

**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

JURY TRIAL DEMANDED

**PLAINTIFFS’ EMERGENCY MOTION FOR AN ORDER TO SHOW CAUSE WHY
DEFENDANTS MATTHEW PARROTT AND TRADITIONALIST WORKER PARTY
SHOULD NOT BE SANCTIONED FOR SPOILIATION AND ORDERED TO PERMIT
PLAINTIFFS TO CONDUCT A FORENSIC EXAMINATION OF INFORMATION
SYSTEMS**

Plaintiffs respectfully submit this Emergency Motion for an Order to Show Cause (the “Motion”) why an order should not be issued: (1) prohibiting Defendants Matthew Parrott a/k/a David Matthew Parrott (“Parrott”) and Traditionalist Worker Party (“TWP”) from further destroying relevant evidence; (2) permitting Plaintiffs immediately to electronically preserve and conduct a forensic examination of Parrott and TWP’s information systems and electronically stored information (“ESI”), including all computers and electronic devices, to attempt to recover any deleted data, at Parrott’s and TWP’s expense; (3) providing for adverse inferences to be drawn to the extent that any evidence has been lost or destroyed; and (4) awarding Plaintiffs the costs and attorneys’ fees associated with this Motion.

PRELIMINARY STATEMENT

On March 13, 2018, Defendant Matthew Parrott, the Chief Information Officer of Defendant TWP, announced on the social network Gab¹ that he intended to delete and destroy all membership information for TWP. (Ex. 1.) Specifically, he wrote:

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.

(*Id.*) When asked to explain, Parrott’s lawyer responded by saying “I don’t know anymore [*sic*] about this situation than you,” and advising Plaintiffs’ counsel to “file what you think best for your case.” (Ex. 2.)

This deliberate destruction of information directly relevant to this litigation is a blatant violation of Parrott’s and TWP’s obligations as parties before this Court—obligations of which they and their counsel are no doubt aware. Indeed, this is not the first time that Defendant Parrott has flouted his discovery obligations. As set out in Plaintiffs’ email to the Court dated March 2,

¹ Like Twitter, Gab is an online news and social networking service where users post and interact with messages.

2018, Defendant Parrott encouraged anyone “involved in any altercation in Cville” – including, obviously, the Defendants in this case – to disable their social media, because “[e]verybody’s getting a ride.” (Ex. 3.) As of late last night, the TWP website was down, and Parrott has now claimed that the “information was scrubbed.” (Ex. 4.)

These actions by Defendants Parrott and TWP are not only clear violations of the Federal Rules of Civil Procedure, but threaten to immediately and materially impact Plaintiffs’ ability to obtain evidence and try this case. Accordingly, pursuant to Federal Rule of Civil Procedure 37(e) and in accordance with this Court’s inherent power to control these proceedings, Plaintiffs move for an order to show cause why an order should not be issued: (1) prohibiting Parrott and TWP from further destroying relevant evidence; (2) permitting Plaintiffs immediately to electronically preserve and conduct a forensic examination of Parrott and TWP’s information systems and ESI, including all computers and electronic devices, to attempt to recover any deleted data, at Parrott’s and TWP’s expense; (3) providing for adverse inferences to be drawn to the extent that any evidence has been lost or destroyed; and (4) awarding Plaintiffs the costs and attorneys’ fees associated with this Motion.

RELEVANT FACTUAL BACKGROUND

Defendant TWP is an unincorporated association pursuant to Virginia Code § 8.01-15, and a national political party committee registered with the Federal Election Commission since 2015. It was founded by Defendants Parrott and Matthew Heimbach. Members of TWP voluntarily joined for the common purpose of promoting anti-Semitism. (First Amended Complaint, ECF No. 175 (“FAC”) ¶ 33.) Parrott has acted as TWP’s Director and Chief Information Officer, (*id.* ¶ 32), although he purported to resign from that role on March 13, 2018 (Ex. 5.).

The FAC alleges that TWP coordinated a “joint operation” with other Defendants to attend the “Unite the Right” events in Charlottesville on August 11 and 12, 2017. Together, Parrott, TWP and other Defendants planned, directed, and prepared for unlawful acts of violence, intimidation, harassment, and denial of equal protection to Charlottesville citizens. (*See, e.g., id.* ¶¶ 63, 67.) The FAC alleges that TWP members were active participants on the Charlottesville 2.0 Discord server that was used to plan the “rally.” (*See, e.g., id.* ¶¶ 77, 322.) While at the “rally,” TWP members acted with militaristic cohesion and joined with other Defendant organizations “to help create two shield walls” for “the fight” (*id.* ¶ 212), and charge through protestors outside Emancipation Park using shields and rods (*id.* ¶ 214).

On January 25, 2018, Plaintiffs served a Request for Production of Documents on all Defendants (“Plaintiffs’ First RFP”), including of course Parrott and TWP. (Ex. 6.) Among other things, Instruction G to Plaintiffs’ First RFP instructed Defendants to “preserve all Documents and Communications relevant to the lawsuit.” (*Id.*) Request No. 8 also requested that Defendants produce documents relating to their efforts to preserve documents. (*Id.*) Defendants Parrott’s and TWP’s responses to Plaintiffs’ First RFPs were due by February 26, 2018, but neither has ever provided any response.

