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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

JEFFREY VERNON MERKEY,

Plaintiff,

vs.

BRUCE PERENS, et al.,

Defendants.

**PETROFSKY'S REPLY IN
SUPPORT OF HIS OBJECTIONS
TO REPORT AND
RECOMMENDATION AND ORDER
GRANTING MOTION TO AMEND
COMPLAINT**

Case No. 2:05-CV-521-DAK

District Judge Dale A. Kimball
Magistrate Judge Paul M. Warner

Alan P. Petrofsky respectfully submits this reply memorandum in support of his consolidated Objections to Magistrate Judge Paul M. Warner's June 30, 2006 Report and Recommendation and Order Granting Motion to Amend Complaint (Docket No. 42).

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1 A supplemental item to my previous declaration

On page 10 of my Objections (Docket No. 43) I mentioned Merkey's fantasies of a nationwide criminal prosecution against me, which he asserted as fact in his last notice of dismissal (Docket No. 28), and which the Court puzzlingly endorsed as "SO ORDERED" (Docket No. 29). However, I forgot to include my statement about that matter in the declaration that I attached to my Objections. I have therefore included it in the declaration attached hereto at Ex. A.

2 Reply argument

Most of Merkey's Response to my Objections is so transparently meritless that no reply is necessary. For instance, the Court need look no further than to my Objections to see that Merkey's allegation of perjury therein is based on nothing more than a flagrant mischaracterization of what I wrote.

However, among Merkey's delusional or patently false statements, and his irrelevant or nonsensical ramblings, he also sometimes tells stories that allege misbehavior by others, and which *sound* plausible, but which are actually just as fictional as his more obvious tall tales. This is what makes him not just a pitiful figure whom I would be happy to completely ignore, but instead an actual danger about whom there is a need for people to be warned.¹ That is why I publish, and will continue to publish,

¹I once thought the notion risible that there was any risk of people taking Merkey seriously, but he presents an all-too-real threat to people's freedom in districts where the U.S. attorney and assistant U.S. attorneys are not always very discriminating about whom they will use as a witness when trying to show that a defendant is a "danger to the community" who must be kept imprisoned. For an example, see Merkey's testimony against James Mooney, and the government's arguments based thereon, at the detention hearing on June 28, 2005 in *U.S. v. Mooney et al.*, 2:05-cr-410-TS-SA. A 5-page ruling by Judge Stewart, discussing Mooney's harmlessness and affirming his release (after he

a web page that documents his malicious lunacy.

For example, Merkey includes the following in his Statement of Facts:

7. I was ordered by Judge Alba in late 2005 to serve Petrofsky with A) a copy of the complaint, and B) a summons.
8. I attempted to mail the summons to Petrofsky following the issuance of the Court's order and he refused service. I subsequently hired a process server and had Petrofsky served in person. Due to Petrofsky's attempts to evade service, and even with additional fees for "expedited service" upon Petrofsky, it took the process server over a week to "catch" him at home and affect [sic] service.

(Response, Docket No. 44 at 6) As the record shows, Magistrate Judge Alba's order was entered on November 28, 2005 (Docket No. 37), the summons was then issued on December 5 (Docket No. 39, also attached hereto at Ex. B), and it was served three days later on December 8 (see Proof of Service, Docket No. 38, also attached hereto at Ex. C).

Thus, Merkey contends that the following sequence of events occurred:

1. On Monday, December 5, the summons was issued and signed by a deputy clerk in Utah.
2. Merkey then mailed the summons to me.
3. The summons arrived in California, and I refused delivery.
4. The post office returned the summons to Merkey in Utah.

had been held for two weeks), was filed on August 2, 2005, and the indictment against Mooney was dismissed on February 23, 2006. The United States was represented in that case by U.S. Attorney Paul M. Warner and Assistant U.S. Attorney Veda M. Travis, until January 27, 2006, when Warner resigned his office. Warner was then appointed a United States Magistrate Judge on February 19, and the present case (*Merkey v. Perens et al.*) was referred to Magistrate Judge Warner on February 23.

