

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

<b>CURTIS J. NEELEY JR.,</b>	§	
	§	
<b>PLAINTIFF</b>	§	
	§	
<b>VS.</b>	§	<b>CIVIL ACTION NO. 12-CV-5208-JLH</b>
	§	
<b>FEDERAL COMMUNICATIONS</b>	§	
<b>COMMISSION, MICROSOFT CORP.,</b>	§	
<b>AND GOOGLE INC.,</b>	§	
	§	
<b>DEFENDANTS</b>	§	

**DEFENDANT GOOGLE INC.’S BRIEF IN SUPPORT OF  
MOTION FOR SANCTIONS UNDER RULE 11**

Defendant Google Inc. (“Google”) moves the Court for an injunction against Plaintiff Curtis J. Neeley, Jr. (“Mr. Neeley”) that will prevent further frivolous, malicious, and vexatious litigation against Google arising from, or connected with, the events previously litigated in Case Nos. 5:09-cv-5151-JLH and 5:12-cv-5074-JLH, and which are now repeated in the instant case, without first seeking and obtaining prior approval by the Court.

**BACKGROUND**

This is Mr. Neeley’s third attempt to sue Google over virtually identical allegations. As this Court previously stated:

Most of the claims plaintiff makes in the present case stem from the same underlying facts and occurrences that were the basis for the claims made in case #09-5151: plaintiff’s artwork depicting nude figures, which he placed in the public domain, were accessible to users, including minors, by conducting an internet search of plaintiff’s name.

Order at 4, *Curtis J Neeley, Jr. v. NameMedia, Inc., et al.*, Case No. 5:12-cv-5074-JLH (“*Neeley*”

*II*') (W.D. Ark. Aug. 1, 2012) (Dkt. No. 21).<sup>1</sup> Mr. Neeley also published some of these nude images in a book of photographic art which was allegedly scanned by Google, giving rise to his invasion of privacy claims. Google's pending Motion to Dismiss (Dkt. No. 16) further details the history of this case and its issues.

Mr. Neeley's two prior attempts to litigate these claims against Google ended in dismissal and summary judgment. Mr. Neeley appealed multiple times to the Eighth Circuit and the Supreme Court, but this Court was affirmed each time and the Supreme Court denied his writ for certiorari. *See Neeley I*, Dkt. Nos. 166, 203, & 290. Mr. Neeley immediately filed the *Neeley II* complaint on the heels of the Eighth Circuit's ruling. *Neeley II* was dismissed under *res judicata* and for being frivolous, malicious, and failing to state a claim under 28 U.S.C. § 1915(e)(2)(B). *See Neeley II*, Dkt. No. 18 at 19; *Neeley II*, Dkt. No. 21.<sup>2</sup>

Mr. Neeley filed hundreds of separate documents during this litigation. Many were frivolous and were later withdrawn. *See Neeley I*, Dkt. No. 125 at 6. Indeed, this trend continues as Mr. Neeley recently moved to withdraw yet another frivolous filing. *See* Dkt. No. 25. The Court's frustration with Mr. Neeley is evident from the record. *See, e.g., Neeley I*, Dkt. No. 97 at 16 (reciting Mr. Neeley's abuses of defendant's counsel and putting him on notice "that no further conduct of this nature will be tolerated."); *Neeley I*, Dkt. No. 125 at 7 ("The Court also notes that over nine months have passed since this case was commenced, without yet reaching the procedural point where the parties can be directed to conduct a 26(f) conference and

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<sup>1</sup> For brevity, Google will cite the relevant docket numbers in the record for each case, i.e. – "*Neeley I*, Dkt. No. xx" and "*Neeley II*, Dkt. No. yy," referring to Case No. 09-cv-5151 and Case No. 12-cv-5074, respectively. Citations to the record without the case identifier are to the current case, No. 12-cv-5208.

<sup>2</sup> Google asserts that the *Neeley II* dismissal was with prejudice as to Google but without prejudice as to the other defendants per Magistrate Judge Setser's recommendation, which the Court adopted in its entirety. *See Neeley II*, Dkt. No. 18 at 14-15.

commence discovery . . . These facets of the case suggest that the delays that have troubled this case to date are prejudicial, and are the result of bad faith or dilatory motive.”).

