

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

OPEN RIVERS MEDIA GROUP INC.)
D/B/A OPEN RIVERS PICTURES,)
ALVIN WILLIAMS, AND TAMMY)
WILLIAMS,)
)
)
Plaintiffs,)

v.)

CIVIL ACTION
NO. 1:15-cv-00724-SCJ

SOUTHERN FILM REGIONAL)
CENTER LLC, DOMINIC “NIC”)
APPLEGATE, GATE INDUSTRIES LLC,)
MAURICE ANDERSON, RATLIFF)
ENTERTAINMENT LLC, AND)
THEOPHALUS RATLIFF,)
)
)
Defendants.)

**BRIEF IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS
PLAINTIFFS’ COMPLAINT FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO
FED. R. CIV. P. 12(B)(6)**

Defendants file this Brief in Support of their Motion to Dismiss Plaintiffs’
Complaint for Failure to State a Claim upon Which Relief Can Be Granted,
pursuant to Fed. R. Civ. P. 12(b)(6).

I. INTRODUCTION.

Defendants file their Motion to Dismiss in response to the vague and confusing allegations in Plaintiffs' Complaint [Dkt. #1], which is a classic “shotgun pleading.” The Complaint contains 10 counts, alleged in 81 paragraphs,¹ stated over 19 unnumbered pages. The Complaint is a “shotgun pleading” for two reasons.

First, each of its 10 counts incorporates by reference all previously alleged paragraphs, without any attempt to identify the particular allegations that actually support each count.² In fact, Counts I and IV attempt to incorporate literally all (or all but one) of the 81 paragraphs alleged in the Complaint.

Second, the Complaint is made even more confusing because of the manner in which Plaintiffs refer to the parties through defined terms.³ Although it is a common practice to refer to groups of persons or entities in a complaint by using a defined term that refers to *all* persons or entities that are in the defined group,

¹ Although the Complaint purports to have 80 paragraphs, there are two consecutive paragraphs numbered “5,” bringing the total to 81.

² Attached as Exhibit “A” to this Brief is a table summarizing Plaintiffs' counts and demonstrating how each is a “shotgun pleading” that incorporates by reference at least all of the preceding paragraphs.

³ Attached as Exhibit “B” to this Brief is a table summarizing the overlapping defined terms that Plaintiffs use to refer to the Defendants in the Complaint.

Plaintiffs have instead defined terms that refer to a group of parties *disjunctively*. For example, Plaintiffs have defined “Maurice Anderson” as follows: “Maurice Anderson (‘Anderson’ *or* ‘Entertainment’ *or* ‘Ratliff’).” (Complaint, ¶ 9 (emphasis added).) Consequently, any reference in the Complaint to “Maurice Anderson” could apply to any, some or all of the three named parties; yet, Plaintiffs make no effort to specify this reference when they use the term “Maurice Anderson.” Further confusion arises from the fact that Plaintiffs have defined “Entertainment” to mean Defendant Ratliff Entertainment, LLC and Maurice Anderson. (*Id.*, ¶¶ 7, 9.) As if this were not confusing enough, Plaintiffs have defined groups of parties that overlap, such that certain of the Defendants are included in several different groups of defined parties (as more clearly indicated on the table attached as Exhibit “B”).

As this Court has frequently noted, “the Eleventh Circuit has specifically instructed district courts to prohibit shotgun pleadings as *fatally defective*,” because “shotgun pleadings impede the orderly, efficient, and economic disposition of disputes.” *See, e.g., Guthrie v. Wells Fargo Home Mortg. Ass’n NA*, No. 1:13-CV-4226-RWS-LTW, 2014 U.S. Dist. LEXIS 102777 (N.D. Ga. July 7, 2014), *19 (emphasis added). Shotgun pleadings also make it onerous, if not impossible, for defendants to respond to a complaint through an answer and

counterclaims. This is especially concerning in this action, where Plaintiffs have alleged three claims for fraud and violation of RICO statutes (Counts I, III, and IV) that must be pled with specificity, in addition to the heightened pleading requirements of *Twombly*,⁴ *Iqbal*,⁵ and their progeny. Therefore, Defendants ask the Court to follow the “proper course of action for a court faced with a shotgun pleading,” which is “to require the plaintiff[s] to recast [their] complaint with the requisite specificity.” *Guthrie*. at *20.

II. STATEMENT OF FACTS.

Plaintiffs filed their Complaint in this action on March 11, 2015. The Complaint consists of 10 counts, stated in 81 paragraphs, printed on 19 unnumbered pages. The counts include three counts alleging fraud and RICO claims: Count II (federal RICO claim), Count III (Georgia RICO claim), and Count IV (fraud).

