

**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, NATALIE ROMERO, CHELSEA
ALVARADO, and JOHN DOE,

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 MOSLEY,
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 “ENOC”
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

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ MOTION FOR
SANCTIONS AGAINST DEFENDANTS ELLIOT KLINE A/K/A ELI MOSLEY AND
MATTHEW HEIMBACH**

TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
FACTUAL BACKGROUND.....	3
I. Defendant Kline	3
A. Defendant Kline’s Pivotal Role in the Conspiracy	3
B. Defendant Kline’s Failure to Participate in Discovery While Continuing to Comment on Social Media	5
C. Defendant Kline’s Flagrant Disregard of this Court.....	6
II. Defendant Heimbach	8
A. Defendant Heimbach’s Pivotal Role in the Conspiracy	8
B. Defendant Heimbach’s Failure to Respond to Discovery.....	9
ARGUMENT	13
I. Defendants Kline and Heimbach Have Acted in Bad Faith	16
II. Plaintiffs Have Been Severely Prejudiced by Defendants Kline’s and Heimbach’s Failure to Respond to Discovery	18
III. Deterrence Is Required Where, as Here, Multiple Defendants Have Resisted Compliance with Discovery	20
IV. Lesser Sanctions Would Not Be Effective.....	22
CONCLUSION.....	24

Plaintiffs respectfully submit this memorandum of law in support of their motion pursuant to Rule 37 of the Federal Rules of Civil Procedure and the Court's inherent authority for sanctions against Defendants Elliot Kline and Matthew Heimbach.

PRELIMINARY STATEMENT

Defendants Elliott Kline and Matthew Heimbach are leaders in the white supremacy movement and were two of the architects of the violent, racially-motivated conspiracy that led to the injuries and fatalities in Charlottesville. They were engaged in all aspects of planning the events in Charlottesville, down to the nitty-gritty details such as ordering the helmets and riot shields. During the event on August 12, Defendants Kline and Heimbach were out front, leading others into battle on the streets of Charlottesville. Kline emerged with the blood of counter-protesters on his clothes. Then Defendants Kline and Heimbach were sued. While both Defendants initially dabbled in the litigation, they each opted out when faced with discovery requests that would reveal the evidence of their misconduct. Content to play by their own rules, Defendants Kline and Heimbach simply refused to participate any longer.

Defendant Kline vanished the instant Plaintiffs requested his deposition. The phone number he made available to his followers on the social networking website Discord while enthusiastically planning the Charlottesville events suddenly went unanswered. Defendant Heimbach chose to make a more conspicuous exit, firing his attorney after this Court ordered him to produce documents and thereafter ignoring all communication. Further demonstrating his utter contempt for the Court and his legal obligations, Defendant Heimbach continues to comment publicly on social media regarding issues in the case, while simultaneously disregarding all Court orders and efforts to reengage him in this case. Meanwhile, neither Defendant has produced a single document in this case. This willful failure to produce any documents has prejudiced

Plaintiffs significantly. Worse, the Defendants' unpunished defiance has become contagious, as one-by-one, other Defendants have begun to employ similar tactics to delay or withhold the production of documents. In fact, as discussed *infra*, Defendant Vanguard America's own counsel concedes that his client's similar refusal to participate in discovery "is a problem." In that sense, Defendants Kline and Heimbach continue to lead.

Defendants Kline and Heimbach must be sanctioned to remedy the prejudice they have inflicted on Plaintiffs, to restore order to this judicial process, and to deter other Defendants from disobeying this Court's rules and orders. Plaintiffs seek the following sanctions under Rule 37 and this Court's inherent authority:

1. That the Court deem the facts listed in the attached Exhibit 1 established for purposes of this action;
2. That the Court deem "authentic" for purposes of satisfying Rule 901 of the Federal Rules of Evidence any document Plaintiffs have a good faith basis to believe were in fact created by Defendants Kline or Heimbach, including, but not limited to, all documents from the social media accounts listed in Exhibit 1;¹
3. That the Court instruct the jury that Defendants Kline and Heimbach chose to intentionally withhold their documents and that the jury may draw adverse inferences from that fact, including that Kline and Heimbach chose to withhold such documents because they were aware that such documents contained evidence that Defendants Kline and Heimbach conspired to plan racially-motivated violence at the Unite the Right event; and
4. Reasonable expenses, including attorney's fees.

¹ Plaintiffs reserve the right to request that additional facts or documents be deemed established or authentic as additional facts or documents are revealed in discovery.

FACTUAL BACKGROUND

I. Defendant Kline

A. Defendant Kline's Pivotal Role in the Conspiracy

Kline was central to the planning and execution of the conspiracy to commit racially motivated violence in Charlottesville. (Ex. 2 at 158 (Deposition of Erica Alduino) (“Eli was one of the main people. . . .”)); *id.* at 189 (“But Jason Kessler and Eli Kline were the only ones that I can confirm were planners of [Unite the Right].”).) He, along with Jason Kessler, was one of two key decisionmakers in almost every aspect of planning the weekend of events in Charlottesville, including logistics, public relations, messaging, transportation, weaponry, lodging, speakers, and recruiting. (*See* Ex. 3 at 237 (Deposition of Jason Kessler) (“Q. Mr. Kessler... you and Eli Mosley were the principal coordinators for the Unite the Right rally on August 11 and 12, 2017, correct? A. Yes.”); Ex. 4 (Operation Unite the Right Charlottesville 2.0).) Kline was responsible for approving details as specific as the words co-conspirators chanted that weekend, chants like “Jews will not replace us” and “Into the ovens.” (Ex. 2 at 239-40.) He was engaged in the planning at a granular level on a daily basis throughout the summer of 2017, working on every aspect of the Unite the Right weekend, including the torchlight march on Friday, August 11, instructing Defendants and others where to go, when to be there and what to bring. (First Amended Complaint (“FAC”), ECF No. 175, ¶¶ 147-148, 152.) He was also a member of Defendant Identity Evropa, which took the lead in organizing white supremacist participation among people from outside Charlottesville in connection with the events on August 11 and 12. (*Id.* at ¶¶ 28-29.) It is no exaggeration to say that without Kline, Unite the Right may not have occurred. At the August 12 event, Kline rushed in with both fists, personally ensuring that his violent plans would play out at that weekend. Photographs taken that day show Kline smiling gleefully with the blood of counter-protestors on his clothes. (*See* Ex. 5.)

Kline set the goals and tone for the weekend. Early in the planning stages, Kline apparently drafted and circulated to “group leaders” a working document titled, “Operation Unite the Right Charlottesville 2.0.” (*See* Ex. 4.) Part battle cry, part playbook, that seven-page document laid out rules, guidelines, and roles for co-conspirators. The seeds for the racially-motivated violence Charlottesville ultimately endured were planted in that foundational document, which explicitly attempted to unify white supremacist groups around the concept of aggression toward so-called “anti-white” protestors: “[w]e will send the message that we will not be divided, we will not allow them to erase history without a fight. . . .” (*Id.* at 1.)

Kline also influenced and monitored the daily communication about the Charlottesville events on the primary communication platform used to plan the weekend events, an invite-only Discord server entitled “Charlottesville 2.0.” (Ex. 2 at 122.) In addition to posting thousands of messages himself, Kline was the moderator of the “Charlottesville 2.0” Discord server, and had the ability to invite others to participate, to delete messages from the platform, and to kick people off the server at his discretion. (*Id.* at 126.) He was able to control the content of communication surrounding the planning of the weekend events, and who had access to those communications. He made a concerted effort to keep any evidence of his plans intensely secret, telling Discord users involved in planning that “Sharing information publically [*sic*] from this discord or about this event or who is attending outside of closed circles or this Discord, will get you immediately banned from all future alt right events.” (*Id.* at 205.) He communicated with co-conspirators through various social media platforms, including multiple accounts on Twitter and Discord, as well as a phone number and email account, which he disseminated on the Charlottesville 2.0 server. (*See* Ex. 4; Ex. 6 (excerpted post from Elliot Kline’s public Twitter profile (Aug. 7, 2017)).) He urged his followers to “Feel free to msg/call whenever,” posting the same phone number he later used to

communicate with his attorney in this litigation. (Ex. 4; Ex. 7 (email from J. Kolenich to G. Tenzer (Nov. 9, 2018))).) In stark contrast to his present radio silence in proceedings before this Court, Kline was prolific and easily reachable while planning the Unite the Right.

In addition to spearheading the planning, Kline was a key participant in each of the events leading up to the weekend in Charlottesville, as well each of the violent events that took place the weekend of August 11 and 12. He was present in Charlottesville on May 13, 2017, a precursor event for the ones in August, marching and chanting along with other co-Defendants. (Ex. 2 at 109-10.) He attended both the Friday night torch march and the event on Saturday and found himself in the midst of the violence at both. Although Kline has failed to produce a single document in this litigation, there is little doubt the documents he authored in relation to planning the weekend events in Charlottesville, such as the operational document, are critical to Plaintiffs' ability to establish a conspiracy to commit racially-motivated violence.

B. Defendant Kline's Failure to Participate in Discovery While Continuing to Comment on Social Media

Kline was served with this lawsuit at his home on October 27, 2017. (ECF No. 62.) Like many other Defendants, he retained James Kolenich, who entered an appearance on his behalf on December 1, 2017. (ECF No. 131.) He was initially vocal and passionate about the case on social media, inviting his Twitter followers to listen to the podcasts where he would be "chatting about this stuff since it is crucial that we continue to win in court for the future of our people." (*See* Ex. 6 (Nov. 9, 2017).) On the same day Mr. Kolenich entered his appearance, Kline tweeted publicly and critically about the investigative findings in the report about Charlottesville issued by Hunton and Williams LLP, a report referenced in certain Defendants' discovery filings. (*Id.* (Dec. 1, 2017).) On January 25, 2018, Plaintiffs served a request for documents on all Defendants, including Kline, seeking documents related to the events described in the Amended Complaint

including, for example, e-mails, text messages, and content posted on social media, and also instructed Kline to preserve all documents and communications relevant to this lawsuit. (*See* Ex. 8 (Pls.’ [Corrected] First Set of Reqs. for Produc. of Docs. to All Defs. (Jan. 25, 2018)).) On the same date, Plaintiffs served all Defendants, including Kline, with a set of interrogatories, asking him to identify, among other things, all means of communication used to discuss the events at issue here, as well as the electronic devices used for such communications. (*See* Ex. 9 at 8 (Pls.’ First Set of Interrogs. to All Defs. (Jan. 25, 2018)).) Kline simply ignored those discovery requests. However, another Defendant, Identity Evropa, responded and identified “Mr. Mosley’s² communication devices[]” as the electronic devices it used to communicate concerning the events. (Ex. 10 (Def. Identity Evropa’s Resp. to Pls.’ First Interrogs. and Req. for Prod. of Docs. (Apr. 6 2018)).) On April 19, 2018, Plaintiffs raised Kline’s total non-compliance with the Court. (ECF No. 308, at 3.) Mr. Kolenich responded that, while he would at times communicate with Kline through Defendant Identity Evropa, Mr. Kolenich had become unable to communicate with Kline. (*Id.* at 4-5.) While ignoring Plaintiffs, his discovery obligations and his own attorneys, Kline nonetheless continued to comment on social media about the Charlottesville events, even betraying an awareness that his communications were relevant to ongoing litigation, noting that he “can’t say much more for obvious reasons” while specifically refuting certain facts about the what took place that weekend. (Ex. 6 (May 27, 2018).) His problem was not his ability to use his phone or communicate about the case. His problem was an unwillingness to do so on anyone’s terms but his own.

C. Defendant Kline’s Flagrant Disregard of this Court

² Kline has held himself out as “Eli Mosley”—a tribute to the pro-Nazi British fascist leader Oswald Mosley—and he is referred to by that name by certain co-conspirators.

Shortly after Defendants' motions to dismiss the Amended Complaint were denied (ECF Nos. 335, 336), on July 23, 2018, James Kolenich and Elmer Woodard moved to withdraw as Kline's attorneys. (ECF No. 344.) Mr. Kolenich reported that he had been in contact with Kline and told Kline that he would need to stay in touch with his attorneys. (ECF No. 345, at ¶¶ 3-4.) Kline apparently agreed to do so. (*Id.*) Thereafter, Defendant Kline's attorneys advised him that Plaintiffs had requested to take his deposition. (*Id.* at ¶ 5.) At that point, Kline stopped participating in the litigation altogether. (*Id.* at ¶ 6.) On July 25, 2018, the Court granted his attorneys' motion to withdraw, (ECF No. 347), and Kline has since subsequently ignored all communications by Plaintiffs and the Court.³

On November 13, 2018, the Court granted Plaintiffs' motion to compel Defendants to produce to Plaintiffs their electronic devices and social media accounts used to communicate about the events in Charlottesville. (ECF No. 379 ("Imaging Order").) Pursuant to the Court's Order, Kolenich provided Plaintiffs with a purportedly working e-mail address for Kline (*see* Ex. 7), which Plaintiffs used to attempt to communicate with Kline on multiple occasions, including to provide him with a copy of the Stipulation and Order for the Imaging, Preservation, and Production of Documents on November 16, 2019. (*See* Ex. 11 (email from C. Greene to E. Kline (Nov. 16, 2018))). Pursuant to this Court's Order, Kline—like all Defendants—was required to sign that stipulation in order to provide Plaintiffs' access to Defendants' social media accounts and electronic devices. Kline ignored that communication and never signed the stipulation. On November 27, 2018, Plaintiffs emailed Kline a copy of the Stored Communications Act ("SCA")

³ Kline's and Heimbach's status as *pro se* litigants should not afford them any leniency from this Court. To the contrary, Kline and Heimbach are "proceeding *pro se* so [they] [are] entirely responsible for [their] actions," *Silvious v. RR Donnelley & Sons*, No. 5:10-CV-116, 2011 WL 3846775, at *3 (W.D. Va. Aug. 29, 2011), "are still subject to sanctions[,] and cannot be allowed to make a mockery of the Court's authority," *McDonald v. Robinson*, No. 1:18-CV-697, 2018 WL 7001680, at *5 (E.D. Va. Dec. 26, 2018), *report and recommendation adopted*, No. 1:18-CV-697, 2019 WL 166548 (E.D. Va. Jan. 10, 2019).

consent form each Defendant was ordered to sign to provide Plaintiffs access to Defendants' Discord accounts. (Ex. 12 (email from C. Greene to E. Kline (Nov. 27, 2018)).) Kline ignored that communication as well and never signed an SCA consent form.

In addition to ignoring communications from Plaintiffs, Kline has failed to appear at seven court conferences on discovery, including a conference scheduled specifically to address Kline's own lack of participation in discovery. (*See* ECF No. 377 (Minute Entry, Nov. 9, 2018); ECF No. 396 (Minute Entry, Jan. 4, 2019); ECF No. 409 (Minute Entry, Feb. 8, 2019); ECF No. 411 (Minute Entry, Feb. 12, 2019); ECF No. 425 (Minute Entry, Feb. 21, 2019); ECF No. 437 (Minute Entry, Mar. 1, 2019); ECF No. 450 (Minute Entry, Mar. 18, 2019).) The Court has attempted to contact Kline more than *ten* times, including via email, physical mail, and voicemail, to no avail. (*See* ECF No. 401 (Feb. 4, 2019); ECF No. 402 ("call[ing] and email[ing] Elliot Kline . . . three times regarding setting a telephonic hearing" and "[a]fter no response[,] . . . [c]lerk called and left voicemails, mailed and emailed notice of [February 8] hearing" (Feb. 5, 2019)); ECF No. 407 ("email[ing] and mail[ing] dial in information" for February 12 hearing (Feb. 8, 2019)); ECF No. 414 (emailing notice of February 21 hearing to Kline (Feb. 15, 2019)); ECF No. 445 (emailing notice of March 18 hearing to Kline (Mar. 13, 2019))).) As far as Plaintiffs are aware, Kline has not once responded to these efforts by the Court.

II. Defendant Heimbach

A. Defendant Heimbach's Pivotal Role in the Conspiracy

Heimbach was an actively engaged leader of major white supremacist organizations that had a robust presence in Charlottesville. At the time of the "Unite the Right" events, Heimbach was one of the leaders of two different white supremacist groups that participated that weekend in August: Defendant Traditionalist Worker Party ("TWP"), a group founded to promote anti-Semitism; and Defendant Nationalist Front, an umbrella organization of approximately twenty

white supremacist organizations, including racist skinhead crews, Klan groups, and neo-Nazi groups. (FAC ¶¶ 31, 33.)

In the weeks leading up to Unite the Right, Heimbach posted over 4,000 messages on Discord, including some in the “Charlottesville 2.0” server, and led in-person meetings to help other Defendant groups plan for the weekend events. (*See* Ex. 13 (excerpted posts from Matthew Heimbach’s Discord profile (July 8, 2017; July 23, 2017; July 30, 2017)) (“We will be holding a Nationalist Front meeting, TWP and allies, in Ocoee TN this weekend on Saturday at 1pm The purpose of the meeting is to plan for the upcoming Charlottesville event carpool, plan for future events, network, and do a flash demo.”).) He instructed TWP members on details such as what to wear on August 12, and provided his followers with “official TWP riot shields” and “a dozen helmets thatll be painted black with Party insignia’s on them” so that “alongside our [Defendant] league of the south and [Defendant] vanguard america allies, we’ll have an unbreakable line.” (*Id.*)

During the August 12 event itself, Heimbach, dressed in combat gear, led Defendant TWP to commit racially-motivated violence. (FAC ¶¶ 200, 214-15; *see* Ex. 14.) Heimbach reported using five different social media platforms—along with his cell phone—to communicate in aid and furtherance of the conspiracy. (ECF No. 354-13, at 1-2 (Def. Matthew Heimbach’s Resp. to Pls.’ First Interrogs. and Req. for Prod. Of Docs. (Apr. 6, 2018))).) The cell phone number he used was the same as the one he used to communicate with his attorney in this litigation, during the period in which he chose to participate. (Ex. 7.)

B. Defendant Heimbach’s Failure to Respond to Discovery

Since the tragic weekend in Charlottesville, the one thing Heimbach has done fairly consistently is communicate about the events on social media. By contrast, he only participated

in this litigation when it suited his interests, abandoning it entirely as soon as he was under an express Court order to produce documents.

In the early stages of the litigation, while he was still represented by counsel, Heimbach expressed his solidarity with his Charlottesville co-conspirators on social media, posting, for example, a photograph with co-conspirator and fellow TWP leader Tony Hovater outside of Charlottesville Regional Jail, stating that he “went to the jail in Cville to visit our POW’s today. Never forget the men behind the wire!” (*See* Ex. 15 (excerpted posts from Matthew Heimbach’s Gab profile (Dec. 4, 2017))). At the same time, he was active in the case, hiring Mr. Kolenich, who entered his appearance on December 1, 2017. Heimbach was served with interrogatories and document requests on January 25, 2018, which sought all documents containing communication about the events at issue in this case.