5. Merkey transmitted the summons to Johnny Collins, a registered process server in California.
6. Collins was then frustrated for “over a week” (more than *seven days*) by my wily “attempts to evade service”.
7. Collins at last managed to “‘catch’ ” me and “affect [sic] service” on Thursday, December 8.

How all of this could have transpired in a mere *three days* is a mystery. I would suspect that time-traveling communists were somehow involved, but Merkey uncharacteristically neglected to mention the Czechoslovakians.

In any event, I have never refused service or delivery of anything from Merkey (see my declaration attached hereto at Ex. A).

The only person who might fairly be said to have “evaded” the occurrence of any service in this case is Merkey himself, whose whole approach to service of process was a remarkable combination of feeble effort and feigned stupidity (and/or genuine stupidity).

Specifically, Merkey moved on July 20, 2005 for permission to conduct expedited discovery on the basis that the defendants were “evading service” (Docket No. 8), but there is nothing in the record to indicate that Merkey even *attempted* service on *any* defendants until August 25, more than one month after he made the motion, and after a hearing had been held.

In my August 9 brief, I pointed out that most of the defendants he named, including me, had internet domains for which registration addresses were publicly listed (Docket No. 10 at 5). I also pointed out that it was rather curious that someone who claimed to be “one of Utah’s preeminent computer scientists” (Amended Complaint,

Docket No. 7, para. 9) had been unable to figure this out for himself.

In his reply memorandum, Merkey apparently withdrew the motion with respect to me: “in so far as specific expedited discovery needs to be conducted on the part of this defendant, none is required” (Docket No. 11 at 8), but he offered no explanation for why he had not already determined my address. Also, he did not withdraw his motion with respect to *any* of the other defendants (“the named defendants, with the exception of Mr. Petrofsky, are evading service” (Id.)), despite my memorandum having included *explicit instructions* (Docket No. 10, at 5 and at Ex. 4) for how he could have looked up the publicly listed addresses of most of the other defendants. Specifically, addresses were readily available for Pamela Jones of groklaw.net, Matt Merkey and Brandon Suit of merkey.net, John Sage of finchhaven.com, and Jeff Causey of ip-wars.net.

Later, after the hearing on the motion, Merkey filed an affidavit in which he apparently withdrew the motion with respect to all defendants except Pamela Jones of groklaw.net (affidavit filed August 23, 2005, Docket No. 25 at 1). Persisting with respect to Jones was stupid not only because (1) groklaw.net had a publicly listed registration address (in Scottsdale AZ), but also (2) Merkey’s own affidavit shows that he had long known of three addresses where Jones might be reached: a Post Office Box in White Plains, NY (Id., Ex. 2 at 3) and street addresses in Hartsdale, NY (Id., Ex. 3 at 1) and Norwalk, CT (Id.). Yet he never so much as tried mailing a service waiver request, or *mailing anything at all*, to even one of those addresses. Instead, he sought to have subpoenas sent to third parties that would have commanded them to provide him with even more addresses for Jones. Presumably, any addresses so obtained would have then just been added to his collection of Jones addresses that he never attempts to use.

To say that holding a hearing on that motion was a waste of the court's resources would be an understatement. The only judicial opinion I have seen that adequately describes the merit of that motion was by United States Bankruptcy Judge Leif M. Clark in the Western District of Texas:

The court cannot determine the substance, if any, of [the movant's] legal argument ... Or, in the words of the competition judge to Adam Sandler's title character in the movie, "Billy Madison", after Billy Madison had responded to a question with an answer that sounded superficially reasonable but lacked any substance, "Mr. Madison, what you've just said is one of the most insanely idiotic things I've ever heard. At no point in your rambling, incoherent response was there anything that could even be considered a rational thought. Everyone in this room is now dumber for having listened to it. I award you no points, and may God have mercy on your soul."

(*Factac, Inc. v. King*, Adv. No. 05-5171 (USBC, WDTX, February 21, 2006), quoting T. Herlihy and A. Sandler, *Billy Madison* (1995). Attached hereto at Ex. D.)

