

**U. S. District Court
Western District of Arkansas (Fayetteville)
CIVIL DOCKET FOR CASE #: 5:14-cv-05135-TLB**

Neeley v. 5 Federal Communications Commissioners et al
Assigned to: Honorable Timothy L. Brooks
Cause: 18:2255 Violation of Protection of Children Against
Sexual Exploitation Act

Date Filed: 05/06/2014
Date Terminated: 08/05/2014
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: U.S. Government Defendant

Plaintiff

Curtis J Neeley, Jr.

represented by **Curtis J Neeley, Jr.**
2619 N. Quality Ln
Apartment 123
Fayetteville, AR 72703
(479)263-4795
PRO SE

V.

Defendant

**5 Federal Communications
Commissioners**

Defendant

FCC Chairman Tom Wheeler, et al

Defendant

US Representative Steve Womack
TERMINATED: 08/05/2014

Defendant

Tom Cotton
US Representative/Senate Candidate
TERMINATED: 08/05/2014

Defendant

US Senator Mark Pryor
TERMINATED: 08/05/2014

Defendant

US Attorney General Eric Holder, Esq

Defendant

Honorable Jimm Larry Hendren

TERMINATED: 08/05/2014

Defendant

Diana E. Murphy

TERMINATED: 08/05/2014

Defendant

Pasco M. Bowman, II

TERMINATED: 08/05/2014

Defendant

Roger Leland Wollman

TERMINATED: 08/05/2014

Defendant

Kermit Edward Bye

TERMINATED: 08/05/2014

Defendant

Stephen Breyer

TERMINATED: 08/05/2014

Defendant

Steven M. Colloton

TERMINATED: 08/05/2014

Defendant

Antonin Scalia

TERMINATED: 08/05/2014

Defendant

Ruth B. Ginsburg

TERMINATED: 08/05/2014

Defendant

Denny Chin

TERMINATED: 08/05/2014

Defendant

Anthony Kennedy

TERMINATED: 08/05/2014

Defendant

Samuel Alito

TERMINATED: 08/05/2014

Defendant

Raymond W. Gruender
TERMINATED: 08/05/2014

Defendant

Microsoft Corporation

Defendant

Google, Inc.

represented by **Jennifer Haltom Doan**
Haltom &Doan
6500 Summerhill Road, Suite 100
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ATTORNEY TO BE NOTICED

Joshua Reed Thane
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ATTORNEY TO BE NOTICED

Date Filed	#	Page	Docket Text
05/06/2014	<u>1</u>		COMPLAINT with Jury Demand against 5 Federal Communications Commissioners, Samuel Alito, Pasco M. Bowman, II, Stephen Breyer, Kermit Edward Bye, Denny Chin, Steven M. Colloton, Tom Cotton, FCC Chairman Tom Wheeler, et al, Ruth B. Ginsburg, Google, Inc., Raymond W. Gruender, Jimm Larry Hendren, Eric Holder, Esq, Anthony Kennedy, Microsoft Corporation, Diana E. Murphy, Mark Pryor, Antonin Scalia, Roger Leland Wollman, Steve Womack (Filing fee \$ 400 receipt number 5004229), filed by Curtis J Neeley, Jr. (Attachments: # <u>1</u> Exhibit "CC", # <u>2</u> Exhibit "Crime", # <u>3</u> Exhibit "Fraud", # <u>4</u> Exhibit "Chin")(tg) (Entered: 05/06/2014)
05/06/2014	<u>2</u>		CIVIL COVER SHEET for case initiated by Curtis J Neeley, Jr. (tg) (Entered: 05/06/2014)
05/06/2014	<u>3</u>		Magistrate Notice/Consent Furnished to Plaintiff. (tg) (Entered: 05/06/2014)
05/16/2014	<u>4</u>		ORDER Setting Hearings: Show Cause Hearing set for 5/27/2014 01:30 PM in Fayetteville -- 5th flr (Rm 509) before Honorable Timothy L. Brooks. The Clerk is directed to mail this order to Plaintiff via certified mail, return receipt requested. Signed by Honorable Timothy L. Brooks on May 16, 2014. (Attachments: # <u>1</u> Court Exhibit 1, # <u>2</u> Court Exhibit 2, # <u>3</u> Court Exhibit 3, # <u>4</u> Court Exhibit 4, # <u>5</u> Court Exhibit 5)(jn) (Entered: 05/16/2014)

