IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF ARKANSAS

Curtis J Neeley Jr., MFA — Plaintiff

v

CASE NO. 12-05074

NameMedia Inc,
Google Inc,
Microsoft Corporation,
Federal Communications Commission,
United States. — Defendants

OBJECTION TO REPORT AND RECOMENDATIONS

Curtis J Neeley Jr., MFA objects to portions of the report and to several recommendations made by the Honorable Magistrate Judge Erin L. Setser. Reasons supporting *de novo* determinations are herein listed concisely in sections labeled (I-IV) and in one footnote while trying to avoid again "rambling".

I. *Res Judicata* used for different wrongs in error

1. The Magistrate cited case law not supportive of the finding of *res judicata* for Defendant Google Inc. The wrongs done by Google Inc but recommended dismissed are supported by different facts and different evidence. The wrongs considered in *Neeley v NameMedia Inc, et al*. were wholly different wrongs.

2. Google Inc conspiring with NameMedia Inc to rebroadcast six pieces of nude art uploaded by Mr. Neeley was excused in the former action as well as Google Inc returning the nude art donated by Mr. Neeley to the Wikipedia Foundation when subjected to the Creative Commons licensure. The recommended *res judicata* dismissal of entirely new claims is flatly improper law for new wrongdoings.

3. The wrongs excused in the past action did not address the wrongs of rebroadcasting numerous other pieces of original nude art from **various other websites** where various "collectors" uploaded nude art once done by Mr. Neeley uninvited or the new violations of the Creative Commons licensure done currently at <wikipedia.org> by Google Inc and Microsoft Corporation. These new wrongs should be addressed and not be excused or precluded due to having **never been considered whatsoever**.

4. Additionally, Google Inc bypassed adult filtration used on <deviantart.com> and used on <redbubble.com> by Mr. Neeley and rebroadcast these otherwise identity filtered nudes to anonymous minors after advised this was offensive and improper before these were withdrawn by Mr. Neeley. The finding of *res judicata* for new wrongs done by Defendant Google Inc is inappropriate and contrary to the case law cited of *DALEY v. MARRIOTT INTERNATIONAL INC*, 415 F.3d at 896 (quoting Costner v. URS Consultants, Inc. 153 F.3d 667, 673 (8 Cir. 1998)) from 2005.

5. The *res judicata* claim preclusion dismissal is improper for Defendant Google Inc and should not be adopted by the District Court. *Res judicata* doesn't protect Google Inc because the wrongs alleged are new, unique claims independent of claims once alleged considered.

II. The collateral estoppel type *res judicata*

It is clear to Mr. Neeley now that "issue" preclusion means any "issue or claim" that could have been brought due to the prior substantive set of facts. ALL "issues or claims" should have been brought concurrently and all claims against NameMedia Inc should have been and will now be treated as barred by the collateral estoppel variation of *res judicata* without further protest. The brain injured Plaintiff thanks the Court for the consideration given thus far and apologizes for bringing the precluded issues against NameMedia Inc again in completely honest error. The Magistrate's claim of Mr. Neeley placing images "on the Internet" is invalid for analysis of *res judicata* for failing to recognize the images placed or where these images were placed. The sun, moon, and stars can be called "up in the sky" just like images can be called "up on the internet". Wholly different claims exist for what actually has been placed where precisely and by whom in the same exact sky.

III. Improperly precluded Google Inc wrongs

1. The new allegation of wrongs admittedly done by Google Inc visiting libraries in New York and scanning and uploading three different nude images created by Mr. Neeley from one library book to <google.com> and republishing these three nudes done by Mr. Neeley before minors was entirely overlooked.

2. The recommended overlooking of this valid new claim should not be adopted and this wrongdoing by Google Inc should be ordered addressed now in trial.

3. Google Inc admitted this wrong and removed the scanned nude images from the Google Inc preview of this book. This admitted and mitigated wrong should not be excused because this intentional malicious act warrants consideration by a jury to determine damages now awarded due to maliciously violating during previous litigation for this type offensive behavior.

IV. Microsoft Corporation Dismissal Errors

The Honorable Magistrate Judge stated incorrect facts and claimed Mr. Neeley placed the nude images that returned in Microsoft Corporation searches in error. It was wildly incorrect to dismiss the claims against Microsoft Corporation because scores of nudes and most nude images returned in Microsoft Corporation searches for "curtis neeley" on internet wire communications were not placed or created by Mr. Neeley and are associated with the text "curtis neeley" in violation of privacy. These are documented to show a jury. Dismissal of defendant Microsoft Corporation for failing to state these new claims properly is erroneous excusal of damages exceeding twenty dollars.

V. FCC malfeasance claim dismissal error

1. Curtis J Neeley Jr., MFA revealed having contacted the FCC in the "rambling" complaint. No administrative procedure exists for citizen artists to seek redress from the FCC. The disclaimer provided publicly by the FCC of not regulating internet wire communications is admission of the malfeasance sought by this harmed former artist of nude images.