After those requests were served, but before any of the Defendants responded, tumult ran through the TWP that raised red flags about the potential destruction of documents. On February 27, 2018, another fellow TWP leader and co-Defendant Matthew Parrott encouraged anyone “involved in any altercation in Cville” to disable their social media, because “[e]verybody’s getting a ride.” (Ex. 16 (excerpted post from Matthew Parrott’s Facebook profile (Feb. 27, 2018))). Fourteen days later, on March 13, 2018, Heimbach was arrested for assaulting Defendant Parrott, who had confronted Heimbach about an alleged affair with Defendant Parrott’s wife. (*See* Ex. 17.) Later that day, Defendant Parrot indicated on social media his intention to delete and destroy all TWP membership information. In the early morning hours of March 14, 2018, Defendant Parrott posted on another social media account that “the information was scrubbed on account of widespread concern about the data’s security. It was a practical security step, and not a political act.” (Ex. 18 (excerpted post from Matthew Parrott’s Gab profile (Mar. 14, 2018))). That alarming

series of posts caused Plaintiffs to seek emergency relief from the Court. (ECF No. 272.) Thereafter, in his April 6, 2018 response to the interrogatories, Heimbach stated, contrary to the evidence of his rampant use of social media to discuss the Charlottesville events, that he had no responsive documents in his possession. (*Compare* ECF No. 354-13 with FAC ¶¶ 74, 327.) In the same document, Mr. Heimbach disclosed that he used a cell phone and five different social media accounts to communicate concerning the events of August 11 and 12. (ECF No. 354-13, at 2-4.) Even more concerning, when asked for documents regarding the steps he had taken to preserve documents relevant to the lawsuit, Heimbach simply responded, “N/A.” (*Id.*)

On April 24, 2018, Plaintiffs wrote to Heimbach (among others) through his attorney, Mr. Kolenich, regarding his troubling and deficient responses. (*See* Ex. 19 (letter from G. Tenzer to J. Kolenich and E. Woodward (Apr. 24, 2018))). Having received nothing from Heimbach, Plaintiffs were ultimately forced to move to compel. On October 2, 2018, Plaintiffs moved to compel Defendants to permit inspection and imaging of their electronic devices. (ECF No. 354.) Two weeks later, Mr. Kolenich indicated to the Court, through a motion to withdraw as counsel, that Mr. Heimbach was in breach of his obligation to pay attorneys’ fees. (ECF Nos. 357, 358, 372.)⁴ On November 13, 2018, this Court granted Plaintiffs’ motion to compel, ordering that all parties must submit their electronic devices and social media accounts that contained potentially relevant information to a neutral, third-party vendor for imaging and preservation. (ECF No. 379; *see also* ECF No. 354.) The Court found that the Imaging Order was “necessary and appropriate to manage discovery in this action” and ordered the parties to “promptly” sign a third-party vendor contract to effectuate production. (ECF No. 379, at 1.) Additionally, the Court ordered Defendants to sign

⁴ Plaintiffs opposed this motion, having already experienced the difficulties of obtaining compliance from Kline once he was permitted to proceed *pro se*, and fearing similar results in Heimbach’s case: “[e]nforcing compliance with the Court’s orders and conducting orderly discovery in this case would be rendered impossible without Defense counsel.” (ECF No. 384.) Those concerns have been emphatically confirmed.

a consent form under the Stored Communications Act (“SCA”) allowing Discord to produce any discoverable documents to Plaintiffs. (*Id.* at 2.) Heimbach never signed the third-party vendor contract to provide Plaintiffs access to his electronic devices and social media accounts, and he submitted a facially defective SCA consent form that was inoperable to provide access to his Discord content. (Ex. 20 (SCA Consent from M. Heimbach (Nov. 20, 2018)).)

On December 4, 2018, Plaintiffs wrote to Mr. Kolenich seeking a functional SCA consent. (Ex. 21 (email from C. Greene to J. Kolenich (Dec. 4, 2018)).) Heimbach never provided any such consent.⁵ He did, however, shortly thereafter, comment on social media about a separate lawsuit involving a different white nationalist that had recently settled, belittling the settlement, stating that “[l]awsuits are just money[.]” and exhorting other nationalists not to “betray their principles” due to “fear of losing money.” (Ex. 22 (excerpted posts from Matthew Heimbach’s public VK Profile (Dec. 25, 2018; Jan. 30, 2019; Feb. 2, 2019; Feb. 3, 2019; Feb. 4, 2019; Feb. 6, 2019; Feb. 14, 2019; Feb. 16, 2019), *available at* <https://vk.com/matthewheimbach>)).) He then did something that has since become a familiar tactic in this litigation: he fired his attorney, explicitly forbidding them from “tak[ing] any actions on his behalf.” (Ex. 23, at 14 (Jan. 4, 2019 Tr.).)

Since he has been *pro se*, Mr. Heimbach has failed to appear at six court conferences, (ECF Nos. 396, 409, 411, 425, 437, 450), and like Kline, more than ten email, physical mail, and voicemail communications from the Court and Plaintiffs have gone unanswered. (*See, e.g.*, ECF Nos. 401, 402, 407, 414, 445; Ex. 24 (email from G. Tenzer to K. Dotson and Counsel (Feb. 8, 2019)).) He has been contacted to no avail at the same phone number he used to

⁵ Plaintiffs subsequently managed to obtain documents from Discord that appear to be authored by Kline and Heimbach, although without these Defendants’ participation in discovery, it will be difficult for Plaintiffs to authenticate those documents.

communicate both with his attorneys when he was represented and with his co-conspirators while planning the events in Charlottesville. (*See* Ex. 7.)

At the same time, Heimbach has continued to advocate on social media for white supremacy, noting recently that he “look[s] up to men like Adolf Hitler.” (Ex. 22; Ex. 25 (excerpted posts from Matthew Heimbach’s public Twitter profile (Feb. 28, 2019; Mar. 7, 2019; Mar. 8, 2019; Mar. 10, 2019; Mar. 12, 2019; Mar. 13, 2019; Mar. 14, 2019; Mar. 15, 2019))).) Indeed, Heimbach continues to discuss the case on social media with impunity, even though he cannot be bothered to participate himself, in what can only be described as flagrant disrespect and disdain for the judicial process. (*See* Ex. 25 (“Reports are coming in that the NSM has filed to ask for a summary judgment against itself, without notifying members.”); Ex. 22 (“What’s the proper etiquette when the people suing you make sweet quote graphics of things you said?”).) In willful defiance of multiple Court orders, Heimbach has yet to produce a single document in this case.

ARGUMENT

A court has wide discretion to impose sanctions when a party fails to serve its answers, objections, or written response to discovery requests or to comply with discovery ordered by the court. *See* Fed. R. Civ. P. 37(b)(2) & (d)(3); *Mut. Fed. Sav. & Loan v. Richards & Ass’n*, 872 F.2d 88, 94 (4th Cir. 1989). It is generally recognized that sanctions are intended to: (1) penalize culpable parties; (2) deter others from engaging in similar conduct; (3) compensate the court and other parties for expense caused; and (4) compel discovery. Gregory P. Joseph, *Sanctions: The Federal Law of Litigation Abuse*, § 49 (2013) (citing *Carlucci v. Piper Aircraft Corp.*, 775 F.2d 1440, 1453 (11th Cir. 1985)). Thus, the range of available sanctions “serve both normative—designed to punish culpable conduct and deter it in others—and compensatory—designed to put the party adversely affected by the spoliation in a position that is as close to what it would have

been in had the spoliation not occurred—functions.” *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 534 (D. Md. 2010). “Rule 37 is flexible,” and courts are permitted to “use as many and as varied sanctions as are necessary to hold the scales of justice even.” *Victor Stanley, Inc. v. Creative Pipe, Inc.*, No. 06-CV-2662, 2016 WL 1597119, at *4 (D. Md. Apr. 20, 2016) (citation omitted).

Rule 37 specifies a nonexclusive list of substantive, case-related sanctions for failure to obey a discovery order, ranging from an order establishing certain facts to the entry of a default judgment. *See* Fed. R. Civ. P. 37(b)(2)(A); *Camper v. Home Quality Mgmt. Inc.*, 200 F.R.D. 516, 517–18 (D. Md. 2000). Rule 37 also provides that the Court *must* order the payment of expenses by the disobedient party, including “the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(b)(2)(C); *see also* Fed. R. Civ. P. 37(d)(3). A court may also award sanctions for discovery violations pursuant to its inherent authority. *See, e.g., Projects Mgmt. Co. v. Dyncorp Int’l LLC*, 734 F.3d 366, 375 (4th Cir. 2013) (“[A] court acting under its inherent authority may impose sanctions for any conduct utterly inconsistent with the orderly administration of justice.” (citation and internal quotation marks omitted)); *Sampson v. City of Cambridge*, 251 F.R.D. 172, 178–79 (D. Md. 2008).

The Fourth Circuit has developed a four-part test for determining what sanctions to impose under Rule 37: “(1) whether the noncomplying party acted in bad faith;⁶ (2) the amount of

⁶ While bad faith is relevant to the analysis and evident in the case of Kline and Heimbach, the Fourth Circuit does not require that a court find bad faith in order to impose the type of sanctions being sought here. *See Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 593 (4th Cir. 2001) (holding that dismissal for spoliation is “usually justified only in circumstances of bad faith or other like action. But even when conduct is less culpable, dismissal may be necessary if the prejudice to the defendant is extraordinary, denying it the ability to adequately defend its case.”); *Sampson*, 251 F.R.D. at 179 (“Although, some courts require a showing of bad faith before imposing sanctions, the Fourth Circuit requires only a showing of fault, with the degree of fault impacting the severity of sanctions.”).

prejudice that noncompliance caused the adversary; (3) the need for deterrence of the particular sort of noncompliance; and (4) whether less drastic sanctions would be effective.” *Anderson v. Found. for Advancement, Educ. & Emp’t of Am. Indians*, 155 F.3d 500, 504 (4th Cir. 1998). The presence or absence of any one of these factors is not dispositive. *See, e.g., Victor Stanley*, 269 F.R.D. at 533.

Additionally, the Court has the power to sanction parties under its inherent authority. The factors courts consider largely mirror those courts apply under Rule 37:

(1) the degree of the wrongdoer’s culpability; (2) the extent of the client’s blameworthiness if the wrongful conduct is committed by its attorney, recognizing that [the court] seldom dismiss[es] claims against blameless clients; (3) the prejudice to the judicial process and the administration of justice; (4) the prejudice to the victim; (5) the availability of other sanctions to rectify the wrong by punishing culpable persons, compensating harmed persons, and deterring similar conduct in the future; and (6) the public interest.

Projects Mgmt., 734 F.3d at 374 (quoting *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 462–63 (4th Cir. 1993)).

Each of the four prongs of the Rule 37 test—as well as the factors courts consider under their inherent authority—are easily satisfied here. Kline’s and Heimbach’s bad faith disappearances have significantly hindered Plaintiffs’ ability to establish vital facts and authenticate critical documents they otherwise would have been able to, had Kline and Heimbach simply complied with their discovery obligations to turn over responsive documents and answer questions in depositions. Moreover, their willful disobedience has led to somewhat predictable copycat behavior from other Defendants—like Defendants Jeff Schoep, Vanguard America, and potentially others—who so far apparently see little downside in similarly disobeying the Court’s discovery orders. Sanctions are tailor-made for precisely this scenario. Specifically, Plaintiffs seek the following sanctions:

1. That the Court deem the facts listed in the attached Exhibit 1 established for purposes of this action;
2. That the Court deem “authentic” for purposes of satisfying Rule 901 of the Federal Rules of Evidence any document Plaintiffs have a good faith basis to believe were in fact created by Defendants Kline or Heimbach, including, but not limited to, all documents from the social media accounts listed in Exhibit 1;⁷
3. That the Court instruct the jury that Defendants Kline and Heimbach chose to intentionally withhold their documents and that the jury may draw adverse inferences from that fact, including that Kline and Heimbach chose to withhold such documents because they were aware that such documents contained evidence that Defendants Kline and Heimbach conspired to plan racially-motivated violence at the Unite the Right event;
4. Reasonable expenses, including attorney’s fees.

The requested sanctions are necessary to put Plaintiffs in the position they would have been in had Kline and Heimbach complied with their discovery obligations in this case and are designed to deter other Defendants from continuing to defy this Court’s orders.

I. Defendants Kline and Heimbach Have Acted in Bad Faith

As an initial matter, it is abundantly clear that Kline and Heimbach have been acting in bad faith. Courts have considered a number of non-exclusive factors in determining whether to presume bad faith, including, as discussed *infra*, whether a decision not to participate appears to be a conscious one, whether there is a legitimate explanation for the failure to participate, and the length of time a party has failed to participate, among others.

There is little question that the failure to participate and produce a single document by both Kline and Heimbach constitute willful decisions by each Defendant. At the beginning of this case, Kline was in sporadic communication with his attorney, communicating via the same phone

⁷ Plaintiffs reserve the right to request that additional facts or documents be deemed established or authentic as additional facts or documents are revealed in discovery.

number he used to plan the Unite the Right events. It was after Plaintiffs requested to set a date for Kline's deposition that he finally disappeared entirely. His phone worked; he simply stopped responding because he felt like it. Indeed, at the same time Kline used his electronic devices to comment about the events in this case on social media, he failed to respond to the most basic discovery requests, such as Plaintiffs' interrogatories.

Similarly, Heimbach was reachable for a time on the same device he used to plan the weekend events in Charlottesville, but his participation ended in this case when it came time for him to comply with the Court's Order to provide a working SCA consent and access to his electronic devices and social media accounts. Even after dropping out of the case, Heimbach continues to stick his thumb in the Court's eye by commenting on the litigation from the sidelines. More than twenty communications from the Court have gone unheeded, not to mention Plaintiffs' attempts to get Defendants to respond to Plaintiffs' discovery requests.

Kline and Heimbach have "proceeded in a manner so dilatory and mulish, the court cannot find it to be other than deliberate." *Gardendance, Inc. v. Woodstock Copperworks, Ltd.*, 230 F.R.D. 438, 452 (M.D.N.C. 2005). Moreover, Defendants have "made no effort to explain or justify [their] failure to engage in meaningful discovery, and given [their] persistent failure to cooperate, [their] silence leaves the court with no choice but to presume bad faith." *Sawyers v. Big Lots Stores, Inc.*, No. 7:08-CV-258, 2009 WL 55004, at *3 (W.D. Va. Jan. 8, 2009); *see also Duse v. Barnes & Noble, Inc.*, No. 1:11-CV-875, 2011 WL 13192908, at *2 (E.D. Va. Dec. 22, 2011) (finding that where a party "made a conscious decision not to participate" in the case, "[s]uch a refusal amounts to bad faith"), *report and recommendation adopted*, No. 1:11-CV-875, 2012 WL 12973545 (E.D. Va. Jan. 6, 2012), *aff'd*, 473 F. App'x 189 (4th Cir. 2012).

It has been *fourteen months*—and counting— since Plaintiffs requested documents from Kline and Heimbach and four months since the Court ordered Defendants to turn over their devices and social media accounts. That amount of time alone suggests bad faith. *See, e.g., Green v. John Chatillon & Sons*, 188 F.R.D. 422, 424 (M.D.N.C. 1998) (noting that “[n]oncompliance with discovery orders can serve as a basis for a finding of bad faith,” and dismissing plaintiff’s claims with prejudice where plaintiff’s “complete failure to provide discovery over *eight months* after the original requests and over two months after being ordered by Magistrate Judge Eliason to do so satisfies the four-part test required by *Mutual Federal*” (emphasis added)); *Daye v. Gen. Motors Corp.*, 172 F.R.D. 173, 177 (M.D.N.C. 1997) (“The failure of Plaintiffs and [their counsel] to honor the Orders of this Court and [Plaintiff’s counsel’s] failure to initiate any contact with Defendant’s counsel for *over six months* constitutes both unjustifiable negligence as well as bad faith.” (emphasis added)). The evidence unequivocally establishes that Kline and Heimbach have been acting in bad faith.

II. Plaintiffs Have Been Severely Prejudiced by Defendants Kline’s and Heimbach’s Failure to Respond to Discovery

The prejudice caused by Heimbach’s and Kline’s wholesale failure to produce documents cannot be understated, particularly in a case where Plaintiffs need to prove a conspiracy. Courts have consistently found prejudice where parties are hampered in their ability to prove material components of their case due to the opposing party’s failure to produce documents. “The purpose of pre-trial discovery is for a litigating attorney to obtain information from the opposing party, information which in many cases is not otherwise available” and “an absolute lack of discovery results in clear prejudice.” *Pruitt v. Bank of Am., N.A.*, No. 8:15-CV-1310, 2016 WL 7033972, at *3 (D. Md. Dec. 2, 2016) (citation omitted); *see also id.* at *2 (“Interrogatories[, document requests,] and depositions are important elements of discovery; [a party] would be hard-pressed to

conduct its case without them. When a [party] refuses to respond to such requests, it can have a debilitating effect on the rest of the litigation.”). Due to Defendants’ repeated and ongoing discovery misconduct, “this case has taken up an inordinate amount of judicial resources, and resulted in significant procedural and substantive prejudice to Plaintiff[s]” who have “been stymied at every turn . . . to get the evidence [they] need[] to prosecute [their] claims.” *First Mariner Bank v. Resolution Law Grp., P.C.*, No. 12-CV-1133, 2014 WL 1652550, at *19 (D. Md. Apr. 22, 2014); *see also Diamond v. Mohawk Indus., Inc.*, No. 6:12-CV-00057, 2014 WL 1404563, at *5 (W.D. Va. Apr. 10, 2014) (finding defendant was “greatly prejudiced by the inability to . . . communicate with [plaintiff] in any regular fashion about the case, or receive responsive documents from him”). “Significant prejudice” is also present where, as here, “the evidence sought by [Plaintiffs’] discovery requests ‘goes to the heart’ of [their] claim.” *Hendricks*, 2017 WL 2711131, at *4; *see also Knight v. Boehringer Ingelheim Pharm., Inc.*, 323 F. Supp. 3d 837, 845 (S.D.W. Va. 2018) (“[P]rejudice arises when a party cannot present evidence essential to its underlying claim.” (citation and internal quotation marks omitted)).

Discovery is especially critical in a conspiracy case. There is already an “inherent difficulty in proving conspiracy,” *Precision Piping & Instruments, Inc. v. E.I. duPont De Nemours & Co.*, 707 F. Supp. 225, 228 (S.D.W. Va. 1989), and the Fourth Circuit has held that “[a]cknowledging the difficulty of proving the existence of a conspiracy by direct evidence, . . . ‘a conspiracy may be proved wholly by circumstantial evidence . . . of a defendant’s relationship with other members of the conspiracy, the length of this association, the defendant’s attitude and conduct, and the nature of the conspiracy,’” *United States v. Masi*, 135 F.3d 771, at *6 (4th Cir. 1998) (table decision) (quoting *United States v. Burgos*, 94 F.3d 849, 858 (4th Cir. 1996)). The absence of documents that Plaintiffs can authenticate as having been generated by Kline and

Heimbach impedes Plaintiffs' ability to prove the manner in which they communicated and conspired with other Defendants, thus jeopardizing Plaintiffs' ability to prove their case against other Defendants as well.

Defendants' failure to participate in discovery has resulted in textbook prejudice here. Although Plaintiffs are aware of damning evidence Kline and Heimbach have in their possession, Plaintiffs are denied access to a huge volume of that evidence, and even those documents Plaintiffs have obtained through other means become difficult to authenticate without the Defendants' participation in the discovery process. For example, Kline and Heimbach were lead organizers of the Unite the Right event and are central members of the conspiracy. Kline published "General Orders" for the event, instructing co-conspirators and attendees that they may have to "take the ground by force," and he moderated, reviewed, and managed the Discord server used to direct and plan the event. (FAC ¶¶ 100-01, 322.) Plaintiffs have worked diligently to mitigate the prejudice from Kline's and Heimbach's wholesale failure to produce by attempting to obtain their documents from third parties, like Discord. While that process has yielded a substantial number of Discord posts that purport to be authored by Kline and Heimbach, Plaintiffs are unable to authenticate these documents or gain any understanding of the volume of documents Kline and Heimbach continue to withhold without being able to get discovery from their electronic devices or take their depositions. Yet, without Court intervention, that is exactly where Plaintiffs find themselves.

III. Deterrence Is Required Where, as Here, Multiple Defendants Have Resisted Compliance with Discovery

Kline's and Heimbach's overt defiance has already had a cascading effect on other Defendants. Since these two stopped participating, other Defendants have similarly fired their attorneys, failed to surrender electronic devices and social media accounts, disbanded their organizations, and shut down servers leading to another pending sanctions motions, one pending

order to show cause, and potentially more such filings on the way. And the discovery process is far from over. Deterrence is badly needed in this case.