On March 2, 2018, Plaintiffs submitted an email to the Court, notifying the Court that Defendants had failed to timely respond to Plaintiffs’ discovery requests and that Defendants Michael Peinovich and Parrott had each made public, on-line statements stating either that they may have deleted relevant information relating to this case that has been requested in discovery, that they intend to do whatever is necessary to prevent disclosure, or encouraging others to take similar or related actions. (Ex. 3.) With respect to Parrott specifically, Plaintiffs explained that Parrott had posted a statement on Twitter encouraging others “involved in any altercation in

Cville” to disable their social media. (*Id.*) In light of these statements, Defendants’ failure to respond to discovery requests, and Plaintiffs’ fact-based concerns about the loss or deletion of information relating to this case, Plaintiffs requested in the March 2 email an order directing Defendants to (a) respond to Plaintiffs’ discovery requests by a date certain, and (b) preserve information relating to this action and confirm in writing that they are in compliance with their obligation to do so. (*Id.*) Plaintiffs also requested that the Court order Defendants to immediately: (1) take all necessary steps to have any of Defendants’ computers, mobile devices, and other electronic devices and data, including webmail, social media, and cloud storage accounts, that may contain information relating to this action imaged by a third party vendor agreed upon by Plaintiffs; and (2) stop the deletion of and immediately recover any social media accounts or data containing information relating to this action that Defendants have deleted or attempted to delete. (*Id.*) Parrott did not respond to Plaintiffs’ March 2 email.

The Court responded to the Plaintiffs’ March 2 email by affirming that the Court expected any party wishing to raise a discovery dispute to confer with the opposing party before bringing the matter to the Court’s attention. (Ex. 7.) Accordingly, on March 9, 2018, Plaintiffs’ counsel wrote to counsel for Defendants, including Parrott and TWP, regarding their failure to respond to Plaintiffs’ First RFPs and requesting that they confirm in writing that they: (1) were complying with their preservation obligations; (2) would take all necessary steps to ensure that Defendants’ electronic data were preserved by a third-party vendor; and (3) would cease any deletions and immediately recover any deleted information. (Ex. 8.)

On March 12, counsel for Parrott and TWP (along with a number of other Defendants) responded by email to Plaintiffs’ March 9 letter, acknowledging Defendants’ legal obligation to preserve documents, but stating that “we decline your request to have each client provide written

verification of their compliance with what is already a legal obligation.” (Ex. 9.) Counsel further informed Plaintiffs that Defendants do not intend to respond to Plaintiffs’ discovery requests until April 6—more than one month after such responses were otherwise due, notwithstanding that they have neither sought nor received any extension of time to respond. (*Id.*)

At approximately 5:00 am on Tuesday, March 13, Parrott posted on Gab: “I hereby fully and permanently resign from @tradworker.”² (Ex. 5.) At approximately 8:30 pm the same day, Parrott further posted on Gab (the “March 13 Post”):

All of the information systems are completely air-gapped^[3] and ***will be destroyed within a few hours in order to guarantee all membership information literally no longer exists anywhere.***

(Ex. 1 (emphasis added).) As of at least 10:50 pm, the TWP website was no longer accessible.

(Ex. 10.) Upon learning of this planned document destruction, Plaintiffs’ counsel emailed counsel for Parrott and TWP at 11:17 pm providing a copy of the March 13 Post and asking that counsel confirm by 9:00 am today that Parrott had not destroyed, and would take steps to preserve, any such documents and information contained in TWP’s information systems. (Ex. 11.) Counsel for Parrott and TWP responded at 8:27 am on March 14, 2018 as follows: “I have read the Gab and other common alt-right feeds. *I don’t know anymore [sic] about this situation than you. . . . I understand that you have to file what you think best for your case.*” (Ex. 2 (emphasis added).) At approximately 12:30 am on March 14, 2018, Parrott posted on Gab that the “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. 4.)

² “@tradworker” is TWP’s Gab account.

³ Plaintiffs understand the term “air-gapped” to mean that an information system has been physically disconnected from the Internet and all other networks, meaning that any information stored on it can only be accessed (or deleted) by the user in physical possession of the system.

ARGUMENT

I. Standard

“It is difficult to imagine conduct that is more worthy of . . . sanction than spoliation of evidence *in anticipation of litigation* because that conduct frustrates, sometimes completely, the search for truth.” *Samsung Elecs. Co. v. Rambus Inc.*, 439 F. Supp. 2d 524, 535 (E.D. Va. 2006) (emphasis added), *vacated on other grounds*, 523 F.3d 1374 (Fed. Cir. 2008). In truth, however, there is conduct even more worthy of sanction than spoliation *in anticipation of litigation*: spoliation *after* litigation has commenced.

To prove sanctionable spoliation, a party must show:

(1) [T]he party having control over the evidence had an obligation to preserve it when it was destroyed or altered; (2) the destruction or loss was accompanied by a culpable state of mind; and (3) the evidence that was destroyed or altered was relevant to the claims or defenses of the party that sought the discovery of the spoliated evidence, to the extent that a reasonable factfinder could conclude that the lost evidence would have supported the claims or defenses of the party that sought it.

Victor Stanley, Inc. v. Creative Pipe, Inc., 269 F.R.D. 497, 520–21 (D. Md. 2010) (internal quotation marks omitted). As set forth below, there can be no dispute, based on their own statements and admissions, that Defendants Parrott and TWP have engaged in spoliation, and that sanctions are now warranted.

II. Defendants Parrott and TWP Have Engaged In Spoliation.

Defendants Parrott and TWP have a duty to preserve all information, including ESI, that they know or reasonably should know “is relevant in the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery, and/or is the subject of a pending discovery request.” *Samsung*, 439 F. Supp. at 543. A party under a duty to preserve information is subject to sanctions for spoliation where the party “willfully

engage[s] in conduct resulting in the evidence’s loss or destruction.” *Turner v. United States*, 736 F.3d 274, 282 (4th Cir. 2013). Although the conduct “must be intentional,” it is not necessary to prove bad faith. *Id.* However, proof of bad faith is a basis for ordering certain sanctions, including attorneys’ fees and directing the jury to make adverse inferences. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 50–51 (1991) (attorneys’ fees may be awarded as a sanction for bad-faith conduct in the course of litigation); Fed. R. Civ. P. 37(e)(2).

