

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

DIGITAL MEDIA TECHNOLOGIES, INC.,

Plaintiff,

v.

CASE NO. 4:16cv243-MW/CAS

NETFLIX, INC.,

Defendant.

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ORDER GRANTING MOTION TO DISMISS

This is a patent case. Plaintiff sued Defendant for infringement of a patent concerning a “multimedia network system.” ECF No. 1. Defendant moved to dismiss for failure to state a claim, arguing that the patent is ineligible under 35 U.S.C. § 101 because it claims an abstract idea. ECF No. 15. This Court, following a hearing on June 12, 2017, **GRANTS** the motion to dismiss.

I. The Parties

Plaintiff, Digital Media Technologies, Inc., is a Florida corporation with its principal place of business in Tallahassee, Florida. ECF No. 1, at 1. Other than owning and litigating the patent at issue, it is unclear what Plaintiff does.

Defendant, Netflix, Inc., is a Delaware corporation with a business address in California. *Id.* Defendant provides a video-on-demand service

offering its subscribers the possibility to watch more than 12,000 titles over the internet. ECF No. 1-2, at 44.¹

II. *The Patent*

Plaintiff owns the rights to U.S. Patent No. 8,964,764 (“the ‘764 patent”), entitled “Multimedia Network System with Content Importation, Content Exportation, and Integrated Content Management.” ECF No. 1-1, at 2. The patent describes the underlying invention as being “relate[d] generally to the field of managing digital information and more particularly to the field of creating, importing, exporting, and accessing the digital information via networked multimedia systems.” *Id.* at 22. The original filing date of the patent is May 19, 2004. *Id.* at 2.

To understand exactly what the ‘764 patent seeks to protect, it is useful to consider the background of the patent. According to the patent, “the issue of content protection . . . has been a major obstacle to allowing consumers to rent or purchase . . . quality video via the internet.” *Id.* at 22. The patent further notes that an “important development has been the ability to record an incoming video stream” using a digital video recorder (“DVR”). *Id.* However, the patent points out that “[e]ach television set requires its own DVR,” and

¹ Defendant filed its motion to dismiss prior to the Supreme Court’s ruling in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017). Moreover, Defendant has not challenged venue. Accordingly, while this Court recognizes that venue may not be proper in this district, that issue has been waived.

that DVRs are “expensive” and have “limited ability to network or interconnect.” *Id.* Consequently, the patent suggests that “a need exists for systems and methods that easily download quality video/audio and other content via the internet, or other data network, that have reliable and flexible content protection, that incorporate DVRs, and that ease the use of multimedia networks.” *Id.*

Although the patent’s background is instructive, the language of the “claim[s]” is what “defines the scope of the patentee’s rights.” *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). The ‘764 patent has thirty-seven numbered claims. *Id.* at 33–34. Claim 1, the only independent claim, reads as follows:

1. A multimedia system, comprising:
an external control server configured to:
 - receive a request from a client device via a wide area network requesting protected content to be sent to the client device;
 - receive client device authentication information from the client device, the client device authentication information comprising at least information related to a user authentication and a device authorization;
 - validate the client device authentication information according to predetermined criteria;
 - send protected content location information to the client device, the protected content location information being associated with a location of the protected content;
 - encrypt, in response to receiving a request for a content license from the client device via the wide area network, the request comprising information related to a location of the content license and being based on a determination by the client device that the protected content is encrypted and requires a content license, the content license using a public key

associated with the client device, the content license comprising a content key which the client device uses to decrypt the protected content and usage parameters specifying the terms under which the protected content can be consumed; and

send the encrypted content license to the client device, the client device using a private key associated with the client device to decrypt the content license and using the content key to decrypt the protected content for use according to usage parameters specified by the content license;

and

an external content server configured to:

receive a request for the protected content from the client device, the request comprising the protected content location information provided by the external control server; and
send the protected content to the client device.

Id. at 33.