As the Fourth Circuit has held, “not only does the noncomplying party jeopardize his or her adversary’s case by such indifference, but to ignore such bold challenges to the district court’s power would encourage other litigants to flirt with similar misconduct.” *Mut. Fed. Sav. & Loan*, 872 F.2d at 92; *see also Nat’l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643 (1976) (holding that sanctions “must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent”). And in fact, they already have. By way of example, and as their own counsel concedes, Defendant Vanguard America “is a problem.” (Ex. 26 (Mar. 18, 2019 Tr. at 14).) In the words of its own attorney, Vanguard America “has not turned over the devices they were supposed to turn over and is not listening to counsel on the necessity of hurrying up and providing this stuff, so I really don’t have anything to say in regard to them other than in might be useful for the Court to give them sort of a warning shot. . . .” (*Id.*)

Multiple Defendants still have not complied with the Court’s latest deadline— March 8—to produce their electronic devices and social media credentials to the third-party vendor. The extent of non-compliance or late compliance among Defendants underscores the need for stiff sanctions against noncomplying parties. *Silvestri*, 271 F.3d at 590 (“The courts must protect the integrity of the judicial process because, as soon as the process falters . . . the people are then justified in abandoning support for the system.” (alteration, citation, and internal quotation marks omitted)). The need to deter this type of conduct “is manifest. Civil cases simply cannot proceed without participation by all parties in discovery.” *Pruitt*, 2016 WL 7033972, at *2. “Continued

contumacious behavior and abuse through non-compliance with [a Court's] orders cannot be tolerated. And with discovery's important role in modern litigation, deterrence is greatly needed."

Flame S.A. v. Industrial Carriers, Inc., 39 F. Supp. 3d 752, 765 (E.D. Va. 2014).

IV. Lesser Sanctions Would Not Be Effective

Pursuant to Rule 37 and the Court's inherent authority, severe sanctions are warranted for Kline's and Heimbach's misconduct.⁸ *Butler v. DirectSat USA, LLC*, No. 10-CV-2747, 2013 WL 6629240, at *1 (D. Md. Dec. 16, 2013) ("A party's total failure to comply with the mandates of discovery, with no explanation for that failure, can certainly justify this harshest of sanctions."); *Nucor Corp. v. Bell*, 251 F.R.D. 191, 194 (D.S.C. 2008) (finding "harsher sanctions" permitted where "the spoliation was so prejudicial that it prevents the non-spoliating party from maintaining [their] case"). Rule 37(b)(2)(ii) expressly provides for sanctions that both remedy the substantial prejudice Plaintiffs have suffered and constitute the most appropriate disincentive to other Defendants contemplating similar transgressions.

Regarding the first and second requested sanctions, Plaintiffs are simply asking that the Court deem certain facts established that Plaintiffs have a good faith basis to believe they would in fact establish if Kline and Heimbach had produced their documents and continued to participate in this case. Rule 37(b)(2)(A)(i) expressly contemplates this particular sanction for exactly this purpose, allowing a court to "direct[] that . . . designated facts be taken as established for purposes of the action, as the prevailing party claims." *See, e.g., Wachtel v. Health Net, Inc.*, 239 F.R.D. 81, 104 (D.N.J. 2006) (holding that certain facts would "be deemed admitted for all purposes" in

⁸ Plaintiffs believe that Kline's and Heimbach's complete failure to comply with discovery could warrant the granting of a default judgment, arguably a more severe sanction than what is sought here. Such a sanction would frankly leave Plaintiffs worse off, however, given the amount of damning evidence Kline and Heimbach possess that may never see the light of day. In a conspiracy case, such a result would hinder Plaintiffs' ability to prove their case against other Defendants and perversely would therefore constitute somewhat of a windfall for these two Defendants.

light of “the significance of the documents withheld from Plaintiffs, the deliberate and willful nature of the non-disclosure, and the prejudice suffered by Plaintiffs”). If these Defendants turned over their documents and participated in the rest of discovery, Plaintiffs would be able to confront them with their documents and establish the authenticity of documents they authored in furtherance of this conspiracy. Any lesser sanction would fail to alleviate the substantial prejudice Plaintiffs have suffered from the inability to obtain and authenticate many of these Defendants’ documents and place them before a jury. Moreover, any sanction that does not impose a case-related consequence would allow Defendants to avoid accountability entirely simply by opting out of the process. Defendants should not be rewarded for their disobedience.

As to the third requested sanction—adverse inferences—a wholesale failure to preserve and produce documents is, in effect, no different from intentional spoliation. “Under the spoliation of evidence rule, an adverse inference may be drawn against a party who destroys relevant evidence.” *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 155 (4th Cir. 1995); *see also Beaven v. U.S. Dep’t of Justice*, 622 F.3d 540, 554–55 (6th Cir. 2010) (affirming district court “imposing a non-rebuttable adverse inference after finding that the Defendants’ destruction of [evidence] severely compromised the Plaintiffs’ case by depriving the Plaintiffs of the most relevant piece of evidence to prove their claims” (internal quotation marks omitted)). “Such an instruction can be critical to assisting the innocent party in establishing the nature of the evidence that has gone missing” and “ameliorate any prejudice to the innocent party by filling the evidentiary gap created by the party that destroyed evidence.” *Ottoson v. SMBC Leasing & Fin., Inc.*, 268 F. Supp. 3d 570, 584 (S.D.N.Y. 2017) (citation and internal quotation marks omitted).

These remedies are the only way to properly “level[] the evidentiary playing field and . . . sanction[] the improper conduct.” *Vodusek*, 71 F.3d at 156. Moreover, given that this Court’s

“direct, unequivocal order[s] ha[ve] been met with . . . silence” Messrs. Kline and Heimbach, “there is nothing to indicate that a less drastic sanction would lead to different results.” *Pruitt*, 2016 WL 7033972, at *3.

Because Defendants Kline and Heimbach have willfully withheld documents and ceased participating in discovery in this case, the above-requested sanctions are the minimum necessary and appropriate to remedy the prejudice Plaintiffs have suffered from Defendants’ defiance, and to deter other Defendants from following suit.

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court grant their motion for sanctions against Defendants Kline and Heimbach in its entirety, order the requested relief, and order such other relief as the Court deems just and proper.

Dated: April 3, 2019

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Respectfully submitted,

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Counsel for Plaintiffs

RULE 37 CERTIFICATION

Plaintiffs hereby certify pursuant to Rule 37(a)(1) that they have attempted to meet and confer with Kline and Heimbach. Additionally, Plaintiffs hereby certify pursuant to Rule 37(d)(1)(B) that they have attempted to meet and confer with Kline. As detailed on pages four through fourteen, all communications with Kline and Heimbach have gone unheeded. Therefore, Plaintiffs certify that they are unable to obtain an answer or response to Plaintiffs' discovery without court action.

Dated: April 3, 2019

Respectfully submitted,

/s/
Robert T. Cahill (VSB 38562)
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2019, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

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Robert Ray, Traditionalist Worker Party,
Jason Kessler, Vanguard America, Nathan
Damigo, Identity Europa, Inc. (Identity
Evropa), and Christopher Cantwell*

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*Counsel for Jeff Schoep, Nationalist Front,
and National Socialist Movement*

I further hereby certify that on April 3, 2019, 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
2634 U.S. HWY 158 E
Yanceyville, NC 27379

Moonbase Holdings, LLC
c/o Andrew Anglin
P.O. Box 208
Worthington, OH 43085

Andrew Anglin
P.O. Box 208
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 Kyle Chapman
52 Lycett Circle
Daly City, CA 94015

Augustus Sol Invictus
9823 4th Avenue
Orlando, FL 32824

I further hereby certify that on April 3, 2019, I also served the following non-ECF participants, via electronic mail, as follows:

Elliot Kline
eli.f.mosley@gmail.com

Matthew Heimbach
matthew.w.heimbach@gmail.com

/s/
Robert T. Cahill (VSB 38562)
COOLEY LLP

Counsel for Plaintiffs

EXHIBIT 1

I. Plaintiffs respectfully request that the following facts be established for purposes of this action:

A. Defendant Kline

1. Defendant Kline was a member of Identity Evropa from April 2017 through at least August 2017.
2. Defendant Kline was one of the leaders of Identity Evropa from April 2017 through at least August 2017.
3. Defendant Kline entered into an agreement with one or more co-conspirators to plan the Unite the Right event that took place in Charlottesville, Virginia on August 11 and 12, 2017.
4. Defendant Kline entered into an agreement with one or more co-conspirators to engage in racially motivated violence in Charlottesville, Virginia on August 11, 2017.
5. Defendant Kline entered into an agreement with one or more co-conspirators to engage in racially motivated violence at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.
6. Defendant Kline was motivated by animus against racial minorities, Jewish people, and their supporters when conspiring to engage in acts of intimidation and violence on August 11 and 12, 2017 in Charlottesville, Virginia.
7. It was reasonably foreseeable to Defendant Kline and intended by him that co-conspirators would commit acts of racially-motivated violence and intimidation at the torch light event in Charlottesville, Virginia on August 11, 2017.

8. It was reasonably foreseeable to Defendant Kline and intended by him that co-conspirators would commit acts of racially-motivated violence and intimidation at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.
9. It was reasonably foreseeable to Defendant Kline and intended by him that a co-conspirator would engage in racially-motivated violence by intentionally driving a car into a crowd of counter-protestors on August 12, 2017.
10. Defendant Kline committed multiple overt acts in furtherance of the conspiracy he entered into to commit racially-motivated violence at the Unite the Right event in Charlottesville.
11. Defendant Kline attended the torch light march on August 11, 2017 and committed acts of intimidation and violence in furtherance of the conspiracy.
12. Defendant Kline attended the Unite the Right event on August 12, 2017 and committed acts of intimidation and violence in furtherance of the conspiracy.
13. After the Unite the Right event in Charlottesville, Virginia on August 11 and 12, 2017, Defendant Kline ratified the racially-motivated violence that occurred at the event.

B. Defendant Heimbach

14. Defendant Heimbach was a member of Traditionalist Worker Party from April 2017 through at least August 2017.
15. Defendant Heimbach was the leader of Traditionalist Worker Party from April 2017 through at least August 2017.
16. Defendant Heimbach entered into an agreement with one or more co-conspirators to plan the Unite the Right event that took place in Charlottesville, Virginia on

August 11 and 12, 2017.

17. Defendant Heimbach entered into an agreement with one or more co-conspirators to engage in racially motivated violence in Charlottesville, Virginia on August 11, 2017.
18. Defendant Heimbach entered into an agreement with one or more co-conspirators to engage in racially motivated violence at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.
19. Defendant Heimbach was motivated by animus against racial minorities, Jewish people, and their supporters when conspiring to engage in acts of intimidation and violence on August 11 and 12, 2017 in Charlottesville, Virginia.
20. It was reasonably foreseeable to Defendant Heimbach and intended by him that co-conspirators would commit acts of racially-motivated violence and intimidation at the torch light event in Charlottesville, Virginia on August 11, 2017.
21. It was reasonably foreseeable to Defendant Heimbach and intended by him that co-conspirators would commit acts of racially-motivated violence and intimidation at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.
22. It was reasonably foreseeable to Defendant Heimbach and intended by him that a co-conspirator would engage in racially-motivated violence by intentionally driving a car into a crowd of counter-protestors on August 12, 2017.
23. Defendant Heimbach committed multiple overt acts in furtherance of the conspiracy he entered into to commit racially-motivated violence at the Unite the

Right event in Charlottesville.

24. Defendant Heimbach attended the Unite the Right event on August 12, 2017 and committed acts of intimidation and violence in furtherance of the conspiracy.

25. After the Unite the Right event in Charlottesville, Virginia on August 11 and 12, 2017, Defendant Heimbach ratified the racially-motivated violence that occurred at the event.

II. Plaintiffs respectfully request that all documents Plaintiffs have a good faith basis to believe were in fact created by Defendants Kline or Heimbach be deemed “authentic” for purposes of satisfying Rule 901 of the Federal Rules of Evidence. In particular, Plaintiffs have a good faith basis to believe that the following social media accounts, identified by the platform name, followed by the handle (or username), belong to Defendants Kline and Heimbach, respectively. Plaintiffs respectfully request that all documents from the following social media accounts be deemed “authentic” for purposes of satisfying Rule 901 of the Federal Rule of Evidence:

A. Defendant Kline

1. Discord - Eli Mosley#5269
2. Discord - Sayer
3. Discord - Sayer#5269
4. YouTube - Eli Mosley
5. Facebook - Eli Mosley
6. Twitter - @EliMosleyIE
7. Twitter - @ThatEliMosley
8. Twitter - @EliMosleyOH

9. Twitter - @EliMosleyIsBack
10. Twitter - @Sheli_Shmosley
11. Twitter - @Eli_Mosley_
12. Gab - @EliMosley

B. Defendant Heimbach

1. Discord - MatthewHeimbach
2. Discord - MatthewHeimbach#4345
3. Twitter - @HeimbachMatthew
4. Twitter - @MatthewHeimbach
5. VK - MatthewHeimbach
6. Facebook - Matthew Heimbach
7. Facebook - Matthew Warren
8. Gab - @MatthewWHeimbach
9. Gab - @ActualMatthewHeimbach

EXHIBIT 2

- - -
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
- - -

Elizabeth Sines, et al.,)
)
) Plaintiffs,)
)
) vs.) Case No.
) 3:17-cv-00072-NKM
Jason Kessler, et al.,)
)
) Defendants.)

- - -
Monday, December 3, 2018
- - -

CONFIDENTIAL

Deposition of ERICA ALDUINO, taken pursuant to Notice, was held at the Porter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio, 45202, commencing at *** a.m., on the above date, before Deborah C. Furey, Registered Professional Reporter and Notary Public in and for the State of Ohio.

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1 A. This is just for Charlottesville 1.0,
2 right?

3 Q. 1.0?

4 A. Yes.

5 Q. Richard Spencer?

6 A. Yes.

7 Q. Christopher Cantwell?

8 A. Christopher Cantwell I don't believe was
9 there.

10 Q. James Alex Fields?

11 A. Yeah, I don't believe that he was there.

12 Q. Andrew Anglin?

13 A. I don't believe that he was there
14 either.

15 Q. Robert Azzmador Ray?

16 A. I don't believe that he was there.

17 Q. Nathan Damigo?

18 A. I think Nathan was there, so he would
19 have chanted it also.

20 Q. Eli Mosley?

21 A. Yes.

22 Q. He was there?

23 A. I believe so, yes.

24 Q. And he would have been chanting, as
25 well?

1 A. Yeah.

2 Q. Did you hear him chant?

3 A. I didn't hear him chant, personally, no.

4 Q. Did you see him at Charlottesville 1.0?

5 A. Yes.

6 Q. Matthew Heimbach, was he present for
7 Charlottesville 2 point -- excuse me --
8 Charlottesville 1.0?

9 A. I'm not sure if he was at the rally or
10 not, but I know that he was at the luncheon.

11 Q. Okay. Did he speak at the luncheon?

12 A. I don't remember. I don't think that he
13 did. I don't remember though.

14 Q. But you recall seeing him at the
15 luncheon?

16 A. Yes, ma'am.

17 Q. And Matthew Parrott, was he there?

18 A. I don't know.

19 Q. Going to Matthew Heimbach, did you hear
20 him chanting?

21 A. I didn't hear him chanting.

22 Q. Michael Tubbs, was he there, at
23 Charlottesville 1.0?

24 A. I don't know. I don't think that he
25 was.

1 But, if they are just coming in the
2 server as a new person, generally -- like, whoever
3 is a moderator or whoever in the server. And then
4 they have to give, like, permission, a certain
5 permission, to whenever comes in the server to
6 deal with, to actually create invite codes.

7 Q. Were you a moderator in the
8 Charlottesville 2.0 server?

9 A. Yes, ma'am.

10 Q. Who else was a moderator in --

11 A. There were a decent amount of moderators
12 in there.

13 Obviously, we had Jason Kessler, he was
14 a moderator. I think Eli Mosley was also. I was.
15 There were like -- you know, we had, like,
16 individual groups of, you know, Identity Europa
17 or -- what was it -- League of the South, Vanguard
18 America. Each of those people had, like, certain,
19 like, leaders within the server who had the
20 ability to create invite codes and be able to send
21 them off.

22 Q. Okay. And that was all they could do,
23 that they could create invite codes all to
24 joining --

25 A. Yeah, they all had, like, moderating

1 people, so there were a decent amount of
2 moderators.

3 Q. Okay. And what else, in addition to
4 invite codes and adding channels? What else can a
5 moderator do that a regular user can't do?

6 A. They can, like, delete messages from,
7 like, other members, like, if members, like, you
8 know, say, like, certain things or, like, whatever
9 then, you know, just messages, like, chat, certain
10 chats can be deleted in there, so.

11 Q. Anything else other than the ability to
12 delete messages?

13 A. I think they can, like, kick people from
14 the server. Yeah, they can delete messages and
15 delete people off the server, off the top of my
16 head. I haven't been in it for so long, I can't
17 remember.

18 Q. And again, the way somebody becomes a
19 moderator --

20 A. Yeah.

21 Q. -- is that another moderator taps them
22 to become a moderator?

23 A. Exactly.

24 Q. Are moderators the only ones who have
25 authority to delete posts?

1 A. No.

2 Q. No?

3 A. I don't think that McCarthy name had
4 anything to do with what his real name was. But,
5 yeah, you know, a lot of the people on there, they
6 go by aliases, so.

7 MS. PHILLIPS: How are we doing on
8 the --

9 THE VIDEOGRAPHER: One hour, 11 minutes.

10 Q. How are you, I'll ask you, can you press
11 on for a little bit longer and then we'll take a
12 lunch break?

13 A. Yes, ma'am.

14 Q. So who in your view were the primary
15 individuals involved in planning the Unite the
16 Right?

17 A. In my view it was obviously Jason
18 Kessler.

19 Q. Uh-huh.

20 A. I think Eli was one of the main people,
21 Eli Mosley.

22 Q. Uh-huh. Who else?

23 A. I don't know. There were like other
24 people who were involved in specific, like, safety
25 planning and stuff like that, but I don't

1 again, this is dated June 11th.

2 A. Yes.

3 Q. Do you know whether these individuals
4 had already signed up to be speakers at this
5 event?

6 A. I'm really not sure, to be completely
7 honest. I know that there were talks -- the
8 people listed, there were talks of these people
9 being there and speaking, but I don't know if they
10 were actually confirmed.

11 Q. Okay. And of these individuals, were
12 these individuals some of the planners for or
13 organizers of Unite the Right?

14 A. Jason Kessler was for sure, that's about
15 the only one on there, and Eli Mosley. But Jason
16 Kessler and Eli Mosley were the only ones that I
17 can confirm were planners of it.

18 Q. To you're knowledge?

19 A. To my knowledge, yes.

20 Q. You see "Groups/Sponsors."

21 A. Yes.

22 Q. And it says under there, again, among
23 others "Identity Europa, League of the South,
24 Vanguard America, Traditionalist Workers Party,
25 Fraternal Order of Alt Knights."

1 Q. Do you know if such meetings were held
2 regularly in the lead up to Charlottesville 2.0?

3 A. I know that they got more frequent at
4 the lead up to Charlottesville 2.0, but once I
5 was, like, removed from any sort of moderating
6 role, I really wasn't around very often. So I
7 can't really say about, like, three weeks to a
8 month before the event, I can't really say too
9 much of what happened in between that timeframe.

10 Q. Okay. Got it.

11 The next message down from Mr. Mosley,
12 the very bottom of that post, he's talking --
13 well, let me start at the top.

14 A. Okay.

15 Q. And this is July 11th, 2017 post at
16 2:14:40 a.m.

17 It says, "@everyone Sharing information
18 publically from this discord or about this event
19 or who is attending outside of closed circles or
20 this Discord, will get you immediately banned from
21 all future alt right events."

22 What was the concern about keeping
23 everything secret?

24 A. I think it was more so -- so we could
25 avoid -- at least in my eyes, it was so we could

1 Q. We talked a little bit about chants and
2 signs that happened at Charlottesville 1.0.

3 I want to talk about the chants and the
4 signs that were planned for Charlottesville 2.0.

5 Were the chants to be -- the chants that
6 were to be spoken, shouted, whatever at
7 Charlottesville 2.0, were those discussed in the
8 Discord server?