On October 27, 2010, the Court entered several orders in an attempt to remedy the multiple Rule 11 abuses forced upon Google by Mr. Neeley. *See Neeley I*, Dkt. No. 189 at 2. While it was clear then that “the situation resulted in wasted litigation resources for Google, and cries out for a remedy,” the time was not yet ripe to afford Google substantially the same relief it now seeks. *Id.* Google has since endured two more years of Mr. Neeley’s harassing litigation. Contrary to the Court’s desires in 2010, these cases have not progressed to a satisfactory conclusion, “and frivolous motions continue to be filed.” *Id.* Google now seeks the Rule 11 sanctions and protections which the Court recognized may be necessary.

Aside from filing repetitive frivolous complaints against Google, Mr. Neeley’s conduct throughout this series of cases has been malicious and abusive. He has made offensive comments to the Court and continues to disrespect the Court by wasting its limited time and resources, to say nothing of the resources Google has expended in its defense. Mr. Neeley accused Google’s defense counsel of lying and fraudulent activity; he filed baseless motions for sanctions against them (*e.g.*, *Neeley II*, Dkt. No. 16); and he attempted to pursue private grievance actions against them individually with the state bar. Mr. Neeley also admitted to manufacturing evidence in the hearing before Magistrate Judge Setser. *See Neeley I*, Dkt. No. 216 at 50-53. Both Judge Hendren and Magistrate Judge Setser repeatedly warned Mr. Neeley about possible sanctions. *See, e.g.*, *Neeley I*, Dkt. No. 189; *Neely I*, Dkt. No. 206 at 64-65; *Neeley II*, Dkt. No. 18 at 19. Every attempt by Google and the Court to help Mr. Neeley pursue his claims in good faith has instead spawned another round of vitriol.

Mr. Neeley's current complaint against Google (Dkt. No. 5) and his most recent filings make it clear that he has no intention of heeding the Court's warnings and will continue to pursue his frivolous, malicious, and vexatious litigation without end. As such, Google respectfully requests that this Court impose sanctions under Rule 11 in order to deter Mr. Neeley's continued abusive conduct because it clearly and repeatedly violates Rule 11(b).

### **APPLICABLE LAW**

Grounds to issue injunctions against malicious litigants can be found under Federal Rules of Civil Procedure 1 and 11. *See Vaughn v. Swatek*, 199 Fed. App'x 580 (8th Cir. 2006); *In re Tyler*, 839 F.2d 1290 (8th Cir. 1988); *McKinzy v. Union Pacific R.R.*, 2011 U.S. Dist. LEXIS 139816 (E.D. Mo. 2011). Rule 1 states the overall purpose of the Rules of Civil Procedure is to "secure the just, speedy, and inexpensive determination of every action and proceeding." Rule 11 furthers this goal by requiring litigants to certify that each pleading is not made for any improper purpose, including harassment or unnecessary delay, or to needlessly increase the cost of litigation. FED. R. CIV. P. 11(b)(1). The signature also certifies that the claims and legal contentions are warranted by existing law, "or a nonfrivolous argument for extending, modifying, or reversing existing law," and the factual contentions have evidentiary support. FED. R. CIV. P. 11(b)(2), (3). A case is frivolous if it fails these requirements. *Kurkowski v. Volcker*, 819 F.2d 201, 204 (8th Cir. 1987). Even *pro se* complaints, given a liberal construction, may still be frivolous "if filed in the face of previous dismissals involving the exact same parties under the same legal theories." *Id.* Litigation is malicious and vexatious if it is brought solely to harass. *See Ruderer v. U.S.*, 462 F.2d 897, 899 (8th Cir. 1972), *appeal dismissed*, 409 U.S. 131. Rule 11 authorizes sanctions, upon motion or on the Court's initiative, to reprimand violations. *See* FED. R. CIV. P. 11(c).

