

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY CASTERLOW-BEY,

Plaintiff,

v.

AMAZON.COM; GOOGLE.COM;
INC., BARNES AND NOBLES.COM;
EBAY.COM; and TRAFFORD
PUBLISHING COMPANY,

Defendants.

CASE NO. 3:17-cv-05833-RJB

ORDER ON MOTIONS TO
DISMISS

This matter comes before the Court on Defendant eBay, Inc.’s Motion to Dismiss (Dkt. 27), Defendant Barnes and Noble, Inc.’s Motion to Dismiss (Dkt. 29), Defendant Trafford Publishing Company’s (“Trafford”) Motion to Dismiss (Dkt. 30), Defendant Amazon.com Inc.’s Motion to Dismiss (Dkt. 31), and Defendant Google, LLC’s Motion to Dismiss (Dkt. 32). The Court has considered the motions and the remainder of the record herein.

This case arises from the Defendants’ alleged sale of Plaintiff’s books. Dkt. 5. Defendants now move for dismissal of the claims asserted against them pursuant to Fed. R. Civ.

1 P. 12. Dkts. 27 and 29-32. For the reasons provided below, their motions should be granted.

2 **I. BACKGROUND FACTS AND PROCEDURAL HISTORY**

3 **A. BACKGROUND FACTS**

4 On October 13, 2017, Plaintiff, at the time a prisoner in the Pierce County, Washington
5 Jail, filed this case *pro se*, moved to proceed *in forma pauperis* (“IFP”), and provided a proposed
6 complaint asserting that the Defendants infringed on the copyrights he has on his books and
7 violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962, (“RICO”).
8 Dkts. 1 and 5. He also makes reference to fraud. *Id.* Plaintiff seeks several million dollars in
9 damages. *Id.* This is one of several cases the Plaintiff has filed regarding his books. *Casterlow-*
10 *Bey v. Trafford Publishing Company*, Western District of Washington case number 17-5459-
11 RJB; *Casterlow-Bey v. Google.com, Inc.*, Western District of Washington case number 17-5686
12 RJB *Casterlow-Bey v. Ebay.com*, Western District of Washington case number 17-5687 RJB;
13 *Casterlow-Bey v. Barnes and Nobles*, U.S. District Court for the Western District of Washington
14 case number 17-5834; and *Casterlow-Bey v. Barnes and Nobles*, U.S. District Court for the
15 Western District of Washington case number 17-5871.

16 According to the Complaint in this case, Plaintiff authored three books: *Through the*
17 *Eyes of a Gangster*, *Through the Eyes of a Gangster II*, and *Wildflower – An Urban Tale* that
18 were “published through Trafford.” Dkt. 5, at 4. In this Complaint, Plaintiff asserts that
19 Trafford “has a forged, fraudulent contract” for *Wildflower – An Urban Tale*, “signed by some
20 unknown person, with non-existent address . . . with a phone number Plaintiff has never had.”
21 *Id.* He maintains that this “bogus, illegal contract authorizes international sales of all three
22 books.” *Id.* The Plaintiff alleges that all of the books’ copyrights belong to him, and the “theft,
23 unlawful distribution of all three of these copyrighted materials, done nationally and
24

1 internationally by Defendants in a continuous ‘covert operation’ designed to deprive Plaintiff of
2 the royalties from sales of all three books since 2006.” *Id.* The Plaintiff alleges that he has
3 “proof of numerous sales from Defendants’ websites.” *Id.*, at 5.

4 **B. PLAINTIFF’S OTHER CASES RELATED TO THE SALE OF HIS BOOKS**

5 On June 14, 2017, Plaintiff, while a prisoner in the Pierce County, Washington Jail,
6 proceeding IFP, filed a breach of contract case against Trafford, who he alleges failed to pay him
7 royalties on the three books that he wrote. *Casterlow-Bey v. Trafford Publishing Company*,
8 Western District of Washington case number 17-5459-RJB; Dkt. 7. An Answer to the Complaint
9 (Dkt. 28) was filed for Trafford, and the parties are engaging in discovery (Dkt. 46).

10 On August 30, 2017, Plaintiff filed another case against Defendants Amazon and Google
11 asserting they committed copyright infringement when Plaintiff’s books were sold on their
12 website. *Casterlow-Bey v. Google.com, Inc.*, Western District of Washington case number 17-
13 5686 RJB, Dkt. 1-1. On January 18, 2018, Defendants Amazon and Google’s motions to dismiss
14 pursuant to Fed. R. Civ. P. 12 were granted and the case was dismissed with prejudice.

15 *Casterlow-Bey v. Google.com, Inc.*, Western District of Washington case number 17-5686 RJB,
16 Dkt. 27.

