

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

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUÑIZ,
MARCUS MARTIN, NATALIE ROMERO,
CHELSEA ALVARADO, JOHN DOE, and
THOMAS BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

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

JURY TRIAL DEMANDED

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF
THEIR MOTIONS FOR EVIDENTIARY SANCTIONS AGAINST
DEFENDANT ELLIOTT KLINE A/K/A ELI MOSLEY**

Plaintiffs respectfully file yet another supplemental brief in further support of their April 3, 2019, Motion for Sanctions, ECF No. 457 (“First Sanctions Motion”), and December 6, 2019, Motion for Evidentiary Sanctions, ECF No. 601 (“Second Sanctions Motion”). Plaintiffs learned on February 10, 2020, that the third-party vendor was able to successfully access the email account CvilleReports@gmail.com by using Kline’s deplorabletruth@gmail.com account as a recovery email address. While being held in jail for civil contempt of Court, Kline submitted a sworn declaration that he attempted to use this precise recovery method and that it “did not work to recover anything.” Kline Resp. at 1, Jan. 7, 2020, ECF No. 625. Based on the vendor’s success in using Kline’s deplorabletruth@gmail.com email account to access CvilleReports@gmail.com, however, there can be no doubt that Kline has been caught in yet another lie to the Court about responsive documents he has withheld from Plaintiffs in discovery.

On January 6, 2020, Plaintiffs filed a submission with the Court identifying a fifth email account used by Kline that Kline had failed to disclose. *See* Pls.’ Supp. Br., Jan. 6, 2020, ECF No. 615. That email account was CvilleReports@gmail.com. *Id.* The Court held a telephonic hearing that day during which Kline testified under oath that “I’m almost certain that I did not create that email address or use that email address.” Hr’g Tr. at 15, Jan. 6, 2020, ECF No. 632; *see also id.* at 16 (“I do not believe, like I said, that that’s an email address that I set up and had access to. However, if I did, it would have the same access and password as the other email addresses that I’ve used. So I would be able to go right in and get access – give access to it if it’s an email address that I used. But I don’t believe it is an email address that I used.”). At the conclusion of the January 6, 2020, hearing, the Court ordered that Kline remain in the custody of the U.S. Marshal and be held in the Charlottesville jail. *Id.* at 38–39.

Later on January 6, 2020, after the hearing, Kline submitted a handwritten declaration he made under oath regarding his attempts to access to the CvilleReports@gmail.com email address. Kline Resp., ECF No. 625. He swore that “you can enter a recovery email for a forgotten password. I tried all 3 of my email addresses as the recovery email, and they did not work to recover anything.”¹ *Id.* at 1. Kline concluded that “the ‘cvillereports’ email address is not one I have credentials for after trying multiple ways to get into the account.” *Id.* at 2.

On January 8, 2020, Plaintiffs filed a submission with the Court to inform it of the compelling evidence that Plaintiffs had uncovered that Kline had lied under oath during the January 6, 2020, hearing when he denied knowledge of the existence of the

¹ Although he did not list them in his sworn declaration, Kline’s three email addresses are deplorabletruth@gmail.com, eli.f.mosley@gmail.com, and eli.mosley@identityevropa.com. Kline Dep. Tr. at 169, Aug. 7, 2019, ECF No. 601-1. Plaintiffs learned about a fourth email address, eli.r.kline@gmail.com, during Kline’s November 25, 2019 civil conspiracy hearing. Hr’g Tr. at 64, Nov. 25, 2019, ECF No. 600.

CvilleReports@gmail.com account. *See* Pls.’ Resp., Jan. 8, 2020, ECF No. 631. Specifically, Plaintiffs identified documentation that confirmed (contrary to Kline’s representations under oath during the hearing) that the email address was registered to Kline. *Id.* at 2–3. Plaintiffs also pointed out that Google’s “account recovery” feature indicated that the CvilleReports@gmail.com account was linked to both a phone number and an email address (the deplorabletruth@gmail.com account) that Kline conceded belonged to him. *Id.* at 3–5. Plaintiffs requested that the Court order that the third-party discovery vendor be authorized to attempt to obtain access to CvilleReports@gmail.com, to image the contents of that email address as well, and to produce such documents directly to Plaintiffs. *Id.* at 6.