The “All Writs Act,” 28 U.S.C. § 1651(a), states, “[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” This power can be used to restrict access to the court system by a vexatious litigant. *Donovan v. Dallas*, 377 U.S. 408 (1964) (recognizing the court’s power to issue such injunctions but overturning because the sanctioning court overstepped its jurisdiction); *Gordon v. U.S. Dept. Justice*, 558 F.2d 618 (1st Cir. 1997) (injunction upheld in “extreme circumstances” where further frivolous filings were only wasting limited resources and time of the court and defendants); *Ruderer*, 462 F.2d at 899 (finding bad faith and personal vendetta against defendants where plaintiff previously had full opportunity to pursue his claims).

District courts are also vested with “discretion to impose sanctions upon a party under its inherent disciplinary power.” *Van Deelen v. City of Kansas City*, 2006 U.S. Dist. LEXIS 50734, \*33 (W.D. Mo. 2006). The court’s inherent powers are “necessarily vested in the courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Id.* (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991)). “[W]hereas each of the other mechanisms [outlined in the Federal Rules of Civil Procedure] reaches only certain individuals or conduct, the inherent power extends to a full range of litigation abuses. At the very least, the inherent power must continue to exist to fill in the interstices.” *Id.* (citing *Chambers*, 501 U.S. at 45).

An injunction against further litigation must be narrowly drawn to the specific vice the court is attempting to remedy or prevent. *Castro v. U.S.*, 775 F.2d 399, 410 (1st Cir. 1985). The circumstances giving rise to the injunction must present more than an “affinity for litigation.” *Ruderer*, 462 F.2d at 899. The record must be well developed to support the injunction, and

reflect the repeated filing of frivolous or previously-decided issues and claims. *See id.* at 898 (*pro se* plaintiff previously filed 21 different actions from the same incident, most dismissed for failure to state a claim); *Tyler*, 839 F.2d at 1290 (inmate filed 113 cases in his own name in the two years before the injunction); *McKinzy*, 2011 U.S. Dist. LEXIS 139816 at \*5 (“Plaintiff is an abusive litigant . . .” having filed four employment discrimination cases against the same defendant in the previous few years and 31 others against different defendants, all of which ended in summary judgment against plaintiff).

Outside of purely frivolous filings, an injunction is appropriate when the record reflects incidents where the plaintiff has been abusive towards the court, defendants, opposing counsel, or the judicial process. *Castro*, 775 F.2d at 402. Finally, injunctions against further litigation are appropriate where, as here, the plaintiff has no money and monetary sanctions would therefore fail to correct the abusive behavior. *Tyler*, 839 F.2d at 1294.

## ARGUMENT

### **A. Mr. Neeley’s Litigious Feud Against Google is Frivolous, Vexatious, and Malicious**

Mr. Neeley has pursued repetitive frivolous claims against Google for over three years. All of Mr. Neeley’s complaints stem from the same nucleus of operative facts, as described in Google’s pending Motion to Dismiss (Dkt. No. 16). These claims have been previously litigated and adjudicated against Mr. Neeley; yet he continues to file more variations of the underlying claim. Mr. Neeley’s litigation against Google has far surpassed any attempt to right a supposed wrong or protect any of Mr. Neeley’s interests, and instead shows “that he is more interested in wreaking revenge on the defendants than obtaining legal redress for any economic injury to himself.” *Neeley I*, Dkt. No. 125 at 7.

This suit is simply a recasting of Mr. Neeley's previous litigation. It is repetitive of every issue which has already been decided, appealed, and affirmed in *Neeley I* and regurgitated in *Neeley II*. A lawsuit is frivolous if it is repetitive of previous causes of action and malicious if it is intended to harass the defendants. *Kurkowski*, 819 F.2d at 204; *Ruderer*, 462 F.2d at 899. The tone of Mr. Neeley's pleadings is abusive towards the defendants and the Court, swinging from the nonsensical to personal attacks. Mr. Neeley's conduct throughout has been offensive: his repetitive and multiplicitous filings reveal a total disregard for the limited resources of the Court, a lack of respect towards the Court, defendants, defense counsel, and the effort required by all to entertain his claims. Mr. Neeley's obsession with Google borders on the fanatical, and he will not quit unless ordered to do so by the Court. *See* Dkt. No. 29 at 5, 10.

