

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

CURTIS J. NEELEY JR., MFA

PLAINTIFF

VS.

CASE NO. 5:12-cv-05074-JLH-ELS

**NAME MEDIA INC,
GOOGLE INC,
MICROSOFT CORPORATION,
FEDERAL COMMUNICATIONS COMMISSION,
THE UNITED STATES**

DEFENDANTS

RESPONSE TO MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Separate Defendant NameMedia, Inc. (“NameMedia”), for its Response to Motion for Leave to Proceed *In Forma Pauperis* filed by Plaintiff Curtis J. Neeley, Jr. (“Neeley”), states as follows.

NameMedia in all respects adopts the arguments and reasoning set forth in Google’s response to Neeley’s motion. Apparently, Neeley believes, erroneously, that he can sue again on the same facts by changing his theories of recovery. This is not the law. “The doctrine of claim preclusion provides that all theories of recovery stemming from one factual situation must be brought at once, or are forfeited; the law will not tolerate successive suits by a plaintiff stemming from the same scenario.” *County of Boyd v. US Ecology*, 48 F.3d 359, 361 (8th Cir. 1995), *citing Ruple v. City of Vermillion*, 714 F.2d 860, 861 (8th Cir. 1983). Thus Neeley’s claim for alleged injury related to the same set of operative facts that were asserted in the previous litigation is barred by claim preclusion no matter what legal theories he may try to fit the claim within.

Additionally, the Court is empowered to require Neeley to show cause why it should not enter an Order prohibiting Neeley, under penalty of contempt, from pursuing any further litigation related to the same set of operative facts which were asserted in the previous litigation. The Court is familiar with Neeley's previous filings, so it is not necessary for NameMedia to set forth in detail their content, which reveals a personal vendetta which Neeley possesses against NameMedia and other parties for perceived wrongs. Unless deterred, NameMedia has little doubt but that Neeley will continue to harass it indefinitely by appropriating this Court as a tool of his harassment. The Court has authority, under 28 U.S.C. §1651(a), to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *In re Pointer*, 345 Fed. Appx. 204 (8th Cir. 2009) is instructive as to how the Court could proceed under 28 U.S.C. §1651(a). The Court could give Neeley notice and an opportunity to respond as to why it should not enter an Order that is sufficiently narrow to prevent further litigation of the nature engaged in to date by Neeley against NameMedia and other parties.

Alternatively, under F.R.C.P. 11(c)(4), a sanction may "include nonmonetary directives...." NameMedia has already served on Neeley a motion for Rule 11 sanctions. Although the prescribed 21 days under Rule 11(c)(2) has not yet passed, Neeley has already unequivocally refused to withdraw his complaint, as set forth in NameMedia's Motion to Alter Time for Filing of Rule 11 Motion. Nevertheless, under Rule 11(c)(3), the Court can order a party to show cause why conduct specifically described in the show cause order has not violated Rule 11(b).

Neeley is permanently disabled and does not believe he has any source of income out of which a monetary award could be collected. Further, NameMedia does not believe that Neeley has any meaningful assets out of which any award could be collected. Neeley's probable judgment-proof status means that monetary sanctions have no power to deter him from a course of filing frivolous claims. In *Stilley v. James*, 48 Fed. Appx. 595 (8th Cir. 2002), the Eighth Circuit upheld this Court's imposition of a Rule 11 sanction on an attorney enjoining him from pursuing further litigation related to an audit report which had already been the subject of previously-decided litigation.

WHEREFORE, NameMedia asks the Court to deny Neeley's motion to proceed *in forma pauperis* and for all other relief to which it may be entitled.

Respectfully submitted,

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By: /s/ Brooks C. White
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CERTIFICATE OF SERVICE

I, Brooks C. White, hereby certify that, on this 30th day of April, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which shall send notification of such filing to the following attorneys of record:

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I further certify that, on this 30th day of April, 2012, I served, via email, a copy of the foregoing to the following *pro se* plaintiff:

Mr. Curtis J. Neeley, Jr.
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/s/ Brooks C. White
Brooks C. White