

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

**CURTIS J. NEELEY, JR.,**

**Plaintiff,**

**v.**

**FEDERAL COMMUNICATIONS  
COMMISSION, MICROSOFT CORP.,  
GOOGLE INC.**

**Defendants.**

**Civil Action No.: 12-5208**

**MICROSOFT CORPORATION'S  
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and the corresponding case law, Defendant Microsoft Corporation respectfully submits this motion to dismiss Plaintiff Curtis J. Neeley, Jr.'s Amended Complaint. Mr. Neeley's allegations, even if presumed true, fail to state a claim against Microsoft upon which relief can be granted and, therefore, should be dismissed. Dismissal under Rule 12(b)(6) "is proper when the plaintiff's complaint fails to state a claim upon which relief can be granted." *Northstar Indus., Inc. v. Merrill Lynch & Co.*, 576 F.3d 827, 831-32 (8th Cir. 2009).

Courts routinely dismiss complaints for failure to state a claim where, as here, the plaintiff's allegations are so vague and lacking in coherence that they fail to apprise the defendant of its alleged wrongful acts. *See, e.g., White v. U.S.*, 588 F.2d 650, 651 (8th Cir. 1978) (affirming dismissal of "virtually incomprehensible" complaint for failure to state a claim). As set forth more fully in the supporting brief filed contemporaneously with this motion, Mr. Neeley's complaint in the present case consists of vague allegations from which Microsoft can

discern neither the alleged conduct that gave rise to Mr. Neeley's grievances, nor the laws that Microsoft is said to have violated. Moreover, this Court has already dismissed one lawsuit by Mr. Neeley against Microsoft for failure to state a claim. *See Neeley v. NameMedia Inc.*, Case No. 12-5074, Order of August 1, 2012, Dkt. No. 21. Mr. Neeley's Amended Complaint in the present case repeats the same assertions as his earlier lawsuit, adding no new allegations or legal theories. Thus, Mr. Neeley's Complaint against Microsoft should be dismissed, this time with prejudice. *See Mangan v. Weinberger*, 848 F.2d 909, 911 (8th Cir. 1988) (affirming dismissal of amended complaint with prejudice due to plaintiff's "deliberate persistence in refusing to conform his pleadings to the requirements of Rule 8").

For the above reasons and those stated in the supporting brief, Microsoft respectfully asks that the Court dismiss all claims against Microsoft.

Respectfully submitted,

MITCHELL, WILLIAMS, SELIG  
GATES & WOODYARD, P.L.L.C.  
5414 Pinnacle Point Drive, Suite 500  
Rogers, AR 72758  
Phone: (479) 464-5650  
Facsimile: (479) 464-5680

By  /s/ Marshall S. Ney  
Marshall S. Ney, Ark. Bar No. 91108  
mney@mwlaw.com

Of Counsel

Simon J. Frankel (CA Bar No. 171552)  
sfrankel@cov.com  
Krzysztof Bebenek (CA Bar No. 279113)  
kbebenek@cov.com  
COVINGTON & BURLING LLP  
One Front Street  
San Francisco, CA 94111-5356  
Telephone: (415) 591-6000  
Facsimile: (415) 591-6091

**CERTIFICATE OF SERVICE**

I, Marshall S. Ney, hereby certify that on November 29, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and will send notification of such filing to the following:

Curtis J. Neeley, Jr.  
2619 N. Quality Ln. Suite 123  
Fayetteville, AR 72703-5523

By     /s/ Marshall S. Ney      
Marshall S. Ney, Ark. Bar No. 91108  
mney@mwlaw.com