

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ELVEN JOE SWISHER, PRO SE,)
WALTER O. LINDSEY, PRO SE,)

Case No. CV-06-338-S-BLW

Plaintiffs,)

**MEMORANDUM
DECISION AND ORDER**

v.)

MIKE MEADE; PATRICK D. TEAGUE;)
STEVEN TEAGUE; JOSEPH VOLK;)
FRANK KISH; VIC VOLTAGGIO;)
DENNIS DRESSLER; ROBERT)
GILMORE; BILL SNOW; DAVE LEWIS;)
DUANE ANDERSON; MICHAEL A.)
BLUM; HELEN HICKS; JOHN DOE #1)
THROUGH JOHN DOE #15; JANE DOE)
#1 THROUGH JANE DOE #15; JOHN)
DOE #16 THROUGH JOHN DOE #20;)
JANE DOE #15 THROUGH JANE DOE)
#20; NATIONAL MARINE CORPS)
LEAGUE (US CORP.); IDAHO)
OBSERVER; DON HARKINS; WESLEY)
HOYT; ROLAND HINKSON; U.S.)
TREASURY DEPARTMENT; NATIONAL)
PERSONNEL RECORDS CENTER (US)
AGENCY); IDAHO DIVISION OF)
VETERANS SERVICES (IDAHO STATE)
AGENCY); UNITED STATES MARINE)
CORP. (US Agency); PAUL HASTINGS;)
GREG TOWERTON; BARRY)
GEORGOPULOS; VETERANS)
ADMINISTRATION AND/OR)
DEPARTMENT OF VETERANS)
AFFAIRS (US AGENCIES),)

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Defendants.)
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INTRODUCTION

The Court has before it a number of motions for more definite statement or to strike. The motions are fully briefed and at issue. The Court will grant in part, and deny in part, the motions for the reasons explained below.

MEMORANDUM DECISION

Plaintiffs Swisher and Lindsey filed their original complaint on August 24, 2006. The defendants filed motions to dismiss that were analyzed by the United States Magistrate Judge in a Report and Recommendation (R&R) filed September 24, 2007. The R&R contained a detailed analysis of every claim, and was over 63 pages in length.

On March 10, 2008, after obtaining the case by reassignment, this Court issued a decision adopting the Magistrate Judge's recommendation. The result was that most claims were dismissed, but plaintiffs were allowed to re-plead with more specificity (1) their Privacy Act claim against the federal agencies and (2) their defamation and breach of contract claims against other defendants.

In an attempt to comply with the Court's decision, the plaintiffs filed an amended complaint on April 9, 2008. The defendants responded with the motions

now before the Court seeking a more definite statement or, in the alternative, an order striking portions of the pleading. The plaintiffs countered on May 19, 2008, with yet another amendment attempt, filing a five-part second amended complaint.

While defendants Hoyt and the Government filed answers to the second amended complaint, and the Government has filed a motion for summary judgment, other defendants stood on their motions for more definite statement or to strike. As to those motions, the Court agrees to strike any allegations by Swisher that he was defamed by accusations that he lied during the *Hinkson* trial. *See United States v. Hinkson*, 526 F.3d 1262 (9th Cir. 2008) (holding that Swisher was “conclusively shown . . . to be a forger and a liar”). The Court will also strike any allegations that attempt to allege new claims, or re-allege dismissed claims. With those strikes, the remaining allegations pass muster under the liberal standard set forth in Rule 8(a).

ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motions for more definite statement and to strike (Docket Nos. 162, 164, 166 & 167) are GRANTED IN PART AND DENIED IN PART. The motions are granted to the extent they seek to strike all allegations in the second amended complaint that attempt to allege

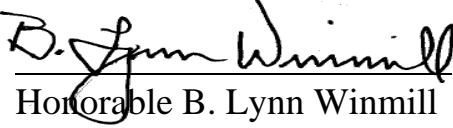
new claims (or re-allege dismissed claims) or allege that Swisher was defamed by accusations that he lied during the *Hinkson* trial. The motions are denied in all other respects.

IT IS FURTHER ORDERED, that no further amendments of the plaintiffs' complaint shall be allowed.

IT IF FURTHER ORDERED, that all dispositive motions in this case be filed on or before January 24, 2009.



DATED: **December 16, 2008**


Honorable B. Lynn Winmill
Chief U. S. District Judge