Every one of Plaintiffs’ 10 counts is a “shotgun pleading,” because each count begins with a paragraph that incorporates by reference all of the preceding

⁴ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007).

⁵ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

paragraphs of the Complaint.⁶ In fact, Count I incorporates 80 of the 81 total paragraphs in the Complaint, and Count II incorporates all 81 paragraphs—because these counts incorporate paragraphs alleged both before and after each of these counts. Attached to this Brief as Exhibit “A” is a table that summarizes each of Plaintiffs’ 10 counts. Among other things, this table lists the paragraphs that Plaintiffs incorporate by reference in support of each count.

Further confusion arises from the Complaint because of the manner in which Plaintiffs have chosen to refer to Defendants in their allegations. In Paragraphs 5 through 9 of the Complaint, Plaintiffs identify the six Defendants and indicate the defined terms that they subsequently use to refer to Defendants in the remaining paragraphs. Although this is a routine practice that often makes pleading more efficient and less cumbersome, that is not the place here—for two reasons.

First, Plaintiffs use defined terms that apply to a number of Defendants, which groups are defined in a *disjunctive* manner that could refer to one, some or all of the individual Defendants in each defined group. For instance, Defendant Gate Industries, LLC is defined as referring to “(‘Applegate’ *or* ‘Regional’).” (Complaint, ¶ 6 (emphasis added).) “Regional” is also defined as referring to

⁶ See, e.g., *PVC Windows, Inc. v. Babbitbay Beach Constr., N.V.*, 598 F.3d 802, 806 (11th Cir. 2010) (finding that a 10-count complaint in which each count “incorporates all preceding counts, such that Count X amounts to an amalgamation of all counts of the complaint” was a “typical shotgun pleading.”)

Defendant Southern Regional Center LLC. (*Id.*, ¶ 5.)⁷ “Applegate” is also defined as referring to Defendant Dominic Applegate. (*Id.*, ¶ 5.)⁸ To help untangle the confusing web of defined groups of Defendants in the Complaint, Defendants have attached as Exhibit “B” hereto, a table showing which Defendants are included in each defined group. As indicated on that table, each of the following defined terms in the Complaint refer to two persons or entities: “Regional,” “Applegate,” “Entertainment,” “Ratliff,” and “Anderson.”

Second, Plaintiffs’ manner of defining groups of Defendants has caused even more confusion because of the overlapping nature of these defined groups, such that numerous parties are included in more than one defined group. As but one example that is evidenced on the table attached as Exhibit “B,” Defendant Maurice Anderson is a member of the defined groups “Entertainment” and “Ratliff.” (*Id.*, ¶ 9.)

One of many examples of the confusion and uncertainty faced by Defendants in trying to comprehend—and ultimately answer—Plaintiffs’ allegations is Paragraph 21 of the Complaint. That paragraph states as follows,

⁷ This citation refers to the first of the two paragraphs of the Complaint numbered “5.”

⁸ This citation refers to the second of the two paragraphs of the Complaint numbered “5.”

with bolded and bracketed comments indicating the Defendants that may or may not be referenced, based upon Plaintiffs' defined groups:

21. Upon information and belief, (1) Applegate [**Nic Applegate or Gate Industries**] has defamed Pictures and the Williams family (2) Ratliff [**Theo Ratliff or Anderson**] and Applegate [**Nic Applegate or Gate Industries**] has [sic] conspired to damage Pictures and its EB5 Application (3) Ratliff [**Theo Ratliff or Maurice Anderson**] and Applegate [**Nic Applegate or Gate Industries**] have been working together to damage Pictures, (4) that Applegate [**Nic Applegate or Gate Industries**] and Regional [**Southern Film Regional Center or Gate Industries**] has [sic] interfered in the business relationship between Ratliff [**Theo Ratliff or Maurice Anderson**] / Entertainment [**Ratliff Entertainment or Maurice Anderson**] and Pictures which lead [sic] to the conspiracy to damage Pictures (5) [**unidentified parties**] violated the Georgia RICO Act and (7) [**unidentified parties**] used false representations and omissions to commit fraud to induce payment from Pictures and damage Pictures in its business.

(*Id.*, ¶ 21.) The following Paragraph 22 begins with another vague reference to unknown and unidentified parties, by stating that “[t]he facts clearly indicate that *your* actions have derailed” (*Id.*, ¶ 22 (emphasis added).) Plaintiffs do not state or suggest to whom the word “your” refers.

Another example of the confusion caused by Plaintiffs' unclear reference to Defendants is Count I, which states in its entirety as follows:

**COUNT I
BREACH OF CONTRACT
AGAINST REGIONAL**

26. Plaintiffs' reallege paragraphs 1-25 and 74-79 below.
27. Regional entered into a contract with Pictures.
28. Defendant breached the contract and attempted to obtain the benefit of the contract, an expected Forty-Five Million Dollars (\$45,000,000.00) in EB5 funding.
29. Regional breached its duty to Plaintiff and failed to honor the contract.
30. Regional harmed Pictures in its business.