The information referenced in Defendant Parrott’s Post is undoubtedly subject to Parrott’s and TWP’s duty to preserve. Given Defendants’ failure to respond to discovery, Plaintiffs do not know the full scope of information stored on TWP’s systems (or what those systems comprise). Nonetheless, Parrott’s Post confirms that, at a minimum, those systems store “all membership information” of TWP. Information concerning TWP’s membership, including the identities of its members and their roles in the organization, is plainly relevant to Plaintiffs’ claims against TWP and its leaders Parrott and Heimbach, and within the scope of discovery provided by Federal Rule of Civil Procedure 26(b)(1). Such information was specifically requested in Plaintiffs’ First RFPs, Request No. 3, which called for “[a]ll Documents concerning and all Communications concerning or with . . . Traditionalist Worker Party.” (Ex. 6 at p. 9.) Given this, Parrott and TWP cannot deny that they knew they were under a duty to preserve the information on TWP’s systems. Indeed, Plaintiffs specifically reminded Parrott and TWP of their preservation obligations in Plaintiffs’ First RFPs, by email to the Court on March 2, and by their letter of March 9. (Exs. 6, 3, 8.)

Parrott’s March 13 Post leaves no room for doubt: he intended to destroy all of Parrott and TWP’s ESI completely and permanently, and he did so knowing that he was under a legal obligation to preserve that information, even noting that this destruction of critical data was not a political act. Compounding this, Parrott and TWP failed to timely respond to Plaintiffs’ First RFPs

and have not produced a single document in the case—documents which may now be lost forever. Accordingly, the Court should conclude that Parrott and TWP have engaged in spoliation, and that they acted in bad faith and with the intent to deprive Plaintiffs of the use of TWP’s ESI in the litigation. *See* Fed. R. Civ. Proc. 37(e)(2); *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 959 (9th Cir. 2006) (finding bad-faith spoliation where plaintiff knew he was under a duty to preserve data but intentionally deleted files and wrote a program to overwrite deleted space).

III. The Court Should Order That Defendants Parrott and TWP Cease Destroying Documents, and Permit Plaintiffs to Preserve Parrott’s and TWP’s ESI and Subject Their Devices to Forensic Examination to Attempt to Restore Any Deleted Information.

This Court has broad discretion to fashion an appropriate sanction to remedy Defendants’ spoliation. *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001). In exercising this discretion, “the applicable sanction should be molded to serve the prophylactic, punitive, and remedial rationales underlying the spoliation doctrine.” *Id.* (quoting *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999)). In addition to deterring further spoliation, an appropriate remedy will “restore the prejudiced party to the same position he would have been in absent the wrongful destruction of evidence by the opposing party.” *West*, 167 F.3d at 779 (internal quotation marks omitted).

One of the “mildest of available remedies” is for this Court to authorize the Plaintiffs to preserve all ESI and to conduct a forensic examination of TWP’s information systems to determine what information has been destroyed, and whether some or all of the information may be recovered. *Klipsch Grp., Inc. v. Big Box Store Ltd.*, No. 12 CIV. 6283(VSB)(MHD), 2014 WL 904595, at *6 (S.D.N.Y. Mar. 4, 2014), *aff’d sub nom. Klipsch Grp., Inc. v. ePRO E-Commerce Ltd.*, 880 F.3d 620 (2d Cir. 2018). Courts have frequently recognized that such a remedy is appropriate. In *Klipsch*, the Court authorized the plaintiff to “undertake a forensic investigation

into . . . defendants' computer systems for the purpose of determining, if possible, the likelihood of document destruction . . . the likely nature and volume of any such destroyed documents, [and] whether some or all of those documents may be recovered." *Klipsch*, 2014 WL 904595 at *6. Similarly, in *Treppel v. Biovail Corp.*, 249 F.R.D. 111, 124 (S.D.N.Y. 2008), the Court permitted the plaintiff to undertake, at the defendants' expense, a forensic examination of an executive's laptop to attempt to recover deleted emails. *See also Orrell v. Motorcarparts of Am., Inc.*, No. CIV. 3:06CV418-R, 2007 WL 4287750, at *8 (W.D.N.C. Dec. 5, 2007) (permitting employer to conduct a forensic examination of former employee's computer where there was evidence of spoliation); *Hosch v. BAE Sys. Info. Sols., Inc.*, No. 1:13-cv-00825 (AJT/TCB), 2014 WL 1681694, at *3 (E.D. Va. Apr. 24, 2014) (referring to order to compel plaintiff to submit electronic devices and email accounts to forensic inspection after plaintiff admitted destroying relevant information).

Here, Plaintiffs risk suffering severe prejudice if the ESI in Parrott and TWP's systems is destroyed and is ultimately unrecoverable. The most expedient way for this Court to attempt to ameliorate this risk is to order that Parrott and TWP immediately cease any and all destruction of evidence, and permit the Plaintiffs to carry out a forensic examination of TWP's information systems at Parrott's and TWP's expense. To avoid doubt, Plaintiffs request that such an order include permitting Plaintiffs to access any data repositories that TWP accesses remotely (for example, web servers or cloud storage services), in addition to any devices in Parrott or TWP's physical possession, custody or control.