05/16/2014		CERTIFIED MAIL, WITH RETURN RECEIPT ATTACHED, DELIVERED TO U.S. POSTAL SERVICE, for service of <u>4</u> Order Setting/Resetting Hearings, as to Curtis J. Neeley Jr. using Certified Mail Article number 70132630000035025698. (jn) (Entered: 05/16/2014)
05/19/2014	<u>5</u>	MOTION Seeking Leave to Become an CM/ECF Party and Electronically File by Curtis J Neeley, Jr. (Attachments: # <u>1</u> Exhibit "What if...")(tg) Modified on 5/19/2014 to add text(tg). (Entered: 05/19/2014)
05/19/2014	<u>6</u>	MEMORANDUM BRIEF in Support of <u>5</u> MOTION for Leave by Curtis J Neeley, Jr. (tg) (Entered: 05/19/2014)
05/20/2014	<u>7</u>	NOTICE of Appearance by Joshua Reed Thane on behalf of Google, Inc.. (Thane, Joshua) (Entered: 05/20/2014)
05/20/2014	<u>8</u>	NOTICE of Appearance by Jennifer Haltom Doan on behalf of Google, Inc.. (Doan, Jennifer) (Entered: 05/20/2014)
05/21/2014	<u>9</u>	ORDER denying <u>5</u> Motion for Leave to Become a CM/ECF Party and Electronically File. Signed by Honorable Timothy L. Brooks on May 21, 2014. (src) (Entered: 05/21/2014)
05/23/2014	<u>10</u>	RESPONSE TO ORDER TO SHOW CAUSE by Curtis J Neeley, Jr re <u>4</u> Order. (tg) (Entered: 05/23/2014)
05/23/2014	<u>11</u>	MEMORANDUM BRIEF in Support of <u>10</u> Response to Order to Show Cause by Curtis J Neeley, Jr. (Attachments: # <u>1</u> Exhibit A)(tg) (Entered: 05/23/2014)
05/23/2014	<u>12</u>	CLERK'S NOTICE OF SERVICE: CERTIFIED MAIL, RETURN RECEIPT RECEIVED for service of documents as set forth in <u>4</u> Order Setting/Resetting Hearings,. Curtis J. Neeley Jr. received documents on no date provided. (Attachments: # <u>1</u> Green Card)(rg) (Entered: 05/23/2014)
05/27/2014		TEXT ONLY Minute Entry for proceedings held before Honorable Timothy L. Brooks: Show Cause Hearing held on 5/27/2014. (Dana Hayden–Court Reporter)(Proceedings held in Fayetteville–Room 509) (slc) (Entered: 05/27/2014)
06/10/2014	<u>13</u>	NOTICE OF FILING OFFICIAL TRANSCRIPT of Show Cause Hearing held on 5/27/2014, before Judge Timothy L. Brooks. Court Reporter/Transcriber Dana Hayden. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber. After the Release of Transcript Restriction deadline, it, or a redacted transcript, may be obtained through the Court Reporter/Transcriber or PACER A Notice of Intent to Request Redaction of the Transcript MUST be filed within 7 calendar days of the filing of the transcript and served manually on the court reporter/transcriber. Redaction Request due 7/7/2014. Redacted Transcript Deadline set for 7/14/2014. Release of Transcript Restriction set for 9/11/2014. (tg) (Entered: 06/10/2014)
06/16/2014	<u>14</u>	MEMORANDUM BRIEF in Support of <u>10</u> Response to Order to Show Cause by Curtis J Neeley, Jr. (Attachments: # <u>1</u> Exhibit Complaint)(tg) (Entered: 06/16/2014)
07/18/2014	<u>15</u>	MOTION for Partial Summary Judgment by Curtis J Neeley, Jr. (rg) (Entered: 07/18/2014)

07/18/2014	<u>16</u>		MEMORANDUM BRIEF in Support of <u>15</u> MOTION for Partial Summary Judgment by Curtis J Neeley, Jr. (rg) (Entered: 07/18/2014)
07/21/2014	<u>17</u>		SUPPLEMENT by Plaintiff Curtis J Neeley, Jr to <u>16</u> Memorandum Brief in Support. (Attachments: # <u>1</u> Exhibit A.C.A. 5-41-103, # <u>2</u> Exhibit 18 U.S.C. 2511)(tg) (Entered: 07/21/2014)
07/21/2014	<u>18</u>		ORDER directing clerk to maintain exhibits in paper and not to upload to ECF re <u>15</u> MOTION for Partial Summary Judgment filed by Curtis J Neeley, Jr., <u>16</u> Memorandum Brief in Support filed by Curtis J Neeley, Jr.. Signed by Honorable Timothy L. Brooks on July 21, 2014. (jn) (Entered: 07/21/2014)
07/25/2014	<u>19</u>		MOTION to Dismiss Parties by Curtis J Neeley, Jr. (rg) (Entered: 07/25/2014)
07/25/2014	<u>20</u>		MEMORANDUM BRIEF in Support of <u>19</u> MOTION to Dismiss Party by Curtis J Neeley, Jr. (rg) (Entered: 07/25/2014)
08/05/2014	<u>21</u>		ORDER granting <u>19</u> Motion to Dismiss Parties. Parties Stephen Breyer, Kermit Edward Bye, Denny Chin, Steven M. Colloton, Tom Cotton (US Representative/Senate Candidate), Ruth B. Ginsburg, Raymond W. Gruender, Jimm Larry Hendren, Anthony Kennedy, Diana E. Murphy, Mark Pryor, Antonin Scalia, Roger Leland Wollman, Steve Womack, Samuel Alito and Pasco M. Bowman, II are dismissed without prejudice. Signed by Honorable Timothy L. Brooks on August 5, 2014. (rg) Modified text on 8/6/2014 (jn). (Entered: 08/05/2014)
08/05/2014	<u>22</u>	7	ORDER DISMISSING THE COMPLAINT <u>1</u> WITH PREJUDICE; ORDER denying <u>15</u> as MOOT Motion for Partial Summary Judgment. Sanctions against Plaintiff for the amount of \$500.00 to be paid to the CLERK OF THE COURT, Google is directed to submit an appropriate motion for attorney fees no later than August 19, 2014, Clerk shall not issue summons without approval and order of the court; see specifics in order. Signed by Honorable Timothy L. Brooks on August 5, 2014. (rg) Modified text on 8/6/2014 (jn). Modified on 8/11/2014 (slc). (Entered: 08/05/2014)
08/08/2014	<u>23</u>		MOTION for Reconsideration re <u>22</u> Order of Dismissal by Curtis J Neeley, Jr. (jn) Modified on 8/11/2014 (slc). (Entered: 08/08/2014)
08/08/2014	<u>24</u>		MEMORANDUM BRIEF in Support of <u>23</u> MOTION for Reconsideration re <u>22</u> Order of Dismissal by Curtis J Neeley, Jr. (jn) Modified on 8/11/2014 (slc). (Entered: 08/08/2014)
08/18/2014	<u>25</u>	17	ORDER denying <u>23</u> Motion for Reconsideration and modifying the language of the Court's Order (Doc.22) setting forth the basis of the attorney fee sanction. Signed by Honorable Timothy L. Brooks on August 18, 2014. (jn) (Entered: 08/18/2014)
08/19/2014	<u>26</u>		MOTION for Attorney Fees <i>and Expenses</i> by Google, Inc.. (Attachments: # <u>1</u> Declaration of J. Thane)(Doan, Jennifer) (Entered: 08/19/2014)
08/19/2014			TEXT ONLY Order directing the Plaintiff to respond to the <u>26</u> MOTION for Attorney Fees <i>and Expenses</i> no later than September 2, 2014. Signed by Honorable Timothy L. Brooks on August 19, 2014. (gg) (Entered: 08/19/2014)
09/05/2014	<u>27</u>	19	ORDER granting <u>26</u> Motion for Attorney Fees in the amount of \$11,434.08. Plaintiff's obligation to pay is suspended unless another lawsuit against

