

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

Plaintiffs respectfully file this supplemental brief in support of their Motion to Compel the Deposition of Defendant Elliott Kline a/k/a Eli Mosley, ECF No. 792 (“Mot.” or “Motion to Compel”). As set forth in their Motion to Compel, Plaintiffs made multiple attempts over the course of months to contact Kline regarding his deposition at all of his known working email addresses, including the email address Kline specifically asked all further emails be sent to. Mot. at 2; Nov. 25, 2019 Contempt Hr’g Tr. at 54:3-4 (“Please send all further e-mails to the deplorabletruth e-mail address”), ECF No. 600. When Kline failed to appear for his duly noticed deposition, Plaintiffs attempted to contact him by calling, texting, and emailing. Mot. at 2.

After not having heard from Kline since early January 2020, on July 17, 2020—the very day his opposition to Plaintiffs’ Motion to Compel was due—Kline emailed Plaintiffs from his deplorabletruth@gmail.com account, which is the same email account he told Plaintiffs months ago to use to communicate with Kline. Ex. A (July 17, 2020 Email from E. Kline to J. Phillips, H. Wheeler, and others). Kline incredibly informed Plaintiffs that *until that very day*, he had “been largely without a phone that can log into [his] email” due to COVID-19 and was “unaware of this deposition being scheduled when it was for July 2<sup>nd</sup>[.]” *Id.* Kline’s email makes no sense. He does not even attempt to explain how COVID-19 prevented him from accessing email on his phone. Moreover, Kline wholly fails to address why he did not respond to Plaintiffs’ calls and texts to him on the day of his deposition. Kline also stated that he “thought [his deposition] was scheduled for this week or next,” notwithstanding that the deadline for completing party depositions set by the Court’s operative scheduling order was July 17, 2020. *Id.*; Order, ECF No. 597.

Now that Kline has once again belatedly resurfaced, Plaintiffs have re-noticed Kline’s deposition for August 12, 2020. However, Plaintiffs maintain that they are entitled to reasonable

attorneys' fees and costs incurred in arranging Kline's July 2, 2020, deposition and in bringing their Motion to Compel. Kline's excuses are all too familiar. This is the same old song and dance he has previously given to both Plaintiffs and this Court about why he has been unable to comply with his discovery obligations. The Court previously concluded that Kline's excuses are not credible. Jan. 6, 2020 Hr'g Tr. at 39:10-11, ECF No. 632; Order Finding Elliott Kline Remains in Civil Contempt 10-11, ECF No. 610; Order Finding Elliott Kline in Civil Contempt 5-6, ECF No. 599. So too here, the Court should reject Kline's attempt to once again blame technology and claim confusion. It was Kline's responsibility to appear for his duly-noticed deposition and he failed to do so, causing Plaintiffs to further waste time and resources. Reasonable attorneys' fees and costs are warranted.

Dated: July 21, 2020

Respectfully submitted,

/s/ Robert T. Cahill

Robert T. Cahill (VSB 38562)

COOLEY LLP

11951 Freedom Drive, 14th Floor

Reston, VA 20190-5656

Telephone: (703) 456-8000

Fax: (703) 456-8100

rcahill@cooley.com

*Of Counsel:*

Roberta A. Kaplan (*pro hac vice*)

Julie E. Fink (*pro hac vice*)

Gabrielle E. Tenzer (*pro hac vice*)

Joshua A. Matz (*pro hac vice*)

Michael L. Bloch (*pro hac vice*)

Jonathan R. Kay (*pro hac vice*)

Alexandra K. Conlon (*pro hac vice*)

Emily C. Cole (*pro hac vice*)

KAPLAN HECKER & FINK, LLP

Jessica E. Phillips (*pro hac vice*)

Katherine M. Cheng (*pro hac vice*)

BOIES SCHILLER FLEXNER LLP

1401 New York Avenue, NW

Washington, DC 20005

Telephone: (202) 237-2727

Fax: (202) 237-6131

jphillips@bsflp.com

kcheng@bsflp.com

350 Fifth Avenue, Suite 7110  
New York, NY 10118  
Telephone: (212) 763-0883  
rkaplan@kaplanhecker.com  
jfink@kaplanhecker.com  
gtenzer@kaplanhecker.com  
jmatz@kaplanhecker.com  
mbloch@kaplanhecker.com

Yotam Barkai (*pro hac vice*)  
BOIES SCHILLER FLEXNER LLP  
55 Hudson Yards  
New York, NY 10001  
Telephone: (212) 446-2300  
Fax: (212) 446-2350  
ybarkai@bsflp.com