On February 7, 2020, the Court granted Plaintiffs’ request and ordered “that the Third-Party Discovery Vendor may attempt to access the CvilleReports email address, image the contents of that email address, and produce such documents directly to Plaintiffs’ counsel, subject to the same terms concerning purportedly privileged documents as in this Court’s Order of January 22, 2020 (Dkt. 638 at 3).” Order at 4, Feb. 7, 2020, ECF No. 644. Plaintiffs provided the third-party vendor with the order. *See* J. Phillips Email to K. Kim, Feb. 7, 2020 (attached hereto as Ex. A).

On February 10, 2020, the third-party vendor informed Plaintiffs that its attempt to access the CvilleReports@gmail.com account through use of the deplorabletruth@gmail.com account as a recovery account was successful. *See* B. Williams Email to J. Phillips, Feb. 11, 2020 (attached hereto as Ex. B). Plaintiffs’ January 8, 2020, submission had cautiously noted that Kline’s January 6, 2020, submission under oath was “likely incorrect or untrue” because Google’s account recovery feature showed that the email address associated with CvilleReports@gmail.com begins with the same three letters and contains the same total characters as Kline’s primary email address, deplorabletruth@gmail.com. Pls.’ Resp. at 4, ECF No. 631. There can be no doubt now that

Kline's sworn statement was a lie. Kline has now been caught lying under oath numerous times regarding accounts and devices he used to create documents concerning the events at issue in this case. Notably, the lies always run in the same direction: each time he is confronted, Kline attempts to obscure the existence of or obstruct access to critical devices and accounts that he previously failed to disclose.

Plaintiffs reiterate their request that that the Court grant the First and Second Sanctions Motions and that the Court (1) deem the facts listed in the Sanctions Motions established; (2) deem authentic for purposes of Fed. R. Evid. 901 any documents that Plaintiffs have a good-faith basis to believe that Kline created, including all documents from the social media accounts listed in the Sanctions Motions, as well as any photographs taken by or depicting Kline; and (3) instruct the jury that Kline chose to intentionally withhold his documents, and that the jury may draw adverse inferences from that fact, including that Kline chose to withhold such documents because he was aware that such documents contained evidence that Kline conspired to plan racially motivated violence at Unite the Right.

Dated: February 12, 2020

Respectfully submitted,

/s/ Robert T. Cahill

Robert T. Cahill (VSB 38562)

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2020, 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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I further hereby certify that on February 12, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

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/s/ Robert T. Cahill

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EXHIBIT A

From: [Jessica Phillips](#)
To: [Ken Kim](#)
Cc: [Michael Bloch](#); [Yotam Barkai](#); [Jessica Phillips](#)
Subject: Sines et al v. Kessler et al Order
Date: Friday, February 7, 2020 2:08:57 PM
Attachments: [2020-02-07 \[644\] Order re Vendor access to Kline - Mosley.pdf](#)
Importance: High

Ken,

Please the attached order from Judge Moon. We asked him to order that iDS be able to try to access the Cvillereports@gmail.com email address by using Kline's deplorabletruth email address. You have access to that email address and we have very good reason to believe that it is associated with the cvillereports@gmail.com email address. We would like you to try to recover the password to the cvillereports email account by using your access to deplorabletruth. If this is not clear, let's have a call to walk through it. We would like to do this ASAP.