			Google is filed and determined to be frivolous or in violation of this Court's injunction. Signed by Honorable Timothy L. Brooks on September 5, 2014. (jn) (Entered: 09/05/2014)
09/19/2014	<u>28</u>	21	NOTICE OF APPEAL as to <u>27</u> Order on Motion for Attorney Fees, <u>25</u> Order on Motion for Reconsideration, <u>22</u> Order of Dismissal by Curtis J Neeley, Jr. (cc via CM/ECF: Jennifer Doan and Joshua Thane, Dana Hayden, Reporter, via U.S. Postal Service: Curtis Neeley,) (cnn) (Entered: 09/19/2014)
09/19/2014	<u>29</u>		APPEAL NOTICE to Counsel and Pro Se Parties re <u>28</u> Notice of Appeal, filed by Curtis J Neeley, Jr.. (cnn) (Entered: 09/19/2014)
09/19/2014	<u>30</u>		MOTION for Leave to Appeal in forma pauperis by Curtis J Neeley, Jr. (cnn) (Entered: 09/19/2014)
09/19/2014	<u>31</u>		DECLARATION/AFFIDAVIT of Curtis Neeley filed by Curtis J Neeley, Jr re <u>30</u> MOTION for Leave to Appeal in forma pauperis. (cnn) (Entered: 09/19/2014)
09/19/2014			MOTIONS REFERRED: <u>30</u> MOTION for Leave to Appeal in forma pauperis and <u>31</u> Declaration in support. Motions referred to Honorable Erin L. Setser.(cnn) (Entered: 09/19/2014)
09/23/2014	<u>32</u>		REPORT AND RECOMMENDATIONS re <u>30</u> MOTION for Leave to Appeal in forma pauperis filed by Curtis J Neeley, Jr.. Objections to RRdue by 10/10/2014. Signed by Honorable Erin L. Setser on September 23, 2014. (rg) (Entered: 09/23/2014)
10/02/2014	<u>33</u>		OBJECTION to <u>32</u> Report and Recommendations by Curtis J Neeley, Jr. (jn) (Entered: 10/02/2014)
10/02/2014	<u>34</u>		MEMORANDUM BRIEF in Support of <u>33</u> Objection to Report and Recommendations by Curtis J Neeley, Jr. (Attachments: # <u>1</u> Exh A, # <u>2</u> Exh B – Held in Clerk's file due to graphic photographs, # <u>3</u> Exh C)(jn) (Entered: 10/02/2014)
10/09/2014	<u>35</u>		***DISREGARD. AMENDED ORDER FILED DOC. <u>36</u> ***ORDER ADOPTING REPORT AND RECOMMENDATIONS <u>32</u> ; denying <u>30</u> Motion for Leave to Appeal in forma pauperis. Signed by Honorable Timothy L. Brooks on October 9, 2014. (rg) Modified on 10/10/2014 per chambers (src). (Entered: 10/09/2014)
10/10/2014	<u>36</u>	23	AMENDED AND SUBSTITUTED ORDER ADOPTING REPORT AND RECOMMENDATIONS <u>32</u> ; denying <u>30</u> Motion for Leave to Appeal in forma pauperis. Signed by Honorable Timothy L. Brooks on October 10, 2014. (src) (Entered: 10/10/2014)
10/14/2014	<u>37</u>	25	NOA SUPPLEMENT FORM re <u>28</u> Notice of Appeal, filed by Curtis J Neeley, Jr.. (jn) (Entered: 10/14/2014)

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

CURTIS J. NEELEY, JR.

PLAINTIFF

v.