I am not sure any such mercy from above will be forthcoming for Merkey, because in his response to my Objections, he is now proposing another hearing (Response, at 8), and it appears that the people who would be forced to waste their time at this useless hearing would include not only the Court, but also someone named Elisabeth Blattner, and even God Almighty (assuming that Blattner were to bring Him along, in compliance with the "Subpoena Deus Tecum" that Merkey proposes; I fear, though, that if such a subpoena is issued, it might cause Him to file not just a Motion to Quash, but an Expedited Motion for Leave to Smite).

Merkey claims that the Novell Settlement Agreement (Complaint, Ex. 2)² was

²Currently unavailable from the Clerk, but available since last October at pages 20 to 29 of the file at this location:

<http://scofacts.org/Merkey-Perens-1-2.pdf>

materially altered by a subsequent amendment, which was executed in 1998, but which he failed to mention until now. He states that pursuant to this secret amendment he was free “to disclose the nature of the release from Novell” (Response, para. 6). However, he doesn’t even claim that there was any change to clauses 6(b) and 6(d), which are the clauses that I discussed Merkey violating (Objections, at 23-25).

Even if Merkey had never deliberately breached his confidentiality obligations, that still wouldn’t change the fact that the reason that I came to know what was in the agreement was that Merkey, accidentally or not, filed it in the public record. Neither Merkey nor Magistrate Judge Warner have ever articulated any reason for why I should be enjoined from freely speaking this knowledge, which I obtained completely lawfully. Indeed, because Magistrate Judge Warner’s sua sponte recommendation, “that Petrofsky be ordered to remove the Novell Settlement Agreement from `scofacts.org` and any other websites owned by Petrofsky” (Docket No. 42 at 3), does not use the words “restrain”, “enjoin”, or “injunction”, let alone “temporary”, “preliminary”, or “permanent”, I don’t even know exactly what standard to show has not been met. I am also not sure whether this was intended as a part of some judgment on Merkey’s complaint (over which the Court has no jurisdiction, as discussed in my Objections) or as an exercise of some other ancillary jurisdiction of this Court that has never been specified. I cannot even be entirely sure that I am correct in assuming that this recommendation was intended to be a recommendation for an injunction, or if it was literally for just a pointless order that I perform a one-time removal.

In any event, there is no need for the Court to hold another hearing in this case. Even if this Court somehow had the jurisdiction and the discretion to enter a new order that somebody do something regarding the Settlement Agreement, it would nevertheless be clear that (1) Merkey is the only one petitioning this Court for any

relief, and (2) Merkey is a prolific liar and/or a raving lunatic,³ who has already caused the Court to hold one pointless hearing, and whose false representations to the Court continue unabated. As I acknowledged in my Objections (at 28-29), it is an unenviable but necessary duty of the Court to take any crank seriously, *initially*, if he manages to come up with the \$350 filing fee (or if he does not come up with the fee but can show that he is a pauper — but in that event a quicker path to dismissal for nuttiness is available, per 28 U.S.C. 1915(e)(2)(B)). However, once a complaint has been dismissed and this unpleasant duty has ended, it defies common sense for a court to continue to give Merkey the time of day, much less a hearing (or a reopening of his case), when he has shown himself to be devoid of good faith.

3 Conclusion

For all the reasons stated in my Objections, and for the additional reasons stated herein, the Court should (1) set aside the Magistrate Judge's order amending the complaint; (2) reject the Magistrate Judge's recommendation that default judgment be entered; (3) reject the Magistrate Judge's recommendation that I be ordered to remove the Settlement Agreement from websites; and, instead, (4) enter an order directing the Clerk of Court to reclose this case.

³Let me state clearly that I have not had an opportunity to personally examine Merkey and precisely diagnosis his mental defects. As it happens, I have also not had an opportunity to complete a residency in the medical specialty of psychiatry. In fact, I am not technically even a Medical Doctor.

