

UNITED STATES DISTRICT COURT
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.)

**REPLY 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 Reply 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)” [Dkt. #7] (the “Motion to Dismiss”), and in opposition to the Memorandum of Law in Support of Plaintiffs’

Motion for Summary Judgment and in Opposition to Defendants’ Motion to Dismiss” [Dkt. #9-1] (“Plaintiffs’ Opposition Brief”).¹

I. INTRODUCTION.

Defendants moved to dismiss the Complaint [Dkt. #1] because it is a “shotgun pleading” that makes it impossible for the Court and Defendants to ascertain which allegations support each of the 10 counts alleged in the Complaint, and which Defendant(s) is or are the subject of the allegations in each of the 81 paragraphs of the Complaint.²

In response, Plaintiffs have failed to address any of the problems with their Complaint that have been raised in the Motion to Dismiss. Plaintiffs have made no attempt to specify which allegations support each of their 10 counts. Plaintiffs have similarly made no effort to specify which Defendant(s) is or are the subject of each allegation, notwithstanding the confusing, disjunctive manner that Plaintiffs have used to refer to the Defendants in the Complaint.

¹ This Reply Brief addresses only the portions of Plaintiffs’ Opposition Brief that concern Defendants’ Motion to Dismiss. Defendants will be filing a separate response to Plaintiffs’ Motion for Summary Judgment.

² Although the Complaint purports to have 80 paragraphs, there are two consecutive paragraphs numbered “5,” bringing the total to 81.

In fact, Plaintiffs' Opposition Brief only increases the confusion that arises from the vagueness of the Complaint. Although Plaintiffs claim that "[t]here is no doubt that the Complaint is legally sufficient," (Defendants' Opposition Brief, p. 9), they still devote three pages of their Brief to a discussion of "some of the facts and reasons for each Count" (*id.*, pp. 10-12). These explanations, like the allegations in the Complaint, are vague and of no help in identifying the specific claims that have been asserted against Defendants. If anything, the Court and Defendants must now try to divine the specific allegations of the Complaint based upon the Complaint itself *and* the explanations given in their Brief. Furthermore, these general explanations make no attempt to cite particular paragraphs of the Complaint or to dispel any of the confusion that arises from Plaintiffs' unclear, disjunctive references to various, overlapping groups of parties.

Although this Reply Brief does not address Plaintiffs' curious decision to incorporate a motion for summary judgment as part of Plaintiffs' Opposition Brief, the many defects in their Motion for Summary Judgment have only caused more confusion, and thus more unnecessary work, for both the Court and Defendants. Accordingly, in addition to this Brief, Defendants are filing herewith a brief in opposition to Plaintiffs' Motion for Summary Judgment, as well as a forthcoming motion seeking reimbursement of the attorney's fees and other costs incurred,

pursuant to 28 U.S.C. § 1927, and this Court’s inherent equitable powers, *see, e.g., Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-51(1991), as Defendants have struggled to make sense of Plaintiffs’ filings and to bring the many defects in those filings to the Court’s attention in an understandable fashion.

I. ARGUMENT AND CITATION OF AUTHORITIES.

A. Plaintiffs Have Completely Failed to Address or Justify Any of the Problems That Cause Their Complaint to Be a “Shotgun Pleading.”

As explained in detail in the Motion to Dismiss and supporting Brief, the Complaint is a “shotgun pleading” for two reasons: *First*, each of the 10 counts alleged in the Complaint incorporates by reference all previously alleged paragraphs, without any attempt to identify the particular allegations that support each count. In fact, Counts I and IV each attempt to incorporate literally all (or all but one) 81 paragraphs of the Complaint. *Second*, it is impossible to identify which Defendant(s) is or are implicated by each allegation, due to the confusing, disjunctive manner in which Plaintiffs have chosen to define groups of Defendants for reference in the Complaint. Defendants’ Opposition Brief fails to address both of these problems—either by proposing a properly pled, amended complaint, or by citing authorities or arguments justifying the Complaint.

