

Jeffrey Vernon Merkey  
1058 East 50 South  
Lindon, Utah 84042  
Telephone: (801)427-3547  
Facsimile: (801)427-3547  
Plaintiff

FILED  
U.S. DISTRICT COURT  
2005 JUL 20 P 3: 36  
DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

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

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JEFFREY VERNON MERKEY  
Plaintiff,

**PLAINTIFF JEFFREY VERNON  
MERKEY'S EX-PARTE MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION TO  
CONDUCT EXPEDITED DISCOVERY**

vs.

YAHOO SCOX members atul666 and saltydogmn  
PAMELA JONES a.k.a. GROKLAW.COM,  
a.k.a. OSRM  
and GROKLAW.NET  
GRENDEL a.k.a. PAGANSAVAGE.COM  
MATT MERKEY a.k.a. MERKEY.NET  
BRANDON SUIT a.k.a. MERKEY.NET  
JOHN SAGE a.k.a. FINCHHAVEN.COM  
MRBUTTLE a.k.a. IP-WARS.NET  
JEFF CAUSEY a.k.a. IP-WARS.NET  
AL PETROFSKY a.k.a. SCOFACFS.ORG  
DOES 1 through 200,

Case No: 2:05-cv-521 DAK

Honorable Dale A. Kimball

Defendants.

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Pursuant to Federal Rule of Civil Procedure 26, 37, and 45 Respondent Jeffrey Vernon Merkey respectfully submits this Ex-Parte Motion for Leave to conduct Expedited Discovery for the purpose of identifying and locating the named parties for service of this action. As the majority of the named defendants are anonymous accounts and Internet websites, and since the defendants are evading service in this matter, and are

actively violating orders relative to the sealing of documents filed in this matter, expedited discovery is necessary to verify the identities of the parties, and locate their physical addresses for the purposes of performing service of process and enjoining their tortious conduct.

### **NATURE OF THIS ACTION**

1. This is a federal civil rights action pursuant to 42 U.S.C. § 1983 and § 1988, and the federal constitutional provisions and statutes referred to herein, by Jeffrey Vernon Merkey ("Merkey") against the named Defendants (sometimes hereinafter collectively referred to as "Defendants").

3. The damages Plaintiff seeks from Defendants are the proximate, direct and consequential result of Defendants' willful, and/or malicious, and/or intentional, and/or reckless and/or deliberately indifferent actions and/or omissions, individually or in concert with others, which violated Plaintiffs' federal constitutional and statutory rights including – but not limited to – their conduct in:

A. Unlawfully depriving, and conspiring to deprive, Plaintiff of his well-established federal constitutional and statutory rights to freely associate, to exercise his religious beliefs and practices, to enjoy his rights to privacy, and his rights to enjoy the due process and equal protection of law and the equal application of the law, without intrusion or interference, his freedom of speech, and his right of expressive association by conspiring to murder and/or

threatening to murder Plaintiff, enlisting and/or soliciting others to murder plaintiff, intentionally inflicting emotional distress upon Plaintiff and advocating through public Internet postings and websites that Plaintiff commit suicide, in stealing Plaintiff's identity on the public Internet and posting comments and emails which defame him, in engaging in slander of title of Plaintiff's intellectual property, and in publicly defaming Plaintiff and tortiously interfering in Plaintiffs career and business and cultural relationships;

B. Unlawfully harassing, intimidating, threatening, and otherwise substantially burdening the Plaintiff in the exercise their fundamental religious beliefs, freedom of speech, and the right of expressive association, by conspiring to murder and/or threatening to murder Plaintiff, enlisting and/or soliciting others to murder plaintiff, intentionally inflicting emotional distress upon plaintiff and advocating through public Internet postings and websites that Plaintiff commit suicide; and in stealing Plaintiff's identity on the public Internet and posting comments and emails which defame him, in engaging in slander of title of Plaintiff's intellectual property, in publicly defaming Plaintiff and tortiously interfering in Plaintiffs career and business and cultural relationships;

3. Plaintiffs assert that Defendants' conduct challenged herein, has and/or continues to deprive Plaintiffs of their well-established federal constitutional and statutory rights to: (1) freedom of speech; (2) assembly; (3) anti-establishment of religion; (4) free exercise of religion; (5) privacy; (6) due process, and (8) equal protection of the laws,

all guaranteed under the First Amendment, and/or Fourth Amendment, and/or Fifth and/or Fourteenth Amendment to the United States Constitution, and/or the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §2000cc et seq., PL 106274, and/or 42 U.S.C. §1996a, and/or Religious Freedom Restoration Act, 42 U.S.C. §2000bb-1 et seq.; and that each of the Defendants is personally and/or officially liable to the Plaintiffs for their malicious, and/or intentional, and/or deliberately indifferent violations and deprivations of Plaintiffs' federal constitutional and statutory rights under both Federal and Utah State Law.