Thanks,

Jessica E. Phillips

Partner

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From: ecfnoticing@vawd.uscourts.gov <ecfnoticing@vawd.uscourts.gov>

Sent: Friday, February 7, 2020 1:39 PM

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Subject: Activity in Case 3:17-cv-00072-NKM-JCH Sines et al v. Kessler et al Order

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U.S. District Court

Western District of Virginia

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Case Name: Sines et al v. Kessler et al

Case Number: [3:17-cv-00072-NKM-JCH](#)

Filer:

Document Number: [644](#)

Docket Text:

ORDER GRANTS Plaintiffs' Request [631] and ORDERS that the Third-Party Discovery Vendor may attempt to access the CvilleReports email address, image the contents of that email address, and produce such documents directly to Plaintiffs' counsel, subject to the same terms concerning purportedly privileged documents as in the Court's Order of January 22, 2020 (Dkt. 638 at 3). Signed by Senior Judge Norman K. Moon on 2/7/20. (Order mailed to Pro Se Parties Elliot Kline, Dillon Hopper and Matthew Heimbach via US Mail (and emailed); and also emailed to Christopher Cantwell and Robert Ray)(jcj)

3:17-cv-00072-NKM-JCH Notice has been electronically mailed to:

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3:17-cv-00072-NKM-JCH Notice has been delivered by other means to:

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Robert Azzmador Ray

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751e4cab8316382080c3adb4a6498c1bc4a7c5ce59cf2d0e398bef2d84b6]]

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ATTACHMENT

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

ELIZABETH SINES, *et al.*,

Plaintiffs,

v.

JASON KESSLER, *et al.*,

Defendants.

CASE NO. 3:17-cv-00072

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court further to Plaintiffs’ request seeking prompt and direct access to certain discovery from Defendant Elliott Kline. Dkt. 631. Specifically, Plaintiffs seek a court order authorizing the Third-Party Discovery Vendor to try to access and collect discovery from an e-mail address believed to be Kline’s. *Id.* at 6.

Plaintiffs’ request stems from Kline’s pattern of ignoring discovery requests and orders in this case, which have been catalogued in numerous prior orders from this Court. *See, e.g.*, Dkts. 638, 634, 621, 613, 610, 600, 599.

By way of background, this Court found Kline in civil contempt at his Contempt Hearing on November 25, 2019, for failure to comply with numerous discovery orders of this Court and U.S. Magistrate Judge Joel Hoppe. *See* Dkts. 600, 599. This Court imposed an escalating set of sanctions, including fines and ultimately incarceration, until Kline complied with orders requiring him to fully respond to Plaintiffs’ discovery requests. *See* Dkts. 621, 613, 610. As a result of these measures, Kline was compelled to respond to Plaintiffs’ discovery requests and provide credentials for several of Kline’s email accounts that may contain responsive documents. Dkt. 634 at 3. This Court ultimately released Kline from custody, but to be clear, Kline remains in civil contempt.

Kline had not then and still has not proven to this Court that he has purged himself of contempt. He has not proven that he has “fully and completely” responded to Plaintiffs’ discovery requests; or that he has provided Plaintiffs or the Third-Party Discovery Vendor access to all potentially relevant email and social media accounts. *Id.* at 3–4.

Faced with Kline’s continued non-compliance, Plaintiffs have sought several discovery measures in order to “move this case forward.” Dkt. 631 at 2. This Court has already granted one such request by Plaintiffs—that the Third-Party Discovery Vendor produce directly to Plaintiffs’ counsel any and all documents collected from Elliott Kline’s accounts to which the Vendor does have access, which documents contain agreed-upon search terms within the applicable date range. Dkt. 638.

Another request by Plaintiffs is presently before the Court. It concerns the “CvilleReports” email address, which Plaintiffs contend was “apparently used by Kline in 2017 and withheld from Plaintiffs for the entirety of this litigation.” Dkt. 631 at 1. While Kline was in custody for his civil contempt, the Court ordered him to, among other things, provide Plaintiffs access to the CvilleReports email account, as it appeared to contain potentially relevant and discoverable information. If Kline was unable to provide Plaintiffs such access, the Court required him to submit a declaration under oath and penalty of perjury demonstrating his efforts to do so. Dkt. 634 at 1–2. Kline submitted such a declaration stating that he did not believe the CvilleReports email account was one that he had access to; and that he had attempted to log into the CvilleReports email account using known passwords, and his phone number and three of his other email addresses for verification, all to no avail. *See* Dkt. 634 at 2; Dkt. 625.

