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October 23, 2021

**BY ECF**

The Honorable Norman K. Moon  
United States District Court  
Western District of Virginia  
255 West Main Street  
Charlottesville, VA 22902

*Re: Sines et al. v. Kessler et al.*, No. 3:17-cv-00072 (NKM) (JCH)

Dear Judge Moon:

Plaintiffs file this corrected letter to cite the proper procedural authority for their request for a separate trial of Defendant Christopher Cantwell (Fed. R. Civ. P. 42), as well as to inform the Court that we will use our best efforts to deliver a copy of this letter to Mr. Cantwell, including by calling Mr. Cantwell in prison to read him this letter as soon as possible.

\* \* \*

Plaintiffs write concerning the repeated complaints of Defendant Christopher Cantwell about his lack of access to documents and pleadings in this case as a result of his incarceration, including statements made by Mr. Cantwell yesterday at the final pretrial conference and continuing in a series of new submissions docketed today. *See, e.g.*, ECF Nos. 1056, 1063, 1084, 1098–99, 1102, 1109–10, 1122, 1159–60, 1162, 1253–57, 1261–63, 1273, 1290. This situation, as Your Honor has noted, is exacerbated by the fact that Mr. Cantwell is proceeding *pro se*. *See, e.g.*, ECF No. 1273. While Plaintiffs remain adamant that any further delay would be extremely prejudicial given the fact that this case was filed four years ago, jury questionnaires have already been sent out, and many parties, counsel, and witnesses are already in or on their way to Charlottesville, *see, e.g.*, ECF Nos. 1108, 1113, 1196, Plaintiffs are also aware that Mr. Cantwell likely will continue to assert these arguments, which could complicate the issues on appeal.

As a result, Plaintiffs have concluded that the best way to resolve the tension between the need to proceed to trial and Mr. Cantwell's due-process arguments would be for the Court to sever Plaintiffs' claims against Mr. Cantwell from their claims against the other Defendants in this case for a separate trial pursuant to Rule 42 of the Federal Rules of Civil Procedure. *See Fed R. Civ. P.*

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42(b) (“For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims.”); *Beasley v. Kelly*, No. CIV. A. DKC 10-0049, 2010 WL 3221848, at \*3 (D. Md. Aug. 13, 2010) (“The court has broad discretion in deciding whether to bifurcate claims for trial, and the exercise of that discretion will be set aside only if clearly abused.”); 9A Wright & Miller, Fed. Prac. & Proc. § 2388 (3d ed. 2019) (“It is well-established by a wealth of case law that ultimately the question of whether to conduct separate trials under Rule 42(b) should be, and is, a matter left to the sound discretion of the trial court on the basis of the circumstances of the litigation before it.”). That way, Plaintiffs can proceed to trial on Monday as scheduled and Mr. Cantwell can have additional time to prepare. Should the Court grant Plaintiffs’ request, Plaintiffs would proceed with trial against Mr. Cantwell at a later date which we believe would be much shorter in length and could potentially take place after Mr. Cantwell is no longer incarcerated. If the Court decides to sever Plaintiffs’ claims against Mr. Cantwell, Plaintiffs would request that they be able to designate portions of Mr. Cantwell’s video deposition testimony to be played at trial against the remaining Defendants.

Given the circumstances, Plaintiffs respectfully ask that the Court decide this issue before the beginning of jury selection on Monday, October 25, 2021.

Very truly yours,

  
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Roberta A. Kaplan

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2021, I served the following via electronic mail:

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I hereby certify that on October 23, 2021, I also served the following via mail and electronic mail:

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