4. Plaintiffs reserve their right to also assert additional, pendent claims against Defendants for violating Plaintiffs' rights under the Constitution and Laws of the State of Utah.

#### **STATEMENT OF FACTS**

1. On April 21, 2005 this action was filed with the Court late in the afternoon on this date. During filing, Exhibit 2 was filed under seal and contained a cover sheet which clearly stated, "Filed Under Seal" as required by the Local Rules.
2. The Court Clerk stated that sealed exhibits could not be filed with a Verified Petition and over-labeled the words "Exhibit 2 - Filed under Seal" for the Exhibit 2 cover sheet with whiteout, and accepted the filing, and instructed plaintiff to submit an order to Judge Kimball to place the exhibit under seal.

3. Plaintiff asked the clerk for an envelope to place Exhibit 2 into and to notify the docket clerk not to scan Exhibit 2 until the order could be submitted.
  
4. Plaintiff promptly contacted the Law Clerk in Judge Kimball's Court the following morning and stated that Exhibit 2 should be placed under Seal. An order was prepared and promptly signed by the Court, unfortunately, the Docket clerk scanned Exhibit 2, despite Plaintiff's request it not be scanned, and placed it onto the PACER system for a short period of time on April 22, 2005. Judge Kimball's Law Clerk, Susie Hindley, informed Plaintiff that the Court clerks were in error if they stated a sealed Exhibit could not be filed with a Verified Petition. Although Plaintiff did not place the Exhibit into an envelope, he did ask for one, and the cover sheet plainly stated the document was "Filed under Seal".
  
5. During the short period of time the Exhibit was placed onto the PACER system it was downloaded by Groklaw, SCOFACRS.ORG and several other individuals who subsequently distributed the document on the public Internet.
  
6. An Individual named Al Petrofsky posted the document to LWN.NET and allowed it to be mirrored onto a Server in Czechoslovakia and LWN.NET members distributed thousands of copies across the public Internet after the Court had sealed the Exhibit. (Exhibit 1)
  
7. Pamela Jones and Groklaw posted copies of the Exhibit on Groklaw and distributed thousands of copies from the Groklaw website after the Court had sealed the

Exhibit. (Exhibit 2)

8. Both individuals knew the document was sealed by the court and also made statements they were aware the document was confidential, however, despite this fact continued to distribute it on the Internet. (Exhibits 1 & 2)
9. These individuals and websites had access to PACER and had notice the document had been sealed but continued to distribute it and post comments. Al Petrofsky sent an email to the Court stating he knew the document was sealed and boldly stated he would continue to send it to others unless he was personally served with the sealing order. (Exhibit 3)
10. Merkey.Net, pagansavage.com do not have an identifiable address of service and attempts to send emails to determine service have been unanswered.
11. Bruce Perens approached Plaintiff and negotiated settlement of his claims in exchange for withdrawing his false and libelous comments, and admonishing Linux and OSS members for posting death threats on the public Internet, and was dismissed from the complaint without prejudice. (Exhibit 4)
12. Slashdot.org also removed the death threats and inappropriate postings from their website and also have been dismissed from the complaint without prejudice.
13. Plaintiff contacted LWN.NET and asked for the postings of the sealed document to

be removed. Jonathon Cohen of LWN.NET promptly removed the postings from the LWN.NET website as required from the Court's order.

14. Plaintiff contacted Patricia Crawford, Associate General Counsel for the University of North Carolina and Chapel Hill, the facilities which host the Groklaw website. Ms. Crawford expressed concern and stated that the UNC would not tolerate violation of Federal Court orders by any hosted party and promptly had the sealed documents removed from the Groklaw website and seized copies of the Groklaw master database and other sealed documents to prevent Pamela Jones and Groklaw members from spoiling evidence in this matter. Ms. Crawford asked Plaintiff to get a subpoena issued to UNC immediately in order to turn over this evidence to the Court immediately.