The claim language, of course, is not a model of clarity.² As such, it helps to consider how this claim would be applied in the real world. The following example is illustrative:

Anna (a client) wants to watch a copyrighted movie (protected content) on her tablet computer (a client device). To do so, she uses her favorite video-on-demand provider, MOV. The movie is stored on MOV's server, which Anna connects with through the internet (a wide area network). From Anna's perspective, the movie starts loading on her tablet as soon as she chooses it. Behind the scenes, however, a series of steps took place:

- 1) MOV's server received a request from Anna's tablet for the movie to be sent to the tablet.
- 2) MOV's server received authentication information from Anna's tablet (ensuring that both the tablet

² "Patent claims are often intentionally drafted with vague and ambiguous language in order to preserve sufficient maneuverability for future litigation." Thomas Chen, *Patent Claim Construction: An Appeal for Chevron Deference*, 94 Va. L. Rev. 1165, 1177-78 (2008).

- was an authorized device and that Anna was an authorized user).
- 3) MOV's server validated the authentication information.
 - 4) MOV's server sent the location of the movie to Anna's tablet.
 - 5) MOV's server received a request for a content license.
 - 6) MOV encrypted the content license.
 - 7) MOV sent the encrypted content license to Anna's tablet.
 - 8) MOV's server received a request for the movie from Anna's tablet
 - 9) MOV's server sent the movie to Anna's tablet.
 - 10) Anna's tablet decrypted the content license, which contained a content key and usage parameters.
 - 11) Anna's tablet used the content key to decrypt the movie.
 - 12) Anna can watch the movie pursuant to the usage parameters (e.g., Anna may only watch the movie within a 24-hour time span, may only watch the movie twice).

The remaining thirty-six claims in the '764 patent are all dependent; that is, they are a function of Claim 1 or other dependent claims. *Id.* at 33–34. For instance, Claim 2 covers “[t]he multimedia system of claim 1, wherein said client device is a computer.” *Id.* at 33. Claim 3 covers “[t]he multimedia system of claim 2, wherein said computer is a tablet computer.” *Id.* And so forth.

III. *The Issue of Abstractness*

Roughly a year ago, Plaintiff filed a complaint alleging that Defendant

infringed several of the claims in the '764 patent.³ ECF No. 1. Shortly after, Defendant moved to dismiss the complaint for failure to state a claim. ECF No. 15. According to Defendant, the '764 patent is ineligible for protection under 35 U.S.C. § 101 because it claims “the abstract and ancient idea of limiting access to content to authorized users.” *Id.* at 7.

A. *Applicable Law*

For those unfamiliar with § 101, it is essentially the portal to the patent world. In expansive terms, it lists the varying types of inventions that are eligible for patent protection. Specifically, it says that “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor” 35 U.S.C. § 101 (2017).

Although the list of eligible inventions is broad, “courts have created exceptions to the literal scope of § 101.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1311 (Fed. Cir. 2016). For instance, the Supreme Court has “long held that . . . abstract ideas are not patentable.” *Alice Corp. Pty., v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). Nevertheless, the Court has also explained that “an invention is not rendered

³ Plaintiff also sued for infringement of another patent (U.S. Patent No. 9,300,657). ECF No. 1-1, at 5–9. However, at the hearing on June 12, 2017, Plaintiff stated that it was dropping that claim. ECF No. 68, at 5–7.

ineligible for patent simply because it involves an abstract concept.” *Id.* Instead, applications of an abstract idea “to a new and useful end” are still eligible. *Id.* (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Accordingly, the Court devised a two-part test to distinguish patents that claim abstract ideas from those that claim “patent-eligible applications” of an abstract idea. *See id.* at 2355.