CASE NO. 5:14-CV-05135

**5 FEDERAL COMMUNICATIONS COMMISSIONERS;
FCC CHAIRMAN TOM WHEELER; U.S. ATTORNEY
GENERAL ERIC HOLDER; MICROSOFT
CORPORATION; and GOOGLE, INC.**

DEFENDANTS

ORDER

This matter came before the Court on the 27th day of May, 2014, for a hearing on the Court's Order to Show Cause (Doc. 4) as to why Plaintiff Curtis J. Neeley, Jr. should not be held in contempt or otherwise sanctioned for repeated, willful violations of the Court's February 15, 2013 Order (Case No. 5:12-CV-05208, Doc. 58); sanctioned under Federal Rule of Civil Procedure 11 for filing his present *pro se* Complaint (Doc. 1); and his Complaint be summarily dismissed. Plaintiff appeared *pro se* at the hearing. Defendants were excused from filing responsive pleadings and from appearing at the hearing; however, attorney Josh Thane appeared on behalf of Defendant Google, Inc.

Plaintiff filed this action on May 6, 2014 (the "Current Complaint"), alleging unintelligible claims and violations of law by the Federal Communications Commission ("FCC"), Microsoft Corporation ("Microsoft"), and Google, Inc. ("Google"), among others, based upon Plaintiff's assertion that internet searches of his name return "artisan nude" images attributing the Plaintiff as being the photographer. This Court previously issued an Injunction barring Plaintiff from filing "any further motions, pleadings, or *pro se* complaints

related to events previously litigated without first obtaining the permission of the Court.” (Case No. 5:12-CV-05208, Doc. 58). Because the Current Complaint seeks to circumvent the Injunction barring him from re-litigating these same and/or related claims, the Current Complaint is **DISMISSED WITH PREJUDICE**. Further, Plaintiff will be sanctioned for the reasons and in the manner set forth below.

I. BACKGROUND

Plaintiff has previously filed several meritless complaints alleging the same or substantially similar facts and claims for relief, most of which have been dismissed by the Court with prejudice. These include Case Nos. 5:9-cv-05151 (*Neeley I*), 5:12-cv-05074 (*Neeley II*), 5:12-cv-05208 (*Neeley III*), 5:13-mc-00066 (*Neeley IV*); and 5:13-cv-05293 (*Neeley V*). The Court’s February 15, 2013 Order in *Neeley III*¹ (hereinafter the “Injunction Order”) barred Plaintiff from re-litigating any claims alleged in *Neeley I* and *Neeley II*, which alleged various violations of law by the FCC, Microsoft, and Google, “based upon the return of nude images attributed to Mr. Neeley in various internet searches.”

The Injunction Order chronicles the history of Plaintiff’s prior lawsuits, allegations, and claims for relief in *Neeley I* and *Neeley II*. Plaintiff’s appeal of the Injunction Order was affirmed by the Eighth Circuit. *Neeley v. Fed. Comm’n Comm’n, et al.*, No. 13-1506 (8th Cir. Aug. 15, 2013). Plaintiff’s Petition for *Certiorari* to the Supreme Court was denied. *Neeley v. F.C.C.*, 134 S. Ct. 496 (Oct. 21, 2013).

On November 8, 2013, shortly after *certiorari* was denied, Plaintiff sought the Court’s permission to file a Complaint (*Neeley IV*) alleging that the FCC and Congress failed to

¹Case No. 5:12-cv-05208, Doc. 58.

protect his minor children from indecent communications broadcast via the internet, including the display of “naked art” associated with internet searches of his name. The proposed Complaint in *Neeley IV* further alleged that Microsoft and Google refused to disable these search results in violation of his right to free speech. The Court denied Plaintiff’s request to file the *Neeley IV* Complaint on November 14, 2013, and likewise denied his Motion for Reconsideration on December 12, 2013, finding the proposed Complaint to be essentially identical to Neeley’s previously dismissed complaints.

Four days later, on December 16, 2013, Plaintiff filed a new Complaint (*Neeley V*) without seeking advance permission from the Court—thereby violating the Injunction Order—in which he made the same or substantially similar allegations as in *Neeley I*, *Neeley II*, *Neeley III*, and *Neeley IV*. The Court granted separate orders dismissing the defendants. The Plaintiff moved for reconsideration, contending that the Court was mistaken in finding the *Neeley V* Complaint related to events previously litigated. On March 7, 2014, the Court denied reconsideration, stating that it had conducted a “side-by-side comparison” with the Second Amended Complaint in *Neeley III*, and found that the claims were “identical in almost every respect.” (*Neeley V*, Doc. 25)

Less than two months later, on May 6, 2014, Plaintiff filed his Current Complaint—once again without seeking advance permission from the Court. The Court reviewed the Current Complaint *sua sponte* and found the facts, issues, and claims for relief to be the same or substantially similar to *Neeley I*, *Neeley II*, *Neeley III*, *Neeley IV*, and *Neeley V*. In its Show Cause Order issued May 16, 2014, this Court found the Current Complaint to be frivolous and without merit on its face (Doc. 4). The Plaintiff was ordered

to appear for a Show Cause Hearing on May 27, 2014, to explain: (1) why he should not be held in contempt or otherwise sanctioned for repeated, willful violations of the Injunction Order; (2) why he should not be sanctioned under Federal Rule of Civil Procedure 11 for the filing of his Current Complaint; and (3) why the Current Complaint should not be summarily dismissed.²