After Kline submitted that declaration, Plaintiffs filed a response providing documentation to support their assertion that the CvilleReports email account was, indeed, registered to Kline.

Dkt. 631 at 3 & Ex. A. Plaintiffs also provided evidence that, contrary to Kline’s statements under oath, the CvilleReports email account likely *could* be accessed via an “account recovery” feature using a phone number Kline described as his “primary” phone number or the “DeplorableTruth” email account that Kline currently uses. *See* Dkt. 631 at 3–4 & Exs. B, C. Plaintiffs argued that “all indications are” that Kline has “repeatedly lied under oath about [the CvilleReports email address],” and that there was a risk “Plaintiffs will be denied access to this trove of important evidence.” Dkt. 631 at 5.

This Court found that “Plaintiffs’ assertions at this stage are grave—that Kline has persisted in lying to this Court under oath and under penalty of perjury, even while being held in incarceration for civil contempt. And Plaintiffs have provided documentation and evidence in support” of those assertions. Dkt. 634 at 3.

Plaintiffs therefore requested certain discovery orders to try to move the case forward. One such request is that the Court issue an order that the Third-Party Discovery vendor be “authorized to attempt to obtain access” to the CvilleReports email address, “to image the contents of that email address as well, and to produce such documents directly to Plaintiffs.” Dkt. 631 at 6. This Court has already found that “Kline’s track-record of failing to fulfill his discovery obligations in a timely manner, and unless and until forced to do so by court order and significant sanctions, make him uniquely ill-suited to participate in a discovery process that is predicated upon one’s prompt and good faith compliance with discovery obligations.” Dkt. 638 at 2. Further still, Plaintiffs presented evidence and argument—to which Kline has not responded though afforded the opportunity (Dkt. 634 at 3)—that even when faced with severe sanctions and incarceration, he still may have lied under oath about this email account. On this record, and weighing the evidence presented, the Court concludes that it cannot simply accept Kline’s word on the matter.

The Court therefore concludes that Plaintiffs have demonstrated that an order authorizing the Third-Party Discovery Vendor to attempt to access the CvilleReports email address is warranted. The Court finds that the CvilleReports email account is likely to contain discoverable information that is important to the development of Plaintiffs' case. The Court also finds that Plaintiffs have a right to test Kline's assertions that he was unable to access the CvilleReports email account. Furthermore, the Court finds that the means identified by Plaintiffs to do so—*i.e.*, that the Third-Party Discovery Vendor itself will attempt to access the CvilleReports accounts, as by using any credentials, accounts, or devices from Kline—is not only a reasonable but also likely the least burdensome means of accomplishing this end for all parties involved.

The Court therefore **GRANTS** Plaintiffs' request (Dkt. 631), and **ORDERS** that the Third-Party Discovery Vendor may attempt to access the CvilleReports email address, image the contents of that email address, and produce such documents directly to Plaintiffs' counsel, subject to the same terms concerning purportedly privileged documents as in this Court's Order of January 22, 2020 (Dkt. 638 at 3).

It is so **ORDERED**.

The Clerk of the Court is directed to send a certified copy of this Order to the parties.

Entered this 7th day of February, 2020.



NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE

EXHIBIT B

Brittany Zhang

From: Bobby Williams <bwilliams@idsinc.com>
Sent: Tuesday, February 11, 2020 7:36 AM
To: Jessica Phillips; Ken Kim
Cc: Michael Bloch; Yotam Barkai; IDS_SINKS-02678
Subject: RE: Sines et al v. Kessler et al Order

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That is correct Jessica.

Bobby Williams, EnCE, GCPE
Managing Consultant
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From: Jessica Phillips <jphillips@bsfllp.com>
Sent: Monday, February 10, 2020 6:25 PM
To: Bobby Williams <bwilliams@idsinc.com>; Ken Kim <kkim@idsinc.com>
Cc: Michael Bloch <mbloch@kaplanhecker.com>; Yotam Barkai <ybarkai@bsfllp.com>; IDS_SINKS-02678 <ids_sinks-02678@idsinc.com>
Subject: RE: Sines et al v. Kessler et al Order

Thanks for the update, Bobby. To be clear, you were able to access Cvillereports@gmail.com by using deplorabletruth@gmail.com?