15. Pamela Jones sent an email in November of 2004 in response to attempt to subpoena her for posting sealed court documents from the Novell vs. Merkey lawsuit filed in Utah State Court, and stated in this email she would destroy emails and other evidence if served with a subpoena. (Exhibit 5)

16. Plaintiff has also contacted Yahoo, Inc. to remove the sealed documents from their website and to date, they have not complied with this request. (Exhibit 6)

17. Plaintiff is unable to identify with certainty for process of service the identities of these individuals who have posted death threats, stolen financial information, or who are actively violating this Court's orders since the Internet service providers and

UNC and others cannot provide this information unless they receive a subpoena from this court, and the individuals use false names and do not provide valid addresses or contact information on their websites. Most of these individuals are clearly evading service in this matter and it is difficult to determine their actual identities unless their Internet Service Providers can be served with discovery to located and accurately identify the parties.

18. Plaintiff contacted OSRM, Pamela Jones former employer and spoke with Jill Ratkevik, the public relations contact for OSRM, and she stated Pamela Jones of Groklaw was aware of this action and had vacated her residence and was "hiding out" and would continue to evade service of process in this matter and was using a "go between" between Jill and other press members to avoid being located by either Plaintiff, or SCO who apparently were also attempting to serve her with process in the matter of SCO vs. IBM which is also before this Court.

### **ARGUMENT**

Given that the named defendants are evading service, threatening to spoilate evidence, posting death threats and engaging to libel and theft of sensitive financial information of Plaintiff, blatantly violating the Courts orders, and misusing the PACER system to distribute sealed documents to the general public, including engaging in conspiracy with Foreign Nationals in other countries to secret, copy, and distribute sensitive Court documents in pending proceedings, it would seem almost necessary to allow Expedited discovery in this matter in order to determine who these individuals are and

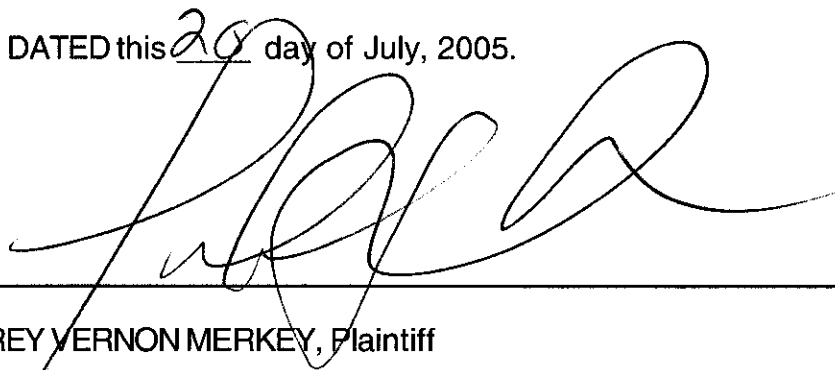


identify them to the Court and bring them before this Court for appropriate action as deemed proper by the Court.

### CONCLUSION

For the forgoing reasons, Plaintiff respectfully seeks leave of the Court to send out Subpoena's for the purpose of locating and identifying these individuals and collecting the evidence other attorneys and Internet Service Providers have obtained relative to these egregious and tortious acts by Defendants.

DATED this 20 day of July, 2005.

A large, stylized handwritten signature in black ink, appearing to read 'J. Merkey', is written over a horizontal line. The signature is fluid and cursive, with the first letter 'J' being particularly large and prominent.

JEFFREY VERNON MERKEY, Plaintiff

# Exhibit 1

LWN: The next chapter in the Merkey saga - Mozilla

File Edit View Go Bookmarks Tools Window Help

Back Forward Reload Stop <http://lwn.net/Articles/140872/> Search Print

Home Bookmarks Red Hat, Inc. Red Hat Network Support Shop Products Training

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**Images of the complaint and its exhibits**

(Posted Jun 22, 2005 20:53 UTC (Wed) by guest **petrofsky**) (Post reply)

I can verify that this complaint was really filed. Here are images of the complaint and its exhibits that I obtained from the court's subscribers-only website. The second exhibit appears to be a 1998 confidential settlement of two lawsuits between Novell and Merkey. I wrote some thoughts about the complaint in messages 275549 and 275622 on Yahoo's SCOX message board. (The latter message references a complaint against Merkey that was filed in April.)