9 A. I believe so, yes.

10 Q. And do you remember what the chants
11 were?

12 A. I don't remember all of them. I think
13 "You will not replace us" was one of them.

14 That's about -- I think just "You will
15 not replace us."

16 And I think Dixie was talked about being
17 sung but I don't remember any chats.

18 Q. Chants?

19 A. Chants, yeah, I don't remember any other
20 chants other than, "You will not replace us."

21 Q. Was "White lives matter" a chant that
22 was discussed?

23 A. I don't remember.

24 Q. "Into the ovens"?

25 A. It may have been. I disagree with that.

1 Q. But it may have been?

2 A. I mean, it may have been. I don't
3 remember.

4 Q. "Jews will not replace us"?

5 A. That may have been discussed in there,
6 too. I don't remember, though.

7 Q. Did anyone have to approve these chants?

8 A. All approval was supposed to go through
9 Jason Kessler, Eli Mosley.

10 Q. Well, did you approve of these chants?

11 A. I mean, it wasn't really up to me. I
12 didn't have the authority to approve any chants.
13 Personally I didn't approve several of the chants
14 that were being spoken of in the thing.

15 Q. Okay. In the Discord?

16 A. In the Discord, yeah, that's what I
17 meant.

18 Q. There's a reference in this Discord to
19 vetting individuals who came into the server.

20 A. Uh-huh.

21 Q. How was vetting accomplished?

22 A. Honestly, like, it wasn't, because
23 individuals who were brought into the server were
24 supposed to be vetted on an organizational basis.
25 So from what I assumed, is that other

EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

* * * * *

ELIZABETH SINES, et al., * CASE NO.
 * 3:17-cv-00072-NKM
Plaintiffs, *
v. *
 *
JASON KESSLER, et al., *
 *
Defendants.

* * * * *

Pursuant to the Order for the Production of Documents
and Exchange of Confidential Information in this case,
all testimony shall presumptively be treated as
Confidential Information and subject to the order during
the testimony and for a period of thirty (30) days after
a transcript of said testimony is received by counsel
for each of the parties. At or before the end of such
thirty day period, the testimony shall be classified
appropriately.

DEPONENT: JASON KESSLER, VOLUME II OF II
DATE: MAY 16, 2018
TIME: 9:15 A.M.
LOCATION: U.S. DISTRICT COURT
 WESTERN DIVISION
 255 WEST MAIN STREET
 CHARLOTTESVILLE, VIRGINIA

REPORTED BY: KIMBERLY L. RIBARIC, RPR, CCR

Veritext Legal Solutions
Mid-Atlantic Region
1250 Eye Street NW - Suite 350
Washington, D.C. 20005

1 MS. KAPLAN: I just -- I'm just going to say
2 something at the beginning. We understand the
3 courthouse is going to be much busier today than it
4 was yesterday, and this is easy for me, because I'm
5 not saying anything, but they have requested that we
6 all try to keep the volume a little bit lower today
7 or maybe significantly lower today than yesterday
8 because of the activity in the courthouse. And I
9 said we would do that.

10 - - -

11 CONTINUED DIRECT EXAMINATION

12 BY MR. LEVINE:

13 Q. Mr. Kessler, you -- you and Eli Mosley were
14 the principal coordinators for the Unite the Right rally
15 on August 11 and 12, 2017; correct?

16 A. Yes.

17 Q. And Mr. Mosley set up the Discord channel,
18 correct?

19 A. No. A woman named Erica did.

20 Q. Working within -- from Identity Evropa?

21 A. She started it up and then later transferred
22 the -- like, the ownership of the thing to him.

23 Q. And you were designated event coordinator?

24 A. Yes.

25 Q. And you used Discord principally to

EXHIBIT 4

Operation Unite the Right Charlottesville 2.0

IMPORTANT: This version of the document is to only be shared by and with group leaders. DO NOT SHARE with other attendees. Another version will be released for them.

Report Version:

6/11/2017 Initial OPORD

Next version release 6/18/2017



ATTENTION: Please read this full document to avoid miscommunication or organizational issues.

Operation Summary:

The town of Charlottesville, Virginia has recently become a flashpoint in the culture war against the anti-white and anti-free speech left with the town trying to take down or alter civil war monuments. Earlier this year, the Alt Right held a secretive rally in the town to protest again these policies which gained international coverage and showed a serious maturity with various groups working together. Since this event the left and the city has not gotten the message, and continue to harass local journalist Jason Kessler and his friends for their point of view on the issue. On August 12th we plan on going back to Charlottesville to show them that they are not unopposed with a rally that brings together the Alt Right with the Alt Light/New Right to show solidarity on issues we overlap with as well as show support for locals afraid to speak up. This rally, like the Battle of Berkley, will be a chance to show the left in one of their central power hubs that they will no longer go unopposed like they are used to with older generations of right wingers. Both the Alt Right and "Alt Light/New Right" will be setting aside our differences and focus on our areas of common ground against our mutual enemies who see no difference between us. We will send the message that we will not be divided, we will not allow them to erase history without a fight, and that they are on the out while the right wing continues to grow.

The right wing must stand united to defend free speech, and the main attack on free speech is the left's intolerance to have pro-White or anti-SJW points of view. Coming together to support each other at this event will be an important show of strength and unity regardless of our disagreements.

Operation Unite the Right Charlottesville 2.0

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Friendlylies:

More groups and speakers are still being added. Contact Eli Mosley or Jason Kessler if you can get additional groups/speakers to attend.

Speakers/Attendees:

Jason Kessler	Baked Alaska
Chris Cantwell	Based Stickman
Mike Enoch	Augustus Invictus
Matt Heimbach	Eli Mosley
Pax Dickinson	Johnny Monoxide
Sacco Vandal	Sam Hyde (Secret/Maybe)
Richard Spencer (Secret)	Gavin McGinnes (Maybe)
Lauren Southern (Secret/Maybe)	

Groups/Sponsors:

Identity Europa	Identity Dixie
TheRightStuff.biz and their Pool Party Groups	Radical Agenda
League of the South	Traditionalist Workers Party
Vanguard America	The Revolutionary Conservative
Proud Boys Regional Groups	Fraternal Order of Alt Knights

Operation Unite the Right Charlottesville 2.0

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Enemies/Counter Protestors:

We are still waiting to figure out the local groups and ones that could be coming in for the event that are antifa or antifa-adjacent. We currently expect around 100-200 counter protesters, but it could easily end up double that.

Discord:

The purpose of the Discord will be to coordinate between groups/individuals, plan travel/lodging accommodations, and disseminate need to know information. This Discord will **NOT** be used to debate topics of disagreement, to recruit for groups, or shitposting. The Alt Light/New Right will be given access to the server at some point and all bullying/harassment/red pills should be kept out of the organizational chats. If an invite is needed, channel must be made or there are issues use the #ModHelp channel. Ask a moderator or above for a server invite.

Roles:

The following roles need to be filled within the next few weeks and more will be needed as time goes on. If you'd like to volunteer for any of the roles below please contact Eli Mosley via Discord expressing which role and what qualifications you have for the role.

Propaganda Coordinator – This role will coordinate between the groups and various artists to create and distribute propaganda for the event. We will have a channel setup for the role of people sharing ideas and creations. Will work closely with the PR teams.

Medical Team Leader – This role will lead the medical team/staff on the ground the day of the event and make sure all members of the team are supplied and qualified to keep attendees safe.

Lodging Coordinator – Help to research and spread information for lodging to all attendees. Moderate the lodging_needed and lodging_wanted channels. Most groups will be able to handle this piece themselves, but having someone to help out would be great.

Operation Unite the Right Charlottesville 2.0

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Sponsor Coordinator – This role will manage the sponsor channels to link sponsors up with people who need help getting to the event. They should have knowledge and access to paypal to middleman if needed. We may gain access to another service as well.

Intelligence Section Coordinator – This role will manage the various intelligence teams that will need to gather intel leading up to the event, during the event and manage the intel/doxing after the event. This person should not be in attendance to the event and have some experience with doing this like previous events.

More roles will be needed in reports moving forward as well. Stay tuned and if you'd like to volunteer to take on roles not listed please message Eli Mosley.

Information Sharing:

There will be two different reports like this every week leading up to the event where it will switch to every day. The first version will be for leadership and Alt Right groups. The second version will be for the general attendees and Alt Light/New Right groups. The reason is that the Alt Light/New Right groups and general attendees may have compromised communication networks so we'd like to keep the info leaks to a minimum on certain things. This means do not discuss the specifics of this event outside of official discussion channels.

During the first few weeks of organizing we will keep most of the big name individuals going a secret. If you are unsure if it is public knowledge that someone is going assume it is not. If you have an individual who would like to speak let Eli Mosley or Jason Kessler know.

Keep all of these intel reports in vetted discords, private Facebook groups, and other non-compromised groups. DO NOT share them in the Proud Boys main Facebook groups or non-vetted regional groups which have been confirmed compromised in the past. If you have any questions on this please contact Eli Mosley.

Operation Unite the Right Charlottesville 2.0

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Alt-Right and Alt-Light/New Right Truce:

For the time being all groups attending should do their very best to keep their people from being antagonistic towards each other. If there are issues between groups please try to fix it behind the scenes in the interest of this event. Don't forget that everyone on either side will not be on the same page here as well.

Contact Information:

This event is currently being organized by Eli Mosley and Jason Kessler with a few others with the Event Coordinator role in the Discord. If you'd like to step up to help out more please contact one of us. Please ask if you need to share contact info outside Discord.

Eli Mosley – Discord, Eli Mosley#5269 – Phone Number, 610-406-2229 – Email, DeplorableTruth@gmail.com. Feel free to msg/call whenever.

Jason Kessler – Discord, MadDimension#8652 – Phone Number, 434-996-5567 – Twitter, @TheMadDimension

Timeline:

6/11-7/2: Initial Planning and Recruiting drive. During this time we will be spreading the general propaganda to try to recruit as many people as we can to the event with the general details of where/when. The leadership and team leaders will be planning out everything for the event behind the scenes during this time. It will be important to keep whatever detailed information about the event we have secret and on need to know basis during this time.

7/2-7/16: Detailed Planning Releases. During this time we will be sending out exactly how we intend to execute that day and take in any feedback or changes needed to be made. We will also step up the PR teams and media reach out during this time so that they are aware of what is going on. During this time we may announce the specific details on all individuals giving speeches and groups attending as well. Intel groups will begin gather information on local antifa possibly attending.

Operation Unite the Right Charlottesville 2.0

IMPORTANT: This version of the document is to only be shared by and with group leaders. DO NOT SHARE with other attendees. Another version will be released for them.

7/16-7/30: Final Planning and Propaganda Blitz. Here we will be spreading the information on the event using social media, podcasts and other alternative media sources while we confirm that everyone knows their role for the day of the event.

7/30-8/10: Daily Operational Reports and Intel Sharing. During the week and a half leading up to the event there will be daily documents with updates being released including any plan changes needed. It will be incredibly important to keep this information secret.

8/11: Scouting/Local team and dry runs. Arrivals of non-local groups and speakers.

8/12: Day of Event.

8/13: Intel crowd sourcing, social media and media blitz day.

Public Relations Team:

Each group attending will need to volunteer one representative for the PR team to attend meetings and make sure everyone is on the same page in terms of message and dealing with the media. They will be in touch with the PR Coordinator. Please message Eli Mosley or Jason Kessler with the representative per group for the PR team.

Propaganda Team:

The Propaganda Team will be lead by a single person who will be asking for general help to spread the message of the event before, during and after. Each group can do this themselves individually as well and can ask for help in spreading this from the Propaganda Coordinator.

Operation Unite the Right Charlottesville 2.0

IMPORTANT: This version of the document is to only be shared by and with group leaders. DO NOT SHARE with other attendees. Another version will be released for them.

Lodging:

The lodging coordinator will help do research on local lodging. It is important to get this booked ASAP before antifa or our people buy everything up in the area. Also, be aware that if you are a doxed individual you may be removed from AirBnB or other services.

KKK Rally:

There will be a KKK rally on July 8th in Charlottesville in the same areas that we will have our rally. The organizer of this rally is a suspected federal agent. The Alt Right groups do not need to counter signal this rally but should expect the Alt Light/New Right groups to do so. We are in no way affiliated with this rally even though the media will try to paint them as the same thing. Our best bet would be to ignore this rally and focus on our own whenever asked about it.

After-Party for Event:

Currently we have no detailed plans for an event after the rally. However, we will have something planned for that day which will have more details out as we get closer to the date.

Patrons/Sponsors:

If you or someone you know is unable to attend the event but would still like to support it please get in touch with the Sponsor Coordinator or use the Discord channels. We may have an official service up for this soon to help make this easier.

If you have any questions or issues please direct them to the #QuestionsForCoordinators channel in Discord.

EXHIBIT 5





EXHIBIT 6

- 10 11 12
-  **Eli Mosley** @ThatEliMosley · Aug 7
- Replying to @ThatEliMosley
- ...Our birthright will be ashes & they'll have to pry it from our cold dead hands if they want it. They will not replace us without a fight.
- 1 6 23
-  **Eli Mosley** @ThatEliMosley · Aug 7
- We are still going to Charlottesville. This is our country and it is our right that me and thousands fought for already...
- 2 8 26
-  **Eli Mosley** @ThatEliMosley · Aug 7





Eli Mosley @Eli_Mosley_ · 5h
From the CVille report:

"Lieutenant Hatter described the dispersal of Emancipation Park on August 12 as the "most messed up thing I ever saw." Hatter noted that the Alt-Right demonstrators were screaming at the VSP and CPD officers as the mobile field force pushed...

6 47 151



Eli Mosley @Eli_Mosley_ · 5h

...from the rear of Emancipation Park, commenting that "you are pushing us right into the crowd." Hatter agreed with this assessment, noting that the effort was "causing confrontations and pushing [the Alt-Right] right into their enemies." Lieutenant Mooney similarly told us that

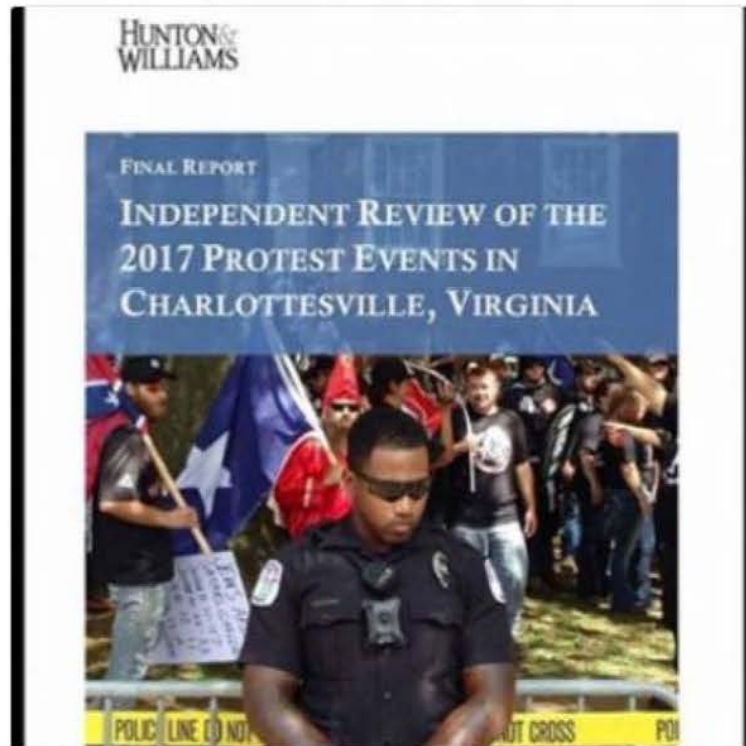
1 22 167



Eli Mosley
@Eli_Mosley_

Follow

It is amazing to me that this "independent investigation" would use a picture of a different rally entirely.



11:55 AM · 1 Dec 2017

15 Retweets 75 Likes



4 15 75



EXHIBIT 7

From: [James Kolenich](#)
To: [Gabrielle E. Tenzer](#)
Cc: [Roberta Kaplan](#); [Karen Dunn](#); [jphillips@bsflp.com](#); [Levine, Alan](#); [Mills, David](#); [pbowman@cooley.com](#)
Subject: Client contact info
Date: Friday, November 9, 2018 4:05:32 PM

Ms. Tenzer:

Pursuant to Judge Hoppe's instruction, please find below contact information for clients I have withdrawn or are seeking to withdraw from representing:

1) Eli Mosely aka Elliott Kline

Eli.F.Mosley@gmail.com

(610) 406-2229

2) Matthew Heimbach

matthew.w.heimbach@gmail.com

(301) 525-1474

3) Robert Ray aka Azzmador

azzmador@gmail.com

903-245-9134 (please advise him by phone/text when sending an email as he receives a large amount of email every day and ignores most of it.)

I do not have physical mailing addresses for any of them.

Respectfully,

Jim Kolenich

--

James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
513-444-2150
513-297-6065(fax)
513-324-0905 (cell)

EXHIBIT 8

**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, NATALIE ROMERO, CHELSEA
ALVARADO, and JOHN DOE,

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 MOSLEY,
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

**PLAINTIFFS' [CORRECTED]
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS
TO ALL DEFENDANTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure ("FRCP"), Plaintiffs hereby request that Defendants produce the following documents and tangible things at the offices of Boies Schiller Flexner LLP, 575 Lexington Avenue, New York, NY 10022, no later than thirty (30) days from service of this First Set of Requests for Production of Documents (the "Requests"), unless otherwise agreed by the parties or required by any scheduling order entered by the Court in this action.

The Definitions and Instructions that appear below form an integral part of the Requests that follow and must be read in conjunction with them and followed when responding to the Requests.

DEFINITIONS

In each Definition, the singular shall include the plural and the plural shall include the singular. Terms used herein shall have the following meanings:

1. “Amended Complaint” means the amended complaint filed in the above-captioned litigation as ECF docket entry number 175.
2. “Communication” means, in addition to its customary and usual meaning, every contact of any nature, whether documentary, electronic, written or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, instant messages, social media postings, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, or any other form of correspondence, and any Document relating to such contact, including but not limited to correspondence, memoranda, notes or logs of telephone conversations, e-mail, electronic chats, text messages, instant messages, direct or private messages, correspondence in “meet ups” or chat rooms, and all other correspondence on Social Media. Without limiting the foregoing in any manner, commenting as well as any act of expression that is not directed at a specific person, or otherwise may not be intended to provoke a response (such as a social media posting, “likes,” “shares,” or any other form of reacting to another’s use of Social Media), are forms of communication.
3. “Concerning” means, in addition to its customary and usual meaning, relating to, pertaining to, referring to, alluding to, confirming, constituting, comprising, containing, commenting upon, responding to, discussing, describing, embodying, evaluating, evidencing, identifying, in connection with, involving, mentioning, noting, pertaining to, probative of, related to, relating to, reflecting, referring to,

regarding, setting forth, supporting, stating, showing, touching upon, dealing with, assessing, recording, bearing upon, connected with, in respect of, about, indicating, memorializing, proving, suggesting, having anything to do with, contradicting, and summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

4. “Document” or “Documents” means documents broadly defined in FRCP Rule 34, and includes (i) papers of all kinds, including but not limited to, originals and copies, however made, of letters, memoranda, hand-written notes, notebooks, work-pads, messages, agreements, rough drafts, drawings, sketches, pictures, posters, pamphlets, publications, news articles, advertisements, sales literature, brochures, announcements, bills, receipts, credit card statements, and (ii) non-paper information of all kinds, including but not limited to, any computer generated or electronic data such as digital videos, digital photographs, audio recordings, podcasts, Internet files (including “bookmarks” and browser history), online articles and publications, website content, electronic mail (e-mail), electronic chats, instant messages, text messages, uploads, posts, status updates, comments, “likes”, “shares”, direct messages, or any other use of Social Media, and (iii) any other writings, records, or tangible objects produced or reproduced mechanically, electrically, electronically, photographically, or chemically. Without limiting the foregoing in any way, every Communication is also a Document.