In step one of the *Alice* test, the reviewing court must “determine whether the claims at issue are directed to [an abstract idea].” *Id.* In other words, the court must “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to [an abstract idea].” *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016). In step two, the court “must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 134 S. Ct. at 2357 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72, 79 (2012)). If the patent claims are directed to an abstract idea at step one and contain no inventive concept at step two, then the patent is ineligible for protection under § 101. *See id.* at 2355–60. Applying that test here, this Court finds the ‘764 patent ineligible.⁴

⁴ As previously indicated, Claim 1 is the only independent claim in the ‘764 patent. Although dependent claims are presumed valid even when they rest on an invalid claim, *see* 35 U.S.C. § 282, the dependent claims in the ‘764 patent add very little to the analysis.

B. Standard of Review

Before delving into the *Alice* test, it is important to acknowledge the procedural posture of this case. That is, this Court is ruling on a motion to dismiss. Determining the issue of abstractness at this stage is certainly appropriate.⁵ However, because the issue is being addressed in the context of a motion to dismiss, this Court “must accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff.” *Alvarez v. ICE*, 818 F.3d 1194, 1200 (11th Cir. 2016). Moreover, this Court must “treat [exhibits attached to the complaint] as part of the complaint for Rule 12(b)(6) purposes.” *Miljkovic v. Shafritz & Dinkin, P.A.*, 791 F.3d 1291,

Indeed, most of the dependent claims recite the same basic system presented in Claim 1 with only minor changes. ECF No. 1-1, at 33–34. Accordingly, if Claim 1 is ineligible for protection then the rest of the claims must fall as well. As such, this Court will consider Claim 1 to be representative.

⁵ The Federal Circuit has “repeatedly recognized that in many cases it is possible and proper to determine patent eligibility under 35 U.S.C. § 101 on a Rule 12(b)(6) motion.” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1373–74 (Fed. Cir. 2016). The reason why some courts refrain from addressing abstractness at this stage is due to claim-construction issues. *Cf., e.g., Khn Sols. Inc. v. Vertisense Inc.*, No. 16-cv-00962-HSG, 2016 WL 5725013, at *2 (N.D. Cal. Sep. 30, 2016) (“The Court holds that claim construction is necessary to fully understand the basic character of the claimed subject matter, making dismissal premature at this stage.”). However, Plaintiff has failed to identify any claim-construction issues relevant to this Court’s abstract-idea analysis. Indeed, at the June 12 hearing on Defendant’s motion to dismiss, the parties indicated that they largely agree on how to construe the ‘764 patent claims. Moreover, even if the parties disagreed, this Court could simply accept Plaintiff’s constructions for purposes of ruling on the motion to dismiss. Accordingly, there is no reason to believe that dismissal is premature in this case. *Cf. Cleveland Clinic Found. v. True Health Diagnostics LLC*, No. 2016-1766, 2017 WL 2603137, at *6 (Fed. Cir. June 16, 2017) (“Cleveland Clinic provided no proposed construction of any terms or proposed expert testimony that would change the § 101 analysis. Accordingly, it was appropriate for the district court to determine that the testing patents were ineligible under § 101 at the motion to dismiss stage.”).

1297 n.4 (11th Cir. 2015). Given the barebones nature of the complaint, the only relevant factual allegations are those contained in the ‘764 patent itself, which was attached as an exhibit. ECF No. 1-1. To the extent those allegations are relevant, this Court will accept them as true.⁶

C. Step One of the Alice Test

Like the patent at issue, the *Alice* test could certainly be clearer.⁷ Although the Supreme Court held that it “need not labor to delimit the precise contours of the ‘abstract ideas’ category,” 134 S. Ct. at 2357, it seems that such a delimitation would be useful. For instance, one issue troubling courts is the “relative level of abstraction” that should be employed at step one of the test. *See, e.g., Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1299 (Fed. Cir. 2016). From 30,000 feet up, one could say that Plaintiff’s patent is directed to the abstract idea of secured content-delivery. Someone flying closer to the