Jessica E. Phillips
Partner

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On February 10, 2020 at 6:18:37 PM EST, Bobby Williams <bwilliams@idsinc.com> wrote:

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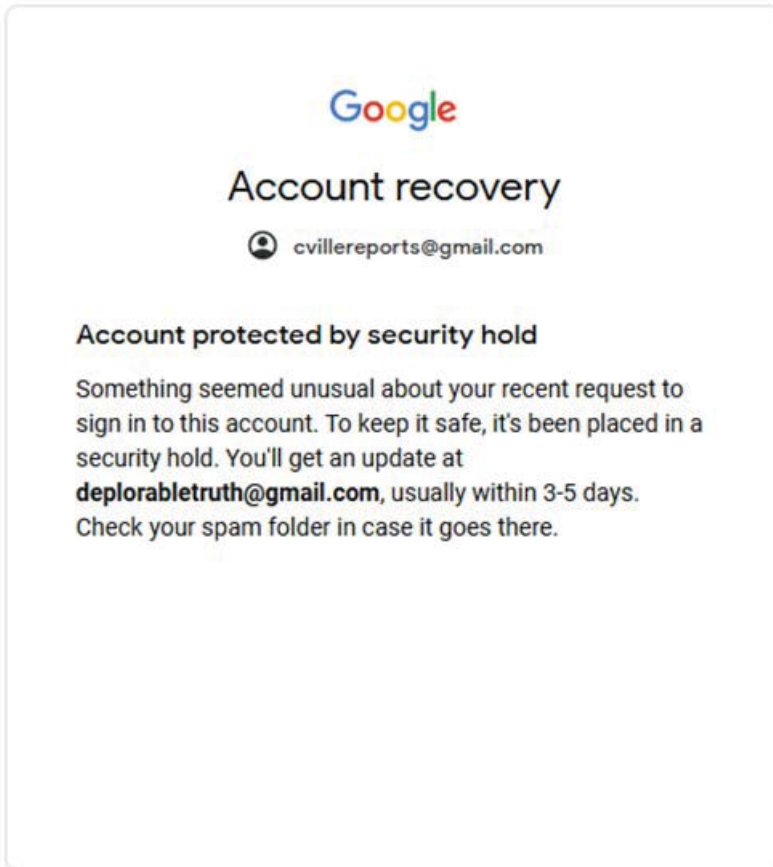


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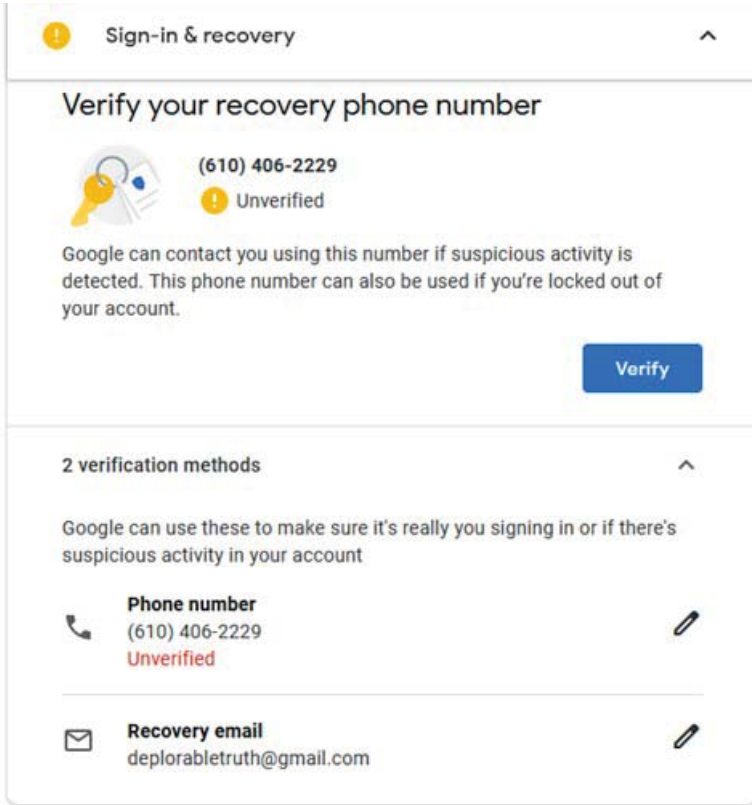
From: Bobby Williams
Sent: Monday, February 10, 2020 6:16 PM
To: Jessica Phillips <jphillips@bsfillp.com>; Ken Kim <kkim@idsinc.com>
Cc: Michael Bloch <mbloch@kaplanhecker.com>; Yotam Barkai <ybarkai@bsfillp.com>; IDS_SINKS-02678 <ids_sinks-02678@idsinc.com>
Subject: RE: Sines et al v. Kessler et al Order

