

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

CURTIS J. NEELEY, JR., MFA

PLAINTIFF

V.

CASE NO. 5:09-cv-05151

**NAMEMEDIA, INC.;
NETWORK SOLUTIONS, INC.;
and GOOGLE, INC.**

DEFENDANTS

**NETWORK SOLUTIONS' OPPOSITION TO PLAINTIFF'S
MOTION REQUESTING LEAVE TO FILE THIRD
AMENDED REPLACEMENT COMPLAINT**

Network Solutions, LLC ("Network Solutions") opposes Plaintiff's Motion Requesting Leave to File Third Amended Replacement Complaint (Doc. #111). Plaintiff concedes the merits of Network Solutions' Motion to Dismiss (Doc. #104) and that all claims previously lodged against Network Solutions should be "dropped/dismissed[.]" *See* Doc. #112 at 3. Nevertheless, Plaintiff now seeks leave to amend his Complaints yet again and continue to drag Network Solutions through baseless litigation. Network Solutions respectfully asks that the Court deny Plaintiff's Motion to file a Third Amended Replacement Complaint and that the Court, as agreed to by Plaintiff, further dismiss all previous Complaints which purported to assert claims against Network Solutions.

I. Legal Standard

Although leave to amend pleadings should generally be granted freely pursuant to Fed. R. Civ. P. 15(a), the Court should deny a motion for leave to amend if the

amendment would be futile. *Stricker v. Union Planters Bank*, 436 F.3d 875, 878 (8th Cir. 2006); *United States ex. rel. Lee v. Fairview Health Sys.*, 413 F.3d 748, 749 (8th Cir. 2005).

II. Argument

Suffice it to say Network Solutions took great efforts to understand precisely what allegations were being lodged in Plaintiff's First and Second Amended Complaints. Rather than seeking dismissal based upon improper service or the improper inclusion of Network Solutions, LLC, Network Solutions instead entered its appearance and expended valuable resources addressing the complete lack of merits in Plaintiff's substantive claims by virtue of a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(3) & (6). Less than one week later, Plaintiff conceded that he "completely agrees with" Network Solutions' Motion to Dismiss. Doc. #112 at 3. Now, however, Plaintiff is back again with more baseless (and, at times, strange) allegations against Network Solutions, and he wants this Court to enable his cavalier "I'll keep throwing things at the wall in the hopes that something will stick" approach to the very serious process of litigating legitimate claims in a court of law. Whether Plaintiff is "confused," "*pro se*," or a "pauper"¹, such is not a license for a party – represented or not -- to abuse this Court's processes and require another party to continue expending precious resources defending against wild and conclusory allegations that do not even form the basis of cognizable claims.

Plaintiff's twenty-plus page, single spaced proposed Third Amended Replacement Complaint casts a welter of allegations and complaints upon virtually all sectors of the Internet business and includes various references to nudity and pornography which may be found on the Internet. *See* Doc. #111-1 at 16-17. While the vast majority of these

¹ Doc. # 111-1 at 20.

allegations bear absolutely no connection to Network Solutions, they certainly appear to involve issues more appropriately directed to a legislative body, rather than a federal court. To require Network Solutions and the Court to continuously wade through these allegations is an unwarranted and inappropriate use of the judicial system and its processes.

Plaintiff now concedes his initial Complaint did not assert any valid claims against Network Solutions, but a review of the scant allegations in his proposed Third Amended Replacement Complaint yields the same conclusion. *See* pages 1; 4-5; 6-7; 11 (conceding Plaintiff has no copyright claims against Network Solutions); 16 (alleging without basis that Network Solutions “conspire[d] to interfere with visitation with his children”); and 19 (again requesting in his prayer for relief that Network Solutions “be ordered not to allow advertisement of domain expiration dates for domains they do not own and therefore violating [sic] the prior owner’s exclusive rights and instantly end [sic] the Ponzi scheme of domain ‘real estate’”). For the same reasons set forth in Network Solutions’ Motion to Dismiss, Plaintiff has no standing to obtain the relief he requests. Notwithstanding that problem, Plaintiff also asserts no viable cause of action against Network Solutions. Plaintiff’s Motion for Leave to File a Third Amended Replacement Complaint should therefore be denied as futile.