⁶ In its response to Defendant’s motion to dismiss, Plaintiff asserted that Defendant “must prove, by clear and convincing evidence,” that all of the claims in the ‘764 patent are invalid. ECF No. 24, at 25 (emphasis omitted). Initially, this Court notes that other courts have disagreed about whether “clear and convincing” is the correct standard to apply. *See, e.g., Front Row Techs., LLC v. NBA Media Ventures, LLC*, 204 F. Supp. 3d 1190, 1231-36 (D.N.M. 2016) (explaining the “four primary ways” courts have approached the issue). Regardless, “clear and convincing” is an evidentiary standard of proof; i.e., a standard that “applies to questions of fact and not to questions of law.” *Microsoft Corp. v. I4I Ltd. P’Ship*, 564 U.S. 91, 114 (2011) (Breyer, J. concurring, joined by Scalia and Alito, JJ.). Given that this Court is ruling on a motion to dismiss, there are no evidentiary issues to be proven; any factual allegations in Plaintiff’s complaint must be taken as true. Therefore, the issue of whether or not the “clear and convincing” standard applies is irrelevant to this Court’s ultimate decision.

⁷ One could say this case is about a patent that claims too much and a legal test that provides too little.

ground, however, might describe the patent as being directed to the abstract idea of delivering content secured with licenses and encryption. The pitfall of this type of analysis is that a reviewing court can essentially find any patent abstract because it is that same court that chooses how broadly to define the patent.⁸

Perhaps this confusion is what has caused the “considerable overlap between step one and step two” of the *Alice* test. *See id.* at 1294. That is, courts have resorted to looking at the individual claim limitations—an analysis typically reserved for step two—in order to determine what the abstract idea is at step one. *See Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016). Faced with this uncertain overlap, this Court adopts the same procedure adopted by the Federal Circuit in *Bascom*. That is, this Court finds it sufficient to hold that the ‘764 patent is directed to an abstract idea at step one, and will “defer . . . consideration of the specific claim limitations’ narrowing effect for step two.” *Id.*

D. *Step Two of the Alice Test*

At step two, the question is whether the patent presents any “inventive

⁸ Of course, the Supreme Court has cautioned that we must “tread carefully in construing [the abstract idea] principle lest it swallow all of patent law,” *Alice*, 134 S. Ct. at 2354, but that is hardly much guidance. At the end of the day, it seems that step one remains an exercise of “I know it when I see it.” *Cf. Eclipse IP LLC v. McKinley Equip. Corp.*, No. SACV 14-154-GW(AJWx), 2014 WL 4407592, at *3 (C.D. Cal. Sep. 4, 2014) (quoting *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J. concurring)).

concept.” *Id.* “The ‘inventive concept’ may arise in one or more of the individual claim limitations or in the ordered combination of the limitations.” *Id.* (quoting *Alice*, 134 S. Ct. at 2355). The limitations must consist of “more than ‘well-understood, routine, conventional activity.’” *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (quoting *Mayo*, 566 U.S. at 79).

Considered individually, each step in the ‘764 patent is well-understood, routine, and conventional.⁹ For instance, it is nothing new for servers and clients to send requests to each other. *Cf. Fitbit, Inc v. AliphCom*, No. 15-cv-04073-EJD, 2017 WL 528491, at *8 (N.D. Cal. Feb. 9, 2017) (holding that generic recitations of communications between servers and clients did not provide inventive concept). Similarly, it is not inventive to require authentications to access content. *Cf. OpenTV, Inc. v. Apple Inc.*, No. 5:15-cv-02008-EJD, 2016 WL 344845, at *5 (N.D. Cal. Jan. 28, 2016) (“The practice of controlling access to information by verifying credentials . . . is a long-standing and well-understood business practice that predates the internet.”); *cf. also Prism Techs. LLC v. T-Mobile USA, Inc.*, Nos. 2016-2031, 2016-2049, 2017 WL 2705338, at *2 (Fed. Cir. June 23, 2017) (nonprecedential) (holding that patent that was directed to abstract idea of “providing restricted access to resources”