IV. The Court Should Draw Adverse Inferences against Parrott and TWP (or Instruct a Jury to Do the Same).

In addition to ordering relief intended to preserve and restore ESI data, an adverse inference is warranted for that discovery that has already been lost. Remedies for spoliation should serve

the twin purposes of “leveling the evidentiary playing field and . . . sanctioning the improper conduct.” *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 156 (4th Cir. 1995). Where lost or destroyed evidence “would have been relevant to an issue at trial and otherwise would naturally have been introduced into evidence,” a court may “permit the jury to draw unfavorable inferences against the party responsible for the loss or destruction of the original evidence,” provided the responsible party “knew the evidence was relevant to some issue at trial.” *Id.*

Although this proceeding is still in its early stages, it is not too early to infer that the destruction of Parrott’s and TWP’s ESI will cause serious prejudice to the Plaintiffs. Information about the membership of TWP, communications between those members, and communications between TWP members and others present during the events on August 11 and August 12, 2017, is clearly relevant to the claims alleged in the FAC. Indeed, it is crucial. The FAC alleges that TWP was one of the key participants in the events on August 11 and 12 that are at the heart of the FAC. TWP’s leaders and members were instrumental in planning the “rally” and the unlawful acts of violence and intimidation that occurred. (*See, e.g.*, FAC ¶¶ 63, 67.) TWP members were active participants on the Charlottesville 2.0 Discord server that was used to plan the “rally,” and likely used other, private, means to communicate with one another. (*See, e.g., id.* ¶¶ 77, 322.) Establishing that individuals who caused Plaintiffs’ injuries were members of TWP will be crucial for establishing liability. Moreover, the coordination among the members of TWP and others required significant communications—communications which Plaintiffs cannot access without discovery. It is impossible to know without discovery to what extent Parrott and TWP have now destroyed these communications which lie at the heart of the case.

For the reasons set out above, Parrott knew that the evidence he destroyed would have been relevant at trial. Such information would naturally be relevant to Plaintiffs’ claims and damages

and, in fact, was already requested in discovery. Accordingly, to the extent that TWP's information is unrecoverable, the Court should, at an appropriate juncture, draw adverse inferences against Parrott and TWP.⁴

V. Defendants Parrott and TWP Should Pay Plaintiffs' Costs of this Motion, Including Attorneys' Fees.

It is well-established that courts have the inherent power to award attorneys' fees "when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers*, 501 U.S. at 45–46 (internal quotation marks omitted). Courts in the Fourth Circuit routinely award costs and attorneys' fees to remedy spoliation, in order to "compensate the prejudiced party but also [to] punish the offending party for its actions and deter the litigant's conduct, sending the message that egregious conduct will not be tolerated." *Victor Stanley, Inc.*, 269 F.R.D. at 536 (internal quotation marks omitted). In *Goodman v. Praxair Services, Inc.*, 632 F. Supp. 2d 494, 524 (D. Md. 2009), the Court explained that courts will award costs or attorneys' fees to compensate the prevailing party for the reasonable expenses incurred in making the motion, for any additional discovery that must be performed as a result of the spoliation, and for any investigatory costs into the spoliator's conduct. *See also Trigon Ins. Co. v. United States*, 234 F. Supp. 2d 592, 593–94 (E.D. Va. 2002) (defendant ordered to pay plaintiff's "expenses and fees

⁴ As noted in their March 2 email to the Court, Plaintiffs also believe there is a significant risk that the remaining Defendants are failing to comply with their preservation obligations and may be destroying relevant and responsive documents. (*See* Ex. 3.) Defendant Peinovich openly stated an intent to destroy relevant communications. (*See id.*) With the exception of Defendant Fields, Defendants have all failed to respond to Plaintiffs' discovery requests, notwithstanding that their responses were due weeks ago and that Defendants neither sought nor obtained any extension of time to respond. A critical part of the First RFPs sought documents relating to Defendants' preservation efforts. (Ex. 6, Request No. 8.) Moreover, notwithstanding Plaintiffs' request that Defendants confirm they have preserved and will continue to preserve relevant documents and information, those Defendants represented by Messrs. Kolenich and Woodard have refused to do so (Ex. 9), and the other Defendants have thus far not done so either. Plaintiffs thus face a real and immediate risk that Defendants are failing to preserve documents, and may even be taking active steps to destroy relevant information. Plaintiffs anticipate that they may need to seek additional relief from the Court on this basis.

incurred in its efforts to discern the scope, magnitude and direction of the spoliation of evidence, to participate in the recovery process, and to follow up with depositions to help prepare its own case and to meet the defense of the [defendant]”); *Leon*, 2004 WL 5571412, at *5 (plaintiff ordered to pay defendant’s reasonable expenses “incurred investigating and litigating the issue of . . . spoliation”).

Here, Plaintiffs should be awarded the cost of any forensic inspections ordered pursuant to this Motion, the fees incurred in investigating Parrott and TWP’s spoliation, as well as the reasonable attorneys’ fees incurred in bringing this Motion. This is so regardless of whether any deleted data is ultimately recovered. A party’s “attempted destruction of authentic . . . information threatens the integrity of judicial proceedings even if the authentic evidence is not successfully deleted.” *CAT3, LLC v. Black Lineage, Inc.*, 164 F. Supp. 3d 488, 498 (S.D.N.Y. 2016).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant the Motion and order Parrott and TWP to show cause why the relief sought should not be granted.

Dated: March 14, 2018

Roberta A. Kaplan (*pro hac vice*)
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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2018, 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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Pro Se Defendant

I further hereby certify that on March 14, 2018, I also served the following non-ECF participants, via U.S. mail, First Class and postage prepaid, addressed as follows:

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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
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**[PROPOSED] ORDER TO SHOW CAUSE WHY DEFENDANTS MATTHEW
PARROTT AND TRADITIONALIST WORKER PARTY SHOULD NOT BE
SANCTIONED FOR SPOILIATION AND ORDERED TO PERMIT PLAINTIFFS TO
CONDUCT A FORENSIC EXAMINATION OF INFORMATION SYSTEMS**

WHEREAS, on March 14, 2018, Plaintiffs filed a 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 (the “Motion”);

WHEREAS, the Court has considered Plaintiffs’ Motion and the papers filed in support thereof; and it appears that Plaintiffs have shown good cause for the entry of this Order. It is by this Court hereby:

ORDERED that Defendants Matthew Parrott and Traditionalist Worker Party appear at ___ a.m./p.m. on the ___ day of _____, 2018, Courtroom No. _____ of the United States Courthouse in Charlottesville, VA, and show cause, if any there be, why this Court should not grant said Motion and enter an Order: (1) prohibiting Matthew Parrott and Traditionalist Worker Party from further destroying relevant evidence; (2) permitting Plaintiffs immediately to electronically preserve and conduct a forensic examination of Matthew Parrott and Traditionalist Worker Party’s information systems and electronically stored information, including all computers and electronic devices, to attempt to recover any deleted data, at Parrott’s and TWP’s expense; (3) providing for adverse inferences to be drawn to the extent that any evidence has been lost or destroyed; and (4) awarding Plaintiffs the costs and attorneys’ fees associated with the Motion.