My use of terms such as "nutjob" and "lunatic" is only meant to imprecisely convey a layman's perception of the conspicuous derangement that pervades most of Merkey's statements.

If I had more of a legal background, I would probably use different turns of phrase, such as: "Merkey is not just prone to exaggeration, he also is and can be deceptive, not only to his adversaries, but also to his own partners, his business associates and to the court. He deliberately describes his own, separate reality." *Novell v. Timpanogas Research Group*, 46 USPQ.2d 1197, 1204 (Utah 1998).

Respectfully submitted this Seventh day of August, 2006,


Alan P. Petrofsky, pro se

A Reply Declaration of Alan P. Petrofsky

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

JEFFREY VERNON MERKEY,

Plaintiff,

vs.

BRUCE PERENS, et al.,

Defendants.

**REPLY DECLARATION OF ALAN
P. PETROFSKY IN SUPPORT OF
HIS OBJECTIONS TO REPORT
AND RECOMMENDATION AND
ORDER GRANTING MOTION TO
AMEND COMPLAINT**

Case No. 2:05-CV-521-DAK

District Judge Dale A. Kimball
Magistrate Judge Paul M. Warner

I, Alan P. Petrofsky, declare as follows:

1. I am making this declaration in support of, and attached as an exhibit to, my reply memorandum in support of my objections to the June 30, 2006 Report and Recommendation and Order in the above-captioned case.
2. I have never refused service or delivery of anything from Jeffrey Vernon Merkey.
3. I have never been contacted by any criminal prosecutors or investigators from any state regarding any alleged crime in which Jeffrey Vernon Merkey was an alleged victim.
4. More generally: in the last two years, I have not been contacted by any authorities regarding any criminal matter or investigation whatsoever.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this Seventh day of August, 2006,
In the State of California,
County of San Mateo,



Alan P. Petrofsky

B Summons dated December 5, 2005

AO 440 (Rev. 10/93) Summons in a Civil Action

United States District Court

DISTRICT OF UTAH

Jeffrey Vernon Merkey

SUMMONS IN A CIVIL CASE

v.

CASE NUMBER: 2:05-cv-521 DAK

Bruce Perens, Alan P. Petrofsky, et. al.

TO : (Name and address of defendant)

Alan P. Petrofsky
3618 Alameda Apt 5
Menlo Park, CA 94025

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Jeffrey V. Merkey
1058 East 50 South
Lindon, UT 84042

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

MARKUS B. ZIMMER

December 5, 2005

CLERK DATE

(BY) DEPUTY CLERK



C Proof of Service made on December 8, 2005

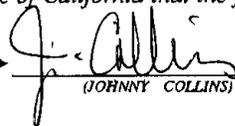
12-12-'05 11:40 FROM-D&T SERVICES 9759471375 T-204 P002/002 F-054
 Case 2:05-cv-00521-DAK-SAD Document 38 Filed 12/15/2005 Page 1 of 2

Attorney or Party without Attorney JEFFREY V MERKEY 1058 EAST 50 SOUTH LINDON, UT 84042		Telephone No.: (000) -	For Court Use Only FILED DISTRICT COURT 2005 DEC 15 P 1:48 DISTRICT OF UTAH	
In Pro Per Plaintiff		Ref. No. or File No.:		
Insert name of Court, and Judicial District and Branch Court. UNITED STATES DISTRICT COURT DISTRICT OF UTAH				
Plaintiff JEFFREY VERNON MERKEY Defendant: BRUCE PERENS, et al.				
PROOF OF SERVICE (Summons)	Hearing Date:	Time:	Dept/Div	Case Number: 2:05-CV-521-DAK CLERK