II. DISCUSSION

A. 18 U.S.C. § 2511

As he explained at the Show Cause Hearing, Plaintiff contends that the “Google Images” website pulls up his profile on deviantart.com, bypassing a password requirement, in violation of the federal wiretap statute under 18 U.S.C. § 2511, a criminal statute. The Court finds that Plaintiff does not have standing to bring any claims pursuant to a criminal statute. Even if Plaintiff had sued under a civil relief provision, he has not alleged facts in the Current Complaint illustrating that anyone attempted to contemporaneously intercept any communications protected by 18 U.S.C. § 2511. Further, 18 U.S.C. § 2511(2)(g)(i) contains an exception for communications readily accessible to the general public, which are the kinds of communications Neeley complains about with regard to the deviantart.com images.

²Prior to the hearing, Plaintiff provided the Court with a proposed Amended Complaint. The Court has now reviewed Plaintiff’s proposed Amended Complaint and finds it virtually identical to Plaintiff’s Current Complaint, with the exception that he removed judges Steven M. Colloton, Denny Chin, and Raymond W. Gruender as defendants, and added additional language pertaining to his allegation that federal judges should not remain on the bench beyond age seventy (70).

B. Ark. Code Ann. § 5-14-103

Plaintiff next alleges that Microsoft and Google violated the Arkansas Computer Fraud statute, Ark. Code Ann. § 5-41-103, by causing images from password-protected pages to return in internet searches using Plaintiff's name. Again, the Court finds that Plaintiff does not have standing to bring a cause of action under an Arkansas criminal statute. Even assuming that Plaintiff intended to reference the civil provision of the Arkansas statute, Plaintiff has not alleged sufficient facts to make his claim recognizable or plausible. In order to set forth the elements of the private right of action, Plaintiff must allege that Defendants intentionally accessed his computer, computer system network, or any part thereof, for the purpose of "devising or executing any scheme or artifice to defraud or extort; or obtaining money, property or service with a false or fraudulent intent, representation, or promise." Ark. Code Ann. § 5-41-103. Plaintiff has failed to allege facts demonstrating Defendants have intentionally accessed his computer or computer network.

C. Mandatory Retirement of Federal Judges

Plaintiff further complains that judges who remain on the bench beyond age seventy (70) have violated Article III of the United States Constitution, because they are not holding their offices during "good behavior." U.S. Const. art. III, § 1. At the hearing, Plaintiff admitted, "I don't suppose there is anything that [the Court] could do [about this complaint]." (Doc.13, p. 18). The Court agrees that it has no power or authority to re-write Article III of the United States Constitution to suit Plaintiff's personal opinions regarding the mandatory retirement age of federal judges. Plaintiff has failed to state any plausible claim upon which relief may be granted.

D. Federal Copyright Claims

Plaintiff further argues that under copyright law, he should be able to control and prevent access to his works from internet searches, and that Defendants have violated his “rights.” However, upon questioning by the Court, Plaintiff admitted that this Court in *Neeley III* ruled against his claims for alleged copyright violations. Plaintiff acknowledged that the Eighth Circuit affirmed the dismissal of his claims and entry of the Injunction Order in *Neeley III*. Plaintiff admitted in open court that he understood the concept of *res judicata* and agreed his case “was decided correctly – the thing is you can’t – you know, beat the dead horse.” (Doc. 13, pp. 19-20). Plaintiff subsequently advised the Court that he would “not sue Google or Microsoft or anybody else,” ever again (*Id.* at 46).

E. Congressional Malfeasance

Plaintiff requests that the Court levy fines on his congressman and senator for “having perjured themselves.” (*Id.* at 20). Plaintiff contends the United States Congress has not upheld their duty under the Constitution to protect the work of artists. Since members of Congress are immune from suit in their official capacities, this claim is without merit and easily dismissed. *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998).

F. Res Judicata

Under the doctrine of *res judicata*, a judgment on the merits of a prior suit bars a second suit involving the same parties or their privies based on the “same nucleus of operative facts” as the prior claim. *Daley v. Marriott Int’l, Inc.*, 415 F.3d 889, 895-96 (8th Cir. 2005) (quoting *Costner v. URS Consultants, Inc.*, 153 F.3d 667, 673 (8th Cir. 1998)). The Eighth Circuit applies a three-part test to determine whether *res judicata* applies: (1)

whether the prior judgment was rendered by a court of competent jurisdiction; (2) whether the prior judgment was a final judgment on the merits; and (3) whether the same cause of action and the same parties or their privies were involved in both cases. *First Nat. Bank in Sioux Falls v. First Nat. Bank S. Dakota*, 679 F.3d 763, 767 (8th Cir. 2012).

Plaintiff's allegations against Google, Microsoft, and the FCC arise from the same underlying facts and occurrences that were the basis of his prior claims—namely, that certain images are associated with internet searches of his name. With each subsequent complaint he files, Plaintiff attempts to alter the wording of his claims, and/or add additional defendants, but the fact remains that he continues to engage in vexatious litigation over claims that have been previously dismissed.

G. Judicial and Congressional Immunity

The actions against the "new" Defendants in the Current Complaint are not actionable claims. Judges enjoy immunity from suit when acting in their official capacity. *Mireles v. Waco*, 502 U.S. 9, 11 (1991)(citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). And, as previously stated, legislative officials have immunity from suit for their legislative activities. *Bogan*, 523 U.S. at 54.

