

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

CURTIS J. NEELEY, JR.

PLAINTIFF

v

Civil No. 14-5135

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

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Currently before the undersigned is the Plaintiff's Application to Proceed on Appeal Without Prepaying Fees or Costs with Affidavit (Doc. 30). On August 5, 2014, United States District Judge Timothy L. Brooks dismissed Plaintiff's complaint with prejudice because: (1) it was filed without advance permission of the Court, in violation of the Injunction Order; (2) it was barred by *res judicata*; and (3) it otherwise failed to state a plausible basis to support a recognized legal claim for relief. (Doc. 22). "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). As was discussed in detail in Judge Brooks' Order, all of Plaintiff's claims were subject to dismissal, as they were filed without advance permission, were barred by *res judicata*, and otherwise failed to state a plausible basis to support a recognized legal claim for relief. Accordingly, any appeal would not be taken in good faith.

The undersigned therefore recommends that the Application to Proceed on Appeal IFP (Doc. 30) be DENIED. Plaintiff may, of course, renew his motion for leave to appeal IFP with the Court of Appeals for the Eighth Circuit. See Fed. R. App. P. 24(a)(5).

The parties have fourteen (14) days from receipt of the report and recommendation

in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 23rd day of September, 2014.

/s/ Erin L. Setser

HON. ERIN L. SETSER
UNITED STATES MAGISTRATE JUDGE