5. “Events” means the occurrences and activities described in Paragraphs 45 to 335 of the Amended Complaint.

6. “Person” means a natural person or individual, and any corporation, partnership, limited liability company, unincorporated association, governmental body or agency, or any other form of organization, group, or entity.

7. “Social Media” means any forum, website, application, or other platform on which persons can create, transmit, share, communicate concerning, or comment upon any information, ideas, or opinions, or otherwise engage in social networking. Without limiting the foregoing in any manner, and by way of

example only, the following are social media platforms: comment sections of websites, Facebook, Discord, Reddit, Imgur, SnapChat, Instagram, Google+, 4chan, 8chan, Twitter, Tumblr, Youtube, and instant messaging services such as Signal, WhatsApp, Messenger, Hangouts, or Skype. Without limiting the foregoing in any manner, and by way of example only, the following are methods of using social media platforms: uploading, posting, commenting, reacting (e.g., “liking” a post), and sharing.

8. “You,” “Your,” or “Yours” refers to the Defendants to whom the Interrogatories are addressed and includes any persons or entities acting for them or on their behalf, including but not limited to all representatives, servants, agents, employees, officers, affiliates, subsidiaries, parent companies, third parties, attorneys, as well as any entities over which any of the Defendants have control.

INSTRUCTIONS

A. These Requests are issued to each Defendant, and each individual Defendant must fully respond, search for and produce all Documents and Communication responsive to these Requests.

B. Your responses to the following Requests shall be based on all knowledge and information (whether or not hearsay or admissible) in your possession, custody, or control.

C. These Requests are continuing in nature. If, after making initial responses, Defendants obtain or become aware of any further Documents responsive to the Requests, Defendants are required to supplement their responses and provide such Documents pursuant to FRCP Rule 26(e).

D. If, in responding to any of the following Requests, you encounter any ambiguity or confusion in construing either a Request or a Definition or Instruction relevant to a Request, set forth the matter deemed ambiguous, select a reasonable interpretation that you believe resolves the ambiguity, respond to the Request using that interpretation, and explain with particularity the construction or interpretation selected by you in responding to the Interrogatory.

E. In the event any document or information is withheld on the basis of the attorney-client privilege, work product doctrine, or any other right to non-disclosure on any other basis, furnish a list

identifying the documents, communications, or information for which the protection is claimed together with the following (if applicable): the type of document or communication; the date or dates of the document or communication; the name, position and address of each person who participated in the document or communication, to whom the document or communication was addressed, or to whom the document or communication or the contents thereof have been communicated by any means; the general subject matter of the document, communication, or information; the specific basis for nonproduction or non-disclosure; and a description that you contend is adequate to support your contention that the document, communication, or information may be withheld from production and/or disclosure. If a document or communication is withheld on the ground of attorney work product, also specify whether the document or communication was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based.

F. If You object to production in response to a specific request, You shall state with particularity the basis for all objections with respect to such request. You should respond to all portions of that request that do not fall within the scope of Your objection. If You object to a Request on the ground that it is overly broad, provide such documents that are within the scope of production that You believe is appropriate. If You object to a Request on the ground that to provide responsive documents would constitute an undue burden, provide such responsive documents as You believe can be supplied without undertaking an undue burden.

G. Whether or not You object, You must preserve all Documents and Communications relevant to the lawsuit, including all Documents and Communications responsive to these Requests. You must also preserve all hardware, software and log files related to databases; servers; archives; backup or recovery disks, files and servers; networks or computer systems including legacy systems; magnetic, optical or other storage media, including hard drives and other storage media; laptops; personal computers; personal digital assistants; handheld wireless devices; mobile telephones; paging

devices; and audio systems, including iPods. You must take every reasonable step to preserve this information until the final resolution of this matter. This includes, but is not limited to, discontinuing all data destruction and backup recycling policies; preserving and not disposing relevant hardware unless an exact replica of the file is made; preserving and not destroying passwords; encryption and accompanying decryption keys; network access codes, including login names; decompression or reconstruction software; maintaining all other pertinent information and tools needed to access, review, and reconstruct all requested or potentially relevant electronically stored information and data. Where any alterations or deletions of any of the documents and data requested by the subpoena have been made since August 11, 2017, You should provide a log detailing any changes and deletions, the individual who made those changes and deletions, and the purpose for which the changes and deletions were made.

H. Produce all responsive documents in Your possession, custody, or control, regardless of whether such documents are possessed directly by You or persons under Your control, including Your agents, employees, representatives, or attorneys, or their agents, employees, or representatives. To the extent that you do not have copies of communications made or received by you that are responsive to these requests, you must provide the consent necessary under the Stored Communications Act, *see* 18 U.S.C. § 2702(b)(3), to permit the providers of electronic communication services and remote computing services, *see* 18 U.S.C. § 2702(a)(1)-(2), to produce the documents.

I. Produce each responsive document in its entirety including with all attachments or other matters affixed thereto.

J. Each Document produced in response to these Requests shall be produced in accordance with the specifications described in Exhibit A attached hereto, or as agreed by the parties or ordered by the Court.

K. References to any natural person shall be deemed to include that natural person's agents, servants, representatives, current and former employees, and successors.

L. References to any non-natural person (e.g., corporation, partnership, entity, membership organizations, etc.) shall be deemed to include that non-natural person's predecessors, successors, divisions, subsidiaries, parents, assigns, partners, members, and affiliates, foreign or domestic, each other person directly or indirectly, wholly or in part, owned by, controlled by, or associated with them, and any others acting or purporting to act on their behalf for any reason, and the present and former officers, directors, partners, consultants, representatives, servants, employees, assigns, attorneys, and agents of any of them.

M. The use of the singular form of any word includes the plural and vice versa.

N. The use of the past tense includes the present tense and vice versa, as necessary to bring within the scope of each request all responses that might otherwise be considered outside its scope. Whenever a term is used herein in the present, past, future, subjunctive, or other tense, voice, or mood, it shall also be construed to include all other tenses, voices, or moods.

O. The terms "and" and "or" should be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

P. The word "all" means "any and all"; the word "any" means "any and all."

Q. The term "including" means "including, without limitation."

R. The masculine includes the feminine and neutral genders.

S. Unless otherwise specified, the time period to which these Requests refer is from January 1, 2015 to the present. If any document is undated and the date of its preparation cannot be determined, the document shall be produced if otherwise responsive to any of the Requests.

DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 1:

All Documents and Communications concerning the Events, including without limitation all documents and communications:

- i. concerning any preparation, planning, transportation to, or coordination for, the Events, including receipts, bills and credit card statements reflecting costs for transportation, lodging, apparel, gear, or any other material purchased for the Events;
- ii. concerning any instructions or coordination relating to the Events, including security details, what to wear, what to bring, when to meet, where to meet, what to say, and any other logistical information or arrangements;
- iii. that are Social Media documents concerning the Events;
- iv. you created during the Events, including Social Media, text messages, video, and photographs;
- v. concerning African Americans, Jewish individuals, or other religious, racial, or ethnic minorities that relate in any way to the Events;
- vi. concerning any statement or action attributed to You in the Amended Complaint; or
- vii. concerning any allegation of an altercation, violent act, injury, or instance of intimidation or harassment that occurred during the Rally, including but not limited to James Fields' vehicular incident; or
- viii. concerning any funding of the Events, including for transportation, housing, food, weapons, uniforms, signage, tiki torches, or other materials or services used in connection with the Events (or the planning thereof)..

REQUEST FOR PRODUCTION NO. 2:

All Documents and Communications concerning events, meetings, rallies, conferences, or conversations held prior to the Events that relate to the Events in any way.

REQUEST FOR PRODUCTION NO. 3:

All Documents concerning and all Communications concerning or with East Coast Knights of the Ku Klux Klan (or East Coast Knights of the True Invisible Empire), Fraternal Order of the Alt-Knights, Identity Europa (or Identity Evropa), League of the South, Loyal White Knights of the Ku Klux Klan (or Loyal White Knights Church of the Invisible Empire Inc.), Moonbase Holdings, LLC, Nationalist Socialist Movement, Nationalist Front (or Aryan National Alliance), Traditionalist Worker Party, Vanguard America, or any such other social group or organization that has as part of its agenda a racial, religious, or ethnic objective.

REQUEST FOR PRODUCTION NO. 4:

All Documents and Communications concerning violence, intimidation, or harassment of Persons on the basis of race, religion, or ethnicity, including but not limited to, ethnic cleansing, white genocide, a white ethno-state, or any other form of large or small scale violence.

REQUEST FOR PRODUCTION NO. 5:

For any Social Media account You had from January 1, 2015, to the present:

- i. Documents and Communication sufficient to show the account home page, and all uses of Social Media for that account that reference or concern the Events or Defendants in any way.
- ii. Documents and Communication sufficient to show all Your “friends” and/or “social connections” maintained on Your account, including their names, addresses, and social network usernames or handles.

REQUEST FOR PRODUCTION NO. 6:

All Documents concerning and all Communications concerning or with any Plaintiff or Defendant (other than You) named in the Amended Complaint, and any other Person who attended, planned or was involved in the Events.

REQUEST FOR PRODUCTION NO. 7:

All Documents and Communications concerning any lawsuits, claims of violence, or arrests relating to or arising out of racially, ethnically, or religiously motivated conduct by You or any Defendant named in the Amended Complaint.

REQUEST FOR PRODUCTION NO. 8:

All Documents and Communications concerning the steps you have taken to preserve Documents and Communications relevant to the lawsuit, including the Documents and Communications responsive to these Requests.

Dated: January 25, 2018
New York, NY

/s/ Philip M. Bowman
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Yotam Barkai (*pro hac vice*)
Joshua J. Libling (*pro hac vice*)
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Counsel for Plaintiffs

EXHIBIT A

1. PRODUCTION FORMAT

- a) To avoid the production of more than one copy of a unique item, use industry standard MD5 or SHA-1 hash values to de-duplicate all files identified for production. Loose e-files will not be compared to email attachments for de-duplication purposes. Hard copy documents containing handwritten notes will not be considered as duplicative of any other document.
- b) Where documents with attachments are produced, they will be attached in the same manner as included in the original file. Where documents are produced and all attachments thereto are not included, identify the missing attachments by means of a “place holder” file, and explain the reason for their non-production. Documents that are segregated or separated from other documents, whether by inclusion of binders, files, dividers, tabs, clips or any other method, will be produced in a manner that reflects these divisions. If any portion of a document is responsive, the entire document should be submitted. Do not redact any non-privileged content from any document absent a separate agreement.
- c) Productions should be delivered on an external hard drive, CD, DVD, or via FTP (or other secure online transfer). If a delivery is too large to fit on a single DVD, the production should be delivered on an external hard drive or via FTP upon agreement with Defendants.
- d) Documents shall be produced as Bates-stamped tagged image file format (“TIFF”) images accompanied by an image load file, a data load file with fielded metadata, document-level extracted text for ESI, and optical character recognition (“OCR”) text for scanned hard copy documents and ESI that does not contain extractable text. Detailed requirements, including files to be delivered in native format, are below.
- e) TIFF Image Requirements
 - a. TIFF images will be produced in black and white, 300x300 dpi Group IV single-page format and should be consecutively Bates-stamped.
 - b. Images will include the following content where present:
 - i. For word processing files (*e.g.*, Microsoft Word): Comments, “tracked changes,” and any similar in-line editing or hidden content.
 - ii. For presentation files (*e.g.*, Microsoft PowerPoint): Speaker notes, comments, and all other hidden content.
 - iii. For spreadsheet files (*e.g.*, Microsoft Excel): Hidden columns, rows, and sheets, comments, “tracked changes,” and any similar in-line editing or hidden content.
- f) Native Production Requirements

- a. Spreadsheet files (*e.g.*, Microsoft Excel and .Csv files) and presentation files (*e.g.* Microsoft PowerPoint) should be provided in native format.
 - i. In lieu of a full TIFF image version of each native file, a single placeholder image bearing the relevant bates number and confidentiality designation should be produced.
 - ii. When redaction is necessary, a redacted full TIFF version may be produced provided that the document is manually formatted for optimal printing. If the file requiring redaction is not reasonably useable in TIFF format, the parties will meet-and-confer to determine a suitable production format.
 - iii. If redactions within a native file are necessary, the parties will meet-and-confer prior to productions and provide a means to identify such documents in the production.
- b. Media files (*e.g.*, .mp3, .wmv, etc.) will be produced in native format.
- c. The parties will meet-and-confer to discuss a suitable production format for any proprietary or non-standard file types that require special software or technical knowledge for review.
- d. The parties will meet-and-confer to discuss a suitable production format for any databases or database reports.
- e. Any files that cannot be accurately rendered in a reviewable TIFF format should be produced in native format.
- f. Defendants reserve the right to request native or color copies of any documents that cannot be accurately reviewed in black and white TIFF format. Reasonable requests for native or color documents should not be refused.
- g) Load File Requirements
 - a. A Concordance compatible data load file should be provided with each production volume and contain a header row listing all of the metadata fields included in the production volume.
 - b. Image load files should be produced in Concordance/Opticon compatible format.
- h) Extracted Text/OCR Requirements
 - a. Electronically extracted text should be provided for documents collected from electronic sources. Text generated via OCR should be provided for all documents that do not contain electronically extractable text (*e.g.*, non-searchable PDF files and JPG images) and for redacted and hard copy documents. Do not to degrade the searchability of document text as part of the document production process.

- b. Document text should be provided as separate, document-level text files and not be embedded in the metadata load file.
 - c. Text files should be named according to the beginning bates number of the document to which they correspond.
 - d. If a document is provided in native format, the text file should contain the extracted text of the native file.
 - e. A path to each extracted text file on the delivery media should be included in a load file field, or in a separate cross-reference file.
- i) Produce all metadata fields listed in Appendix 1 if available.

APPENDIX 1

Field	Comments
BegBates	Beginning Bates number
EndBates	Ending Bates number
BegAttach	Bates number of the first page of a family range
EndAttach	Bates number of the last page of a family range
PageCount	Number of pages in a Document.
FileExtension	Original file extension as the document was maintained in the ordinary course
FileSize	File size in bytes
DocTitle	Document title as stored in file metadata
Custodian	Custodian full name
Author	Document author information for non-email
From	Email FROM
To	Email TO
Cc	Email CC
BCC	Email BCC
Subject	Email Subject
Attachments	Name of attached file(s) as maintained in the ordinary course of business
DateCreated	File date created MM/DD/YYYY
DateModified	File date modified MM/DD/YYYY
DateSent	Email date sent MM/DD/YYYY
TimeSent	Email time sent HH:MM:SS AM/PM
DateReceived	Email date received MM/DD/YYYY
TimeReceived	Email time received HH:MM:SS AM/PM
FileName	Name of the file as maintained in the ordinary course of business with extension
MD5Hash	The computer-generated MD5 Hash value for each document
NativePath	The path to the native-format file corresponding to each record on the delivery media, including the file name (if a native-format file is provided)
TextPath	The path to the corresponding text file for each record on the delivery media, including filename

EXHIBIT 9

**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, NATALIE ROMERO, CHELSEA
ALVARADO, and JOHN DOE,

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 MOSLEY,
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 “ENOCH”
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

**PLAINTIFFS’ FIRST SET OF
INTERROGATORIES TO ALL
DEFENDANTS**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“FRCP”), Plaintiffs
hereby request that Defendants answer under oath the First Set of Interrogatories

(“Interrogatories”) set forth below within the time specified in Rule 33, unless otherwise agreed by the parties or required by any scheduling order entered by the Court in this action.

The Definitions and Instructions that appear below form an integral part of the Interrogatories that follow and must be read in conjunction with them and followed when responding to the Interrogatories.

DEFINITIONS

In each Definition, the singular shall include the plural and the plural shall include the singular. Terms used herein shall have the following meanings:

1. “Amended Complaint” means the amended complaint filed in the above-captioned litigation as ECF docket entry number 175.

2. “Communication” means, in addition to its customary and usual meaning, every contact of any nature, whether documentary, electronic, written, or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, instant messages, social media postings, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, and any other form of communication or correspondence. Without limiting the foregoing in any manner, commenting as well as any act of expression that is not directed at a specific person, or otherwise may not be intended to provoke a response (such as a social media posting, “likes,” “shares,” or any other form of reacting to another’s use of Social Media), are forms of communication.

3. “Concerning” means, in addition to its customary and usual meaning, relating to, pertaining to, referring to, alluding to, confirming, constituting, comprising, containing,

commenting upon, responding to, discussing, describing, embodying, evaluating, evidencing, identifying, in connection with, involving, mentioning, noting, pertaining to, probative of, related to, relating to, reflecting, referring to, regarding, setting forth, supporting, stating, showing, touching upon, dealing with, assessing, recording, bearing upon, connected with, in respect of, about, indicating, memorializing, proving, suggesting, having anything to do with, contradicting, and summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Interrogatory.

4. “Electronic Device” means any device that stores, compiles, displays, generates, receives, transmits, or manipulates electronic information. Without limiting the foregoing in any manner, and by way of example only, the following are Electronic Devices: laptop and desktop computers, smartphones, tablets, smartwatches, cameras, smart devices (such as Google Home and Amazon Alexa), external storage devices (such as hard drives or USB sticks) or fitness activity trackers.

5. “Events” means the occurrences and activities described in Paragraphs 45 to 335 of the Amended Complaint.

6. “Social Media” means any forum, website, application, or other platform on which persons can create, transmit, share, communicate concerning, or comment upon any information, ideas, or opinions, or otherwise engage in social networking. Without limiting the foregoing in any manner, and by way of example only, the following are social media platforms: comment sections of websites, Facebook, Discord, Reddit, Imgur, SnapChat, Instagram, Google+, 4chan, 8chan, Twitter, Tumblr, Youtube, and instant messaging services such as Signal, WhatsApp, Messenger, Hangouts, or Skype. Without limiting the foregoing in any

manner, and by way of example only, the following are methods of using social media platforms: uploading, posting, commenting, reacting (e.g., “liking” a post), and sharing.

7. “Social Media Handle” means the unique identifier (whether a name, nickname, user name, avatar, image, or otherwise) associated with a user of Social Media. A Social Media Handle includes, for example, your unique Discord user handle including a four-digit number at the end of that handle.

8. “You,” “Your,” or “Yours” refers to the Defendants to whom the Interrogatories are addressed and includes any persons or entities acting for them or on their behalf, including but not limited to all representatives, servants, agents, employees, officers, affiliates, subsidiaries, parent companies, third parties, attorneys, as well as any entities over which any of the Defendants have control.

INSTRUCTIONS

A. These Interrogatories are issued to each Defendant, and each individual Defendant must fully respond to these Interrogatories.

B. Your responses to the following Interrogatories shall be based on all knowledge and information (whether or not hearsay or admissible) in your possession, custody, or control.

C. These Interrogatories are continuing in nature. If, after making initial responses, Defendants obtain or become aware of any further Documents responsive to the Requests, Defendants are required to supplement their responses and provide such Documents pursuant to FRCP Rule 26(e).

D. When the term “identify” is used in these Interrogatories, please supply the following information as context requires:

- i. when used in reference to a natural person, state the person’s full name, present or last known business and residential addresses, present or last known telephone

numbers or other contact information, and present or last known employment position or business affiliation;

- ii. when used in reference to any person who is not a natural person, state the full name, present or last known address, and present or last known telephone number or other contact information;
- iii. when used in reference to an object, state the nature, type, and location of the object and identify the person (natural or non-natural) who has custody or control over the object.

E. If, in responding to any of the following Interrogatories, you encounter any ambiguity or confusion in construing either an Interrogatory or a Definition or Instruction relevant to an Interrogatory, set forth the matter deemed ambiguous, select a reasonable interpretation that you believe resolves the ambiguity, respond to the Interrogatory using that interpretation, and explain with particularity the construction or interpretation selected by you in responding to the Interrogatory.