III. RULING

A. Current Complaint Dismissed

This Court's Injunction Order enjoined Plaintiff from filing another lawsuit without first proffering it to the Court to determine whether it is related to previously litigated claims. Plaintiff has willfully violated the Injunction Order. The Current Complaint is dismissed with prejudice because: (1) it was filed without advance permission of the Court, in violation of

the Injunction Order; (2) it is barred by *res judicata*; and (3) it otherwise fails to state a plausible basis to support a recognized legal claim for relief.

B. Sanctions

The Court is exceedingly troubled by Plaintiff's repeated filing of frivolous and nonsensical claims, which demonstrates an intentional and willful violation of the Court's Injunction Order. The Court finds that Plaintiff should be sanctioned pursuant to Federal Rule of Civil Procedure 11 for the repeated filing of frivolous lawsuits regarding the same issues and claims. Rule 11 requires that any attorney or *pro se* litigant certify that a complaint is not being presented for any improper purpose, such as harassment or unnecessary delay, or to needlessly increase the cost of litigation. Fed. R. Civ. P. 11(b)(1). Rule 11 also requires that the claims, defenses, and other legal contentions in a complaint are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or establishing new law. Fed. R. Civ. P. 11(b)(2). Although *pro se* complaints are read liberally, they must follow the requirements of Rule 11. *Kurkowski v. Volcker*, 819 F.2d 201, 204 (8th Cir. 1987). A *pro se* complaint may be frivolous if "filed in the face of previous dismissals involving the exact same parties under the same legal theories." *Id.*

Decisive action is required to prevent Plaintiff's abuse of the legal system through his vexatious filings. Pursuant to Rule 11(c), the Court finds it necessary to sanction the Plaintiff in the form of a fine, and by payment of Google, Inc.'s attorney fees, in order to deter Plaintiff's repetitive violations of the Rules and this Court's prior Orders. Additionally, the Court finds it necessary to broaden the scope and effect of its prior Injunction Order.

IT IS THEREFORE ORDERED that Plaintiff's Current Complaint (Doc. 1) is **DISMISSED WITH PREJUDICE**. Consequently, Plaintiff's "Motion for Summary Judgment" (Doc. 15) is **DENIED** as **MOOT**.

IT IS FURTHER ORDERED that the Plaintiff, Curtis J. Neeley, Jr., is hereby sanctioned with a fine levied against him in the sum of **Five Hundred Dollars (\$500.00)**, which shall be paid to the CLERK OF THE COURT.

IT IS FURTHER ORDERED that the Plaintiff, Curtis J. Neeley, Jr., shall be obligated to pay Google, Inc.'s reasonable attorney fees and expenses associated with Plaintiff's filing of the Current Complaint. **Google is directed to submit an appropriate motion for attorney fees and expenses to the Court by no later than by August 19, 2014.** The Court will thereafter make a specific award in favor of Google, Inc.

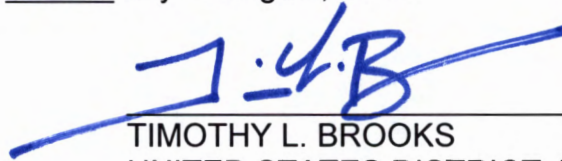
IT IS FURTHER ORDERED, that the Court's prior Injunction Order³ shall remain in full force and effect, as modified hereafter.

IT IS FURTHER ORDERED, that should the Plaintiff, Curtis J. Neeley, Jr., attempt to file another *pro se* complaint in this District, regardless of the purported allegations or claims therein, **the Clerk SHALL NOT ISSUE a summons without approval and further order of the Court.** Instead, the Clerk is ordered to accept Plaintiff's *pro se* complaints for filing (upon payment of the filing fees), and to promptly provide a copy of any such complaints to the Court for review. The Court will screen the Plaintiff's future complaints and determine the appropriateness of allowing summons to be issued, and will so inform the Clerk of its conclusion.

³Case No. 5:12-cv-5208, Doc. 58.

IT IS FURTHER ORDERED, that this Order shall not prohibit the Plaintiff from filing a proper Notice of Appeal in this action. Nor shall this Order prevent Plaintiff from filing any suit by and through a licensed attorney, and in such case summons shall be issued in the normal fashion. Finally, nothing in this Order will prohibit Plaintiff from defending himself in any criminal or civil litigation brought against him.

IT IS SO ORDERED this 5th day of August, 2014.



TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE

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

CURTIS J. NEELEY, JR.

PLAINTIFF

v.