The Court previously remarked about Mr. Neeley's tone and strategy throughout his cases against Google. *See Neeley I*, Dkt. No. 125 at 7. Mr. Neeley has repeatedly made offensive remarks towards the Court. *See, e.g., Neeley I*, Dkt. No. 94 (Titled "Remedial Copyright Lesson Communicated to the Court and Every Defendant Pursuant to LR 7.3"); Dkt. No. 30-8 at 2 ("... this fact is obvious to anyone with three or four live brain cells."). Similarly, Mr. Neeley has written numerous letters to Google's defense counsel accusing them personally of lying, and he has filed meritless motions for sanctions. *See, e.g., Neeley II*, Dkt. No. 16.

The malicious character of Mr. Neeley's vexatious litigation is further displayed by his outlandish claims. In *Neeley I*, he requested an award of ten million dollars and maximum punitive damages. *Neeley I*, Dkt. No. 14. In *Neeley II*, he sought millions against Google and punitive damages that "should be the largest ever established by a jury," as well as an injunction that would effectively shut down the internet. *Neeley II*, Dkt. No. 1 at 18. In the latest rendition,

he now claims damages of \$11.6 *billion* and massive punitive damages. Dkt. No. 5 at 15. These damages are intended to cripple Google, not fairly remedy any loss suffered by Mr. Neeley.

Mr. Neeley's record is sufficient to support an injunction limiting his access to the Court in further pursuit of his personal vendetta against Google. In *Ruderer*, the Eighth Circuit upheld an order which "permanently and forever enjoined [the plaintiff] from commencing any proceeding" in the Eastern District of Missouri in an attempt to relitigate facts "and/or questions of fact or law he asserted" in his twenty one prior actions, most of which were dismissed as frivolous, appealed, and affirmed. 462 F.2d at 899 n.2. The record in *Tyler* also supported the Court's injunction, which limited the plaintiff to filing only one *in forma pauperis* claim per month, and set certain conditions for the claims' acceptance. 839 F.2d at 1294. The *Tyler* Court found the plaintiff "flagrantly and repeatedly abused the judicial process by filing a multitude of meritless lawsuits, and this course of conduct will likely continue unabated unless preventive measures are imposed." *Id.* at 1295.

**B. Mr. Neeley's Litigation Record Reflects Repeated Warnings Regarding His Abusive Litigation Practices**

This Court repeatedly reprimanded and warned Mr. Neeley about the possibility of sanctions for his abusive litigation behavior. *See, e.g., Neeley I*, Dkt. No. 189 at 2 ("If . . . frivolous motions continue to be filed, the opposing party may seek sanctions pursuant to F.R.C.P. 11."); *Neeley I*, Dkt. No. 216 at 64-65 ("You made personal attacks. I think you accused opposing counsel of committing fraud . . . . What that means is I could just strike your pleadings, motions denied, wouldn't even have to have this hearing today. . . . It could be monetary sanctions. . . .It could be more severe sanctions. It could result in your case just being dismissed, Mr. Neeley.").



Mr. Neeley has not altered his conduct in accordance with the Court's warnings. Nor does he recognize the substantial effect that the prior dismissals and adverse adjudications have on the continued life of his claims. *See* Dkt. No. 29 at 9-10. In fact, while Mr. Neeley may no longer be making direct insults against the Court or Google's counsel, the tenor of his filings has not changed. Mr. Neeley's December 17 filings confirm that the offensive and frivolous filings continue unabated. The Court's repeated warnings have fallen on deaf ears. Mr. Neeley still refuses to comport with Rule 11's requirements and seeks perpetual litigation of his meritless claims. This conduct will continue unless the Court intervenes.

