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

JEFFREY VERNON MERKEY

No. 2:05-CV-521 DAK

Plaintiff,

**NOTICE OF EMERGENCY
MOTION AND EMERGENCY
MOTION FOR LEAVE TO
FILE BRIEF *AMICUS CURIAE*
IN OPPOSITION TO
PLAINTIFF'S *EX PARTE*
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; GRENDDEL 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

Date: August 17, 2005
Time: 11:30 a.m.
Rm: 248
Judge: Hon. Samuel Alba

Trial Date: Not set
Complaint Filed: July 20, 2005

Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:¹

PLEASE TAKE NOTICE that the *Electronic Frontier Foundation* (“EFF”) and the *American Civil Liberties Union of Utah* (“ACLU of Utah”) hereby request leave to file the accompanying brief *amici curiae* opposing Plaintiff’s motion for leave to conduct expedited discovery. (Brief attached as Exhibit 1.)

This is a civil rights action in which Plaintiff seeks damages and fees and costs against ten named Defendants, most of whom appear to have no relationship to each other, and four of whom have elected to speak anonymously. Plaintiff alleges that Defendants have unlawfully conspired to murder and/or threatened to murder, and/or solicited others to murder him. Plaintiff also accuses Defendants of defamation, slander of title, intentional infliction of emotional distress, identity theft, and tortious interference with Plaintiff’s “career and business and cultural relationships.” Plaintiff contends that the alleged bad conduct constitutes a violation of his civil and statutory rights under federal and Utah state law. Plaintiff has moved the Court, *ex parte*, for leave to take expedited discovery to identify and locate the Defendants, including the four anonymous Defendants.

EFF is a donor-supported membership organization working to protect fundamental rights regardless of technology; to educate the press, policymakers, and the general public about civil liberties issues related to technology; and to act as a defender of those liberties. EFF currently has over 8,000 paying members nationwide, and over 50,000 subscribers to EFFector, its email newsletter, including over 400 subscribers in Utah. Among its various activities, EFF opposes misguided legislation, initiates and defends court cases preserving individuals’ rights, launches global public campaigns, introduces leading edge proposals and papers, hosts frequent

¹ It is the understanding of amici that Plaintiff has failed to properly notify and serve the Defendants in this matter. Amici are serving Plaintiff and Defendants that have submitted documents to the Court in connection with Plaintiff’s *Ex Parte* Motion with copies of this Motion and the accompanying Brief.

educational events, engages the press regularly, and publishes a comprehensive archive of digital civil liberties information on the most linked-to web sites in the world at www.eff.org.

EFF is particularly concerned with protecting the rights of individuals to speak anonymously, on the Internet or otherwise, and regularly advises individuals around the country whose free speech rights are threatened. This case squarely impacts the interests of EFF members and the interests of anonymous speakers who we seek to protect. In its brief, EFF identifies critical First Amendment and due process requirements that must be taken into account before Plaintiff is permitted to intrude upon the rights of anonymous Defendants.

The ACLU of Utah is a nonprofit, nonpartisan membership organization, founded in 1958. The ACLU of Utah is the state affiliate of the ACLU, which was founded in 1920 to protect and advance civil liberties throughout the United States and has more than 300,000 members nationwide. The ACLU of Utah has more than 2,200 members, and more than 650 subscribers to its email newsletter. The ACLU of Utah has been involved extensively in litigation and advocacy to protect the rights of speakers under the First Amendment. Some of this litigation and advocacy has focused on First Amendment rights in the context of the Internet. For instance, the ACLU of Utah is currently plaintiff and counsel in *The King's English v. Shurtleff*, 2:05-cv-00485-DB, a federal lawsuit challenging a variety of restrictions on Internet speech.

EFF and the ACLU file this motion on an emergency basis because Plaintiff seeks expedited discovery yet has failed to properly notify multiple Defendants of the very existence of this lawsuit. Without proper notice, several Defendants are unable to appear before this Court on August 17, 2005, in order to oppose Plaintiff's motion. EFF and the ACLU of Utah are deeply concerned that the interests of speakers who have chosen to exercise their Constitutional right to speak anonymously – Defendants identified by Internet aliases atul666, saltydogmn, mrbuttle a.k.a IP-Wars.com, and Grendel a.k.a. PaganSavage.com – will be compromised if the Court

grants Plaintiff his requested relief.

Amici believe it is critical that the First Amendment rights of individuals like the anonymous speakers here are protected from discovery fishing expeditions in the absence of a genuine need that outweighs the constitutionally protected interest. The choice to speak anonymously should not be invalidated by judicial process unless it is clearly shown that specifically identified, relevant information about an anonymous poster is central to the claims of the party seeking the information, that those claims are viable, and that the party can acquire the information in no other manner.

Accordingly, EFF and the ACLU of Utah respectfully request leave to file the accompanying brief *amici curiae*, which discusses in detail the ample precedent rejecting the use of civil discovery tools where the disclosure of information would infringe another party's First Amendment interest in anonymity. Plaintiff has made no attempts to satisfy the significant requirements presented by both the First Amendment and expedited discovery rules.

For the above reasons, EFF and the ACLU of Utah respectfully request that this Court grant this Motion for Leave to File as *Amici Curiae*.

Dated: August 15, 2005

Respectfully submitted,

Margaret Plane
American Civil Liberties Union of Utah
Foundation, Inc.

Electronic Frontier Foundation

Attorneys for Amicus Curiae

CERTIFICATE OF MAILING

I hereby certify that on August 15, 2005 I caused to be sent a true and correct copy of the foregoing NOTICE OF EMERGENCY MOTION AND EMERGENCY MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN OPPOSITION TO PLAINTIFF'S EX PARTE MOTION TO CONDUCT EXPEDITED DISCOVERY to:

Jeffrey Vernon Merkey
1058 East 50 South
Lindon, Utah 84042

(via hand delivery), and

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

(via overnight service).

AMERICAN CIVIL LIBERTIES UNION
OF UTAH FOUNDATION, INC.

ELECTRONIC FRONTIER FOUNDATION
Attorneys for Amici Curiae

By _____
MARGARET PLANE