Case No. 5:14-CV-05135

5 FEDERAL COMMUNICATIONS
COMMISSIONERS; MICROSOFT CORPORATION; and
GOOGLE, INC.

DEFENDANTS

ORDER

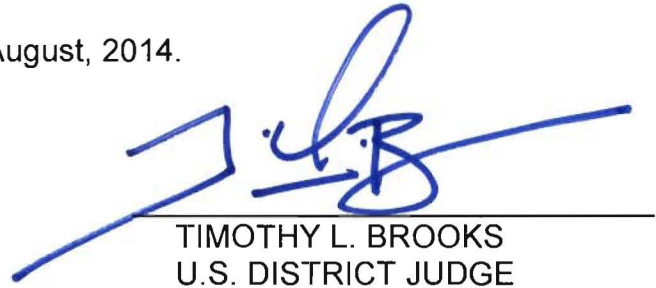
Now before the Court is Plaintiff's Motion for Reconsideration (Doc. 23). Plaintiff asks the Court to reconsider its Order (Doc. 22) dismissing his Complaint and denying his Motion for Summary Judgment. Plaintiff seeks relief pursuant to Rules 58, 59, and 60. Although the Rules do not contemplate "Motions for Reconsideration," the Court will construe the motion as an effort to correct a mistake in an order pursuant to Rule 60(a). Plaintiff's Motion fails, however, to identify any specific oversight or omission in need of correction. Instead, Plaintiff restates his same grievances and arguments.

The Court has conducted a thorough review of the pleadings filed herein, the transcript of the Show Cause Hearing held on May 27, 2014, and its Order of Dismissal dated August 5, 2014 (Doc. 22). On its own accord, the Court observes that the language of its attorney fee sanction was inaccurately premised on Rule 11. The Court's intent was to use its inherent power to sanction the Plaintiff for deliberately misusing the judicial process. The Court should further clarify that Google is not being compelled to seek an award of attorney fees. Rather, it is the Court's present intent to sanction Mr. Neeley by

ordering him to pay Google's reasonable attorney fees, provided that Google files an appropriate motion requesting such fees— along with supporting documentation— by no later than August 19, 2014. The language of the Court's Order (Doc. 22) setting forth the basis of the attorney fee sanction is hereby modified accordingly.

Otherwise, the Court finds no mistakes, errors, or omissions in its Order of Dismissal, and therefore Plaintiff's "Motion For Reconsideration" (Doc. 23) is **DENIED**.

IT IS SO ORDERED this 18th day August, 2014.



TIMOTHY L. BROOKS
U.S. DISTRICT JUDGE

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

CURTIS J. NEELEY, JR.

PLAINTIFF

v.

Case No. 5:14-CV-05135

**5 FEDERAL COMMUNICATIONS
COMMISSIONERS; MICROSOFT
CORPORATION; and GOOGLE, INC.**

DEFENDANTS

OPINION AND ORDER

Currently before the Court is Separate Defendant Google, Inc.'s ("Google") Motion for Attorneys' Fees and Expenses (Doc. 26) filed pursuant to this Court's Order entered August 5, 2014 (Doc. 22) and the Court's subsequent Order on Plaintiff Curtis J. Neeley's ("Mr. Neeley") Motion for Reconsideration (Doc. 25) entered on August 18, 2014. In accordance with the Court's Orders, Google has submitted an itemized statement of costs and attorneys' fees incurred as a result of Mr. Neeley filing a Complaint against Google related to events previously litigated. Mr. Neeley's deadline to file a response to Google's Motion has passed with no objections or response having been filed.

In its August 18, 2014 Order, the Court clarified that it intended to sanction Mr. Neeley by ordering him to pay Google's reasonable attorneys' fees, provided that Google filed an appropriate motion requesting those fees by August 19, 2014. Upon thorough consideration of Google's timely filed Motion and accompanying billing statement, the Court finds that Google has substantiated costs and fees totaling \$11,434.08, which the Court finds to be reasonable.

Accordingly, **IT IS HEREBY ORDERED AND ADJUDGED** that Google shall be entitled to recover its attorneys' fees from Mr. Neeley in the amount of \$11,434.08.

IT IS FURTHER ORDERED that Mr. Neeley's obligation to pay said fees is hereby suspended, unless and until such time that Mr. Neeley may file another lawsuit against Google. If the Court determines that any such future suit is frivolous and/or in violation of this Court's standing Injunction prohibiting the filing of such suits, then the Court will reduce the fee owed to a judgment against Mr. Neeley.

IT IS SO ORDERED this 5th day of September, 2014.


TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF ARKANSAS

Curtis J Neeley Jr.

U.S. DISTRICT COURT
WESTERN DIST ARKANSAS
Plaintiff FILED

CASE NO. 14-cv-05135

SEP 19 2014

**5 Federal Communications Commissioners
FCC Chairman Tom Wheeler, et al,
US Attorney General Eric Holder Esq,
Microsoft Corporation,
Google Inc.**

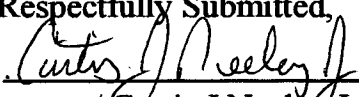
CHRIS R. JOHNSON, Clerk
By
Defendants Deputy Clerk

Notice of Appeal

Notice is given that Curtis J. Neeley Jr., plaintiff in the above case, appeals to the United States Court of Appeals for the Eighth Circuit from denial of Doc. 23 {*Motion For Reconsideration*} in Doc. 22 {*ORDER denying 15 as MOOT Motion for Partial Summary Judgment; ORDER OF DISMISSAL WITH PREJUDICE*} described by Doc. 26 {*ORDER denying Motion for Reconsideration*}. The Order of Doc. 27 {*ORDER granting 26 Motion for Attorney Fees*} on Sept 5, 2014 was a final order based on these prior abuses of discretion and errors in law. An appeal is timely until Nov. 4, 2014 because Five Federal Communications Commissioners and the United States Attorney General are Defendants pursuant to Fed. Rules of Civ. P. Rule 4(a)(1)(B).