**C. The Court Should Enjoin Mr. Neeley from Further Abusive Litigation Against Google**

"Abusive litigation results in prolonged, repetitive harassment of defendants causing frustration and often extraordinary and unreasonable expenditures of time and money defending against unfounded claims." *Van Deelen*, 2006 U.S. Dist. LEXIS 50734 at \*43 (citing *Tyler*, 839 F.2d at 1291). "Defendants have a right to be free from harassing, abusive and meritless litigation" and the "federal courts have a clear obligation to exercise their authority to protect litigants from such behavior." *Id.* For three years, Google has patiently dealt with Mr. Neeley's abusive and meritless litigation as it would with any good faith litigant. Mr. Neeley, however, has time and again demonstrated his lack of good faith and malicious intent.

Monetary sanctions are not appropriate in this case because Mr. Neeley has no money. Monetary sanctions will not have the intended effect of stemming his litigious feud against Google. In all three of his cases, Mr. Neeley has requested to proceed *in forma pauperis*. His most recent requests for pauper status have been denied as sanctions for his abusive litigation conduct. *See Neeley II*, Dkt. No. 18 at 19. Like the plaintiff in *Tyler*, Mr. Neeley's fiscal situation insulates him from the normally harsh effect of monetary sanctions. This Court

therefore should issue a nonmonetary directive to put an end to Mr. Neeley's vendetta against Google.

In his latest filing, Mr. Neeley reaffirmed his dedication to his cause, which is not the preservation of any of his own rights but rather the destruction of Google and the end of the modern internet. "Google Inc [sic] will no longer exist as the most profitable PORN website on Earth before the Plaintiff ceases to end Google Inc's [sic] authoritarian rule of anonymous 'WEB' porn access." Dkt. No. 29 at 10 (emphasis original). Similarly, Mr. Neeley asked the Court to issue the exact relief Google requests here because "nothing besides this order or death will cause Plaintiff to stop. . ." *Id.* at 5. Mr. Neeley's intent is perfectly clear, and now it is written in the record. He will continue harassing Google with his malicious litigation unless the Court specifically orders him to stop.

In light of Mr. Neeley's unwavering determination to continue his feud, Google respectfully requests that the Court now intervene on Google's behalf to protect it from further "harassing, abusive and meritless litigation." An injunction preventing Mr. Neeley's further abuse of the legal system will adequately protect both the Court's limited time and resources and Google's right to be free from such behavior. Mr. Neeley himself has made it abundantly clear that such an order is the only way to deter repetition of his malicious conduct.

**D. Google has Complied with FED. R. CIV. P. 11 Notice Requirement Before Moving For Sanctions**

Rule 11 requires a party moving for sanctions to give the challenged party at least 21 days' notice before filing its motion. FED. R. CIV. P. 11(c)(2). The notice period provides an opportunity for the violation to be remedied by withdrawing the challenged paper or other corrective action. *Id.* Google has complied with the safe harbor provision. On December 5, 2012, Google served Mr. Neeley with a copy of the instant Motion for Sanctions and requested

that he withdraw or permanently dismiss his complaint against Google. *See* Email from J. Doan to C. Neeley, Dec. 5, 2012, a true and correct copy of which is attached hereto as Ex. A. Mr. Neeley has failed to take any action to remedy his past, current, and continued violations of Rule 11. Indeed, on December 17, 2012, Mr. Neeley filed multiple motions and exhibits, further compounding the prejudice to Google. Therefore this Motion is timely filed.

### **CONCLUSION**

For all these reasons, Google respectfully requests that the Court enter an injunction against Mr. Neeley that will prevent further frivolous, malicious, and vexatious litigation against Google arising from, or connected with, the events previously litigated in *Neeley I* and *Neeley II*. Specifically, Google requests that Mr. Neeley be required to obtain the Court's prior approval before filing any further motions, pleadings, or *pro se* complaints relating to events previously litigated. Google respectfully requests all other relief that the Court deems equitable, appropriate, and just.

Respectfully submitted,

\s\ Jennifer H. Doan

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**ATTORNEYS FOR DEFENDANT  
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**CERTIFICATE OF SERVICE**

I, Jennifer H. Doan, hereby certify that on December 28, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to CM/ECF participants, 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\ Jennifer H. Doan  
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