⁹This Court is well aware that it should avoid any “hindsight bias.” *See, e.g., Ameritox, Ltd. v. Millennium Health, LLC*, 88 F. Supp. 3d 885, 914 (W.D. Wis. 2015). Notably, Plaintiff made sure to remind this Court that the ‘764 patent should be evaluated based on its filing date of May 19, 2004. ECF No. 24, at 35 n.12.

lacked inventive concept where the asserted claims “merely recite[d] a host of elements that are indisputably generic computer components”). Nor is it any more inventive to incorporate asymmetric/public-key encryption into an authentication system. *Cf. OpenTV*, 2016 WL 344845 at *5; *cf. also Kinglite Holdings Inc. v Micro-Star Int’l Co.*, No. CV 14-03009 JVS(PJWx), 2015 WL 6437836 (C.D. Cal. Oct. 16, 2015). Finally, even the application of licenses or rules to control content usage is not novel. *Cf. Uniloc USA, Inc. v. Amazon.com, Inc.*, No. 2:16-CV-00570, 2017 WL 1049595 (E.D. Tex. Mar. 20, 2017); *cf. also Intellectual Ventures II LLC v. JP Morgan Chase & Co.*, No. 13-cv-3777 (AKH), 2015 WL 1941331, at *14 (S.D.N.Y. Apr. 28, 2015) (“The use of an ‘access mechanism’ to enforce . . . pre-selected rules is nothing more than programming conventional software or hardware to apply rules governing access—a routine, conventional practice.”).

Accordingly, the only real issue is whether the ordered combination of claim elements supplies an inventive concept. *See Bascom*, 827 F.3d at 1350 (“The inventive concept inquiry requires more than recognizing that each claim element, by itself, was known in the art. As is the case here, an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.”). However, even that analysis does not save the ‘764 patent. The only possible “non-conventional and non-generic arrangement” in the ‘764 patent is the combination of asymmetric encryption

with content licenses. But combining those two concepts is not new. Indeed, the ‘764 patent references two earlier patents¹⁰ that both consider combining asymmetric encryption with licenses to enforce usage restrictions.¹¹ ECF No. 1-1, at 3. *Cf. also* U.S. Patent No. 7,434,052 col. 4 l. 11–20 (filed Dec. 15, 1999); U.S. Patent No. 0,191,764 figs. 2, 10 (filed Dec. 5, 2000).

Although Plaintiff suggests that this case is like *Bascom*, ECF No. 24, at 34–41, there are important distinctions between the two cases. In *Bascom*, the patent at issue recited “a specific, discrete implementation of [an] abstract idea.” 827 F.3d at 1350. Additionally, the claim did not merely recite the abstract idea with the requirement to “perform it on a set of generic computer components.” *Id.* Because of those qualities, the Federal Circuit found the

¹⁰ “[A] district court may take judicial notice of matters of public record without converting a Rule 12(b)(6) motion into a Rule 56 motion.” *Halmos v. Bomardier Aerospace Corp.*, 404 F. App’x 376, 377 (11th Cir. 2010). “Patents are public records.” *Boyden v. Burke*, 55 U.S. 575, 582 (1852).

¹¹ Even if combining asymmetric encryption with content licenses was non-conventional, the fact remains that Plaintiff’s patent claims an abstract idea. The concept of delivering content secured with licenses and encryption is simply that—a concept. It shouldn’t matter whether Plaintiff was the first to embody that concept into a networked computer system. *Cf. OpenTV, Inc. v. Apple, Inc.*, No. 14-cv-01622-HSG, 2015 WL 1535328, at *6 (N.D. Cal. Apr. 6, 2015) (“[T]he fact that a company may be the first to successfully apply an abstract idea within a new technological context does not transform the abstract idea into something tangible and patentable.”). Nor is it determinative that Plaintiff’s system might be faster and more efficient because it uses computers. *Cf. Jericho Sys. Corp. v. Axiomatics, Inc.*, No. 3:14-CV-2281-K, 2015 WL 2165931, at *5 (N.D. Tex. May 7, 2015) (“Even if the system is faster and more efficient than what was done in the past, that fact does not make this not an abstract idea. The idea behind the process remains that [sic] same. Also, it is not the invention that makes the system fast and efficient, it is the use of computers systems to implement the abstract idea that make the system fast and efficient.”), *aff’d*, 642 F. App’x 979 (Fed. Cir. 2016).