The denial of Doc. 23 {*Motion For Reconsideration*} was failure to correct judicial revision of 18 U.S.C. 2511 and Ark Code Ann. 5-41-103. Document 22 remains a clear mistake of law. Failing to correct this mistake of law when plead was abuse of discretion leading to Doc. 27 {*ORDER granting 26 Motion for Attorney Fees*} on Sept 5, 2014 in keeping with the "swift" *sua sponte* dismissal planned by Defendant Google Inc and the District Court *ex parte*. This is wholly unjust and evidenced in the Declaration by Joshua R. Thane Esq attached to improperly granted Doc. 26.

Curtis J. Neeley Jr. 2619
N Quality Lane
Apartment 123
Fayetteville, AR 72703
14792634795 t-sms
15014217083 f

Respectfully Submitted,

s/ Curtis J Neeley Jr.

IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF ARKANSAS¹

Curtis J Neeley Jr.

Plaintiff

CASE NO. 14-cv-5135

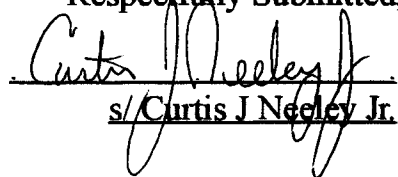
**5 Federal Communications Commissioners,
FCC Chairman Tom Wheeler et al,
US Attorney General Eric Holder Esq,
Microsoft Corporation,
Google Inc.**

Defendants

CERTIFICATE OF SERVICE

Plaintiff, Curtis J Neeley Jr, most respectfully affirms under penalty of perjury this will be filed and scanned by the United States Court for the western District of Arkansas and this scan will then be mirrored free "online" at TheEndofPornbyWire.org within 24 hours and be made available perpetually for free linked from the proceeding location including links to the FCC.gov website as a publicly accessible comment in Gn ## (13-86, 14-28).

Respectfully Submitted,


s/ Curtis J Neeley Jr.

Curtis J. Neeley Jr.
2619 N Quality Lane
Suite 123
Fayetteville, AR 72703
14792634795

¹ Submitted before EVERYONE "online" on Earth at TheEndofPornbyWire.org and at FCC.gov.

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

CURTIS J. NEELEY, JR.

PLAINTIFF

v.

CASE NO. 5:14-CV-05135

**5 FEDERAL COMMUNICATIONS
COMMISSIONERS; FCC CHAIRMAN TOM
WHEELER; U.S. ATTORNEY GENERAL
ERIC HOLDER; MICROSOFT CORPORATION;
and GOOGLE, INC.**

DEFENDANTS

AMENDED AND SUBSTITUTED ORDER

The following amends and substitutes the Order Adopting the Report and Recommendation (Doc. 35) entered on October 9, 2014:

Currently before the Court is the Report and Recommendation (“R & R”) (Doc. 32) of the Honorable Erin L. Setser, United States Magistrate Judge for the Western District of Arkansas, filed in this case on September 23, 2014, regarding Plaintiff Curtis J. Neeley, Jr.’s Application to Proceed on Appeal without Prepaying Fees or Costs (Doc. 30). After careful review of the R & R, Plaintiff’s Objections (Docs. 33 and 34), and a *de novo* review of the record, the Court finds that Defendant’s objections offer neither law nor fact requiring departure from the Magistrate’s findings. Accordingly, the R & R should be, and hereby is **ADOPTED**.

On August 5, 2014, this Court dismissed Plaintiff’s Complaint with prejudice because it was filed in violation of the Court’s Injunction Order, it was barred by res judicata, and it otherwise failed to state a claim for relief. Plaintiff now seeks to appeal *in forma pauperis* (“IFP”) the judgment, the Court’s Order on his Motion for Reconsideration

(Doc. 25), and the Court's award of attorneys' fees (Doc. 27). Plaintiff's request to proceed IFP is not taken in good faith and will be denied. Plaintiff may renew his motion for leave to appeal IFP with the Court of Appeals for the Eighth Circuit pursuant to Fed. R. App. P. 24(a)(5).

IT IS THEREFORE ORDERED that Plaintiff's Application to Proceed on Appeal Without Prepaying Fees or Costs with Affidavit (Doc. 30) is **DENIED**.

IT IS SO ORDERED this 10th day of October, 2014.

/s/ Timothy L. Brooks

TIMOTHY L. BROOKS

UNITED STATES DISTRICT JUDGE

**U.S. COURT OF APPEALS - EIGHTH CIRCUIT
NOA SUPPLEMENT**

Please note any additions or deletions to the style of the case from the style listed on the docket sheet or attach an amended docket sheet with the final style of the case.

Western District of Arkansas - FAYETTEVILLE DIVISION

14-5135 NEELEY vs. 5 FEDERAL COMMUNICATION COMM et al.

Length of Trial: **None**

Financial Status: Fee Paid? Yes No **XX**

If NO, has IFP been granted? Yes No **XX**

Is there a pending motion for IFP? Yes No **XX**

Are there any other post-judgment motions? Yes No **XX**

Please identify the court reporter.

If no court reporter, please check **XXXXXX**

Name
Address

Telephone Number

CRIMINAL CASES ONLY:

Is the defendant incarcerated? Yes No

Place of confinement, if known:

Please list all other defendants in this case, if there were multiple defendants.

SPECIAL COMMENTS: IFP DENIED 10/10/14