

**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 ROBERT "AZZMADOR" RAY**

Plaintiffs respectfully file this motion to compel Defendant Robert "Azzmador" Ray to sit for his deposition. On June 8, 2020, Plaintiffs properly noticed Ray's deposition for July 13, 2020. Ray failed to appear, thereby wasting Plaintiffs' time and resources and further prejudicing Plaintiffs by robbing them of crucial evidence for this case. As discussed in prior filings, Ray is a critical figure to the conspiracy alleged by Plaintiffs. *See, e.g.*, Pls. Mot. to Compel Disc. from Robert "Azzmador" Ray, Mar. 11, 2020, ECF No. 673.¹ As a writer for the white supremacist website *The Daily Stormer* and as an active participant on Discord, Ray played a key role in recruiting attendees and instructing them on equipment to bring to Unite the Right. *Id.* at 2–3. His posts on Discord—for example, telling supporters he would “be there gassing these people”—

¹ Independent of this motion to compel, Plaintiffs have a pending June 1, 2020, motion for evidentiary sanctions against Ray and for an order directing Ray to show cause why he should not be held in contempt of Court. ECF No. 750. Ray's decision to ignore multiple communications from Plaintiffs and his failure to show up for his deposition further underscore the reasons why evidentiary sanctions are warranted against Ray.

made explicit Defendants' violent intentions. *Id.* at 3. And Ray executed on those intentions on the weekend of August 11 and 12—bringing numerous followers to Charlottesville, leading a group in a chant of “Gas the kikes, race war now!” on August 12, proudly informing another attendee that he had “personally, literally, gassed half a dozen kikes,” and declaring the event “a huge victory for the Alt Right.” *See id.* at 4–5; ECF No. 673-11 at 12.² Furthermore, as the Court is aware, Ray has willfully violated numerous court orders, failed to appear at multiple hearings and conferences, and doggedly avoided his discovery obligations in this case, including the Court's most recent order dated May 18, 2020. *See generally* Order, May 18, 2020, ECF No. 728.

Ray's deposition is critical to permit Plaintiffs access to essential discovery. Plaintiffs therefore respectfully request that the Court (1) compel Ray to appear at his deposition; (2) issue a bench warrant for Ray's arrest and hold him in custody until Plaintiffs have the opportunity to depose him; and (3) compel Ray to pay reasonable expenses incurred in arranging his July 13, 2020, deposition and in bringing this motion, including reasonable attorneys' fees and costs.

BACKGROUND

On April 3, 2020, Plaintiffs reached an agreement with Defendants to conduct remote video depositions, which was memorialized in writing for all parties. Ex. A (Bloch Email to Defendants, Apr. 3, 2020). On May 3, 2020, Plaintiffs reached out to all Defendants regarding deposition scheduling. *Id.* (Bloch Email to Defendants, May 3, 2020). On May 7, 2020, Plaintiffs separately emailed Ray, at the email address provided by his counsel and on file with the Court, to schedule his deposition and to confirm that he had the necessary technology for a video deposition. Ex. B (Barkai Email to Ray, May 7, 2020). Plaintiffs received no response from Ray. On June 5, 2020,

² *See also* Kelly Weill, “Charlottesville Lawyers Dump Nazi Clients,” *Daily Beast* (July 26, 2019), <https://www.thedailybeast.com/charlottesville-lawyers-dump-nazi-clients-chris-the-crying-nazi-cantwell-and-robert-azzmador-ray>.

Plaintiffs followed up with Ray and informed him that if he did not provide his availability, “Plaintiffs will pick a date before July 17, 2020, and circulate a deposition notice.” Ex. C (Barkai Email to Ray, June 5, 2020). Ray did not respond. On June 8, 2020, Plaintiffs noticed Ray’s deposition for July 13, 2020, at 9:30 a.m. ET and served Ray with a deposition notice by email. Ex. D (Notice of Ray Deposition, June 8, 2020); Ex. E (Barkai Email to Ray and others, June 8, 2020).

Ray failed to appear for his duly noticed deposition on July 13, 2020. At no point in time prior to July 13, 2020, did Ray inform Plaintiffs that he did not plan to attend his deposition. When Ray failed to appear, Plaintiffs’ counsel attempted to contact him by phone and email. Ray did not respond to those efforts. Plaintiffs’ counsel, Defendants’ counsel, the court reporter, and the videographer waited for an hour after the deposition was scheduled to begin before Plaintiffs’ counsel made a statement on the record. Ex. F (Statement on the Record, July 13, 2020).

ARGUMENT

A party’s attendance at his noticed deposition is mandatory under Rule 30 of the Federal Rules of Civil Procedure. *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).

The Court is familiar with Ray's refusal to participate in this litigation and his complete disregard for the discovery process. On July 25, 2019, Ray's own counsel moved to withdraw from their representation of Ray because they had been unable to communicate with him. Br. in Supp. of Mot. to Withdraw as Counsel, July 25, 2019, ECF No. 531. On June 1, 2020—after the production deadline came and went without Ray producing numerous documents, electronic devices, and account credentials in his possession—Plaintiffs were forced to move to compel discovery from Ray. Mot. to Compel Disc. from Def. Robert “Azzmador” Ray, Mar. 11, 2010, ECF No. 673. The Court granted Plaintiffs' motion in full on May 18, 2020. Order, May 18, 2020, ECF No. 728. Despite the Court's warning that Ray's “failure to fully comply with [the Court's May 18, 2020] Order may result in the Court imposing sanctions under Rule 37(b)(2) of the Federal Rules of Civil Procedure and/or directing Ray to show cause why he should not be held in contempt of court,” *id.* at 5, Ray yet again ignored the Court, Plaintiffs, and his discovery obligations. As provided by the Court's May 18, 2020, Order, Plaintiffs accordingly moved for evidentiary sanctions against Ray and for an order directing Ray to show cause why he should not be held in contempt of Court. Mot. for Sanctions, June 1, 2020, ECF No. 750.

Ray's failure to appear for his deposition is now the latest episode in Ray's pattern of defiant and contemptuous misconduct. Plaintiffs have been forced to waste precious time and resources only to have Ray flout his obligations to Plaintiffs and the Court. Plaintiffs have also been severely prejudiced by the evidentiary gap created by Ray's behavior. In light of Ray's extensive history of noncompliance and nonparticipation in this case, Plaintiffs do not believe that Ray will appear for his video deposition without the Court's assistance. Accordingly, Plaintiffs respectfully request that the Court issue a bench warrant and have the United States Marshals Service hold Ray in custody until his deposition can be held.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) compel Ray to appear for his deposition; (2) issue a bench warrant for Ray's arrest and hold him in custody until his deposition can take place; and (3) order Ray to pay Plaintiffs' reasonable expenses incurred in arranging Ray's July 13, 2020, deposition and in bringing this motion, including reasonable attorneys' fees and costs.

Dated: July 14, 2020

Respectfully submitted,

/s/ Robert T. Cahill

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 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 14, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

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