UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

CURTIS J. NEELEY JR.,	§	
	§	
PLAINTIFF	§	
	§	
VS.	§	**CIVIL ACTION NO. 12-5074**
	§	
NAMEMEDIA, INC., GOOGLE INC., MICROSOFT CORPORATION, THE FEDERAL COMMUNICATIONS COMMISSION, AND THE UNITED STATES	§	
	§	
	§	
DEFENDANTS	§	

RESPONSE IN OPPOSITION TO APPLICATION TO PROCEED *IN FORMA PAUPERIS*[1]

Mr. Neeley's protracted abuse of the judicial system of the United States must cease. In litigation that commenced in 2009 and spanned until 2012 (*Neeley v. Namemedia, Inc., Network Solutions, Inc., and Google, Inc.*, 5:09-CV-5151-JLH), Mr. Neeley trudged Defendant Google and others through frivolous litigation that included no less than five denied attempts to amend the asserted claims, two hundred and eighty docket entries, summary judgment in favor of the defendants, three futile trips to the United States Court of Appeals for the Eighth Circuit, and one summarily denied petition for a writ of certiorari by the Supreme Court of the United States. Neither the facts nor the law have changed since Mr. Neeley's previous lawsuit was summarily dismissed. Mr. Neeley's games should be brought to a halt through this Court's inherent power to review and dismiss frivolous or malicious *in forma pauperis* proceedings.

[1] To date, Google Inc. has not been formally served with process in this lawsuit. By filing this response, Google Inc. does not waive its right to challenge service of process of the Complaint and Summons. Further, Google Inc. does not waive its right to assert any and all defenses.

Under 28 U.S.C. § 1915, the Court may authorize the commencement of a lawsuit without prepayment of the fees when an applicant demonstrates an inability to pay the costs of bringing a lawsuit – allowing the plaintiff to proceed *in forma pauperis*. The inquiry does not, however, end at the determination of impoverishment. Under section 1915, the Court must dismiss a case if it determines the allegations are "frivolous or malicious" or "fail to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B). "[A]n action is frivolous if it 'lacks an arguable basis either in law or in fact.'" *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Further, "[a]n action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right." *Spencer v. Rhodes*, 656 F. Supp. 458, 461-463 (E.D.N.C. 1987). In enacting section 1915(e)(2)(B), Congress recognized that "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Aziz v. Burrows*, 976 F.2d 1158 (8th Cir. 1992) (citing *Neitzke*, 490 U.S. at 324). Here, there is no doubt that Mr. Neeley's allegations against Google – like the allegations in his previous lawsuit against Google – lack any basis in the law, and that he merely seeks to initiate another round in his obsessive feud.

That obsession was evident in his recently dismissed case against Google and Namemedia. In that case, Mr. Neeley, against the weight of the law and ignoring prior court rulings, sought leave to amend his complaint no less than five times – including seeking leave to add some of the very allegations he now attempts to assert in this lawsuit. *See, e.g.*, *Neeley v. Namemedia, Inc., Network Solutions, Inc., and Google, Inc.*, 5:09-CV-5151-JLH at Dkt. Nos. 67, 68, 111, 112, 120, 122, 132, 133, 167, 168. Further evidence of Mr. Neeley's harassment is

apparent through the multiple frivolous grievances Mr. Neeley has filed with the Arkansas Supreme Court Office of Professional Conduct against Google's outside counsel.

Now, literally only days after the Eighth Circuit finally put his first campaign to rest, Mr. Neeley is back, seeking to restart the same case yet again. Although the labels he uses change from iteration to iteration, from "copyright" to "outrage" to "defamation" to "libel," the same underlying facts and occurrences are the basis of each version: that Google enables internet users to locate photographs that Mr. Neeley initially and intentionally placed on the internet himself, and now refuses to withdraw. That frivolous claim – frivolous *both* because Mr. Neeley published his works subject to a "Creative Commons" license that expressly allows anyone to reproduce them as long as they are attributed to him *and* because his steadfast refusal to register copyrights absolutely bars suit – has been finally adjudicated against him, and affirmed on appeal, at an expense to the Defendants of hundreds of thousands of dollars. *Res judicata* bars a repeat performance. This Court should not allow Mr. Neeley to play this game again.

Because Mr. Neeley's claims are nothing more than a renewed malicious attack on the defendants and their counsel, his application to proceed *in forma pauperis* should be denied and, indeed, his case should be dismissed, *sua sponte*, under 28 U.S.C. § 1915(e)(2)(B).

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT GOOGLE INC.

CERTIFICATE OF SERVICE

I, Joshua R. Thane, hereby certify that on April 27, 2012, I electronically filed the foregoing RESPONSE IN OPPOSITION TO APPLICATION TO PROCEED *IN FORMA PAUPERIS* with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following list:

Brooks White
Allen Law Firm, P.C.
212 Center Street
Ninth floor
Little Rock, Arkansas 72201

and I hereby certify that I have mailed the document by the United States Postal Service to the following non-CM/ECF participants:

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/s/ Joshua R. Thane
Joshua R. Thane