1. At the time of service I was at least 18 Years of age and not a party to this action.
2. I served copies of the:
Summons; In A Civil Case, Second Amended Complaint.
3. a. Party Served: **ALAN P. PETROFSKY (Defendant)**
 b. Person Served: party in item 3.a.
4. Address where the party was served: **3618 ALAMEDA, APT. 5
 MENLO PARK, CA**
5. I served the party:
 a. by personal service I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Thu, Dec. 08, 2005 (2) at: 8:00PM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
 a. as an individual defendant.
7. Person who served the papers:
 a. **JOHNNY COLLINS**
 b. **D & T SERVICES, LTD.**
 2146 N. Main Street, Suite A
 P.O. Box 5383
 Walnut Creek, CA 94596
 c. (925) 947-1221
 d. **The Fee for service was: \$90.00**
 e. I am: (3) Registered California process server.
 (i) Independent Contractor
 (ii) Registration No.: 361
 (iii) County: SAN MATEO
Recoverable Costs Per CCP 1033.5(a)(4)(B)

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Dec. 13, 2005
 Judicial Council Form POS-010
 Rule 982.9 (a)&(b) Rev Jul. 01, 2004

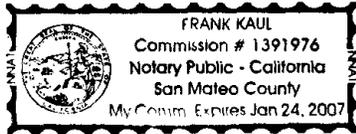
PROOF OF SERVICE  (JOHNNY COLLINS) MERKEY.964624

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of SAN MATEO } ss.

On 12/13/05 before me, Frank Kaul, Notary Public
personally appeared Johnny Collins
Name and Title of Officer (e.g., Jane Doe, Notary Public)
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]

Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

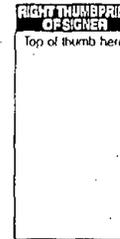
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



D Factac, Inc. v. King



SO ORDERED.

SIGNED this 21 day of February, 2006.


LEIF M. CLARK
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court

Western District of Texas
San Antonio Division

IN RE
RICHARD WILLIS KING
DEBTOR
FACTAC, INC.,
<i>PLAINTIFF</i>
v.
RICHARD WILLIS KING
<i>DEFENDANT</i>

BANKR. CASE No.

05-56485-C

CHAPTER 7

Adv. No. 05-5171-C

ORDER DENYING MOTION FOR INCOMPREHENSIBILITY

Before the court is a motion entitled "Defendant's Motion to Discharge Response to Plaintiff's Response to Defendant's Response Opposing Objection to Discharge." Doc. #7. As background, this adversary was commenced on December 14, 2005 with the filing of the plaintiff's complaint objecting to

the debtor's discharge. (Doc. #1). Defendant answered the complaint on January 12, 2006. Doc. #3. Plaintiff responded to the Defendant's answer on January 26, 2006. Doc. #6. On February 3, 2006, Defendant filed the above entitled motion. The court cannot determine the substance, if any, of the Defendant's legal argument, nor can the court even ascertain the relief that the Defendant is requesting. The Defendant's motion is accordingly denied for being incomprehensible.¹

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¹ Or, in the words of the competition judge to Adam Sandler's title character in the movie, "Billy Madison," after Billy Madison had responded to a question with an answer that sounded superficially reasonable but lacked any substance,

Mr. Madison, what you've just said is one of the most insanely idiotic things I've ever heard. At no point in your rambling, incoherent response was there anything that could even be considered a rational thought. Everyone in this room is now dumber for having listened to it. I award you no points, and may God have mercy on your soul.

Deciphering motions like the one presented here wastes valuable chamber staff time, and invites this sort of footnote.

Certificate of Service

I hereby certify that on the Seventh day of August, Anno Domini MMVI, a true and correct copy of the foregoing document, titled "PETROFSKY'S REPLY IN SUPPORT OF HIS OBJECTIONS TO REPORT AND RECOMMENDATION AND ORDER GRANTING MOTION TO AMEND COMPLAINT", including all of its attachments, was sent by U.S. Mail, postage prepaid, to the following:

Jeffrey Vernon Merkey
1058 E 50 S
Lindon UT 84042

Elisabeth R. Blattner-Thompson
Parsons Behle & Latimer
201 S Main St Ste 1800
Salt Lake City UT 84111

Deus Omnipotens
c/o His Holiness Benedict XVI, Vicar of Christ on Earth
SCV-00120
Vatican City State



Alan P. Petrofsky