F. If you believe that an Interrogatory calls for production of a document or communication, or requires disclosure of information, over which you claim attorney-client privilege, work product doctrine, or any other right to non-disclosure on any other basis, furnish a list identifying the documents, communications, or information for which the protection is claimed together with the following (if applicable): the type of document or communication; the date or dates of the document or communication; the name, position and address of each person who participated in the document or communication, to whom the document or communication was addressed, or to whom the document or communication or the contents thereof have been communicated by any means; the general subject matter of the document, communication, or

information; the specific basis for nonproduction or non-disclosure; and a description that you contend is adequate to support your contention that the document, communication, or information may be withheld from production and/or disclosure. If a document or communication is withheld on the ground of attorney work product, also specify whether the document or communication was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based.

G. References to any natural person shall be deemed to include that natural person's agents, servants, representatives, current and former employees, and successors.

H. If You object to answering a specific interrogatory, You shall state with particularity the basis for all objections with respect to such interrogatory. You should respond to all portions of that interrogatory that do not fall within the scope of Your objection. If You object to an interrogatory on the ground that it is overly broad, provide such documents that are within the scope of production that You believe is appropriate. If You object to an interrogatory on the ground that to provide responsive documents would constitute an undue burden, provide such responsive documents as You believe can be supplied without undertaking an undue burden.

I. If the answer to all or part of an Interrogatory is that you lack knowledge of the requested information, set forth such remaining information as is known to you and describe all efforts made by you or by your attorneys, accountants, agents, representatives, or experts, or by any professional employed or retained by you, to obtain the information necessary to answer the interrogatory. If any approximation can reasonably be made in place of unknown information, also set forth your best estimate or approximation, clearly designated as such, in place of unknown information, and describe the basis upon which the estimate or approximation is made.

J. In answering each Interrogatory, you shall identify each document relied upon that forms the basis for your answer or in any way corroborates your answer or the substance of your answer.

K. A response identifying documents falling within the scope of these Interrogatories shall state that the documents have or will be produced, unless the Interrogatory is objected to, in which event the reasons for objection shall be specifically stated.

L. References to any non-natural person (e.g., corporation, partnership, entity, membership organizations, etc.) shall be deemed to include that non-natural person's predecessors, successors, divisions, subsidiaries, parents, assigns, partners, members, and affiliates, foreign or domestic, each other person directly or indirectly, wholly or in part, owned by, controlled by, or associated with them, and any others acting or purporting to act on their behalf for any reason, and the present and former officers, directors, partners, consultants, representatives, servants, employees, assigns, attorneys, and agents of any of them.

M. The use of the singular form of any word includes the plural and vice versa.

N. The use of the past tense includes the present tense and vice versa, as necessary to bring within the scope of each request all responses that might otherwise be considered outside its scope. Whenever a term is used herein in the present, past, future, subjunctive, or other tense, voice, or mood, it shall also be construed to include all other tenses, voices, or moods.

O. The terms "and" and "or" should be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

P. The word "all" means "any and all"; the word "any" means "any and all."

Q. The term "including" means "including, without limitation."

R. The masculine includes the feminine and neutral genders.

S. Unless otherwise specified, the time period to which these Interrogatories refer is from January 1, 2015 to the present.

INTERROGATORIES

1. Identify all means of communication used by you to communicate concerning the Events, whether before, during, or after the Events, and for each means of communication, identify all names, aliases, e-mail addresses, phone numbers, and Social Media Handles you used in connection with such communications, including the 18-digit account identifier associated with any Discord account used by You. Means of communications include, but are not limited to, telephone calls, in-person meetings, and all means of electronic communication including, for example, Social Media, email, SMS messages, podcasts, and online video.

2. Identify any “channel” or “server” on Discord to which you had access.

3. Identify all persons (natural or non-natural) with whom you communicated concerning the Events, whether before, during, or after the Events.

4. Identify all Electronic Devices used by you to communicate concerning the Events, whether before, during, or after the Events.

Dated: January 25, 2018
New York, NY

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Counsel for Plaintiffs

EXHIBIT 10

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA**

ELIZABETH SINES et al.,

Plaintiff

vs.

JASON KESSLER et al.,

Defendant

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**CASE NO: 3:17cv00072
(J. Moon, Magistrate J. Hoppe)**

**DEFENDANT IDENTITY EVROPA'S RESPONSES TO DEFENDANT'S FIRST
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Now comes defendant Identity Evropa ("IE") and responds to defendants first set of Interrogatories and Request for Documents as follows:

I. DISCOVERY REQUESTS

1. Identify all means of communication used by you to communicate concerning the Events, whether before, during, or after the Events, and for each means of communication, identify all names, aliases, e-mail addresses, phone numbers, and Social Media Handles you used in connection with such communications, including the 18-digit account identifier associated with any Discord account used by You. Means of communications include, but are not limited to, telephone calls, in-person meetings, and all means of electronic communication including, for example, Social Media, email, SMS messages, podcasts, and online video.

ANSWER: identityevropa.com,

youtube: <https://www.youtube.com/channel/UC8ZmnNg0kKjX2C0NeXsukXg>,

twitter: Handle: @IdentityEvropa

URL: <https://twitter.com/IdentityEvropa>

Facebook

Page: Identity Evropa

No longer exists. Was deleted by Facebook after Charlottesville.

Discord

Server: Identity Evropa

Slack

guardianie.slack.com

2. Identify any “channel” or “server” on Discord to which you had access.

ANSWER: Identity Evropa server. Lost access on or about 8/14/17.

3. Identify all persons (natural or non-natural) with whom you communicated concerning the Events, whether before, during, or after the Events.

ANSWER: Eli Mosely aka Elliott Kline handled IE’s limited presence in Charlottesville.

4. Identify all Electronic Devices used by you to communicate concerning the Events, whether before, during, or after the Events.

ANSWER: Mr. Mosely’s communication devices. Specific information is unknown to IE at this time.

II. DOCUMENT REQUESTS

General Response: IE objects to all below document requests on the grounds that to comply without third party permission or a court order violates the Stored Communications Act 18 USC §2701 et seq.

1. All Documents and Communications concerning the Events, including without limitation all documents and communications:
 - i. concerning any preparation, planning, transportation to, or coordination for, the Events, including receipts, bills and credit card statements reflecting costs for transportation, lodging, apparel, gear, or any other material purchased for the Events;
 - ii. concerning any instructions or coordination relating to the Events, including security details, what to wear, what to bring, when to meet, where to meet, what to say, and any other logistical information or arrangements;
 - iii. that are Social Media documents concerning the Events;
 - iv. you created during the Events, including Social Media, text messages, video, and photographs;
 - v. concerning African Americans, Jewish individuals, or other religious, racial, or ethnic minorities that relate in any way to the Events;

vi. concerning any statement or action attributed to You in the Amended Complaint; or
vii. concerning any allegation of an altercation, violent act, injury, or instance of intimidation or harassment that occurred during the Rally, including but not limited to James Fields' vehicular incident; or
viii. concerning any funding of the Events, including for transportation, housing, food, weapons, uniforms, signage, tiki torches, or other materials or services used in connection with the Events (or the planning thereof)..

ANSWER: See above objection.

2. All Documents and Communications concerning events, meetings, rallies, conferences, or conversations held prior to the Events that relate to the Events in any way.

ANSWER: See above objection.

3. All Documents concerning and all Communications concerning or with East Coast Knights of the Ku Klux Klan (or East Coast Knights of the True Invisible Empire), Fraternal Order of the AltKnights, Identity Europa (or Identity Evropa), League of the South, Loyal White Knights of the Ku Klux Klan (or Loyal White Knights Church of the Invisible Empire Inc.), Moonbase Holdings, LLC, Nationalist Socialist Movement, Nationalist Front (or Aryan National Alliance), Traditionalist Worker Party, Vanguard America, or any such other social group or organization that has as part of its agenda a racial, religious, or ethnic objective.

ANSWER: See above objection.

4. All Documents and Communications concerning violence, intimidation, or harassment of Persons on the basis of race, religion, or ethnicity, including but not limited to, ethnic cleansing, white genocide, a white ethno-state, or any other form of large or small scale violence.

ANSWER: See above objection.

5. For any Social Media account You had from January 1, 2015, to the present: i. Documents and Communication sufficient to show the account home page, and all uses of Social Media for that account that reference or concern the Events or Defendants in any way. ii. Documents and Communication sufficient to show all Your "friends" and/or "social connections" maintained on Your account, including their names, addresses, and social network usernames or handles.

ANSWER: See above objection.

6. All Documents concerning and all Communications concerning or with any Plaintiff or Defendant (other than You) named in the Amended Complaint, and any other Person who attended, planned or was involved in the Events.

ANSWER: See above objection.

7. All Documents and Communications concerning any lawsuits, claims of violence, or arrests relating to or arising out of racially, ethnically, or religiously motivated conduct by You or any Defendant named in the Amended Complaint.

ANSWER: See above objection.

8. All Documents and Communications concerning the steps you have taken to preserve Documents and Communications relevant to the lawsuit, including the Documents and Communications responsive to these Requests.

ANSWER: No special steps were taken.

Respectfully Submitted and as to Objections:

s/ James E. Kolenich PHV

James E. Kolenich

Ohio Bar Number: 0077084

Attorney for Jason Kessler

Kolenich Law Office

9435 Waterstone Blvd. #140

Cincinnati, OH 45249

(513) 444-2150

(513) 297-6065 (fax)

Email: Jek318@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on **April 6, 2018** **via email** upon: Mr. Yotam Barkai, Esq., Ms. Sequin Strohmeier Esq. ***Attorneys for Plaintiffs*** as follows: email: YBarkai@bsflp.com; sstrohmeier@kaplanandcompany.com

s/ James E. Kolenich PHV

James E. Kolenich

Nathan Damigo

Signature

[Signature]

Date

4-6-2018

Acknowledgment by Authorized Person

STATE OF New York

Personally appeared before me Nathan Damigo, authorized officer of Identity Evropa on April 6, 2018 (date) and did swear that the above responses to interrogatories and requests for production of documents are true and correct to the best of his knowledge on the date listed in this acknowledgement.

Lisa M Jarosz
Notary Public

Printed Name: Lisa M Jarosz

My Commission Expires: 08/18/2018

Lisa M. Jarosz
Notary Public, State of New York
Reg. #01JA6309821
Qualified in Erie County
Commission Expires 08/18/2018

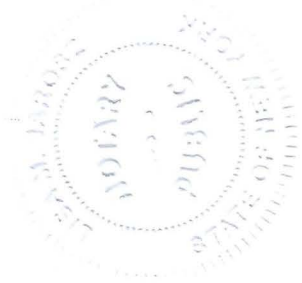


EXHIBIT 11

From: [Christopher Greene](#)
To: eli.f.mosley@gmail.com
Cc: [Roberta Kaplan](#); [Julie Fink](#); [Gabrielle E. Tenzer](#); [Karen Dunn](#); [Jessica Phillips](#); [Levine, Alan](#); [Mills, David](#); [Bowman, Philip M.](#)
Subject: Sines v. Kessler
Date: Friday, November 16, 2018 7:10:59 PM
Attachments: [Modified Proposed Imaging Stipulation Order - AS FILED.pdf](#)
[2018.11.16 Notice of Filing - AS FILED.pdf](#)

Mr. Kline,

Please see the attached Notice and Modified Proposed Imaging Stipulation and Order, which were filed with the Court this evening.

Regards,

Christopher B. Greene | Kaplan Hecker & Fink LLP
350 Fifth Avenue | Suite 7110
New York, New York 10118
(W) 929.294.2528 | (M) 646.856.6861
cgreene@kaplanhecker.com

EXHIBIT 12

From: [Christopher Greene](#)
To: eli.f.mosley@gmail.com
Cc: [Roberta Kaplan](#); [Julie Fink](#); [Gabrielle E. Tenzer](#); [Karen Dunn](#); [Jessica Phillips](#); [Levine, Alan](#); [Mills, David](#); [Bowman, Philip M.](#)
Subject: Sines v. Kessler
Date: Tuesday, November 27, 2018 6:56:46 PM
Attachments: [2018.11.13 379 Order re Pltfs Motion to Compel to Permit Inspection.pdf](#)

Mr. Kline,

Plaintiffs have subpoenaed Discord for communications related to Plaintiffs' claims against Defendants in this action. Accordingly, we request that you send the below consent by e-mail to SCA@bsfllp.com for each Discord account that you used to communicate concerning the Events, as that term is defined in Plaintiffs' First Requests for Production of Documents, dated January 25, 2018. This includes, but is not limited to, any Discord account you identified in response to Plaintiffs' Interrogatory No. 1 to Defendants. As you know, Judge Hoppe has already ordered all Defendants who appeared at the November 9, 2018 conference to provide such consent. (ECF No. 379; Order attached.) Other Defendants have complied with the Court's order and provided the consent. Plaintiffs therefore request that you provide the consent without the necessity of Court intervention.

The consent e-mail must be sent from the e-mail address that you used to initially set up their Discord user account. For the avoidance of doubt, it does not matter if your Discord user account has been deleted.

Plaintiffs request that you send the below consent email to SCA@bsfllp.com no later than Friday, November 30.

Regards,

Christopher B. Greene | Kaplan Hecker & Fink LLP
350 Fifth Avenue | Suite 7110
New York, New York 10118
(W) 929.294.2528 | (M) 646.856.6861
cgreene@kaplanhecker.com

* * * * *

I, [type your name here], am the sole accountholder for the Discord account associated with the username [insert] and the email address [fill in your email address here], from which I am sending this email.

Pursuant to the Stored Communications Act, 18 U.S.C. § 2702(b)(3), I expressly consent to Discord producing all records and contents of communications associated with the account referenced above, including without limitation all messages and posts regardless of their privacy settings and all communications and messages that are presently active and that may be restored in the future.

I understand and consent that Discord will disclose the records and contents to the legal team for Plaintiffs in the lawsuit Sines, et al. v. Kessler, et al., Case No. 3:17cv-00072, which is currently ongoing in the United States District Court for the Western District of Virginia. I understand and

agree that Discord will not search, filter, or limit the records or content in any way before producing them. I understand that after disclosing the information, Discord cannot control how the records and content are used and whether the records and content are further disclosed, which may include being filed in the public record.

I indemnify Discord, Inc., and its parents, subsidiaries, affiliates, officers, contractors, and employees against all claims for damages, compensation, and/or costs brought by any party with respect to damage or loss caused by, or arising out of, or being incidental to the above-referenced disclosure of records or contents of communications. I release any claims I may have against Discord, Inc., or its parents, subsidiaries, affiliates, officers, and employees for damages, compensation, and/or costs with respect to damage or loss caused by, or arising out of, or being incidental to the above-referenced disclosure of records or contents of communications.

EXHIBIT 13



MatthewHeimbach 2017-07-08 04:52:35 🔍 🔗

Reminder to all comrades in the area. We will be holding a Nationalist Front meeting, TWP and allies, in Ocoee TN this weekend on Saturday at 1pm at the famous Whitewater Grill.

The address is 1224 US-64, Ocoee, TN 37361

The purpose of the meeting is to plan for the upcoming Charlottesville event carpool, plan for future events, network, and do a flash demo.

Come meet great comrades and let's make some history!



[MatthewHeimbach](#)

2017-07-23 04:13:02



our official TWP riot shields arrived



MatthewHeimbach

2017-07-23 04:14:08



also a dozen helmets thatll be painted black with Party insignia's on them



MatthewHeimbach

2017-07-30 00:49:20



Itll be solid, alongside our league of the south and vanguard america allies, we'll have an unbreakable line

EXHIBIT 14





EXHIBIT 15



Matthew Heimbach @MatthewWHeimbach

21 hours

@TonyHovater and I went to the jail in Cville to visit our POW's today.
Never forget the men behind the wire!



142

Reply

Repost

Quote

EXHIBIT 16



Boonie Hat

@don_chump

Follow



@kaplanrobbie @IntegrityforUSA Whatever you do, don't look at this.



David M Parrott

1 hr · 🌐

...

General Note:

If you were involved in any altercation in Cville, and you haven't disabled your social media, you should do so.

I know it's a bit late for some folks, obviously. But just in case there's anybody out there reading this who's out there who hasn't taken that step, do so.

It doesn't matter if you actually did anything. Everybody's getting a ride even if it's totally obvious that they're not convictable.

👍 Like

💬 Comment

➦ Share

👍 🤔 13



Alex McNabb Heh heh heh.

Like · Reply · 1 hr



Justin Murphy II They pick up someone else?

Like · Reply · 1 hr



David M Parrott No one specifically. But that's a direction they're going with it.

Like · Reply · 🇺🇸 1 · 1 hr



Justin Murphy II Lovely. Stay safe fam

Like · Reply · 1 hr

11:35 AM - 27 Feb 2018



EXHIBIT 17

Post Nation

How a white nationalist's family came to blows over a trailer tryst

By [Marwa Eltagouri](#) and

[Avi Selk](#)

March 14, 2018

Matthew Heimbach, who came to national attention in 2016 for [shoving a black woman](#) at a campaign rally for Donald Trump, was arrested Tuesday and accused of attacking his wife and choking his white nationalist group's co-founder unconscious after the pair caught Heimbach having an affair in a trailer, authorities said.

Heimbach helped launch the Traditionalist Worker Party years ago and has been involved in organizing white separatist, supremacist and nationalist events around the country. Heimbach, who is in his mid-20s, is "the affable, youthful face of hate in America," an editor for the Southern Poverty Law Center's Hatewatch blog [told The Washington Post](#).

His desire for a United States split into separate racial states has lost Heimbach many friends, The Washington Post's Joe Heim [wrote](#) after the Trump rally incident. He's been excommunicated from his church and clashed with his parents — and last week was seen brawling with protesters at a white nationalist event at Michigan State University.

On the other hand, Heimbach has been close to his wife, her stepfather and the stepfather's wife — all of whom are listed as "white nationalists" in a [police report](#) obtained by the SPLC.

In fact, Heimbach's stepfather-in-law, 35-year-old Matt Parrott, co-founded the Traditionalist Worker Party with him.

But recently, police wrote, Parrott and his stepdaughter (Heimbach's wife) became suspicious that Heimbach was having an affair with Parrott's wife, Jessica Parrott, 31.

On Monday night, police wrote, Heimbach's wife and stepfather-in-law "made a plan to 'set up' Matthew Heimbach to see if Matthew would in fact attempt to sleep with Jessica."

The plan apparently worked — to a point. Matt Parrott and his stepdaughter watched from a window outside a trailer on his property in rural Paoli, Ind., that night, while Heimbach and Jessica Parrott rendezvoused inside, the police report said.

Heimbach's wife recorded evidence of the tryst, according to the report, then got scared and ran away. Matt Parrott "stayed behind watching the encounter on a box through the window."

"While doing this the box broke," the reported continued.

Matt Parrott then ran around the trailer to confront his wife and stepson-in-law. He told Heimbach to get off his property.

When Heimbach wouldn't leave, Parrott poked his chest, the report states.

Heimbach then grabbed and twisted Parrott's hand, got behind him and "choked him out" with his arm, according to the report.

Parrott said he briefly lost consciousness, woke up and fled the trailer to a nearby house.

He told police that Heimbach followed and that he threw a chair at Heimbach to ward him off.

But the younger man once again got behind Parrott and choked him until he passed out, the report states.

Upon waking a second time, Parrott told police, he heard his wife tell Heimbach to track down his own wife to obtain the recording of their affair.

At that point, Matt Parrott and a child from the home fled to a nearby Walmart, where Paoli police met him around 1 a.m. Tuesday.

Police could see marks on Parrott's neck, and left to find Heimbach arguing with his wife at another property, the report states.

Heimbach's wife — who is not named in the report — told police that her husband "demanded that I tell the cops to leave," kicked a wall, grabbed her face and threw her face-first into a bed, according to the report

Heimbach was arrested and charged with assaulting his wife and Parrott.

The arrest puts him at risk of serving jail time — not just for this week's incident but also because he received a suspended sentence after shoving a protester at the Trump rally in Louisville in the spring of 2016.

In video footage of that confrontation that went viral, he wore a "Make America Great Again" hat, yelled at a 21-year-old university student and shoved her twice through the crowd — until the crowd began to shove her, as well.

