

**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. 09-5151</b>
	§	
<b>NAMEMEDIA, INC., NETWORK SOLUTIONS, INC., GOOGLE INC.</b>	§	
	§	
<b>DEFENDANT</b>	§	

**GOOGLE INC.’S RESPONSE AND BRIEF IN OPPOSITION TO MOTION FOR  
LEAVE TO AMEND COMPLAINT (Docket #97)**

Mr. Neeley once again asks leave to file another complaint. This Court on March 4, 2010 granted the bulk of Google’s motion to dismiss Mr. Neeley’s Second Amended Complaint, as well as NameMedia’s motion for partial summary judgment. Mr. Neeley has moved for reconsideration of that order.<sup>1</sup> In the same pleading, however, Mr. Neeley again asks for leave to replead his claims, for the fourth or fifth time.<sup>2</sup>

Mr. Neeley has not explained what new or different claims he now seeks to bring, and has not submitted a proposed complaint. Instead, he states that “[t]he complaint cannot be attached because it depends on the Ruling on this Motion to prepare” and that the “Third Amended Complaint would completely replace this action.” Motion at 11.

Absent a showing of the new or different claims he seeks to bring, and a showing that the proposed amendments would not be futile, leave to amend should be denied. *See Stricker v. Union Planters Bank, N.A.*, 436 F.3d 875, 878 (8th Cir. 2006) (citing *Migliaccio v. K-tel Int’l*,

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<sup>1</sup> Google opposes that motion, and cross-moves for reconsideration, in separate pleadings filed concurrently herewith.

<sup>2</sup> Mr. Neeley has filed a Complaint, a First Amended Complaint, and a Second Amended Complaint. He has also filed, and then withdrawn, a proposed Third Amended Complaint and request for leave to file it.

*Inc. (In re K-tel Int'l, Inc. Sec. Litig.)*, 300 F.3d 881, 899 (8th Cir. 2002)) (noting that leave to amend may be denied if the amendment would be futile).

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT  
GOOGLE INC.**

**CERTIFICATE OF SERVICE**

I, Joshua R. Thane, hereby certify that on March 11, 2010, I electronically filed the foregoing GOOGLE INC.'S RESPONSE AND BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO AMEND COMPLAINT (Docket #97) with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following list:

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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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