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**Mirror of merkey\_v\_perens-1-2.pdf**

(Posted Jun 24, 2005 3:13 UTC (Fri) by guest **Feldegast**) (Post reply)

here is a mirror of merkey\_v\_perens-1-2.pdf  
[http://www.multiweb.cz/merkey/merkey\\_v\\_perens-1-2.pdf](http://www.multiweb.cz/merkey/merkey_v_perens-1-2.pdf)

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**The next chapter in the Merkey saga - seems like he has a case ...**

(Posted Jun 22, 2005 22:46 UTC (Wed) by subscriber **sp\_ware**) (Post reply)

Just look at the first item I found by pairing "Bruce Perens" and "kill" on a Google search!

"Why is Canopy so happy to kill Linux, destroy the GPL, and counterdemonstrate

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(Posted Jun 22, 2005 22:46 UTC (Wed) by subscriber **sp\_ware**) (Post reply)

# Exhibit 2

GROKLAW - Mozilla

File Edit View Go Bookmarks Tools Window Help

Back Forward Reload Stop file:///groklaw-1.html Search Print

Home Bookmarks Red Hat, Inc. Red Hat Network Support Shop Products Training

# Groklaw

When you want to know more but don't know where to look

IANAL. I am a journalist with a paralegal background, so if you have a legal problem and want advice, please hire an attorney.

Home  
Quote DB  
Search  
GrokLine  
GrokDoc

Legal Links  
Archives  
Legal Docs  
RH Timeline  
Commenting  
Novell-MS  
Transcripts  
IBM Timeline  
Mission/Index  
MS Litigation  
SCO Financials  
Courts  
Where is ...?  
Contracts  
GPL  
Novell Timeline  
Case Summary  
Patents  
SCO Financials  
Courts

Settlement Agreement [Novell v. Wolf Mountain] (1998-08-18) | 16 comments | [Create New Account](#)

Oldest First | Threaded | Refresh | Reply

Comments belong to whoever posts them. Please notify us of inappropriate comments.

Settlement Agreement [Novell v. Wolf Mountain] (1998-08-18)

Author: [feldegast](#) on Wednesday, June 22 2005 @ 11:22 PM EDT

Settlement Agreement [Novell v. Wolf Mountain] (1998-08-18) pdf

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[ [Reply to This](#) | [Parent](#) | # ]

- [Sealed?](#) - Author: [Anonymous](#) on Wednesday, June 22 2005 @ 11:38 PM EDT
  - [Delete grandparent? PJ?](#) - Author: [Anonymous](#) on Wednesday, June 22 2005 @ 11:42 PM EDT
    - [Delete grandparent? PJ?](#) - Author: [feldegast](#) on Wednesday, June 22 2005 @ 11:48 PM EDT
      - [Delete grandparent? PJ?](#) - Author: [Anonymous](#) on Wednesday, June 22 2005 @ 11:52 PM EDT
  - [Sealed?](#) - Author: [lava](#) on Wednesday, June 22 2005 @ 11:47 PM EDT

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- [Delete grandparent? PJ?](#) - Author: [Anonymous](#) on Wednesday, June 22 2005 @ 11:42 PM EDT

groklaw - Mozilla

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Back Forward Reload Stop file:///groklaw-2.html Search Print

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**publish -> publish**

Authored by: Anonymous on Wednesday, June 22 2005 @ 11:42 PM EDT  
 In Factual Background)

[ Reply to This | # ]

**Delete grandparent? PJ?**

Authored by: Anonymous on Wednesday, June 22 2005 @ 11:42 PM EDT  
 (replying to myself)

Re-reading the docket entry, a redacted version was supposed to be substituted.  
 However the PDF linked by grandparent doesn't appear to be redacted.

PJ, should this thread be removed?

[ Reply to This | # ]

**Is there a copy of Wallace's motion for Summary Judgment Motion**

Authored by: Anonymous on Wednesday, June 22 2005 @ 11:43 PM EDT  
 ... hanging around?

[ Reply to This | # ]

**Sealed?**

Authored by: fava on Wednesday, June 22 2005 @ 11:47 PM EDT  
 Not quite.

Merkey did not follow the proper procedure for submitting a document under seal  
 therefore the clerk didnt seal it.

The mistake was by Merkey not the clerk.