Heimbach acknowledged that he pushed her and later wrote online: "White Americans are getting fed up and they're learning that they must either push back or be pushed down."

He pleaded guilty in July 2017 to disorderly conduct at the rally, [according to the SPLC](#) — with jail time suspended on the condition that he not be charged with another crime for two years.

The woman he pushed, Kashiya Nwanguma, joined other protesters at the rally and sued Trump, alleging he incited a riot. Heimbach was named in the suit.

In turn, he [argued to the court](#) that Trump essentially ordered violence against protesters by repeatedly urging the crowd to “get them out.” The case has not been resolved.

Heimbach posted \$1,000 bond Tuesday and was released.

Parrott told the SPLC that he had resigned from the Traditionalist Worker Party.

“I’m done. I’m out,” [Parrott said](#). “SPLC has won. Matt Parrott is out of the game.”

This post has been updated.

Read more:

[Asian American doctor: White nationalist patients refused my care over race](#)

[Austin police search for bombing motive, say explosives made with ‘skill and sophistication’](#)

[The unique terror of Austin’s deadly package bombs](#)

Marwa Eltagouri

Marwa Eltagouri was a general assignment reporter for The Washington Post. She left The Post in 2018. She previously worked as a reporter for the Chicago Tribune, where she covered crime, immigration and neighborhood change.

Avi Selk

EXHIBIT 18



Matt Parrott @parrott

11 hours

To clarify, the information was scrubbed on account of widespread concern about the data's security. It was a practical security step, and not a political act.



18



Reply



Comments 5



Repost 3



Quote



Matt Parrott @parrott

16 hours

All of the information systems are completely air-gapped and will be destroyed within a few hours in order to guarantee all membership information literally no longer exists anywhere.



23



Reply



Comments 11



Repost 13



Quote

EXHIBIT 19

April 24, 2018

Via Email

James E. Kolenich, Esq.
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
jek318@gmail.com

Elmer Woodard, Esq.
5661 US Hwy 29
Blairs, VA 24527
isuecrooks@comcast.net

Re: *Sines v. Kessler*, 17 Civ. 0072 (NKM) (W.D. Va.)

Dear Mssrs. Kolenich and Woodard:

I write on behalf of Plaintiffs in the above-captioned action regarding the responses and objections (“Responses”) of Defendants Cantwell, Damigo, Heimbach, Identity Evropa, Kessler, National Socialist Movement (“NSM”), Nationalist Front, Parrott, Ray, Schoep, Traditionalist Worker Party (“TWP”), and Vanguard America (collectively, “Defendants”) to Plaintiffs’ [Corrected] First Set of Requests for Production of Documents, served on January 25, 2018 (“RFPs”).¹ While reserving all rights as to any deficiencies in Defendants’ Responses, Plaintiffs write pursuant to the Court’s direction during the April 19, 2018 telephonic conference that the parties meet and confer concerning the issues set forth in Plaintiffs’ April 19, 2018 email to the Court. Plaintiffs look forward to receiving Defendants’ response to this letter by no later than May 1, 2018, and are available to meet and confer regarding Defendants’ Responses at your soonest possible convenience over the next week.

Defendants Have Waived Any Objections to the RFPs

With the exception of Defendants Identity Evropa and TWP, Defendants have not objected to any of the RFPs and therefore have waived any objections. *See, e.g., Southampton Pointe Prop. Owners Ass’n, Inc. v. OneBeacon Ins. Co.*, No. 2:12-cv-03035-RMG, 2013 WL 12241830, at *2 (D.S.C. Aug. 27, 2013) (finding plaintiff waived objection by failing to raise in response to RFP); *see also Hall v. Sullivan*, 231 F.R.D. 468, 474 (D. Md. 2005) (“[I]mplicit within Rule 34 is the requirement that objections to document production requests must be stated with particularity in a timely answer . . .”). Defendants TWP and Identity Evropa object to Plaintiffs’ RFPs solely on the ground that “to comply without third party permission or a court order violates the Stored Communications Act 18 USC §2701 et seq.” This is not a legitimate objection (see below), and Defendants TWP and Identity Evropa have waived all other objections.

¹ Capitalized terms used in this letter have the same meaning as in the RFPs.

Defendants' Responses Are Inadequate***Plaintiffs Request that Defendants Confirm They Have No Responsive Documents:***

Several Defendants, including Defendants Heimbach, Nationalist Front, Ray, and Vanguard America, responded that there were no documents responsive to any of Plaintiffs' RFPs, or "none in [their] possession." Plaintiffs request that by no later than May 1, 2018, any Defendant who answered "none" or some variant thereof to any RFP confirm that for each RFP, there are no responsive Documents or Communications in that Defendant's possession, custody, or control. *See* Fed. R. Civ. P. 34(a)(1); RFP Instr. H. Defendants are reminded that "possession, custody, or control" is not limited to Documents or Communications in the physical possession of a Defendant, but rather extends to materials over which each Defendant has custody or control. *See, e.g., Terry v. Modern Inv. Co.*, No. 3:04-CV-00085, 2006 WL 2434264, at *6 n.15 (W.D. Va. Aug. 21, 2006) ("Control" is defined as the legal right to obtain the document on demand.); *United States v. 2012 GMC Savannah Van VIN: 1GDS7DC40C1145561*, No. 2:13 cv 18, 2014 WL 2215933, at *2 (W.D.N.C. May 29, 2014) ("A party is obligated to produce her account records when she has the legal right to those records even though the party does not have a copy of the records.").

Similarly, for those Defendants who responded to any of the RFPs with the response "See Attached," "None except as listed above," or some variant thereof, Plaintiffs request that by no later than May 1, 2018, each Defendant clarify their Responses so that Plaintiffs can discern whether each Defendant is producing Documents and Communications in response to each RFP or, alternatively, claiming that they are not in possession, custody, or control of any Documents or Communications responsive to the RFP. *See, e.g., Porreca v. Mitchell L. Morgan Mgmt., Inc.*, Civ. No. JFM 08—1924, 2009 WL 400626, at *6–7 (D. Md. Feb. 13, 2009) (ordering plaintiffs to provide "full and complete responses" to RFPs when plaintiffs "merely respond[ed] 'see attached documents' for every request").

In addition, Defendants Identity Evropa and TWP have objected to Plaintiffs' RFPs solely on the ground that "to comply without third party permission or a court order violates the Stored Communications Act 18 USC §2701 et seq."; neither Identity Evropa nor TWP provides any further basis for its refusal to produce *any* documents in response to Plaintiffs' RFPs. Accordingly, Plaintiffs request that by no later than May 1, 2018, Defendants Identity Evropa and TWP confirm that they do not have in their possession, custody, or control any responsive documents such as emails, text messages, receipts, hard copy documents, pictures, videos, audio recordings, phone records, or any other kind of Document or Communication, the production of which would not be affected by the Stored Communications Act ("SCA"). For example, the contract between Defendants Identity Evropa and Eli Mosley, to which Mr. Kolenich referred during the April 19 telephonic conference with the Court and described as governing the relationship between those parties, would be responsive—based on Mr. Kolenich's description alone—to at least RFP Nos. 3 and 6 and would not be affected by the SCA.

Plaintiffs Request that Defendants Confirm They Will Provide SCA Consents: Certain Defendants, including Damigo, Heimbach, and Ray, suggest in their Responses that they would have had responsive documents but for their deletion by sites such as Twitter, Facebook, and the Daily Stormer. Deactivation or deletion of Social Media accounts or posts does not, however, shield otherwise relevant material from discovery. *See, e.g., Romano v. Steelcase Inc.*, 30 Misc.

3d 426, 435 (N.Y. Sup. Ct. 2010) (ordering plaintiff to deliver to defendant a consent and authorization as required by social media website operators to gain access to plaintiff's social media records "including any records previously deleted or archived by said operators"). Moreover, the SCA provides no basis for Identity Evropa, TWP, or any other Defendant to refuse to produce Documents and Communications. While the SCA may limit the ability of electronic communications and remote computing services to produce certain communications without the consent of the relevant user, *see* 18 U.S.C. § 2702(b)(3) (2012), the SCA does not prevent any Defendant from satisfying its discovery obligations, *see, e.g., Flagg v. City of Detroit*, 252 F.R.D. 346, 363 (E.D. Mich. 2008) (ordering defendants to give consent for retrieval of information subject to the SCA from an internet service provider); *see also Al Noaimi v. Zaid*, No. 11–1156–EFM, 2012 WL 4758048, at *3 (D. Kan. Oct. 5, 2012) (finding the court need not resolve motion to quash where it could order the plaintiff to execute a consent to third party that satisfies the SCA); *supra* regarding "control" of documents.

Plaintiffs request that by no later than May 1, 2018, each Defendant confirm that they will provide by no later than May 4, 2018, the necessary SCA consents to permit the providers of electronic communication services and remote computer services to provide documents responsive to the RFPs. *See* RFP Instr. H.

Defendants Have Taken No Steps to Preserve Responsive Information

RFP No. 8 requests that Defendants produce "[a]ll Documents and Communications concerning the steps you have taken to preserve Documents and Communications relevant to the lawsuit, including the Documents and Communications responsive to these Requests." In response to this Request, Defendants interpose a variety of answers suggesting that no steps were taken to preserve relevant information. For example, Defendants Identity Evropa, TWP, and Vanguard America all respond that they had taken "no special steps" to preserve relevant Documents and Communications. TWP's response is particularly troubling given the issues raised in Plaintiffs' Emergency Motion for an Order to Show Cause Why Defendants Matthew Parrott and Traditionalist Worker Party Should Not Be Sanctioned for Spoliation and Ordered to Permit Plaintiffs to Conduct a Forensic Examination of Information Systems. (ECF No. 272.) The other Defendants all responded "none" or a variation of "[n]one other than items responsive to above requests," but none of the documents produced to date have provided information about the steps taken to preserve Documents and Communications relevant to the lawsuit.

Plaintiffs request that by no later than May 1, 2018, each Defendant confirm whether or not they: (1) have taken steps to preserve Documents and Communications relevant to this litigation; and (2) are in possession, custody, or control of any Documents or Communications concerning steps taken to preserve Documents and Communications relevant to this litigation.²

² To reiterate, Plaintiffs reserve all rights with respect to other aspects of Defendants' Responses. By way of example only, certain Defendants, including Schoep and NSM, improperly direct Plaintiffs to websites that purportedly contain, among other material, information responsive to Plaintiffs' RFPs. Defendants are required to collect responsive material and produce it to Plaintiffs; Defendants cannot simply point Plaintiffs to entire websites and expect Plaintiffs to know which information Defendants are

Defendants are presumed to be in possession, custody, or control of relevant and responsive Documents, despite the inadequacies in Defendants' Responses set forth above. Accordingly, in addition to taking the steps requested above, and consistent with the Court's direction at the March 16, 2018 telephonic conference, Plaintiffs propose that the parties enter into the attached Proposed Order and Stipulation for the Production of Electronically Stored Information and Proposed Evidence Preservation Stipulation and Order. Please let us know by May 1, 2018, if Defendants are prepared to enter into the attached stipulations or if you have any comments on the attached.

Plaintiffs look forward to receiving Defendants' response to this letter by no later than May 1, 2018. Plaintiffs continue to reserve all rights with respect to their RFPs and Defendants' Responses.

Sincerely,



Gabrielle E. Tenzer

cc: Plaintiffs' Counsel of Record

(Attachments)

referring to as responsive to the RFPs. Plaintiffs will address this and other deficiencies in Defendants' Responses in future correspondence.

EXHIBIT 20

From: [Matthew Heimbach](#)
To: [SCA](#)
Subject: Fwd: Please tend to immediately
Date: Tuesday, November 20, 2018 7:53:02 PM
Attachments: [Scan M. Heimbach.pdf](#)

----- Forwarded message -----

From: James Kolenich <jek318@gmail.com>
Date: Tue, Nov 20, 2018, 5:56 PM
Subject: Please tend to immediately
To: Matthew Heimbach <matthew.w.heimbach@gmail.com>

Please send the attached to SCA@bsflip.com right away.

Jim

--

James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
513-444-2150
513-297-6065(fax)
513-324-0905 (cell)

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EXHIBIT 21

From: [Christopher Greene](#)
To: [James Kolenich](#)
Cc: [Bowman, Philip M.](#); [Gabrielle E. Tenzer](#); [Yotam Barkai](#)
Subject: Sines v. Kessler - SCA Consent
Date: Tuesday, December 4, 2018 2:56:41 PM
Attachments: [Scan M. Heimbach \(002\).pdf](#)

Jim,

We'd like to bring to your attention two issues pertaining the SCA consents that your clients provided.

- We understand that Tony Hovater sent an SCA consent to Discord, but that he did so with respect only to his personal account, and not for the Traditionalist Worker Party account for which he had previously provided a hand-signed consent. Please have Mr. Hovater send an appropriate consent to the SCA@bsfillp.com address for the @tradworker Discord user account.
- Defendant Heimbach provided the attached SCA consent that does not identify the e-mail address with which he signed up for his Discord account, as is required. Please have Defendant Heimbach resend his SCA consent with the e-mail address identified.

Regards,

Christopher B. Greene | Kaplan Hecker & Fink LLP
350 Fifth Avenue | Suite 7110
New York, New York 10118
(W) 929.294.2528 | (M) 646.856.6861
cgreene@kaplanhecker.com

EXHIBIT 22



Matthew Heimbach

57 minutes ago

So looks like Byron de la Vandal, who's music I did enjoy, agreed to renounce all of us, take anti hate training, and give a video confession and renunciation to be used in anti nationalist propaganda, all because of a lawsuit.

Lawsuits are just money, and as the Bible tells us "No man can serve two masters: for either he. will hate the one, and love the other; or else. he will hold to the one, and despise the other, Ye cannot serve God and mammon."

Too many self described "nationalists" will turn in their comrades, betray their principles, and renounce their views; not under torture, not under threat of death, but due to a fear of losing money.

Millions of men have died for nationalism throughout history, and we blink in America at the slightest pain or discomfort



Settlement requires 'anti-hate training' for internet troll

kutv.com



1

15

WHO CREATES INFRASTRUCTURE AND INDUSTRY?



THE WORKERS DO

BUT WHO MAINTAINS THAT INFRASTRUCTURE AND INDUSTRY?



THE WORKERS DO

BUT WHO THEN BECOMES WEALTHY FROM THE WORKERS LABOR?



THE RULING CLASS

ONLY EXISTS BY EXPLOITING WORKERS LABOR FOR PROFIT

**TALK TO YOUR UNION
REPRESENTATIVES!**



**GET ARMED AND
ORGANIZED TODAY!**



Matthew's wall photos 5 of 114

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Matthew Heimbach

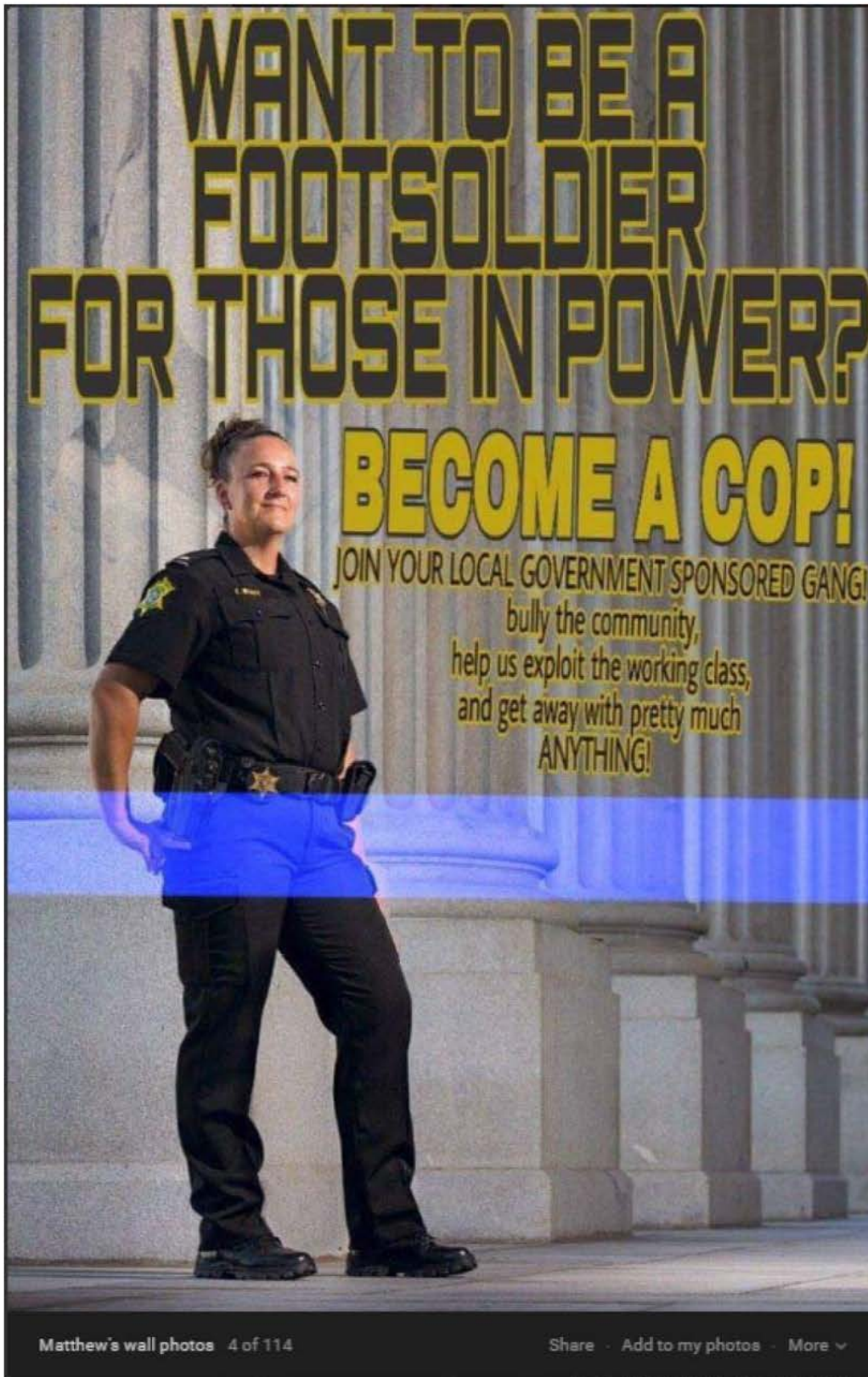
30 Jan at 10:54 pm



"The bourgeoisie has to yield to the working class ... Whatever is about to fall should be pushed. We are all soldiers of the revolution. We want the workers' victory over filthy lucre. That is socialism." - Dr Joseph Goebbels



Commenting on this photo is restricted.