2. Nude images created by Mr. Neeley should not be allowed to violate the safety of the public on interstate and world-wide wire or radio communications due to the 47 USC §151 statute by the FCC, regardless of who places these nude images on the network of computers connected to wires now called the internet by the FCC for disguise.

3. The intentional tort of malfeasance should be allowed because the internet is the logical development of telegraph wire communications beyond Morse code and facsimile. Internet wire communications are clearly not "*THE WHOLLY NEW MEDIUM"* claimed in *ACLU v Reno,* in 1996.

VI. Errors regarding USA claim(s)

1. United States has violated the natural and constitutionally recognized rights of individual authors since 1790. Internet wire communications developed quickly from facsimile and Morse code. Unconstitutional 47 USC §230(c)(1) has been enforced counter to the intentions of Congress. Mr. Neeley felt these claims were described adequately in the "ramblings" and these concerns are shared by millions of artists and billions of parents around the Earth and should now be ordered to be addressed by the Attorney General.

2. Curtis J Neeley Jr., MFA clearly has statutorily unprotected Ninth Amendment rights and related responsibilities to exclusively control creations for a limited time as the author of nude art. This personal right was authorized by Congress for protection in 1787. The Individual personal right to control creations was never protected though claimed protected in error centuries ago by US Title 17 in the "1790 Copy[rite] Act" or ritual for authorizing new copies. US Title 17 recognizes absolutely NO PERSONAL RIGHTS in contrast to the personal right to a jury trial when the disputed value exceeds twenty dollars.

3. The obviously unprotected individual rights of authors and the associated responsibilities to restrict viewership to adults for nude art is now demanded protected by Mr. Neeley. This unprotected cognizant right is now pursued by Mr Neeley in the attached complaint that does not include NameMedia Inc at all.

VII. Error in recommending denial of IFP appeal

1. The Honorable Magistrate Judge Erin L. Setser recommended the Court certify in writing that Mr. Neeley be denied leave to appeal in forma pauperis due to Mr. Neeley's claims being barred by *res judicata* and being frivolous as should now be seen as erroneous and violating the Seventh Amendment rights of Mr. Neeley.

2. The errors listed in preceding sections (I.-VI.) clearly show complete dismissal is clearly an error of law. Mr. Neeley's utter legal confusion bringing the admittedly "rambling" complaint does not justify dismissal of obviously **new civil claims with more than twenty dollars in contention requiring jury decisions**.

3. The issue preclusion bar of collateral estoppel does extend procedural immunity to NameMedia Inc completely and to Google Inc for the rebroadcast of six nude images uploaded by Mr. Neeley to <photo.net> and for rebroadcasting two nudes by Mr. Neeley when compliant with the Creative Commons licensure from the donations to the Wikipedia Foundation uploaded at <wikipedia.org>.

CONCLUSION

Curtis J Neeley Jr., MFA reluctantly admits collateral estoppel bars further pursuit of NameMedia Inc and warrants prejudicial dismissal entirely as recommended for NameMedia Inc. Mr. Neeley is severely brain injured and prays the District Court now appoint legal representation for review and aid with the amended complaint as attached or directing the attached complaint served since the matter in controversy greatly exceeds twenty dollars.[1]

[1] In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law

CONCLUSION-continued

ALL interstate and world-wide wire and radio communications were clearly meant regulated by Congress due to 47 USC §151 as now sought ordered by a jury since this failure cost Mr Neeley greatly.

ALL current usage of 47 USC §230(c)(1) is invalid when applied in opposition to the "Good Samaritan" intent of Congress as now sought declared and sought ordered by a jury since this failure cost Mr Neeley greatly. This complaint, when completed, should result in the United States and other Defendants recognizing authors' rights listed in the Constitution as human rights not yet protected by statute.

It should now be clear this complaint's appropriate resolution requires the FCC to regulate ALL distant public communications including internet wires.

The malfeasance of the FCC on this statutory duty is much too important to be left exclusively pursued by one brain-injured former photo artist of the nude as a pauper.

PRAYER

Curtis J Neeley Jr., MFA prays the motion to proceed *in forma pauperis* and new attached complaint be returned to the Magistrate with instructions to grant service of the summons along with the provisional complaint as attached, or in the preferred alternative, after reviewed and made better by the team of counselors appointed now to assist in the interests of the billions of members of the public affected by these claims. The number of persons affected by this action exceeds the population of the Western District of Arkansas and the entire 8th Circuit as well as the population of the entire United States.

2619 N Quality Ln
Suite 123
Fayetteville, AR 72703
479-263-4795
curtis@curtisneeley.com

Respectfully submitted,

_____

Curtis J Neeley Jr., MFA

Certificate of Service

I, Curtis J Neeley Jr, certify that on this 26th day of July 2012, I served a copy of the foregoing electronically on listed but un-served NameMedia Inc and Google Inc counselors. This is stated under penalty of perjury.

_____

Curtis J Neeley Jr., MFA