All,

Here is where we stand. I was able to get to this point on Friday:



I set a reminder to check for today 4pm. This is where we are now:



I will attempt to start collection now.

Bobby Williams, EnCE, GCCE
 Managing Consultant
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 Mobile: 202.642.2113



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From: Jessica Phillips <jphillips@bsfllp.com>
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Subject: RE: Sines et al v. Kessler et al Order

Please let me know if you have any questions about exactly what to do.

Jessica E. Phillips
 Partner

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From: Bobby Williams [<mailto:bwilliams@idsinc.com>]
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Cc: Michael Bloch <mbloch@kaplanhecker.com>; Yotam Barkai <ybarkai@bsfllp.com>; Jessica Phillips <jphillips@bsfllp.com>; iDS_SINKS-02678 <ids_sinks-02678@idsinc.com>
Subject: RE: Sines et al v. Kessler et al Order

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All, I will review the order and proceed as appropriate based on the available information.

Bobby Williams, EnCE, GCFE
Managing Consultant
Direct: 202.249.7834
Mobile: 202.642.2113



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https://www.chambersandpartners.com/12788/2817/editorial/58/1#22770855_editorial

From: Ken Kim <kkim@idsinc.com>
Sent: Friday, February 7, 2020 2:32 PM
To: Jessica Phillips <jphillips@bsfllp.com>; Bobby Williams <bwilliams@idsinc.com>
Cc: Michael Bloch <mbloch@kaplanhecker.com>; Yotam Barkai <ybarkai@bsfllp.com>; Jessica Phillips <jphillips@bsfllp.com>; iDS_SINKS-02678 <ids_sinks-02678@idsinc.com>
Subject: FW: Sines et al v. Kessler et al Order
Importance: High

Hi Jessica:

I am forwarding your email with attachment to the iDS team.

Bobby:

Do you have bandwidth to address the below request ASAP? And please advise if you have any questions concerning the below.

Thanks,
Ken

Kenneth Kim
Consultant, Discovery Services
iDiscovery Solutions
Mobile: 267.847.4876



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<https://www.chambersandpartners.com/12788/2817/editorial/58/1#22770855> editorial

From: Jessica Phillips <jphillips@bsfllp.com>
Sent: Friday, February 7, 2020 2:09 PM
To: Ken Kim <kkim@idsinc.com>
Cc: Michael Bloch <mbloch@kaplanhecker.com>; Yotam Barkai <ybarkai@bsfllp.com>; Jessica Phillips <jphillips@bsfllp.com>
Subject: Sines et al v. Kessler et al Order
Importance: High

Ken,

Please the attached order from Judge Moon. We asked him to order that iDS be able to try to access the Cvillereports@gmail.com email address by using Kline's deplorabletruth email address. You have access to that email address and we have very good reason to believe that it is associated with the cvillereports@gmail.com email address. We would like you to try to recover the password to the cvillereports email account by using your access to deplorabletruth. If this is not clear, let's have a call to walk through it. We would like to do this ASAP.