At pages 1, 4 and 5, Plaintiff purports to set forth what Network Solutions did and what it told him. In short, Plaintiff liberally uses the terms “fraud” and “emotional distress.” Courts have many times addressed what a heightened standard of pleading and proof is required to pursue such theories in a court of law. The tort of fraud requires the misrepresentation of a known, material fact, which is intended to induce reliance on the

part of the plaintiff, which in fact results in reliance by the plaintiff, and which results in damages to the plaintiff. *Allen v. Allison*, 356 Ark. 403, 418, 155 S.W. 3d 682 (2004), citing *Wiseman v. Batchelor*, 315 Ark. 85, 88-89 (1993). Damages for mental anguish due to fraud are simply not cognizable in Arkansas. *Id.* At 419, citing *Higginbotham v. Waugh*, 313 Ark. 558, 560-61 (1993); *see also, Moss v. American Alternative Ins. Corp.*, 420 F. Supp 2d 962, 966 (E.D. Ark. 2006)(noting that failure to allege actual reliance and damages proximately flowing therefrom is a fatal bar to alleging a valid claim).

At best, Plaintiff alleges that Network Solutions told him things that were not true. He in no way alleges fraud with any particularity as required by Fed. R. Civ. P. 9. He fails to assert the basic elements of a fraud claim. And the very elements of damage he appears to assert are not recoverable elements of damage. Moreover, given the extremely dim view Arkansas courts take of the tort of outrage/intentional infliction of emotional distress, it would be a hopeless endeavor to attempt to somehow cipher a legitimate claim for that tort from Plaintiff's proposed pleading. *See Crockett v. Essex*, 341 Ark. 558, 564, 19 S.W. 3d 585 (2000)("merely describing conduct as outrageous does not make it so"). It is not a defendant's or a court's obligation to read a legitimate claim where none is stated. In short, allowing these amendments would be futile.

Network Solutions and its counsel have carefully read the allegations of paragraphs 6 and 7 as they relate to Network Solutions. These paragraphs are incomprehensible and they certainly do not allege any recognizable cause of action. For instance, at page 7, Plaintiff states: "Plaintiff hereby grants Defendant Network Solutions LLC a license to offer the following domain names if Plaintiff decides not to renew them, dies, or of [sic] Network Solutions LLC is able to sell them for more than one million

dollars and retaining only a forty percent commission.” Plaintiff goes on to list five specific domain names. These paragraphs do not assert any recognizable facts, claims, causation, damages, or any other recognizable case or controversy which should proceed in this United States District Court. Accordingly, it would be futile and an inefficient use of the judicial system to allow the proposed amendment.

III. Conclusion

Network Solutions respectfully requests that the Court deny Plaintiff’s Motion Requesting Leave to File Third Amended Replacement Complaint. Network Solutions further respectfully requests that the Court grant its Motion to Dismiss (Doc. #104) in full, as Plaintiff has admitted that he completely agrees with that Motion. To the extent that this Court were inclined to give Plaintiff any additional leeway, which Network Solutions does not encourage, it is respectfully requested that Plaintiff be required to retain competent counsel so that he can receive appropriate direction as to the law and the procedures and requirements of the Federal Rules of Civil Procedure, Federal Rules of Evidence, and Local Rules of this District Court. Given the number of parties and extraneous facts Plaintiff wishes to involve, there simply must be some mechanism in place to protect litigants from abusive and excessive litigation such as this.

Respectfully submitted,

NETWORK SOLUTIONS, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System which will send notification of such filing to the following:

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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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