Karen L. Dunn (*pro hac vice*)  
William A. Isaacson (*pro hac vice*)  
PAUL WEISS RIFKAND WHARTON  
GARRISON LLP  
2001 K St NW  
Telephone: (202) 223-7300  
Fax: (202) 223-7420  
Washington, DC 20006  
kdunn@paulweiss.com  
wisaacson@paulweiss.com

Alan Levine (*pro hac vice*)  
Philip Bowman (*pro hac vice*)  
COOLEY LLP  
55 Hudson Yards  
New York, NY 10001  
Telephone: (212) 479-6260  
Fax: (212) 479-6275  
alevine@cooley.com  
pbowman@cooley.com

David E. Mills (*pro hac vice*)  
Joshua M. Siegel (VSB 73416)  
COOLEY LLP  
1299 Pennsylvania Avenue, NW  
Suite 700  
Washington, DC 20004  
Telephone: (202) 842-7800  
Fax: (202) 842-7899  
dmills@cooley.com  
jsiegel@cooley.com

J. Benjamin Rottenborn (VSB 84796)  
WOODS ROGERS PLC  
10 South Jefferson St., Suite 1400  
Roanoke, VA 24011  
Telephone: (540) 983-7600  
Fax: (540) 983-7711  
brottenborn@woodsrogers.com

*Counsel for Plaintiffs*

### CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2020, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

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

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

*Counsel for Defendants Jason Kessler, Nathan Damigo, Identity Europa, Inc. (Identity Evropa), Matthew Parrott, and Traditionalist Worker Party*

Justin Saunders Gravatt  
David L. Campbell  
Duane, Hauck, Davis & Gravatt, P.C.  
100 West Franklin Street, Suite 100  
Richmond, VA 23220  
jgravatt@dhdglaw.com  
dcampbell@dhdglaw.com

Bryan Jones  
106 W. South St., Suite 211  
Charlottesville, VA 22902  
bryan@bjoneslegal.com

*Counsel for Defendants Michael Hill, Michael Tubbs, and League of the South*

*Counsel for Defendant James A. Fields, Jr.*

William Edward ReBrook, IV  
The ReBrook Law Office  
6013 Clerkenwell Court  
Burke, VA 22015  
edward@rebrooklaw.com

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

I further hereby certify that on July 21, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

Christopher Cantwell  
christopher.cantwell@gmail.com

Vanguard America  
c/o Dillon Hopper  
dillon\_hopper@protonmail.com

Robert Azzmador Ray  
azzmador@gmail.com

Elliott Kline a/k/a Eli Mosley  
eli.f.mosley@gmail.com  
deplorabletruth@gmail.com  
eli.r.kline@gmail.com

Matthew Heimbach  
matthew.w.heimbach@gmail.com

Richard Spencer  
richardbspencer@gmail.com

*/s/ Robert T. Cahill*

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Robert T. Cahill (VSB 38562)  
COOLEY LLP

*Counsel for Plaintiffs*

# EXHIBIT A

**From:** Eli Mosley <deplorabletruth@gmail.com>  
**Sent:** Friday, July 17, 2020 10:16 AM  
**To:** Jessica Phillips <jphillips@bsflp.com>; oycej@vawd.uscourts.gov; Heidi Wheeler <HeidiW@vawd.uscourts.gov>  
**Cc:** eli.f.mosley@gmail.com; eli.r.kline@gmail.com; Michael Bloch <mbloch@kaplanhecker.com>  
**Subject:** Re: your deposition

Hello,

Due to the current Covid-19 situation and not having a cell phone with internet access I have been largely without a phone that can log into my email until today. I was unaware of this deposition being scheduled when it was for July 2nd, and thought it was scheduled for this week or next. I will be available to reschedule my deposition sometime during the next three weeks as I will have internet/phone during this time in order to participate. I fully intend to give my deposition for the case so please let me know when we can reschedule. Thank you and I apologize for missing the originally scheduled meeting.

Elliott Kline,

On Thu, Jul 2, 2020 at 10:27 AM Jessica Phillips <[jphillips@bsflp.com](mailto:jphillips@bsflp.com)> wrote:

Mr. Kline:

Plaintiffs in *Sines v. Kessler* have noticed your deposition for today beginning at 9:30 am ET. See the attached deposition notice that was sent to you by email on June 1, 2020. Plaintiffs' counsel is on the video conference with the videographer and court reporter waiting for you to join. I am attaching the relevant access information that was sent to you by email last night.

If you do not appear for your deposition today, Plaintiffs will immediately notify the Court and will



seek all available remedies. Plaintiffs reserve all rights.

**Jessica E. Phillips**

Partner

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**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](mailto:jphillips@bsfllp.com)

[www.bsfllp.com](http://www.bsfllp.com)

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