

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAVID ANDREW BARDES,

Plaintiff,

v.

GEORGE WALKER BUSH, et al.,

Defendants.

Case No. 1:22-cv-290

Cole, J.
Bowman, M.J.

REPORT AND RECOMMENDATION

On May 26, 2022, Plaintiff David Andrew Bardes paid the requisite filing fee and filed suit against multiple individual and corporate defendants. (Doc. 1). Two of three pending motions to dismiss have been referred to the undersigned for initial review. (Notation Order of 8/23/2022). For the reasons that follow, the undersigned now recommends that the referred motions to dismiss filed by Defendants Alphabet, Inc., Lawrence Edward Page, Apple, Inc. (see Docs. 11, 12), be GRANTED. In addition, the undersigned recommends that a third motion to dismiss filed by Defendant Microsoft Corporation be granted and that all remaining motions filed by Plaintiff be denied. As explained below, Plaintiff's complaint is subject to *sua sponte* dismissal with prejudice under the Court's own authority.

I. Background

Plaintiff's complaint identifies eight individual and corporate defendants: former President George Walker Bush, Richard Bruce Cheney, William Henry Gates, III, Microsoft Corporation, Lawrence Edward Page, Alphabet, Inc., Timothy Donald Cook,

and Apple, Inc. In addition, Plaintiff includes two individual defendants identified only as “John and Jane Doe.” He alleges that after being falsely accused in 2004 of failing to pay child support, he was the victim of “Cold Cell” torture in an unspecified jail.¹ (Doc. 1 at PageID 2). Plaintiff alleges that while jailed, he suffered “unspeakable pain” until he fell “into [a] hypothermic coma” and was “mistakenly declared...dead.” (*Id.*) Following his release, Plaintiff alleges he began researching “punishment holding cells” and learned of widespread use of “Cold Cell” torture by former President Bush and others. (*Id.*) Plaintiff alleges that he “blew the whistle” by publishing a book and operating a website that “chronicled all of [his] research on Cold Cell torture” and associated murders. (*Id.* at PageID 1, 3, 6).

As best the undersigned can discern, Plaintiff sincerely believes that former President George W. Bush and other former or current government officials, along with three large corporations and their current or former CEOs, are trying to silence his research and writings, including through attempts to kill him. He also appears to believe that Defendants and others have previously taken retaliatory actions and conspired to prevent him from obtaining legal redress. Plaintiff generally alleges that Defendants have colluded or conspired with former President Bush in a manner that has led to the dismissal of multiple prior lawsuits and appeals, and clandestine efforts by CIA or other government agents to befriend him, to pay him off, to dig up dirt on him, to prosecute him, and/or to physically harm and murder him.² (Doc. 1 at PageID 5-8). Invoking this Court’s diversity jurisdiction, Plaintiff seeks “\$17 billion dollars in compensatory damages, and triple that

¹In prior judicial proceedings, the jail is identified as being located in Charleston, South Carolina.

²Notwithstanding these allegations, Plaintiff has not named any CIA or other government agents as defendants other than the former U.S. President and his former Vice President.

amount in extraordinary damages” from all defendants for “the reckless infliction of emotional distress, among other things.” (*Id.* at ¶¶49, 51, PageID 10).

On July 14, 2022, Defendant Alphabet, Inc. and Lawrence Edward Page (jointly referenced as “Alphabet”) filed a motion to dismiss. (Doc. 11). Alphabet’s motion seeks dismissal under Rule 12(b)(6) based upon Plaintiff’s failure to state any claim. In addition and in the alternative, Alphabet argues that this Court lacks personal jurisdiction over the Alphabet defendants, and that venue does not lie in the Southern District of Ohio.

On July 15, 2022, Apple, Inc. (“Apple”) also filed a motion to dismiss. (Doc. 12). Apple’s motion points out that Plaintiff filed a prior lawsuit in this Court on September 20, 2021 that contained substantially identical allegations. *See generally, Bardes v. United States*, Case No. 1:21-cv-598-DRC-KLL. Apple’s motion therefore seeks dismissal with prejudice under Rule 12(b)(6) based upon the doctrine of claim preclusion, as well as for failure to state a claim. Additionally, Apple seeks dismissal for lack of personal jurisdiction, for improper venue, and for insufficient service of process.

Microsoft Corporation (“Microsoft”) filed the third pending motion to dismiss on August 26, 2022.³ (Doc. 25). Microsoft’s motion discusses Plaintiff’s “long history of filing frivolous lawsuits based on the same or similar allegations” as those contained in this case. (*Id.* at PageID 304). In addition to seeking dismissal for failure to state a claim under Rule 12(b)(6), Microsoft seeks dismissal for insufficient service of process.