[ Reply to This | # ]

**Delete grandparent? PJ?**

Authored by: federkast on Wednesday, June 22 2005 @ 11:48 PM EDT  
 that's PJ's call. if she deletes it so be it

The mistake was by Merkey not the clerk.

[ Reply to This | # ]

GROKLAW - Mozilla

File Edit View Go Bookmarks Tools Window Help

Back Forward Reload Stop file:///groklaw-2.html Search Print

Home Bookmarks Red Hat, Inc Red Hat Network Support Shop Products Training

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[ Reply to This | # ]

**review -> review**

Authored by: Anonymous on Wednesday, June 22 2005 @ 11:48 PM EDT

... also in the Factual Background section

[ Reply to This | # ]

**Delete grandparent? PJ?**

Authored by: Anonymous on Wednesday, June 22 2005 @ 11:52 PM EDT

No worries. I was actually looking for that document earlier today (er, the redacted version of it anyway). Thanks for posting, but heaven knows it doesn't belong here under the circumstances.

[ Reply to This | # ]

**FSF Moves to Dismiss Wallace and for Stay on Filing Briefs on Summary Judgment Motion**

Authored by: LocoYake! on Wednesday, June 22 2005 @ 11:54 PM EDT

If the statements made in the motion to dismiss are correct the complaint cannot be amended to correct errors. The error was in the FILING of the complaint when he has **no grounds** on which to do so.

Waiting for the games I play to be released in Linux, or a decent Windows emulator, to switch entirely.

[ Reply to This | # ]

**FSF Moves to Dismiss Wallace and for Stay on Filing Briefs on Summary Judgment Motion**

Authored by: Anonymous on Wednesday, June 22 2005 @ 11:56 PM EDT

Not necessarily, the motion to dismiss mostly lists allegations that the complaint lacks. I'd expect Wallace to be given a chance to try to file an amended complaint that includes the missing allegations.

[ Reply to This | # ]

GROKLAW - Mozilla

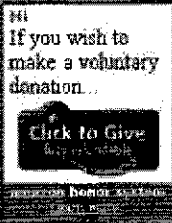
File Edit View Go Bookmarks Tools Window Help


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[New Timeline](#)  
[Mission Index](#)  
[MS Litigation](#)  
[SCO Financials](#)  
[Courts](#)  
[Where is ...?](#)  
[Contracts](#)  
[GPL](#)  
[Novell Timeline](#)  
[Case Summary](#)  
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[Patent News](#)

**XML**


  
 If you wish to make a voluntary donation...


  
[law.com Dictionary](#)

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**User Functions**

Username:

Password:

---

**User Functions**

- [Delete grandparent? PJ?](#) - Authored by: feidecast on Wednesday, June 22 2005 @ 11:48 PM EDT
  - [Delete grandparent? PJ?](#) - Authored by: Anonymous on Wednesday, June 22 2005 @ 11:52 PM EDT

**Sealed?**

Authored by: fava on Wednesday, June 22 2005 @ 11:47 PM EDT

Not quite.

Merkey did not follow the proper procedure for submitting a document under seal therefore the clerk didnt seal it.

The mistake was by Merkey not the clerk.

[ [Reply to This](#) | [Parent](#) | # ]

- [Liquidated Damages for Breach of the Press Release Or Confidentiality Provisions](#) - Authored by: moonbroth on Thursday, June 23 2005 @ 12:55 AM EDT

**Merkey breached?**

Authored by: Anonymous on Thursday, June 23 2005 @ 12:45 AM EDT

Replying to myself again... This is a truly fascinating document, but I'll try not to talk about anything in it not govered by its confidentiality clause.

Before breaching section 6 of the settlement in general by initially filing it sans seal, did he breach section 6(d) specifically?

Section 6 governs confidentiality, and 6(d) says that Merkey may not "publically discuss or comment upon [...] the scope of the Permanent Injunction as a measure of the validity of either side's position in the Trade Secret Litigation."

But didn't Merkey specifically say that he won, but the filings (including, presumably, the permanent injunction) were sealed so he couldn't show it?

[ [Reply to This](#) | [Parent](#) | # ]

- [Merkey breached?](#) - Authored by: meshuggeneh on Thursday, June 23 2005 @ 01:57 AM EDT

But didn't Merkey specifically say that he won, but the filings (including, presumably, the permanent injunction) were sealed so he couldn't show it?