Thanks,

Jessica E. Phillips
Partner

BOIES SCHILLER FLEXNER LLP

1401 New York Ave., NW
Washington, DC 20005
(t) +1 202 895 7592
(m) +1 312 493 7114
jphillips@bsfllp.com
www.bsfllp.com

From: ecfnoticing@vawd.uscourts.gov <ecfnoticing@vawd.uscourts.gov>
Sent: Friday, February 7, 2020 1:39 PM
To: vawd_ecf_nef@vawd.uscourts.gov
Subject: Activity in Case 3:17-cv-00072-NKM-JCH Sines et al v. Kessler et al Order

[External]

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U.S. District Court

Western District of Virginia

Notice of Electronic Filing

The following transaction was entered on 2/7/2020 at 1:39 PM EST and filed on 2/7/2020

Case Name: Sines et al v. Kessler et al
Case Number: [3:17-cv-00072-NKM-JCH](#)
Filer:
Document Number: [644](#)

ORDER GRANTS Plaintiffs' Request [631] and ORDERS that the Third-Party Discovery Vendor may attempt to access the CvilleReports email address, image the contents of that email address, and produce such documents directly to Plaintiffs' counsel, subject to the same terms concerning purportedly privileged documents as in the Court's Order of January 22, 2020 (Dkt. 638 at 3). Signed by Senior Judge Norman K. Moon on 2/7/20. (Order mailed to Pro Se Parties Elliot Kline, Dillon Hopper and Matthew Heimbach via US Mail (and emailed); and also emailed to Christopher Cantwell and Robert Ray)(jcj)

3:17-cv-00072-NKM-JCH Notice has been electronically mailed to:

Elmer Woodard (Terminated) issuecrooks@comcast.net

Robert T. Cahill rcahill@cooley.com, droelofs@cooley.com, ebolton@cooley.com, efiling-notice@ecf.pacerpro.com, jvanbenten@cooley.com, slappin@cooley.com

David E. Mills dmills@cooley.com

David Leon Campbell dcampbell@dhdglaw.com

Erin Boyd Ashwell eashwell@woodsrogers.com

John Benjamin Rottenborn brotenborn@woodsrogers.com

Bryan Jeffrey Jones bryan@bjoneslegal.com

James Edward Kolenich (Terminated) Jek318@gmail.com

Joshua Michael Siegel jsiegel@cooley.com

Roberta Ann Kaplan rkaplan@kaplanandcompany.com

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Joshua Adam Matz jmatz@kaplanandcompany.com

Gabrielle E. Tenzer gtenzer@kaplanhecker.com

John A. DiNucci dinuuccilaw@outlook.com, dinuuccilaw@verizon.net

Jessica E. Phillips jphillips@bsfllp.com, sginsberg@bsfllp.com

Michael Low Bloch mbloch@kaplanhecker.com

William Edward ReBrook, IV. edward@rebrooklaw.com

3:17-cv-00072-NKM-JCH Notice has been delivered by other means to:

Vanguard America
c/o Dillon Hopper

Christopher Cantwell

David Duke(Terminated)
240 Garden Avenue
Mandeville, LA 70471

James Hart Stern(Terminated)
12625 Frederick Street

Suite I-5
Moreno Valley, CA 92553

John Doe(Terminated)
98 West 1st Street
Yuma, AZ 85364

Matthew Heimbach
P.O. Box 278
Steubenville, OH 43592

Michael Enoch Peinovich(Terminated)
P.O. Box 1069
Hopewell Junction, NY 12533

Robert Azzmador Ray

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1052918722 [Date=2/7/2020] [FileNumber=3475839-0]
[1db5c101f8a529dd34668c4a39e43d2768c3f0a29be0cd1df5140bb4a5bd3bc8d1c5
751e4cab8316382080c3adb4a6498c1bc4a7c5ce59cf2d0e398bef2d84b6]]

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