Dated: March ____, 2018

SO ORDERED

Hon. Joel C. Hoppe, M.J.

EXHIBIT 1



Matt Parrott @parrott

2 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.

^ 17

← Reply

● Comments 9

↻ Repost 10

🗉 Quote

EXHIBIT 2

From: James Kolenich
To: [Julie Fink](mailto:jfink@kaplanandcompany.com)
Subject: Re: Sines et al. v. Kessler et al.
Date: Wednesday, March 14, 2018 8:27:08 AM

Good Morning. I have read the Gab and other common alt-right feeds. I dont know anymore about this situation than you. The only post incident communication from that group has been a request that I meet with Heimbach late this afternoon, which I will do, even if the meeting has to be at a jail. I will update you then.

I understand that you have to file what you think best for your case.

Jim

On Tue, Mar 13, 2018, 11:17 PM Julie Fink <jfink@kaplanandcompany.com> wrote:

Messrs. Kolenich and Woodard,

In the attached message posted to Gab, your client Matt Parrott states his intention to destroy documents and information directly relevant to Plaintiffs' claims against him and TWP, in violation of both of their legal obligations. Specifically, he writes: "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."

Please confirm by 9am tomorrow morning that Mr. Parrott has not destroyed and will take steps to preserve any and all such documents and information, or we will seek immediate relief from the Court.

Julie E. Fink | Kaplan & Company, LLP

350 Fifth Avenue | Suite 7110

New York, NY 10118

(W) 212.763.0885 | (M) 646.856.6431

jfink@kaplanandcompany.com

From: James Kolenich [mailto:jek318@gmail.com]

Sent: Monday, March 12, 2018 10:52 PM
To: Seguin Strohmeier <ssrohmeier@kaplanandcompany.com>
Cc: Elmer Woodard <isuecrooks@comcast.net>; Julie Fink <jfink@kaplanandcompany.com>; Roberta Kaplan <rkaplan@kaplanandcompany.com>; Christopher Greene <cgreene@kaplanandcompany.com>; Karen Dunn <KDunn@bsflp.com>; Levine, Alan <alevine@cooley.com>
Subject: Re: Sines et al. v. Kessler et al.

Ms. Strohmeier:

Thank you for your letter of March 9, 2018. Due to the press of other business my clients will be unable to respond to discovery by March 23. We can respond by April 6, 2018. In addition we decline your request to have each client provide written verification of their compliance with what is already a legal obligation.

Respectfully,

Jim Kolenich

On Fri, Mar 9, 2018 at 7:08 PM, Seguin Strohmeier <ssrohmeier@kaplanandcompany.com> wrote:

Mssrs. Woodard and Kolenich:

Please see the attached correspondence.

Seguin L. Strohmeier

Kaplan & Company, LLP

350 Fifth Avenue, Suite 7110

New York, NY 10118

[\(929\) 294-2531](tel:(929)294-2531)

ssrohmeier@kaplanandcompany.com

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--

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 3

From: [Christopher Greene](#)
To: hoppe.ecf@vawd.uscourts.gov; KarenD@vawd.uscourts.gov
Cc: [David Campbell](#); jsuecrooks@comcast.net; [James Kolenich](#); bryan@bjoneslegal.com; [Mike Peinovich](#); [Roberta Kaplan](#); [Julie Fink](#); [Gabrielle Tenzer](#); [Levine, Alan](#); [Karen Dunn](#); [Philip Bowman](#)
Subject: Sines v. Kessler - Case No. 17 Civ. 72
Date: Friday, March 2, 2018 4:01:18 PM
Attachments: [Exhibit A.pdf](#)
[Exhibit B.pdf](#)

Dear Judge Hoppe,

Plaintiffs in the above-captioned matter write concerning a pressing discovery issue that has recently arisen. For the reasons set forth below, Plaintiffs respectfully request that the Court: (1) deny Defendant Michael Peinovich's motion to stay discovery, ECF No. 224; and (2) order Defendants to (a) respond to Plaintiffs' discovery requests by a date certain (with the exception of Defendant James Alex Fields – see below); and (b) preserve information relating to this action and confirm in writing that they are in compliance with their obligation to do so. Plaintiffs also respectfully request that, to ensure that Defendants are complying with their preservation obligation going forward, the Court order Defendants to immediately: (1) take all necessary steps to have any of Defendants' computers, mobile devices, and other electronic devices and data, including webmail, social media, and cloud storage accounts, that may contain information relating to this action imaged by a third party vendor agreed upon by Plaintiffs; and (2) stop the deletion of and immediately recover any social media accounts or data containing information relating to this action that Defendants have deleted or attempted to delete. Plaintiffs understand that certain social media platforms permit users to reverse account deletion if the request is made by the user within days of the initial deletion.

