

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division

ELIZABETH SINES et al.,	)	
Plaintiffs,	)	Civil Action No. 3:17-cv-00072
	)	
v.	)	<u>ORDER</u>
	)	
JASON KESSLER et al.,	)	By: Joel C. Hoppe
Defendants.	)	United States Magistrate Judge

This matter is before the Court on Plaintiffs’ post-trial Motion for Attorney’s Fees and Costs (“Pls.’ Mot.”), ECF No. 1552, and Bill of Costs, ECF No. 1553. *See* Order of Jan. 5, 2023, ECF No. 1624. The Report & Recommendation entered this date addresses Plaintiffs’ requests for \$12,726,103.35 in attorney’s fees under Virginia Code § 8.01-42.1(B), *see* Pls.’ Mot. 8, 19, 21, 30, and for \$546,018.46 in other costs under Rule 54(d) of the Federal Rules of Civil Procedure, *see id.* at 20, 30–31.

Separately, Plaintiffs seek \$1,266,420.84 in costs associated with hiring a third-party discovery vendor to collect and produce electronically stored information (“ESI”) from Electronic Devices and Social Media Accounts belonging to certain Defendants or their agents. *See* Pls.’ Mot. 20, 32 (citing ECF No. 383); Decl. of Yotam Barkai, Esq. ¶¶ 27–28 (citing ECF Nos. 379, 383). They make this request specifically under the parties’ Stipulation & Order for the Imaging, Preservation, and Production of Documents, ECF No. 383 (“ESI Stip. & Order”), and not under Rule 54(d)(1) of the Federal Rules of Civil Procedure. *See* Pls.’ Mot. 20, 32 (citing ECF No. 383); Barkai Decl. ¶ 28 (citing ECF Nos. 379, 383). No Defendant has opposed Plaintiffs’ request to be reimbursed for these specific e-discovery expenses under the terms of the ESI Stipulation & Order. *See* Pls.’ Reply 6 & n.1; Pretrial Order ¶ 7, ECF No. 101.

I signed and entered the ESI Stipulation & Order on November 19, 2018, shortly after granting Plaintiffs’ motion to compel seventeen Defendants to permit inspection and imaging of their electronic devices. *See* Order of Nov. 13, 2018, ¶¶ 1–2, ECF No. 379; Pls.’ Mot. to Compel Defs. to Permit Insp. & Imaging of Elec. Devices 2–4, ECF No. 354 (Oct. 2, 2018); Fed. R. Civ. P. 37(a)(3)(B)(iv). The ESI Stipulation & Order was drafted by the Parties<sup>1</sup> and “put in place specifically to help” the seventeen named Defendants “‘collect and preserve’ ESI from identified social media accounts and ‘electronic devices that [was] potentially relevant to this litigation and/or responsive to Plaintiffs’ discovery requests’ originally served on January 25, 2018.” Mem. Op. of Aug. 19, 2019, at 19, ECF No. 539 (quoting Stip. & Order ¶ I(1)); *see* Order of Mar. 26, 2018, at 3 (noting that all Defendants failed to timely respond to Plaintiffs’ discovery requests and directing each Defendant to answer, respond, or object to those requests within twenty-one days), ECF No. 287. It contains the following agreed-upon terms:

Within 21 days of the entry of this Stipulation and Order, *the Parties shall engage, at Plaintiffs’ expense, a Third Party Discovery Vendor to conduct the collection and production of ESI from Defendants’ Electronic Devices and Social Media Accounts* required by this Stipulation and Order. Pursuant to the Court’s November 13, 2018 Order, ECF No. 379, *such engagement shall be without prejudice to Plaintiffs’ ability to seek to recover from Defendants expenses arising from this engagement at a later date.* This Stipulation and Order does not obligate Defendants to pay any fees or costs incurred by the Third Party Discovery Vendor at this time, and does not prejudice Defendants’ rights to oppose any request made by Plaintiffs to recover those expenses, any such obligation to be determined at a later date.

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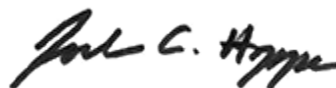
<sup>1</sup> “Plaintiffs and Defendants Christopher Cantwell, Nathan Damigo, Matthew Heimbach, Michael Hill, Identity Ervopa, Jason Kessler, League of the South, Eli Mosely [a.k.a. Elliott Kline], Nationalist Front, National Socialist Movement, Matthew Parrott, Robert [‘Azzmador’] Ray, Jeff Schoep, Richard Spencer, Traditionalist Worker Party, Michael Tubbs, and Vanguard America (collectively, the ‘Defendants,’ and with Plaintiffs, the ‘Parties’) hav[e] stipulated and agreed to the terms set forth herein[.]” *Id.* The ESI Stipulation & Order does not apply to Defendant James Fields Jr. *See* ESI Stip. & Order 2; Mem. Op. of June 11, 2020, ECF No. 759.

ESI Stip. & Order ¶ II(4) (emphasis added). The Parties engaged iDiscovery Solutions (“iDS”) in Washington, D.C., to image, collect, and produce ESI from these Defendants’ electronic devices and social media accounts. *See* Barkai Decl. ¶ 27. There is no indication that iDS handled any Electronic Device or Social Media Account belonging to Plaintiffs. *See id.* ¶¶ 27–28.

Plaintiffs submitted invoices from iDS showing that Plaintiffs incurred \$1,266,420.84 in fees for imaging, collection, production, preservation, and related tasks performed between March 1, 2019, and October 31, 2021. *See* Barkai Decl. Ex. V, at 2–229. The Parties’ agreement contemplated that Plaintiffs would incur expenses “arising from” the Vendor’s work “conduct[ing] the collection and production of ESI from Defendants’ Electronic Devices and Social Media Accounts required by th[e] Stipulation and Order,” including taking measures to “preserve evidence” from those devices and accounts, and that Plaintiffs could later seek to “recover those expenses” from Defendants. ESI Stip. & Order ¶¶ I(1), II(4).

Accordingly, Plaintiffs are entitled to recover **\$1,266,420.84** in reimbursable expenses under the terms of the ESI Stipulation & Order. *See Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 324 (4th Cir. 2001) (en banc) (acknowledging “the rule in this circuit that a district court . . . is best able to interpret its own orders” (quotation marks omitted)). Defendants Christopher Cantwell, Nathan Damigo, Matthew Heimbach, Michael Hill, Identity Evropa, Jason Kessler, League of the South, Eli Mosely (a.k.a. Elliott Kline), Nationalist Front, National Socialist Movement, Matthew Parrott, Robert “Azzmador” Ray, Jeff Schoep, Richard Spencer, Traditionalist Worker Party, Michael Tubbs, and Vanguard America shall be jointly and several liable to Plaintiffs for this amount.

ENTERED: March 7, 2023



Joel C. Hoppe  
United States Magistrate Judge