17 On August 30, 2017, Plaintiff filed a case against Ebay.com, asserting that Ebay.com
18 committed copyright infringement, breached a contract, and committed fraud when it sold
19 Plaintiff’s books. *Casterlow-Bey v. Ebay.com*, Western District of Washington case number 17-
20 5687 RJB, Dkt. 1-1. Plaintiff sought injunctive relief and several million dollars in damages in
21 that case. *Id.* Ebay.com moved to dismiss the claims asserted against it, in part, based on
22 Plaintiff’s failure to show that his books are registered with the U.S. Copyright Office; the
23
24

1 motion was granted and the case was dismissed with prejudice on January 8, 2018. *Casterlow-*
2 *Bey v. Ebay.com*, Western District of Washington case number 17-5687 RJB, Dkt. 25.

3 On October 13, 2017, (the same day the instant case was filed) Plaintiff also filed a case
4 against “Barnes and Nobles,” moved for IFP, and provided a proposed complaint asserting that
5 Defendant “Barnes and Nobles” committed copyright infringement, breached a contract, and
6 committed fraud when it sold Plaintiff’s books. *Casterlow-Bey v. Barnes and Nobles*, U.S.
7 District Court for the Western District of Washington case number 17-5834, Dkts. 1 and 1-1.
8 Plaintiff also makes reference to the Racketeer Influenced and Corrupt Organizations Act, 18
9 U.S.C. § 1962, (“RICO”). *Id.* Plaintiff sought several million dollars in damages. *Id.* Barnes
10 and Noble’s motion to dismiss was granted, Plaintiff’s claims have been dismissed and the case
11 is closed. *Casterlow-Bey v. Barnes and Nobles*, U.S. District Court for the Western District of
12 Washington case number 17-5834, Dkt. 20.

13 On October 25, 2017, Plaintiff filed *Casterlow-Bey v. Barnes and Nobles*, U.S. District Court
14 for the Western District of Washington case number 17-5871, moved for IFP, and provided a
15 proposed complaint again asserting that Defendant “Barnes and Nobles” committed copyright
16 infringement, breached a contract, and committed fraud when it sold Plaintiff’s books.
17 *Casterlow-Bey v. Barnes and Nobles*, U.S. District Court for the Western District of Washington
18 case number 17-5871, Dkts. 1 and 1-1. Plaintiff again made reference to RICO violations. *Id.*
19 Plaintiff sought injunctive relief and several million dollars in damages. *Id.* His motion for IFP
20 was denied because the case was duplicative of the other cases he had already filed. *Casterlow-*
21 *Bey v. Barnes and Nobles*, U.S. District Court for the Western District of Washington case
22 number 17-5871, Dkt. 4. After being given an opportunity to pay the filing fee if he wished to
23 continue with the case, the case was dismissed for failure to pay the filing fee. *Casterlow-Bey v.*
24

1 *Barnes and Nobles*, U.S. District Court for the Western District of Washington case number 17-
2 5871, Dkt. 5.

3 C. PROCEDURAL HISTORY

4 Defendant eBay now moves to dismiss the claims asserted against it, arguing that (1)
5 Plaintiff's claims are subject to dismissal for the same reasons set forth in this Court's order
6 dismissing *Casterlow-Bey v. Ebay.com*, Western District of Washington case number 17-5687
7 RJB, Dkts. 21 and 25; (2) Plaintiff has again not sufficiently plead facts to support his RICO and
8 fraud claims, and so they should be dismissed, and (3) Plaintiff's RICO claim is preempted by
9 Section 230 of the Communications Decency Act ("CDA") 47 U.S.C. § 230. Dkt. 27.

10 Defendants Amazon, Google, Barnes and Noble, and Trafford move to dismiss this case on
11 the same, or similar, grounds. Dkts. 29-32.

12 The Court issued a notice to Plaintiff, as a *pro se* litigant, regarding Defendants' motions to
13 dismiss under Fed. R. Civ. P. 12 (b), and discussed Plaintiff's obligations, if he intended to
14 oppose the motions. Dkt. 41.

15 The pending motions were filed on December 29, 2017 (Dkt. 27) and January 2, 2018
16 (Dkts. 29-32). Due to Plaintiff being released from jail, he was granted two extensions of time to
17 respond to the motions to dismiss. Dkts. 41 and 48.

18 Plaintiff's responses were due March 12, 2018. Dkt. 48. Plaintiff filed a response on
19 March 13, 2018, which was not docketed in the file until March 15, 2018. Dkt. 52.

20 In his response, Plaintiff asserts that he owns copyrights to *Through the Eyes of a*
21 *Gangster* and *Through the Eyes of a Gangster II* in Canada, maintains that the "Defendants still
22 make a mockery of this court, the entire criminal justice system, as well as the Plaintiff's
23 personal constitutionally guaranteed rights by continuously and in open deviance [sic], continue
24

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.