[jek318@gmail.com](mailto:jek318@gmail.com)>; Bryan Jones <[bryan@bjoneslegal.com](mailto:bryan@bjoneslegal.com)>; David Hauck <[DHauck@dhdglaw.com](mailto:DHauck@dhdglaw.com)>; Justin Gravatt <[JGravatt@dhdglaw.com](mailto:JGravatt@dhdglaw.com)>

**Cc:** Julie Fink <[jfink@kaplanandcompany.com](mailto:jfink@kaplanandcompany.com)>; Philip Bowman <[pbowman@bsfllp.com](mailto:pbowman@bsfllp.com)>; Levine, Alan <[alevine@cooley.com](mailto:alevine@cooley.com)>; Joshua Libling <[jlibling@BSFLLP.com](mailto:jlibling@BSFLLP.com)>

**Subject:** RE: Sines v. Kessler

All,

I do not consent to this motion being decided without a hearing. Also, what is going on with the confidentiality order?

Dave

---

David L. Campbell

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**From:** Christopher Greene [<mailto:cgreene@kaplanandcompany.com>]

**Sent:** Wednesday, December 27, 2017 5:09 PM

**To:** Mike Peinovich <[mpeinovich@gmail.com](mailto:mpeinovich@gmail.com)>; Elmer Woodard <[isuecrooks@comcast.net](mailto:isuecrooks@comcast.net)>; Kim Davis <[KDavis@dhdglaw.com](mailto:KDavis@dhdglaw.com)>; James Kolenich <[jek318@gmail.com](mailto:jek318@gmail.com)>; Bryan Jones <[bryan@bjoneslegal.com](mailto:bryan@bjoneslegal.com)>; David Hauck <[DHauck@dhdglaw.com](mailto:DHauck@dhdglaw.com)>; David Campbell <[DCampbell@dhdglaw.com](mailto:DCampbell@dhdglaw.com)>; Justin Gravatt <[JGravatt@dhdglaw.com](mailto:JGravatt@dhdglaw.com)>

**Cc:** Julie Fink <[jfink@kaplanandcompany.com](mailto:jfink@kaplanandcompany.com)>; Philip Bowman <[pbowman@bsfillp.com](mailto:pbowman@bsfillp.com)>; Levine, Alan <[alevine@cooley.com](mailto:alevine@cooley.com)>; Joshua Libling <[jlibling@BSFLLP.com](mailto:jlibling@BSFLLP.com)>

**Subject:** Sines v. Kessler

All,

Please let us know by mid-day tomorrow whether you consent to the Court ruling on the Doe Plaintiffs' Motion to Proceed under Pseudonyms without a hearing.

Regards,

Christopher B. Greene

Kaplan & Company, LLP

[\(929\) 294-2528](tel:9292942528)

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