Before addressing the pending motions, the undersigned takes judicial notice of six prior cases prosecuted by Plaintiff that contain similar or closely related allegations.

³The first two motions to dismiss were formally referred to the undersigned prior to the date that Microsoft filed its motion. Because Microsoft’s motion so closely aligns with the other two motions to dismiss, the undersigned has included a recommendation that Microsoft’s motion also be granted.

In 2008, Plaintiff filed his first federal lawsuit in South Carolina based upon allegations concerning his alleged cold cell torture in a South Carolina jail. That case was partially dismissed at the outset, with other claims against a sheriff dismissed on summary judgment. See, e.g., *Bardes v. Magera*, 2:08-CV-487-PMD-RSC, 2009 WL 3163547 (D.S.C. Sept. 30, 2009) (dismissal of all claims against all defendants except sheriff); *Bardes v. Cannon, Jr.*, 2:08-CV-487-PMD-RSC, 2010 WL 3169614 (D.S.C. Aug. 9, 2010) (adopting R&R and granting summary judgment on claims that sheriff was vicariously liable for subjecting to cold cell torture); see also *id.* at 2010 WL 3169832 (D.S.C. June 18, 2010) (R&R). Plaintiff filed a second federal lawsuit in South Carolina in 2010, which case was dismissed based upon principles of res judicata. See *Bardes v. South Carolina*, C.A. No. 2:10-559-PMD-RSC, 2010 WL 1498190 (D.S.C. March 13, 2010) (R&R recommending sua sponte dismissal despite payment of full filing fee based on lack of subject matter jurisdiction and prior civil case); *id.*, 2010 WL 1498190 (D.S.C. Apr. 12, 2010) (adopting R&R and dismissing based upon principles of res judicata).

Plaintiff filed a third similar lawsuit in the Middle District of North Carolina.⁴ Noting the similarity of allegations to his South Carolina cases, that federal court also dismissed based upon the doctrines of res judicata and collateral estoppel. See e.g., *Bardes v. South Carolina*, No. 1:11-cv-999-CCE-LPA, 2013 WL 3864405 at *6 (M.D.N.C. July 24, 2013) (observing that Plaintiff's complaint "reflects the delusional, wholly incredible allegations of someone suffering from mental illness," but also recommending dismissal

⁴Plaintiff has engaged in additional unrelated litigation, including a pro se case filed against a former employer in the Middle District of North Carolina, in which judgment was entered in favor of the defendant. See *Bardes v. Mass. Mutual*, Case No. 11-cv-00340-CCE-JLw (MD.N.C. April 28, 2014), *aff'd* Case No. 14-1560 (4th Cir. Nov. 6, 2014).

based upon res judicata and/or collateral estoppel), adopted on August 21, 2013, *aff'd* Case No. 13-2133 (4th Cir. Feb. 7, 2014).

In 2015 and again in 2017, Plaintiff filed two more similar lawsuits in the Western District of North Carolina. In *Bardes v. Auld*, Civil No. 1:15-CV-00214-MR-DLH, 2015 WL 5796466 (W.D.N.C., Oct. 2, 2015), *aff'd* Case No. 15-2396 (4th Cir. Jan. 19, 2016), the court again dismissed Plaintiff's suit as legally frivolous. The court held that Plaintiff's claims, seeking monetary damages for injuries allegedly sustained as a result of "brutal hypothermic torture" that occurred while he was being held in the Charleston County Detention Center, were barred by the doctrines of res judicata and collateral estoppel. *See id.* ("The patency of these barriers to this action renders it legally frivolous.").

After Plaintiff filed a second suit in the Western District of North Carolina (his fifth similar suit in all), the court again listed his prior cases and pointed out that the last three had been dismissed based upon res judicata and/or collateral estoppel. The court then succinctly concluded: "For the same reasons and based on the same authority cited in those decisions, the doctrines of res judicata and collateral estoppel also bar the Plaintiff from re-litigating those issues in this case." *Bardes v. US Courts*, Civil Case No. 1:17-cv-00089-MR-DLH, 2017 WL 3402080, at *1 (W.D.N.C. Aug. 8, 2017) (dismissing case based on allegations of "hypothermic torture" that allegedly occurred while plaintiff was being held as a detainee in Charleston, South Carolina). Because it was the second such case in that district, that court expressly warned Plaintiff "that future frivolous filings will result in the imposition of a pre-filing review system." *Id.*, 2017 WL 3402080 at *3. Heeding that warning, Plaintiff did not again file suit in the Western District of North Carolina.

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