(Complaint, ¶¶ 26-30.)

Plaintiffs assert this claim against “Regional.” As indicated on Exhibit “B,” the defined term “Regional” refers to Defendant Southern Regional Film Center, and/or Defendant Gate Industries, LLC. (Complaint, ¶¶ 5, 6.) Thus, it is unclear whether Plaintiffs assert this claim against one or both of these Defendants.

The allegations in Paragraphs 26 through 30 of the Complaint do not resolve this uncertainty. For example, the allegation in Paragraph 27, that “Regional entered into a contract with Pictures,” does not even indicate which of the two parties included in the defined term “Regional” was allegedly a party to the subject contract. Then, in the following Paragraph 28, Plaintiffs then refer to an unspecified “Defendant” that allegedly breached the subject contract. Consistent

with this vagueness, Paragraphs 29 and 30 refer only to “Regional” with no specificity as to which Defendant(s) is or are being referenced.

III. ARGUMENT AND CITATION OF AUTHORITIES.

A. Plaintiffs’ Complaint Is a “Shotgun Pleading.”

This Court has described shotgun pleadings as follows: “[f]or complaints, this problem often occurs where there are several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (*i.e.*, all but the first) contain irrelevant factual allegations and legal conclusions.” *T-12 Entm’t, LLC v. Young Kings Enters.*, 36 F. Supp. 3d 1380, 1386-1387 (N.D. Ga. 2014) (punctuation and citations omitted). *See also Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 (11th Cir. Ga. 2002).

As explained above in Section II of this Brief and in the table attached hereto as Exhibit “A,” the Complaint contains 10 counts, each of which incorporates by reference (at least) all of the preceding paragraphs stated in the Complaint. Therefore, it is a “shotgun pleading.” The fact that Plaintiffs have further confused their allegations by using a complex and confusing array of disjunctively defined and overlapping groups of parties, only goes to make the Complaint even more of a problematic, “shotgun pleading.” This is because a

“shotgun pleading” is one in which it is “virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.” *Anderson v. District Bd. of Trustees of Cent. Fla. Community College*, 77 F.3d 364, 366 (11th Cir. 1996).

This Court has also noted the significant problems that can result from a shotgun pleading in a case with multiple defendants, such as the instant case: “[f]or cases with multiple defendants, the inability-to-frame-an-answer problem has another frequent cause: failure to specify which defendant is responsible for each act alleged.” *T-12 Entm’t, LLC*, 36 F. Supp. 3d at 1387 (citing *Beckwith v. Bellsouth Telecomms. Inc.*, 146 F. App’x 368, 372 (11th Cir. 2005)). That is precisely the confusing situation presented by the Plaintiffs Complaint.

B. The Eleventh Circuit and This Court Have Repeatedly Made Clear That Shotgun Pleadings Are Improper, “Fatally Defective,” And Should Be Dismissed.

This Court has recognized that “[s]hotgun pleadings have long drawn fire from the Eleventh Circuit,” as indicated by the fact that “the circuit expressly condemned shotgun pleadings upward of fifty times” during the period between 1985 and 2008. *T-12 Entm’t, LLC*, 36 F. Supp. 3d at 1386 (quoting *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 979 n.54 (11th Cir. 2008)). “The central problem with such pleadings is that it is virtually impossible to know which

allegations of fact are intended to support which claim(s) for relief, thus thwarting the opposing party's ability to frame a responsive pleading." (*Id.* (quotations and citation omitted).)

Consequently, this Court has found that:

Shotgun complaints violate the letter of the Federal Rules because they are in no sense the short and plain statement of a claim required by Rule 8. They also violate the spirit of the Federal Rules, which is to secure the just, speedy, and inexpensive determination of every action. Experience offers another reason to eschew them: they often beget shotgun answers, which in turn trigger . . . unbridled discovery. The consequences of shotgun pleadings are bleak: issues are not joined, discovery is not controlled, and the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice. But these consequences are avoidable so long as the pleadings identify the relevant issues.

T-12 Entm't, LLC, 36 F. Supp. 3d at 1387 (citations and internal punctuation omitted).

"For this reason, courts faced with shotgun complaints should ordinarily require the plaintiff to replead, either on motion or *sua sponte*." *Id.* Similarly, "the Eleventh Circuit has specifically instructed district courts to prohibit shotgun pleadings as fatally defective." *Guthrie*, 2014 U.S. Dist. LEXIS 102777 at *20 (citing *B.L.E. ex rel. Jefferson v. Georgia*, 335 F. App'x 962, 963 (11th Cir. 2009)). Just as this Court has granted prior motions to dismiss for failure to state a claim filed pursuant to Fed. R. Civ. P. 12(b)(6) that were filed in opposition to a

shotgun complaint, the Court should grant Defendants' Motion and dismiss the confusing and vague Complaint. *See, e.g., Id.* at *22.