# Exhibit 3

**Subject:** Re: Belatedly sealed document in Merkey v. Perens  
**From:** jmerkey <jmerkey@utah-nac.org>  
**Date:** Thu, 23 Jun 2005 09:41:19 -0600  
**To:** Alan P Petrofsky <al@petrofsky.org>  
**CC:** Susie Hindley <Susie\_Hindley@utd.uscourts.gov>, Jim F Lundberg <jflundberg@novell.com>

All,

After leaving Mr. Petrofsky a message last night, he continued to distribute these documents and subsequently posted them to a site in the country of Checkoslovakia. He and his associates then created links on Groklaw and continued to distribute copies. I have snapshots of the text, comments, and downloads from al and others assisting in violating the courts order. I am preparing an ex-parte motion for TRO against al, groklaw, and his conspirators for an order requiring that they remove this content and asking the court to prohibit these sites from using any court pleadings obtained from PACER for any pending cases until the cases have been adjudicated. These internet sites have conspired with individuals in communist countries and have assisted deliberately in the violation of the courts order. Al is simply a liar, and I will file the evidence next week with the Court detailing his actions and those of his associates.  
Sincerely,

Jeff

Alan P Petrofsky wrote:

Dear Ms. Hindley:

I understand you are the law clerk assigned to Judge Kimball's odd-numbered cases. One of those cases is Merkey v. Perens et al., 2:05-cv-00521-DAK, which was filed late on Tuesday (June 21).

The second exhibit to the complaint is a copy of a 1998 settlement agreement between Merkey, Novell, Inc., and some other parties.

I am not a party to the settlement agreement nor to the Merkey v. Perens action. I am, however, in the habit of collecting some documents of interest to people following the litigation efforts of the SCO Group, Inc.. I make such documents publicly available on the scofacts.org internet website. (The SCO Group is also not a party to the Merkey case, but it is connected to the case by, among other things, the plaintiff's allegations on pages 18-22 of the complaint.)

On Wednesday morning, I obtained copies of the Merkey complaint and its exhibits from the court's ECF system. I then placed them at the following locations:

<http://scofacts.org/Merkey-Perens-1.pdf> (the complaint)  
[http://scofacts.org/Merkey-Perens-1\\_1.pdf](http://scofacts.org/Merkey-Perens-1_1.pdf) (exhibits 1 and 2)

I mentioned their locations on two public message systems, and the exhibits have subsequently been downloaded by visitors from over a hundred different internet addresses around the world.

I notice that on Wednesday afternoon, Judge Kimball entered an order that reads:

Plaintiff filed a Verified Complaint in this matter on June 21, 2005, including a confidential settlement agreement as Exhibit 2 to the Verified Complaint. Plaintiff notified the court that he intended to file this exhibit under seal. However, because it was not filed according to the court's rules regarding sealed documents,

the exhibit was scanned into the court's public electronic docket. Pursuant to paragraph 6 of the settlement agreement, the parties agreed that the settlement agreement was confidential. Therefore, the court hereby seals Exhibit 2 of the Verified Complaint in this matter and directs the Clerk of Court to remove the exhibit from the court's electronic docket.

I have received, apparently from Jeff Merkey, an email titled "Criminal Contempt", which states that "I have notified the Court you are distributing copies in violation of Judge Kimballs order". (The full text of the email is below.)

I notice, however, that the order, as written, is directed solely at the Clerk of Court, and not at me.

Please let me know if the court intends to enter an order that would forbid my distribution of this document.

Yours truly,

Alan P. Petrofsky

=====

Date: Wed, 22 Jun 2005 17:01:49 -0600  
From: jmerkey <jmerkey@utah-nac.org>  
To: [al@scofacts.org](mailto:al@scofacts.org)  
Subject: Criminal Contempt

Hey Al,

You have copies of the Novell settlement agreement posted on your site. I have downloaded an forwarded links and hosting information to Judge Kimball's Clerks. There is an order sealing these documents (the complaint is OK). I have notified the Court you are distributing copies in violation of Judge Kimballs order. Go check PACER.

I advise you to take down the documents immediately.

Jeff

# Exhibit 4

# Bruce Perens Dismissed without Prejudice from Federal Action 2:05-CV-521-DAK

Wednesday, July 06 2005 @ 06:30 PM MDT

Contributed by: Admin

We are pleased to announce settlement has been reached between Mr. Bruce Perens and Mr. Merkey relative all claims and causes of action arising from Federal Lawsuit 2:05-cv-521-DAK filed in US District Court in Utah. All claims and causes of action will be dismissed relative to Mr. Perens as of this date.