Matthew Heimbach
2 Feb at 5:33 pm



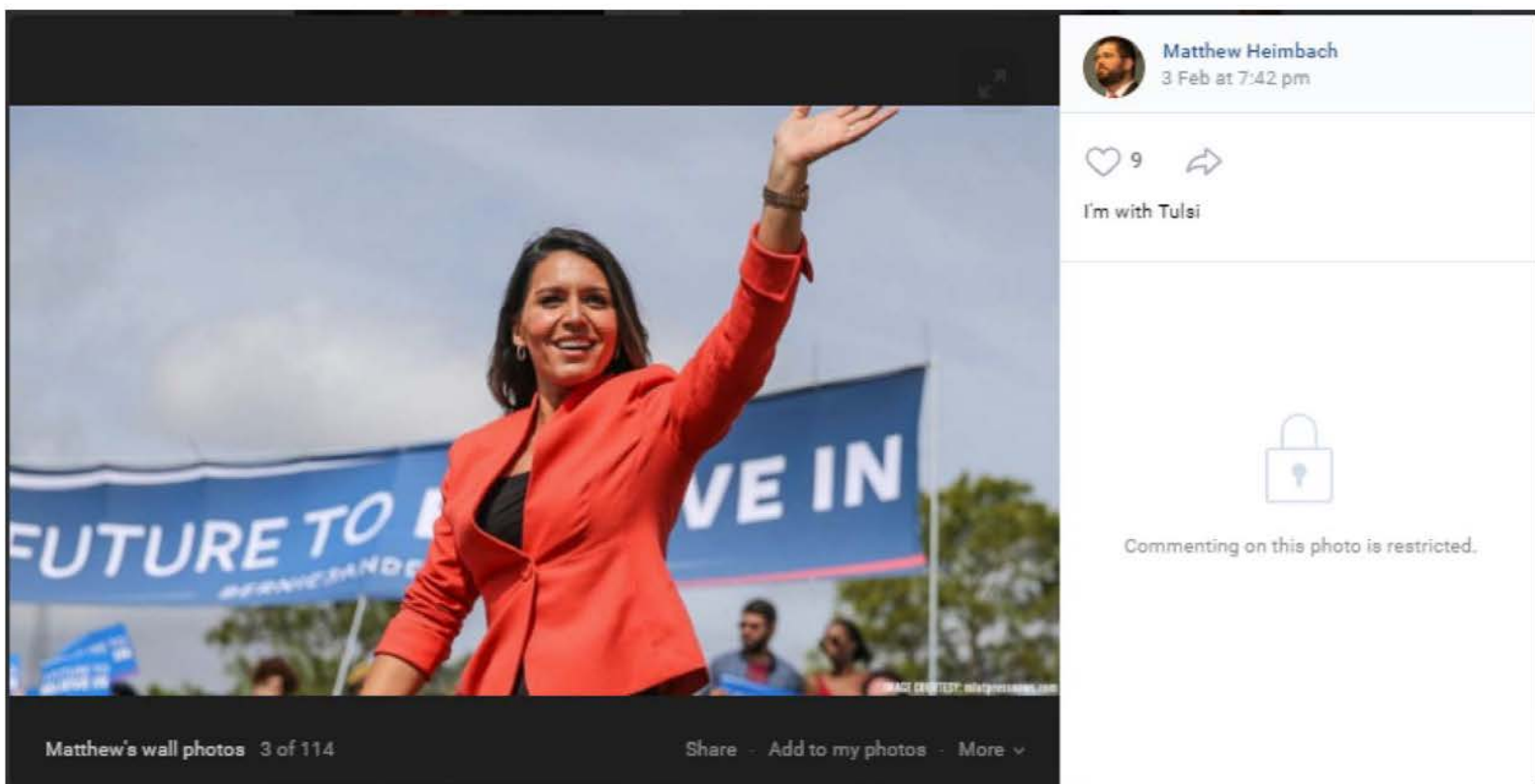
#ACAB



Commenting on this photo is restricted.

Matthew's wall photos 4 of 114

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**ARE
GENITAL
PREFERENCES
TRANSPHOBIC?**

Riley



**Then one day for no
reason at all**

**They started putting
people in camps**

ARBEIT MACHT FREI



Matthew Heimbach
4 Feb at 8:54 pm



8



Commenting on this photo is restricted.

Matthew's wall photos 2 of 114

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Matthew Heimbach

Feb 6, 2019 at 9:35 am

+ Follow

We must be active to make the Revolution happen!

Sitting online or in endless debating clubs will never result in our victory, only action will pave the way for our bright future.

The revolution can be pushed forward only by the active struggle of the revolutionaries and the popular masses. Fundamentally speaking, a revolution does not always break out when all the necessary conditions exist, nor is it carried out always in favourable circumstances.

Waiting with folded arms for all conditions to ripen is tantamount to refusing to make a revolution. Primary importance, therefore, should be given to the ideological factor in the revolutionary struggle and construction work, and on this basis strenuous efforts should be made to create all the necessary conditions.

Kim Jong Il



3



More ~

63

The author has opted to limit comments for this post



Matthew Heimbach

yesterday at 4:26 pm

+ Follow

What's the proper etiquette when the people suing you make sweet quote graphics of things you said?

**"Of course
we look up to men
like Adolf Hitler."**

-Matthew Heimbach, Defendant



21



1

More

181



Matthew Heimbach
Feb 16, 2019 at 11:13 am

+ Follow

The NSM, I guess formerly under [Jeff Schoep](#) is now under the legal control of a Black Civil Rights advocate who has previously dissolved White nationalist organizations who got into legal trouble.

Reverend James Hart Stern is now the President/Director of the National Socialist Movement, according to legal filings.

I honestly don't even know what to say about this, but I look forward to a public statement from the NSM to explain and clarify exactly what is going on.

<https://www.documentcloud.org/documents/5740627-Stern..>

<https://www.documentcloud.org/documents/5740625-Stern..>

CSCLICD-520 (Rev. 10/17) 03

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU		
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Stern NSM www.documentcloud.org		

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👁 194

The author has opted to limit comments for this post

EXHIBIT 23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, et al.,

No. 3:17-cv-72

Plaintiffs,

Charlottesville, Virginia

vs.

January 4, 2019

2:04 p.m.

JASON KESSLER, et al.,

Defendants.

TRANSCRIPT OF TELEPHONIC MOTION HEARING
BEFORE THE HONORABLE JOEL C. HOPPE
UNITED STATES MAGISTRATE JUDGE.

APPEARANCES:

For the Plaintiffs:

ROBERTA ANN KAPLAN
GABRIELLE E. TENZER
Kaplan & Company, LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
212-763-0883

ALAN LEVINE
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JESSICA E. PHILLIPS
Boies Schiller Flexner, LLP
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Washington, DC 20005
202-237-2727

For the Defendants:

JAMES EDWARD KOLENICH
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9435 Waterstone Blvd., Suite 140
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513-444-2150

JOHN A. DiNUCCI
Law Office of John A. DiNucci
8180 Greensboro Drive, Suite 1150
McLean, VA 22102
703-821-4232

Also Present: ROBERT AZZMADOR RAY

Transcribed by: Carol Jacobs White
Registered Diplomat Reporter
PO Box 182
Goode, VA 24556
Carol.jacobs.white@gmail.com

Proceedings recorded by FTR; computer-assisted transcription.

1 with the order, I guess in particular for Mr. Ray and Mr. Heimbach
2 on the certifications?

3 MS. TENZER: I don't know if we're going to address that
4 in the motion to withdraw. Those are still outstanding --

5 THE COURT: All right.

6 MS. TENZER: -- those certifications.

7 THE COURT: Mr. Kolenich, what is the status of those?

8 MR. KOLENICH: Judge, as I think I emailed to chambers,
9 Mr. Heimbach's response to the last court order was to terminate my
10 representation. So he has fired myself and Mr. Woodard and forbid
11 us to take any actions on his behalf. The Court will also note
12 that he hasn't called in today, even though I did transmit the time
13 and call-in information. So that's the status on Heimbach.

14 Mosely's status is well-known to the Court.

15 Mr. Ray's information, that is on me. I haven't
16 completed getting that information from Mr. Ray yet. He is fully
17 cooperating with the process. And we'll get that just as soon as
18 possible. And, of course, the contract issue, the statement of
19 work, is a separate issue. And we'll take that up with Ms. Tenzer.

20 THE COURT: Where -- Mr. Kolenich, it is news to me that
21 Heimbach has terminated your representation. I don't recall seeing
22 that.

23 MR. KOLENICH: Sorry, Your Honor. I emailed it -- I
24 thought I did -- to chambers. Maybe I sent it to the wrong one; I
25 don't know. I deal with many federal courts. But Mr. Heimbach did

EXHIBIT 24

From: [Gabrielle E. Tenzer](#)
To: [John DiNucci](#); KarenD@vawd.uscourts.gov
Cc: jek318@gmail.com; alevine@cooley.com; brottenborn@woodsrogers.com; bryan@bjoneslegal.com; [Christopher Greene](#); dcampbell@dhdglaw.com; dmills@cooley.com; isuecrooks@comcast.net; [Julie Fink](#); jgravatt@dhdglaw.com; jlibling@bsflp.com; Joshua Matz; jphillips@bsflp.com; kdunn@bsflp.com; lisa_lorish@fd.org; Michael Bloch; pbowman@bsflp.com; rcahill@cooley.com; [Roberta Kaplan](#); [Seguin L. Strohmeier](#); wisaacson@bsflp.com; [Yotam Barkai](#); Eli.F.Mosley@gmail.com; matthew.w.heimbach@gmail.com
Subject: RE: CC Monday or Tuesday - Sines v. Kessler 3:17cv72
Date: Friday, February 8, 2019 9:32:51 AM

Ms. Dotson:

With the exception of Mr. Mosley and Mr. Heimbach, who we have not yet heard from, Plaintiffs' counsel and the other counsel for Defendants are available on Tuesday between 12:30 and 2:00 p.m.

Respectfully submitted,
Gabrielle Tenzer

Gabrielle Tenzer | Kaplan Hecker & Fink LLP

350 Fifth Avenue | Suite 7110
New York, New York 10118
(W) [929.294.2536](tel:929.294.2536) | (M) [646.856.7275](tel:646.856.7275)
gtenzer@kaplanhecker.com

From: John DiNucci <dinuuccilaw@outlook.com>
Sent: Friday, February 8, 2019 9:27 AM
To: KarenD@vawd.uscourts.gov
Cc: jek318@gmail.com; alevine@cooley.com; brottenborn@woodsrogers.com; bryan@bjoneslegal.com; Christopher Greene <cgreene@kaplanhecker.com>; dcampbell@dhdglaw.com; dmills@cooley.com; Gabrielle Tenzer <gtenzer@kaplanhecker.com>; isuecrooks@comcast.net; Julie Fink <jfink@kaplanhecker.com>; jgravatt@dhdglaw.com; jlibling@bsflp.com; Joshua Matz <jmatz@kaplanhecker.com>; jphillips@bsflp.com; kdunn@bsflp.com; lisa_lorish@fd.org; Michael Bloch <mbloch@kaplanhecker.com>; pbowman@bsflp.com; rcahill@cooley.com; Roberta Kaplan <rkaplan@kaplanhecker.com>; Seguin L. Strohmeier <sstrohmeier@kaplanhecker.com>; wisaacson@bsflp.com; Yotam Barkai <ybarkai@bsflp.com>; Eli.F.Mosley@gmail.com; matthew.w.heimbach@gmail.com
Subject: Re: CC Monday or Tuesday - Sines v. Kessler 3:17cv72

Ms. Dotson:

I am available on Tuesday after 11 a.m.

John A. DiNucci

Sent from my iPhone

On Feb 7, 2019, at 2:56 PM, "KarenD@vawd.uscourts.gov" <KarenD@vawd.uscourts.gov> wrote:

Counsel,

Judge Hoppe would like to have a conference call next Monday or Tuesday regarding the below email.

Please confer with each other and decide on a date and time THEN let me know what time you have agreed on and I'll set up the conference call. Thank you.

Feb. 11 - anytime between 9:00, 9:30, 10:00, 10:30, 11:00, 11:30, 2:00 or later

Feb. 12 - 11:00 or later

Respectfully,

Karen

Karen L. Dotson
Courtroom Deputy for
Hon. Joel C. Hoppe
U.S. Magistrate Judge
(540) 434-3181 ext. 2

From: Gabrielle Tenzer <gtenzer@kaplanhecker.com>
To: "hoppe.ecf@vawd.uscourts.gov" <hoppe.ecf@vawd.uscourts.gov>, "KarenD@vawd.uscourts.gov" <KarenD@vawd.uscourts.gov>
Cc: David Campbell <dcampbell@dhdgclaw.com>, "isuecrooks@comcast.net" <isuecrooks@comcast.net>, James Kolenich <jek318@gmail.com>, Bryan Jones <bryan@bjoneslegal.com>, John DiNucci <dinuuccilaw@outlook.com>, "lisa_lorish@fd.org" <lisa_lorish@fd.org>, Roberta Kaplan <rkaplan@kaplanhecker.com>, Julie Fink <jfink@kaplanhecker.com>, "Levine, Alan" <alevine@cooley.com>, "Mills, David" <dmills@cooley.com>, "Bowman, Philip M." <pbowman@cooley.com>, "Rottenborn, Ben" <brottenborn@woodsrogers.com>, Karen Dunn <kdunn@bsflp.com>, Jessica Phillips <jphillips@bsflp.com>, William Isaacson <Wisaacson@BSFLLP.com>
Date: 02/06/2019 07:04 PM
Subject: Sines v. Kessler, Case No. 17 Civ. 72

Dear Judge Hoppe:

As Your Honor encouraged us to do during the January 4, 2019 telephonic conference, we are once again writing to provide a status update and to seek the Court's assistance with outstanding discovery items.

Although we have received and are still receiving information from Discord thanks in large part to the Court's intervention with respect to obtaining Defendants' SCA consents, we still have received precious few documents from the Defendants themselves. We have yet to receive a single page from 9 of the 18 Defendants who remain in the case (not including Defendant Fields, who is incarcerated). Other than Defendant Kessler, the productions we have received thus far from the Defendants who have produced documents have been meager, to say the least. And it is not for lack of trying on Plaintiffs' part. Plaintiffs' document requests were originally served over a year ago, on January 25, 2018. On November 13, 2018, nearly three months ago, the Court granted Plaintiffs' Motion to Compel Defendants to Permit Inspection and Imaging of Electronic Devices. Plaintiffs

raised the issue of the Third Party Discovery Vendor Contract on the call with the Court on January 4, 2019, as well as in a January 16, 2019 email to the Court. Yet to date, Defendants have not agreed to the Third Party Discovery Vendor Contract that Plaintiffs sent to them over a month ago, on December 28, 2018. The parties have made progress in coming to an agreement on the contract, but Plaintiffs and the vendor are still waiting to hear back from Defendants on one outstanding issue concerning indemnification.

While Plaintiffs have been trying to avoid involving the Court again, it appears that a call is needed to ensure that this process moves forward more expeditiously. Accordingly, we request a conference with the Court to seek an order that a Third Party Discovery Vendor Contract be executed by a date certain and that, upon execution of the contract, Defendants be required to immediately tender their devices to the vendor for imaging and to complete all other aspects of the document production process also by a date certain. For obvious reasons, and consistent with due process, Plaintiffs do not want to notice Defendants' depositions before receiving their documents. Given the current fact discovery cutoff of April 17, 2019, it is not clear how this can all happen without further intervention from the Court, including the possible imposition of sanctions for any further non-compliance.

Plaintiffs can be available for a conference with the Court on Monday or Tuesday of next week, February 11 or 12. We appreciate Your Honor's consideration of this request.

Respectfully submitted,
Gabrielle E. Tenzer

Gabrielle E. Tenzer | Kaplan Hecker & Fink LLP

350 Fifth Avenue | Suite 7110

New York, New York 10118

(W) [929.294.2536](tel:929.294.2536)

| (M) [646.856.7275](tel:646.856.7275)

gtenzer@kaplanhecker.com

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EXHIBIT 25



Matthew Heimbach

@HeimbachMatthew

Follow



Reports are coming in that the NSM has filed to ask for a summary judgment against itself, without notifying members.

Jeff Schoep is like a captain who not only doesn't go down with the ship, but gets on the only life raft and doesn't tell the crew that they've hit an iceberg.

2:23 PM - 28 Feb 2019

1 Like



1



1





Matthew Heimbach

@HeimbachMatthew

Follow



As the NSM saga continues to grow, I can't help but think that Burt Colucci taking over the remains of the group is the historical equivalent of Admiral Karl Dönitz taking over the German government after the battle of Berlin, there just to sign the surrender papers.

7:14 AM - 7 Mar 2019





Matthew Heimbach

@HeimbachMatthew

Follow

Everyone Post Cville: Discord has publicly said that they are helping the SPLC and will leak all chats, let's stop using Discord

Identity Evropa: Discord may out all of our members and kneecap us in a year, but it's really convenient so let's keep using it.

Everyone Else: Wat?



10:20 PM - 8 Mar 2019

4 Retweets 5 Likes



3



4



5





Matthew Heimbach

@HeimbachMatthew

Follow



What a week.

IE has largest data breach in American nationalist history, has "secret" conference revealed

IE disbands/rips off Patriot Front

They steal the acronym of the indigenous AIM, shitty to do

Stop trying to make boat shoes nationalism happen, it's not going to happen

5:01 PM - 10 Mar 2019

1 Retweet 6 Likes



1



1



6





Matthew Heimbach

@HeimbachMatthew

Follow



So I never sent a Tweet to or at the "American Identity Movement" but they pre-blocked me.

Afraid of getting roasted about their lack of a plan, capitalism, and loser talking points I guess.

Boat shoes nationalism is lame, reactionary, and filled with insufferable shithheads



AMERICAN IDENTITY MOVEMENT

@AIM_America

You are blocked from following @AIM_America and viewing @AIM_America's Tweets. [Learn more](#)

4:07 PM - 12 Mar 2019

1 Like



2



1





Constantinus330 🏳️‍🌈 @Constantinus331 · 17h

Awesome. Hope to see you back in the public space soon enough.



Matthew Heimbach

@HeimbachMatthew

Follow



Replying to @Constantinus331

Sooner rather than later comrade, it's time for us all to get back to work

10:39 AM - 13 Mar 2019



Matthew Heimbach @HeimbachMatthew · 55m

Broski, the "normal" nationalists, aka boat shoe boys, can't organize a BBQ or a meaningful protest, let alone a functioning community organizing network.

They've had an open year to do anything, and they've only failed.

Time for the real activists to take the lead again



OWEN GØYER 🌲 @OwenGoyer · 52m

What have you accomplished that Thomas Russo hasn't?



Matthew Heimbach

@HeimbachMatthew

Follow

Replying to @OwenGoyer

Not abandoning the Cville POWs or my own guys that got caught in trouble?

PF has had like 10 guys arrested in the past year and it seems from all I've heard that they've been left to the wolves.

Also Americana isn't an inspiring brand.

Thomas is good people tho, no disrespect

12:58 PM - 14 Mar 2019

1 Like





Matthew Heimbach

@HeimbachMatthew

Follow



Shooting folks in their place of worship is a shitty thing to do

The people responsible for the situation in the West are not Muslims but the political and capitalist elites who bomb Muslim nations then bring refugees as cheap labor

The real enemy wears a suit and looks like us

9:31 AM - 15 Mar 2019

17 Retweets 49 Likes



12



17



49



EXHIBIT 26

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, et al.,)
)
 Plaintiffs,) Civil Case No. 3:17-CV-00072
)
vs.)
)
JASON KESSLER, et al.,)
)
 Defendants.)

TRANSCRIPT OF TELEPHONIC HEARING
HONORABLE MAGISTRATE JUDGE JOEL C. HOPPE PRESIDING
MONDAY, MARCH 18, 2019, 4:08 P.M.

Court Reporter: Judy K. Webb, RPR
 210 Franklin Road, S.W., Room 540
 Roanoke, Virginia 24011
 (540) 857-5100 Ext. 5333

Proceedings recorded FTR and transcribed using
Computer-Aided Transcription

1 MR. KOLENICH: Vanguard is a problem. Vanguard has
2 not turned over the devices they were supposed to turn over
3 and is not listening to counsel on the necessity of hurrying
4 up and providing this stuff, so I really don't have anything
5 to say in regard to them other than it might be useful for the
6 Court to give them sort of a warning shot that, you know,
7 you're not kidding, sanctions possible in this circumstance,
8 and give them one last chance to comply.

9 The situation with Vanguard is they really don't
10 exist anymore in any kind of a real sense. Obviously, they're
11 in litigation and their officers are hanging on, trying to do
12 their job in defending, but they don't want to be involved.
13 And if their officers decide to just hang it up and leave the
14 organization, I don't know who takes over at that point.
15 There is a likely suspect.

16 But the current guy who I've been dealing with is
17 kind of frustrated with it all and doesn't want to deal with
18 it. So I think if the Court could send, you know, some
19 sort of -- some sort of warning before actually imposing
20 sanctions or making us go through motion practice, with
21 Vanguard that might be useful to at least bring this to a
22 conclusion that either he is or is not going to cooperate.

23 THE COURT: All right. All right. Well, you know, I
24 have -- I have issued an order directing that the devices and
25 account information be provided, and if it's -- and if you all