IV. CONCLUSION.

Plaintiffs' Complaint is confusing and convoluted. Consequently, neither Defendants nor this Court can easily and accurately divine from it exactly what is being alleged and against which Defendants. Each of Plaintiffs' 10 counts attempts to incorporate at least all previously asserted allegations, without any guidance as to which allegations actually support each count. Furthermore, the disjunctive and overlapping way in which Plaintiffs have defined and referred to various groups of Defendants makes it even more difficult to interpret or respond to Plaintiffs' allegations.

As this Court has noted, when faced with a shotgun pleading, "[t]he Eleventh Circuit . . . does not require the district court, or the defendants, to 'sift through the facts presented and decide for [itself] which were material to the particular cause of action asserted.'" *Id.* at *20 (quoting *Strategic Income Fund*, 305 F.3d at 1296 n.9). Therefore, Defendants respectfully request that the Court dismiss Plaintiffs' fatally defective Complaint and require Plaintiffs to state their claims in an intelligible and procedurally proper manner.

Respectfully submitted this 3rd day of April, 2015.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

I hereby certify that this document was prepared in Times New Roman,
14-point font pursuant to LR 5.1(c), NDGa.

This 3rd day of April, 2015.

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CERTIFICATE OF SERVICE

I have this day filed the foregoing **Brief in Support of Defendants' Motion to Dismiss Plaintiffs' Complaint for Failure to State a Claim upon Which Relief Can Be Granted pursuant to Fed. R. Civ. P. 12(b)(6)** using the CM/ECF system and served a copy of same upon all parties to this matter by depositing a true and correct copy of the same via regular mail, addressed as follows:

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This 3rd day of April, 2015.

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EXHIBIT “A”

TABLE IDENTIFYING PARAGRAPHS ALLEGED IN SUPPORT OF PLAINTIFFS' CLAIMS

Count	Claim	Defendant(s)¹	First Supporting Paragraph No.	Paragraphs Incorporated by Reference
I	"Breach of Contract Against Regional"	SFRC Gate Industries	¶ 26	¶¶ 1-79 ²
II	"Violation of RICO Against All Defendants"	All	¶ 31	¶¶ 1-30
III	"Violation of Georgia RICO Against All Defendants"	All	¶ 36	¶¶ 1-35
IV	"Fraud Against All Defendants"	All	¶ 43	All ³
V	"Negligent Misrepresentation Against All Defendants"	All	¶ 48	¶¶ 1-47
VI	"Willful Misrepresentation Against All Defendants"	All	¶ 52	¶¶ 1-51
VII	"Conversion Against Regional and Applegate"	SFRC Gate Industries Applegate	¶ 56	¶¶ 1-55

¹ The "Defendants" column lists each of the Defendants that is allegedly subject to each count, based on Plaintiffs' confusing and overlapping defined terms for the Defendants. (See Complaint, ¶¶ 5-9.)

² The first paragraph of Count I incorporates by reference "paragraphs 1-25 and 74-79 below." Therefore, because Paragraph 74, itself, incorporates Paragraphs 1-73, Count I as pled is predicated on Paragraphs 1-79 (or all but one of the 80 paragraphs stated in the Complaint).

³ The first paragraph of Count IV incorporates by reference "paragraphs 1-42 and 48-80 below." Therefore, because Paragraph 52, itself, incorporates Paragraphs 1-51, Count I as pled is predicated on Paragraphs 1-80 (or all of the 80 paragraphs stated in the Complaint).

VIII	“Defamation Against Regional and Applegate, Ratliff and Anderson”	SFRC Gate Industries Applegate Ratliff Entertainment Anderson	¶ 60	¶¶ 1-59
IX	“Interference with Contractual Relations Against Regional and Applegate”	SFRC Gate Industries Applegate	¶ 68	¶¶ 1-67
X	“Breach of Contract Against Ratliff and Anderson”	Ratliff Entertainment Anderson	¶ 74	¶¶ 1-73

EXHIBIT “B”

TABLE IDENTIFYING PLAINTIFFS' DEFINED TERMS FOR PARTIES

	“Regional”	“Applegate”	“Entertainment”	“Ratliff”	“Anderson”
Southern Film Regional Center, LLC	X				
Gate Industries, LLC	X	X			
Dominic “Nic” Applegate		X			
Theophalus Ratliff				X	
Ratliff Entertainment, LLC			X		
Maurice Anderson			X	X	X