This week, Defendants Michael Peinovich and David Parrott have each made public, on-line statements stating either that they may have deleted relevant information relating to this case that has been requested in discovery, that they intend to do whatever is necessary to prevent disclosure, or that others should take similar or related actions. Evidence of those statements is attached. In Exhibit A (found on Gab, a Twitter-like social media site), Defendant Peinovich states, among other things, that he had begun the process of deleting his Facebook account (although he later "resurrected" it), would "do whatever [he] can to not have to produce" materials from his Facebook account, and "do[es] not expect to ever turn over this info." In Exhibit B (found on Twitter), Defendant Parrott encourages others "involved in any altercation in Cville" to disable their social media. In addition, with the exception of Defendant Fields (who has filed his own motion to stay discovery, ECF No. 233), Defendants have failed to timely respond or object to Plaintiffs' January 25, 2018 discovery requests. Plaintiffs therefore have serious concerns about the loss or deletion of information relating to this case, as previously expressed in Plaintiffs' opposition to Defendant Peinovich's motion to stay discovery. See ECF No. 240 at 7.

Plaintiffs are submitting this email based on the understanding from Your Honor's courtroom deputy, Ms. Karen Dotson, that the Court prefers to address discovery disputes without the filing of formal motions. We defer to the Court's direction on how best to proceed.

Respectfully submitted,

Christopher B. Greene
Kaplan & Company, LLP
(929) 294-2528



Microchip @Microchip PRO

a day

what's this all about?



Michael E Peinovich ▶ **The TRS Stuff**

3 hrs ·

OK, full disclosure. Yesterday I was zucked and then I shoahed my other FB because part of the document request made by the attorneys was for all my social media friends and any identifying info I may know about them. This is a document request served on ME, not on FB. I currently have a motion to stay this request pending my motion to dismiss the entire case. If that motion is not granted, or if this case moves to trial, I will then file an objection to the document requests themselves for being too broad. There is no reason they need my FB friends list going back to 2015 for their case. I began the process of deleting my FB acct but a guy told me this was a very bad idea, so I resurrected it. It's still on Zucc for 6 days so I'll use this one. I would not worry too much about it though. They won't get the info and I will do whatever I can to not have to produce it. I do not expect to ever turn over this info, but if they saw that I deleted the account, this would give them an argument and possibly lead them to subpoena facebook itself. So there. I figure I may as well be open about this, no reason to lie.

^ 3

↩ Reply 2

📄 Quote

🔄 Repost 1



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 4



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 5



Matt Parrott @parrott

18 hours



I hereby fully and permanently resign from @tradworker.
I will be making no further public statements. God bless.

^ 18 ← Reply ● Comments 8 ↻ Repost 11 🗉 Quote



Matt Parrott @parrott

4 days



I have attempted to be a positive, uplifting, and unifying voice in the nationalist cause.
At a certain point, even the most stubborn man must hold himself accountable to the fruit of his labor.
My focus from here on out will be exclusively infrastructure and logistics.

^ 2 ← Reply ● Comments 3 ↻ Repost 🗉 Quote

EXHIBIT 6

**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' [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
Philip M. Bowman (*pro hac vice*)
Yotam Barkai (*pro hac vice*)
Joshua J. Libling (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
575 Lexington Ave.
New York, NY 10022
Telephone: (212) 446-2300
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pbowman@bsflp.com
ybarkai@bsflp.com
jlibling@bsflp.com

Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656

Telephone: (703) 456-8000
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rcahill@cooley.com

Roberta A. Kaplan (*pro hac vice*)
Julie E. Fink (*pro hac vice*)
Christopher B. Greene (*pro hac vice*)
Seguin L. Strohmeier (*pro hac vice*)
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Telephone: (212) 763-0883
rkaplan@kaplanandcompany.com
jfink@kaplanandcompany.com
cgreene@kaplanandcompany.com
sstrohmeier@kaplanandcompany.com

Karen L. Dunn (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
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Washington, DC 20005
Telephone: (202) 237-2727
Fax: (202) 237-6131
kdunn@bsflp.com
wisaacson@bsflp.com

Alan Levine (*pro hac vice*)
COOLEY LLP
1114 Avenue of the Americas, 46th Floor
New York, NY 10036
Telephone: (212) 479-6260
Fax: (212) 479-6275
alevine@cooley.com

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

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 7

From: JoelH@vawd.uscourts.gov
To: [Christopher Greene](#)
Cc: [Levine, Alan](#); bryan@bjoneslegal.com; [David Campbell](#); [Gabrielle Tenzer](#); hoppe.ecf@vawd.uscourts.gov; isuecrooks@comcast.net; [James Kolenich](#); [Julie Fink](#); KarenD@vawd.uscourts.gov; [Karen Dunn](#); [Mike Peinovich](#); [Philip Bowman](#); [Roberta Kaplan](#)
Subject: Re: Sines v. Kessler - Case No. 17 Civ. 72
Date: Tuesday, March 6, 2018 3:58:16 PM

Counsel and parties,

During the scheduling conference on March 16, I intend to discuss discovery in this case and my procedures for addressing discovery disputes. I certainly expect that you all will adhere to the Federal Rules of Civil Procedure and, for any discovery dispute, that you confer with the opposing party before bringing the matter to my attention.

I look forward to talking with you all on March 16.

Sincerely,
Joel Hoppe

From: Christopher Greene <cgreene@kaplanandcompany.com>
To: "hoppe.ecf@vawd.uscourts.gov" <hoppe.ecf@vawd.uscourts.gov>, "KarenD@vawd.uscourts.gov" <KarenD@vawd.uscourts.gov>
Cc: David Campbell <DCampbell@dhgclaw.com>, "isuecrooks@comcast.net" <isuecrooks@comcast.net>, James Kolenich <jek318@gmail.com>, "bryan@bjoneslegal.com" <bryan@bjoneslegal.com>, Mike Peinovich <mpeinovich@gmail.com>, Roberta Kaplan <rkaplan@kaplanandcompany.com>, "Julie Fink" <jfink@kaplanandcompany.com>, Gabrielle Tenzer <gtenzer@kaplanandcompany.com>, "Levine, Alan" <alevine@cooley.com>, "Karen Dunn" <KDunn@BSFLLP.com>, Philip Bowman <pbowman@bsflp.com>
Date: 03/02/2018 04:01 PM
Subject: Sines v. Kessler - Case No. 17 Civ. 72