patent was eligible under § 101. *See id.* The ‘764 patent, however, does the opposite of the patent in *Bascom*. The functions it provides are neither specific nor discrete.¹² And the patent does little more than recite an abstract idea (delivering content secured with licenses and encryption) with the instruction to perform that idea on generic computer components. ECF No. 1-1, at 33.

Nor is this case, as Plaintiff suggests, similar to *Contentguard Holdings, Inc. v. Amazon.com, Inc.*, 142 F. Supp. 3d 510 (E.D. Tex. 2015). Although the patents in *Contentguard* were certainly similar to the ‘764 patent, other facts distinguish the two cases. For instance, the court in *Contentguard* held that the patents at issue were not directed to an abstract idea precisely because they used “specific and non-generic ‘trusted’ devices and systems.” *Id.* at 515. Moreover, the subject-matter of the patents was particularly “narrow” because the court had entered a *Markman* order construing the term “trusted” to require that three specific types of “integrities” were maintained. *See id.* at 512, 515. That narrowing element is not present in this case.¹³

¹² For instance, Claim 1 refers to functions such as “validate the client device” and “encrypt . . . the content license using a public key” without specifying how those functions are to be performed. ECF No. 1-1, at 33.

¹³ Moreover, *Contentguard* is not binding on this Court, and this Court is free to disagree with *Contentguard*’s holding. Indeed, at least one other court has. *See Front Row*, 204 F. Supp. 3d at 1271 (“The Court respectfully disagrees with Judge Gilstrap’s approach to [the claim in *Contentguard*]. It is difficult to imagine any form of DRM not preempted under this vague description of a limiting method for digital content.”).

IV. Conclusion

In deciding whether a patent claims an abstract idea, the Federal Circuit has distinguished between claims that “merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet” and claims that are “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). Here, the ‘764 patent seeks to solve a problem that has existed for many years. *Cf. Jericho*, 2015 WL 2165931, at *6 (noting that the problem of limiting access to authorized persons “existed before modern computing and the internet existed”). Indeed, as long as content has existed, people have sought to secure who may access it and how it may be used.

Simply put, the ‘764 patent is directed to an abstract idea. Specifically, it is directed to the abstract idea of delivering content secured with licenses and encryption. Moreover, the claim limitations in the ‘764 patent, whether taken individually or as an ordered combination, do not provide an inventive concept sufficient to *transform* the abstract idea into a patent-eligible invention.

Finally, this Court notes that its ultimate conclusion conforms with the underlying principles of patent law. The Constitution makes plain that the

purpose of granting patents is “[t]o promote the Progress of Science and useful Arts.” U.S. Const. art. I, § 8, cl. 8. However, the Supreme Court has explained that “monopolization of [abstract ideas] through the grant of a patent might tend to impede innovation more than it would tend to promote it.” *Mayo*, 566 U.S. at 70. Accordingly, the *Alice* test is designed to ensure that a patent is “more than a drafting effort designed to monopolize [an abstract idea] itself.” 134 S. Ct. at 2357. Ultimately, this Court is concerned that the ‘764 patent would undermine that goal by “improperly tying up the future use of” the invention it seeks to claim. *Cf. id.* at 2354.

For the reasons set forth above,

IT IS ORDERED:

1. Defendant’s Motion to Dismiss, ECF No. 15, is **GRANTED**.
2. The Clerk shall enter judgment stating, “Plaintiff’s claims against Defendant are dismissed with prejudice.”
3. The Clerk shall close the file.

SO ORDERED on July 3, 2017.

s/Mark E. Walker
United States District Judge