On a personal note, Mr. Merkey applauds Mr. Perens courage, candor, and demonstrated leadership in addressing these issues.

Mr. Perens has issued the following public statement regarding the litigation and this statement is posted here pursuant to an agreement between the parties.

## STATEMENT OF BRUCE PERENS

"You may have noticed that Mr. Jeff Merkey has filed suit against a number of net entities and I. Mr. Merkey subsequently offered to withdraw his claims against me if I would issue a short statement. Of course I was concerned that his request could be an attempt to suppress my right to free speech on the net, but it turns out that the statement that Mr. Merkey asked for contains nothing I would not want to say.

Several people who have my sympathy are still being sued. I feel that my removal from the case will only hasten its demise, and I need to spend my time on important fights rather than this silly one.

I have made some statements regarding Mr. Merkey's relationship to SCO and Canopy Group that he would like me to clarify. He sold certain assets of his company to Canopy Group some time ago, but did not go to work for Canopy or SCO. Mr. Merkey has expressed a very strong disdain for both companies.

I subsequently suggested in public statements that Mr. Merkey work to cultivate his people skills in engaging and interacting with others, which is something he himself has admitted needs improvement. Subsequent to making these public comments, I observed a large number of written attacks with violent connotations made against him by various net entities. This conduct is the opposite of what I would endorse or support.

There are many such attacks visible on the net. Of course, weblog postings do not contain an "author's age" field. Violent-language postings are not made by the responsible members of any Open Source community I know of. If you've been making them, know well that you are not one of us.

I've made statements before that our community should always take the high road, and that is no less true today. If you see people posting violent language, please do what you can to discourage them. Some of them are outsiders whose interests will be promoted if they make us look bad. The rest are along for some adolescent thrill that is outside of the ethos of our community. Don't be carried along with them. Post sober rebuttals to their speech, moderate their postings down where possible, and approach weblog operators to remove them as inappropriate.

This is not to say that you should not write about what you feel strongly about. It's essential that you do so. Just remember that effective writing doesn't contain violent language."

Bruce Perens

0 comments

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<http://www.merkeylaw.com/article.php?story=20050706183025663>

# Exhibit 5

RE: [Fwd: Re: Novell postings on Groklaw]

**Subject:** RE: [Fwd: Re: Novell postings on Groklaw]  
**From:** pj@groklaw.com  
**Date:** Thu, 28 Oct 2004 10:07:43 -0700  
**To:** "Jeff V. Merkey" <jmerkey@drdos.com>

Jeff,

You need to stop threatening and libeling me. What you are doing is actionable.

It's also pointless. I never keep email, just as policy. But I will tell you this: I have nothing to do with either IBM or Novell, so your imaginations are inaccurate. Consequently, I couldn't care less what they say or do about Groklaw, because I don't do it to please them in any way. Groklaw is a community-based project.

PJ

----- Original Message -----

Subject: [Fwd: Re: Novell postings on Groklaw]  
From: "Jeff V. Merkey" <jmerkey@drdos.com>  
Date: Thu, October 28, 2004 10:23 am  
To: [pj@groklaw.com](mailto:pj@groklaw.com)

PJ,

I spoke with Novell and the UNC about your "activities". I can tell you

I have people trying to track you down and I am going to find out who you are, where you are, and if possible, obtain discovery on your email traffic with people. This site is like digging near a septic tank, the deeper you dig, the worse it smells.

I have also been informed UNC has initiated an investigation into the activities that occur on this site. In short, people are watching this site very carefully, so I would be careful posting hate speech and libel to this site, and allowing the

"thundering herd" attacks of people to continue.

I also spoke with Allan Sullivan and he stated IBM is going to publically disavow association with this site and Novell has stated the same. He also relayed that your stories and attacks on O'Gara are out in the weeds. He stated he knew the people you had in the hearing and that you deliberately misrepresented what happened in court, and that O'Gara's story was accurate, although he preferred

none of it made into the press.

Think long and hard before you post another article about me on this site, and I notice the previous article is not taken down. You can expect intense scrutiny from me and others until it is.

