

**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' MOTION TO COMPEL THE DEPOSITION OF DEFENDANT ELLIOTT
KLINE A/K/A ELI MOSLEY**

INTRODUCTION

Plaintiffs respectfully file this motion to compel Defendant Elliott Kline a/k/a Eli Mosley to sit for his deposition. Plaintiffs properly noticed Kline's deposition for July 2, 2020. Kline failed to appear, thereby wasting Plaintiffs' time and resources. As discussed in multiple prior filings, Kline is a critical figure to the conspiracy alleged by Plaintiffs and played a leading role in planning, organizing, and executing the racially-motivated violence that occurred in Charlottesville on August 11-12, 2017. *See, e.g.*, Pls. Mot. for Sanctions against Defs. Kline and Heimbach, Apr. 3, 2019, ECF No. 457 ("First Sanctions Motion"); Pls. Mot. for Evidentiary Sanctions Against Kline, ECF No. 601.¹ He also has a longstanding history of which the Court is well aware of willfully violating court order after court order, failing to appear at multiple hearings and conferences, and dissembling time and again in order to avoid complying with his discovery obligations in this case. *See generally* Order to Show Cause, ECF No. 584; Contempt Order, ECF No. 599. Compelling Kline's attendance at a deposition is critical to permit Plaintiffs access to essential discovery. Plaintiffs therefore respectfully request that the Court compel Kline to: (1) appear at his deposition; (2) issue a bench warrant for his arrest and hold Kline in custody until Plaintiffs have the opportunity to depose him; and (3) pay reasonable expenses incurred in arranging Kline's July 2, 2020 deposition and in bringing this motion, including reasonable attorneys' fees and costs.

¹ Independent of this motion to compel, Plaintiffs have a December 6, 2019, motion for evidentiary sanctions against Kline pending with the Court. ECF No. 601. Kline's decision to ignore multiple communications from Plaintiffs and his failure to show up for his deposition further underscores the reasons why evidentiary sanctions are warranted against Kline.

BACKGROUND

On April 3, 2020, Plaintiffs reached an agreement with Defendants to conduct virtual depositions, which was memorialized in writing for all parties. Ex. A (Email from M. Bloch). On May 3, 2020, Plaintiffs reached out to all Defendants regarding deposition scheduling. *Id.* On May 5, 2020, Plaintiffs separately emailed Kline to schedule his deposition and to confirm that he had the necessary technology for a virtual deposition. Ex. B (Email from J. Phillips to E. Kline, cc: Y. Barkai). This email was sent to all three of the email addresses Kline has previously indicated he uses. Pls. Mot. for Evidentiary Sanctions against Kline 10 n.7, 15, ECF No. 601 (identifying Kline's working email addresses as deplorabletruth@gmail.com, eli.f.mosley@gmail.com, and eli.r.kline@gmail.com). Plaintiffs received no response from Kline. On May 24, 2020, Plaintiffs followed-up with Kline and informed him that if Kline did not provide his availability, "Plaintiffs will pick a date before July 17, 2020 [the last day for party depositions], and circulate a deposition notice." Ex. C (Email from J. Phillips to E. Kline, cc: Y. Barkai). Kline did not respond. On June 1, 2020, Plaintiffs noticed Kline's deposition for July 2, 2020, at 9:30 a.m. ET and served Kline with a deposition notice by email to all three of his email addresses. Ex. D (Notice of Kline Deposition); Ex. E (Email from K. Cheng to E. Kline and others).

Kline failed to appear for his duly-noticed deposition on July 2, 2020. At no point in time prior to July 2, 2020, did Kline inform Plaintiffs that he did not plan to attend his deposition. When Kline failed to appear, Plaintiffs' counsel attempted to contact Kline by phone, text, and email. Kline did not respond to those efforts. Plaintiffs' counsel, the court reporter, and the videographer waited for an hour and a half after the deposition was scheduled to begin before Plaintiffs' counsel made a statement on the record. Ex. F (7/2/20 Statement on the Record).

ARGUMENT

A party's attendance at his noticed deposition is mandatory under Federal Rule of Civil Procedure 30. *See Diamond v. Bon Secours Hosp.*, No. WMN-09-865, 2010 WL 11549876, at *2 (D. Md. Apr. 15, 2010) ("Mr. Diamond's attendance at the March 1, 2010 deposition was mandatory under Fed. R. Civ. P. 30(a)(1)"). Federal Rule of Civil Procedure 37(d) provides that a court may order sanctions if "a party...fails, after being served with proper notice, to appear for that person's deposition," and "must require the party failing to act...to pay the reasonable expenses, including attorney's fees caused by the failure[.]" Fed. R. Civ. P. 37(d)(1)(A)(i), (3); *see also Diamond*, 2010 WL 11549876, at *4 (granting motion to compel *pro se* plaintiff's attendance at his deposition and awarding attorneys' fees and costs).

Kline's utter disregard for his discovery obligations is all too familiar. Indeed, Kline's refusal to engage in the discovery process and his blatant violations of almost a dozen court orders, led the Court to hold Kline in civil contempt, fine him almost \$6,000, and order Kline to be taken into custody and spend 48 hours in jail. Contempt Order 2, 4, 9-15, ECF No. 599; Order for Elliott Kline to Surrender to Custody of the U.S. Marshal, ECF No. 613 ("Custody Order"); Pls. Resp. to Court's Jan 8, Order 3, ECF No. 642.

Kline has now disappeared from the litigation again by failing to appear for his deposition. Yet again, Plaintiffs have been prejudiced by Kline's "[c]ontinued contumacious behavior." Order to Show Cause 12, ECF No. 584; *see* Contempt Order 10, 12, ECF No. 599. Plaintiffs have been forced to waste precious time and resources only to have Kline flout his obligations to Plaintiffs and the Court. In light of Kline's long history of noncompliance and nonparticipation in this case absent the threat of arrest and jail time, Plaintiffs do not believe that Kline will appear for his virtual deposition without the Court's assistance. Accordingly, Plaintiffs respectfully request that

the Court issue a bench warrant and have the U.S. Marshals hold Kline in custody until his deposition can be held.

CONCLUSION

Plaintiffs respectfully request that the Court (1) compel Kline to appear for his deposition; and (2) issue a bench warrant for Kline's arrest and hold him in custody until his deposition can take place; and (3) order Kline to pay Plaintiffs' reasonable expenses incurred in arranging Kline's July 2, 2020, deposition and in bringing this motion, including reasonable attorneys' fees and costs.

Dated: July 3, 2020

Respectfully submitted,

/s/ Robert T. Cahill

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 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 July 3, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

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