Dear Judge Hoppe,

Plaintiffs in the above-captioned matter write concerning a pressing discovery issue that has recently arisen. For the reasons set forth below, Plaintiffs respectfully request that the Court: (1) deny Defendant Michael Peinovich's motion to stay discovery, ECF No. 224; and (2) order Defendants to (a) respond to Plaintiffs' discovery requests by a date certain (with the exception of Defendant James Alex Fields – see below); and (b) preserve information relating to this action and confirm in writing that they are in compliance with their obligation to do so. Plaintiffs also respectfully request that, to ensure that Defendants are complying with their preservation obligation going forward, the Court order Defendants to immediately: (1) take all necessary steps to have any of Defendants' computers, mobile devices, and other electronic devices and data, including webmail, social media, and cloud storage accounts, that may contain information relating to this action imaged by a third party vendor agreed upon by Plaintiffs; and (2) stop the deletion of and immediately recover any social media accounts or data containing information relating to this action that Defendants have deleted or attempted to delete. Plaintiffs understand that certain social media platforms permit users to reverse account deletion if the request is made by the user within days of the initial deletion.

This week, Defendants Michael Peinovich and David Parrott have each made public, on-line statements stating either that they may have deleted relevant information relating to this case that has been requested in discovery, that they intend to do whatever is necessary to prevent disclosure, or that others should take similar or related actions. Evidence of those statements is attached. In Exhibit A (found on Gab, a Twitter-like social media site), Defendant Peinovich states, among other things, that he had begun the process of deleting his Facebook account

(although he later “resurrected” it), would “do whatever [he] can to not have to produce” materials from his Facebook account, and “do[es] not expect to ever turn over this info.” In Exhibit B (found on Twitter), Defendant Parrott encourages others “involved in any altercation in Cville” to disable their social media. In addition, with the exception of Defendant Fields (who has filed his own motion to stay discovery, ECF No. 233), Defendants have failed to timely respond or object to Plaintiffs’ January 25, 2018 discovery requests. Plaintiffs therefore have serious concerns about the loss or deletion of information relating to this case, as previously expressed in Plaintiffs’ opposition to Defendant Peinovich’s motion to stay discovery. See ECF No. 240 at 7.

Plaintiffs are submitting this email based on the understanding from Your Honor’s courtroom deputy, Ms. Karen Dotson, that the Court prefers to address discovery disputes without the filing of formal motions. We defer to the Court’s direction on how best to proceed.

Respectfully submitted,

Christopher B. Greene
Kaplan & Company, LLP
(929) 294-2528

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EXHIBIT 8

March 9, 2018

By E-MAIL

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

Re: Sines v. Kessler, et al., Case No. 3:17-cv-00072

Dear Counsel:

We write concerning the failure of Defendants Jeff Schoep, Nationalist Front, National Socialist Movement, Matthew Parrott, Matthew Heimbach, Robert Ray, Traditionalist Worker Party, Elliot Kline, Jason Kessler, Vanguard America, Nathan Damigo, Identity Europa, Inc. (Identity Evropa), and Christopher Cantwell (“Defendants”) to timely respond to Plaintiffs’ outstanding discovery requests, and to obtain confirmation that Defendants are, and have been, complying with Defendants’ respective obligations to preserve any and all Communications and Documents relevant to this litigation.¹

Failure to Respond to Plaintiffs’ Discovery Requests

On January 25, 2018, Plaintiffs served Defendants with Plaintiffs’ [Corrected] First Set of Requests for Production of Documents to All Defendants (“First RFPs”) and Plaintiffs’ First Set of Interrogatories to All Defendants (“First Interrogatories,” and collectively with the First RFPs, the “First Discovery Requests”). Defendants’ deadline to respond to the First Discovery Requests was February 26, 2018. *See* FED. R. CIV. P. 34(b)(2)(A).² Since you have not timely

¹ Capitalized terms used in this letter have the same meaning as in Plaintiffs’ [Corrected] First Set of Requests for Production of Documents to All Defendants, served on counsel for all Defendants on January 25, 2018, including the definitions of “Communications,” “Documents,” and “Social Media.”

² Defendant Peinovich’s and Defendant Fields’ motions to stay discovery do not relieve any Defendant of the obligation to respond. *See, e.g., Alston v. Becton, Dickinson & Co.*, No. 1:12-cv-452, 2014 WL 338804, at *2 (M.D.N.C. Jan. 30, 2014) (“the mere filing of a motion to stay does not effect a stay”).

objected to Plaintiffs' First RFPs, please confirm by no later than March 15, 2018, that you will begin producing documents responsive to the First RFPs by no later than March 23, 2018, and provide a reliable estimate of when you expect to complete your production. If we do not hear back from you by March 15, 2018, we will seek relief from the Court.

Similarly, with respect to Plaintiffs' First Interrogatories, if we do not hear from you by March 15, 2018, that we will receive your belated responses by March 23, 2018, we will also seek relief from the Court.

Preservation of Relevant Information

Last week, it came to Plaintiffs' attention that one Defendant was encouraging anyone "involved in any altercation in Cville" to disable their social media accounts in order to avoid "getting a ride," and another Defendant "began the process of deleting [his] FB acct" in response to Plaintiffs' document requests. See Mar. 2, 2018 email from Pls. to Magistrate Judge Hoppe. Any such deletion of relevant Communications or Documents, including Social Media, would be in violation of the duty to preserve documents.³

Accordingly, Plaintiffs request that by no later than March 15, 2018, each Defendant provide written confirmation that Defendant: (1) is (and has been) complying with the obligation to preserve any and all Communications and Documents relevant to this litigation; (2) agrees to take all necessary steps to have Defendant's computers, mobile devices, and other electronic devices and data, including webmail, Social Media, and cloud storage accounts, that may contain information relating to this action imaged by a third party vendor agreed upon by Plaintiffs; and (3) agrees to stop the deletion of and immediately recover any Social Media accounts or data containing information relating to this action that Defendant has deleted or attempted to delete.