Very Truly Yours,

Jeff V. Merkey





RE: [Fwd: Re: Novell postings on Groklaw]

**Subject:** RE: [Fwd: Re: Novell postings on Groklaw]

**From:** pj@groklaw.com

**Date:** Thu, 28 Oct 2004 10:41:55 -0700

**To:** "Jeff V. Merkey" <jmerkey@drdos.com>

Your legal analysis is flawed. You are libeling me and you need to stop falsely accusing me and Groklaw. What you are doing is actionable, and the bigger this gets, the greater your liability. I would suggest that you not only stop but that you contact everyone you have libeled me to and make a correction.

The court's ruling is not sealed. It is published in USPQ, the patent quarterly, which is publicly available.

PJ

----- Original Message -----

Subject: Re: [Fwd: Re: Novell postings on Groklaw]

From: "Jeff V. Merkey" <jmerkey@drdos.com>

Date: Thu, October 28, 2004 12:49 pm

To: [pj@groklaw.com](mailto:pj@groklaw.com)

[pj@groklaw.com](mailto:pj@groklaw.com) wrote:

Jeff,

You need to stop threatening and libeling me. What you are doing is actionable.

Who are you? You want to be a "real" person. It isn't possible to libel an imaginary person on the internet. If you want to have a "real" closure to all this, then call me -- now. 801-427-3547. I am not a jerk or an asshole, but you are creating a huge mess that just may end up back in court with Novell (with you getting hit with Subpoena Deus Tecum Requests left and right). They just sent me a threat to reopen the litigation because of this stupid article, do you think I want to go back to court with Novell after 7 years.

You have no idea what kind of a hornets nest this case is. This ruling was so far from the truth in this case, it's not even funny. You want me to go away for good? I'd like nothing better, but hosting that ruling can and probably will result in the whole Novell case being reopened again -- with you in the middle as well.

Where did you get a copy of this document -- the case has been sealed? Tell me this. Novell is barred from sending copies of it out or even commenting on the litigation by the terms of the agreement. By you posting the ruling (which now the whole planet has copies of it -- thanks to you), how can it ever be taken down?

Your whole premise about SCO/Merkey was completely false -- period.

You want me to drop this. You drop it.

Jeff

It's also pointless. I never keep email, just as policy. But I will tell you this: I have nothing to do with either IBM or Novell, so your

# Exhibit 6

Yahoo! SCOX - Mozilla

File Edit View Go Bookmarks Tools Window Help

Back Forward Reload Stop http://messages.yahoo.com/bbs?mm=1 Search Print

Home Bookmarks Red Hat, Inc. Red Hat Network Support Shop Products Training

Options Edit Public Profile Add to My Yahoo!

**Yahoo! Message Boards: SCOX**

< Previous | Next > [ First | Last | **Msg List** ] Msg #:  Go Reply

**Recommend this Post** - This post has 26 recommendations **Ignore this User** | **Report Abuse**

**Killing Me Digitally With His Song** 06/22/05 01:59 pm  
Msg: 275549 of 280597

by: [al\\_petrofsky](#)  
Long-Term Sentiment: **Strong Sell**

Well, Merkey really filed his complaint yesterday, and it went up on ECF this morning at 8:46 -0600. The case is 2:05-cv-00521-DAK

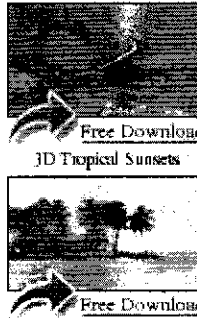
[scofacts.org/Merkey-Perens-1.pdf](http://scofacts.org/Merkey-Perens-1.pdf)  
[scofacts.org/Merkey-Perens-1\\_1.pdf](http://scofacts.org/Merkey-Perens-1_1.pdf)

The complaint appears to match the text posted to [merkeylaw.com](http://merkeylaw.com) yesterday.

Exhibit 2 (part of the 1\_1.pdf) is interesting. It's a ten-page settlement agreement executed on 1998-08-18 by Merkey, Novell (by Senior VP David R. Bradford), Timpanogas Research Group (by President Merkey), Darren Major, and Larry Angus. It settles both the 1997 Novell v. Wolf Mountain Group, Merkey, et al., settlement agreement executed on 1998-08-18 by Merkey, Novell (by Senior VP David

AD

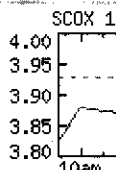
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3.85  
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