UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAVID ANDREW BARDES,

   Plaintiff,

              Case No. 1:22-cv-290

  v.   **JUDGE DOUGLAS R. COLE**

                Magistrate Judge Bowman

GEORGE WALKER BUSH, *et al.*,

   Defendant.

OPINION AND ORDER

"Extraordinary claims require extraordinary evidence." *Savage v. Warden, Pickaway Corr. Inst.*, No. 1:21-cv-33, 2022 WL 4357465, at *14 (S.D. Ohio Sept. 20, 2022) ("borrow[ing] a phrase from Carl Sagan"). David Bardes tells a truly extraordinary story—one that could be ripped from the pages of a political thriller. He has long researched and published his claim that President George W. Bush, Vice President Dick Cheney, and others have used hypothermic torture on their enemies, indirectly leading to its use on him, as well. (R&R, Doc. 28, #326). Now, though, he claims the pair are in cahoots with Microsoft, Google, Apple, and the current or former CEOs of those companies "to silence his research and writings, including through attempts to kill him." (*Id.*).

The Court does not question the sincerity of Bardes's beliefs. But courts do not accept "allegations that are sufficiently fantastic to defy reality as we know it," like "claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in time travel." *Courie v. Alcoa Wheel & Forged Prods.*, 577 F.3d 625, 629 (6th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 696 (2009) (Souter, J., dissenting)). After

reviewing the Magistrate Judge's Report and Recommendation (Doc. 28), the Court agrees with her that Bardes's story has no legal merit and no plausible basis in reality. So the Court **ADOPTS** the R&R's (Doc. 28) conclusions, although for slightly different reasons. Thus, the Court **DISMISSES** Bardes's Complaint (Doc. 1) **WITH PREJUDICE**. And the Court **DENIES** all pending motions (Docs. 5, 8–13, 15, and 25) as **MOOT** and **OVERRULES** Bardes's Objections (Doc. 31). Finally, the Court notifies Bardes that, should he file any more frivolous complaints, the Court will declare him a vexatious litigator.

BACKGROUND

A. Bardes's Complaint

After paying his filing fee, Bardes filed his Complaint. In her R&R, the Magistrate Judge extensively describes the factual basis of Bardes's Complaint. The Court will quote her liberally. Bardes's Complaint names "eight individual and corporate defendants." (Doc. 28, #325). These are former President George W. Bush, former Vice President Dick Cheney, Bill Gates, Microsoft, Alphabet (Google's parent company), Larry Page (Google's co-founder and Alphabet's former CEO), Apple, and Tim Cook (Apple's current CEO). "In addition, [Bardes] includes two individual defendants identified only as John and Jane Doe." (Doc. 28, #326).

Apparently, after he was falsely accused of failing to pay child support, he was jailed, though he doesn't say where. While incarcerated, he endured hypothermic torture, which he also calls Cold Cell torture. (*Id.*). After his release from a Cold Cell, he says he "began researching punishment holding cells" and apparently learned that

President Bush and others regularly used Cold Cell torture. (*Id.*). "He 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 #326) (citations and internal quotation marks omitted).

Now, Bardes thinks "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." (*Id.*). He has sued various parties on similar grounds before, (*id.* at #327–31), but thinks that the defendants colluded to get those suits dismissed, (*id.* at #326). He also accuses them of retaliating against him using "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." (*Id.*).

In terms of relief, Bardes "seeks $17 billion dollars [sic] in compensatory damages, and triple that amount in extraordinary damages from all defendants for the reckless infliction of emotional distress, among other things." (*Id.* at #326–27 (citations and internal quotation marks omitted)).

B.   Pending motions

After Bardes filed the Complaint, Bardes and several defendants filed a flurry of motions, several of which are pending. The pending motions include the following. First, Bardes moved for default judgment against President Bush, who has yet to appear. (Doc. 5). Next, he moved for default judgment against Gates and Microsoft, who had also failed to appear at the time. (Doc. 8). Microsoft has since appeared. (Doc.

23). He also moved for default judgment against Vice President Cheney, who has yet to appear. (Doc. 10). And he moved for default judgment against Apple (Doc. 15) and seemingly against Cook as well (Doc. 13). But by the time he did so, they had appeared. (Doc. 7). Finally, he moved to compel the Court to process his default judgment motions. (Doc. 9, #90).

There are also three pending motions to dismiss on the docket. Alphabet and Larry Page move to dismiss the case. (Doc. 11). Their motion "seeks dismissal under Rule 12(b)(6) based upon Plaintiff's failure to state any claim." (Doc. 28, #327). They also argue that "this Court lacks personal jurisdiction over the Alphabet defendants, and that venue does not lie in the Southern District of Ohio." (*Id.*).

Apple also moves to dismiss. (Doc. 12). "Apple's motion points out that [Bardes] filed a prior lawsuit in this Court on September 20, 2021 that contained substantially identical allegations." (Doc. 28, #327 (citation omitted)). So the motion "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." (*Id.*). Apple also "seeks dismissal for lack of personal jurisdiction, for improper venue, and for insufficient service of process." (*Id.*).

Finally, Microsoft also seeks dismissal. (Doc. 25). "Microsoft's motion discusses [Bardes]'s long history of filing frivolous lawsuits based on the same or similar allegations as those contained in this case." (Doc. 28, #327 (citations and internal quotation marks omitted)). Note, though, that Microsoft seeks dismissal for failure to state a claim, not claim preclusion. (Doc. 25, #305). And, "[i]n addition to seeking

dismissal for failure to state a claim under Rule 12(b)(6), Microsoft seeks dismissal for insufficient service of process." (*Id.*).

C.   The R&R

The Magistrate Judge concludes that Bardes's complaint is legally and factually frivolous. She offers two major reasons. First, the doctrine of claim preclusion (formerly known as res judicata) prevents Bardes from re-litigating the same allegations and claims he has litigated (and lost) before. (Doc. 28, #333–36). Second, the claim is "fantastic or delusional." (*Id.* at #336–39).

For these reasons, along with others offered by Alphabet, Larry Page, and Apple, the Magistrate Judge recommends that the Court not only grant their motions to dismiss but also sua sponte dismiss the whole case with prejudice under Fed. R. Civ. P. 12(b)(6). (Doc. 28, #345–46). She also recommends that the Court warn Bardes "that any further frivolous filings in this Court may result in [him] being declared a vexatious litigator." (*Id.* at #346). This would impose a pre-filing review requirement on him in future lawsuits.

Separately, the Magistrate Judge also concludes that venue is improper, (*id.* at #339–41), that the Court lacks personal jurisdiction over any of the defendants, (*id.* at #341), and that there was insufficient service of process, (*id.* at #341–43). So, in the alternative, she recommends the Court dismiss the case under Fed. R. Civ. P. 12(b)(2), 12(b)(3), or 12(b)(5). (Doc. 28, #346).

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.