Plaintiffs look forward to receiving your timely response to this letter, including Defendants' responses to Plaintiffs' First Discovery Requests, and reserve all rights with respect thereto. Should you wish to discuss these requests, Plaintiffs are available to meet and confer by phone at your soonest convenience.

Sincerely,



Julie E. Fink

cc: Karen Dunn (via e-mail)
Alan Levine (via e-mail)
Roberta Kaplan (via e-mail)

³ See, e.g., *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001) (a party has a duty to preserve evidence as soon as a party "reasonably should know that the evidence may be relevant to anticipated litigation"); *Jenkins v. Woody*, No. 3:15CV355, 2017 WL 362475, at *14 (E.D. Va. Jan. 21, 2017) (observing that the duty to preserve evidence "is triggered, at the latest, when the defendant is served with the complaint") (citations omitted, emphasis added).

EXHIBIT 9

From: James Kolenich
To: [Seguin Strohmeier](#)
Cc: [Elmer Woodard](#); [Julie Fink](#); [Roberta Kaplan](#); [Christopher Greene](#); [Karen Dunn](#); [Levine, Alan](#)
Subject: Re: Sines et al. v. Kessler et al.
Date: Monday, March 12, 2018 10:53:12 PM

Ms. Strohmeier:

Thank you for your letter of March 9, 2018. Due to the press of other business my clients will be unable to respond to discovery by March 23. We can respond by April 6, 2018. In addition we decline your request to have each client provide written verification of their compliance with what is already a legal obligation.

Respectfully,

Jim Kolenich

On Fri, Mar 9, 2018 at 7:08 PM, Seguin Strohmeier <ssrohmeier@kaplanandcompany.com> wrote:

Mssrs. Woodard and Kolenich:

Please see the attached correspondence.

Seguin L. Strohmeier

Kaplan & Company, LLP

350 Fifth Avenue, Suite 7110

New York, NY 10118

[\(929\) 294-2531](tel:(929)294-2531)

ssrohmeier@kaplanandcompany.com

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--

**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 10

404 Not Found

nginx/1.10.3 (Ubuntu)

EXHIBIT 11

From: [Julie Fink](#)
To: [James Kolenich](#); [Elmer Woodard](#)
Cc: [Roberta Kaplan](#); [Christopher Greene](#); [Karen Dunn](#); [Levine, Alan](#); [Philip Bowman](#); [Gabrielle Tenzer](#); [Sequin Strohmeier](#)
Subject: RE: Sines et al. v. Kessler et al.
Date: Tuesday, March 13, 2018 11:17:06 PM
Attachments: [Parrott - 3-13-18.pdf](#)

Messrs. Kolenich and Woodard,

In the attached message posted to Gab, your client Matt Parrott states his intention to destroy documents and information directly relevant to Plaintiffs' claims against him and TWP, in violation of both of their legal obligations. Specifically, he writes: "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."

Please confirm by 9am tomorrow morning that Mr. Parrott has not destroyed and will take steps to preserve any and all such documents and information, or we will seek immediate relief from the Court.

Julie E. Fink | Kaplan & Company, LLP
350 Fifth Avenue | Suite 7110
New York, NY 10118
(W) 212.765.0885 | (M) 646.856.6431
jfink@kaplanandcompany.com

From: James Kolenich [mailto:jek318@gmail.com]
Sent: Monday, March 12, 2018 10:52 PM
To: [Sequin Strohmeier](mailto:sequin.strohmeier@kaplanandcompany.com) <sequin.strohmeier@kaplanandcompany.com>
Cc: [Elmer Woodard](mailto:isuecrooks@comcast.net) <isuecrooks@comcast.net>; [Julie Fink](mailto:jfink@kaplanandcompany.com) <jfink@kaplanandcompany.com>; [Roberta Kaplan](mailto:rkaplan@kaplanandcompany.com) <rkaplan@kaplanandcompany.com>; [Christopher Greene](mailto:cgreene@kaplanandcompany.com) <cgreene@kaplanandcompany.com>; [Karen Dunn](mailto:KDunn@bsfillp.com) <KDunn@bsfillp.com>; [Levine, Alan](mailto:alevine@cooley.com) <alevine@cooley.com>
Subject: Re: Sines et al. v. Kessler et al.

Ms. Strohmeier:

Thank you for your letter of March 9, 2018. Due to the press of other business my clients will be unable to respond to discovery by March 23. We can respond by April 6, 2018. In addition we decline your request to have each client provide written verification of their compliance with what is already a legal obligation.

Respectfully,

Jim Kolenich

On Fri, Mar 9, 2018 at 7:08 PM, Seguin Strohmeier <ssrohmeier@kaplanandcompany.com> wrote:

Mssrs. Woodard and Kolenich:

Please see the attached correspondence.

Seguin L. Strohmeier
Kaplan & Company, LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
[\(929\) 294-2531](tel:(929)294-2531)
ssrohmeier@kaplanandcompany.com

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--
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513-324-0905 (cell)



Matt Parrott @parrott

2 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.

^ 17

← Reply

● Comments 9

↻ Repost 10

🗉 Quote



Matt Parrott @parrott

18 hours



I hereby fully and permanently resign from [@tradworker](#).
I will be making no further public statements. God bless.

^ 18

← Reply

● Comments 8

↻ Repost 11

🗉 Quote



Matt Parrott @parrott

4 days



I have attempted to be a positive, uplifting, and unifying voice in the nationalist cause.

At a certain point, even the most stubborn man must hold himself accountable to the fruit of his labor.

My focus from here on out will be exclusively infrastructure and logistics.

^ 2

← Reply

● Comments 3

↻ Repost

🗉 Quote