1. **Plaintiffs Do Not Even Attempt to Demonstrate How Each Count of Their Complaint Properly Specifies the Particular Allegations That Support It.**

Plaintiffs' Opposition Brief does not offer any authorities supporting their argument that the Complaint is proper and not a "shotgun pleading." Nor does their Brief offer any compelling arguments defending the alleged specificity of the allegations in the Complaint. Although Defendants have noted that "[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,'" this is exactly the situation that results from the manner in which Plaintiffs have drafted their Complaint.³ *Guthrie v. Wells Fargo Home Mortg. Ass'n NA*, No. 1:13-CV-4226-RWS-LTW, 2014 U.S. Dist. LEXIS 102777, *20 (N.D. Ga. July 7, 2014) (quoting *Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1296 n.9 (11th Cir. 2002)). That situation remains unchanged, even after Defendants' Motion to Dismiss explained this problem in detail, and even after Plaintiffs have had an opportunity to respond in opposition.

³ Furthermore, Plaintiffs have only compounded this problem for the Court and Defendants by filing a vague, procedurally deficient, and premature Motion for Summary Judgment.

Without making any further effort to identify which allegations are stated in support of which claims, and against which Defendant(s), Plaintiffs continue to take the position that everything required is already in the Complaint:

Plaintiff's [sic] Complaint in this action, contains exhibits, contracts and documents supporting the claims against each defendant. The causes of actions [sic] against each defendant are also separated against each defendant with separate facts as outlined in paragraphs 10-80 of the Complaint.

(Plaintiffs' Opposition Brief, p. 13.) Yet, Plaintiffs make no attempt to specify any of these items. In fact, their statement, that the details concerning their 10 claims are already stated in Paragraphs 10-80 of the Complaint, is itself an admission that this is a "shotgun complaint." For example (and as cited in footnote 6 of Defendants' Brief in Support of their Motion to Dismiss), the Eleventh Circuit has held that a similar, 10-count complaint, in which each count incorporated by reference all preceding paragraphs, was a "typical shotgun pleading" that had to be dismissed. *See, e.g., PVC Windows, Inc. v. Babbitbay Beach Constr., N.V.*, 598 F.3d 802, 806 (11th Cir. 2010).

Furthermore, given that the first nine paragraphs of the Complaint simply identify the parties to this action (albeit in a confusing fashion), it strains credibility for Plaintiffs to allege that "[t]he causes of actions [sic] against *each* defendant are also separated against *each* defendant with *separate* facts as outlined

in paragraphs 10-80 of the Complaint.” (Plaintiffs’ Opposition Brief, p. 13 (emphasis added).) The specificity alleged in this quote is found nowhere in the Complaint, and Plaintiffs have not even attempted to defend or explain that specificity in their opposition Brief. (In fact, as will be addressed in a separate brief, Plaintiffs have essentially chosen to justify their improper “shotgun Complaint” by filing what amounts to a “shotgun motion for summary judgment” that flagrantly violates this Court’s Local Rules by failing, *inter alia*, to include a required list of allegedly undisputed material facts, along with specific citations to the record, as expressly required by LR 56.1(B)(1), NDGa.)

2. Plaintiffs Also Do Not Even Attempt to Specify Which Defendant(s) Is or Are the Subject of Each of the Many Allegations in Their 81-Paragraph Complaint.

The second reason that the Complaint is a vague and improper “shotgun pleading” is because Plaintiffs’ confusing and overlapping references to disjunctive groups of Defendants prevents the Court and Defendants from knowing exactly which Defendant(s) is or are the subject of Plaintiffs’ allegations and claims. Although Defendants have demonstrated the unavoidable confusion that arises from Plaintiffs’ confusing references to certain sub-groups of Defendants, Plaintiffs have made absolutely no effort to clarify their Complaint in this regard. In fact, Plaintiffs have chosen simply to repeat, verbatim, these same confusing,

disjunctive groupings in Paragraph Nos. 3-8 of the “Facts Relevant to Motion” section of Plaintiffs’ Opposition Brief.⁴

Instead, Plaintiffs attempt to point a finger at Defendants for the vagueness and confusion of Plaintiffs’ allegations. For instance, Plaintiffs claim that “[o]ne of the issues that Plaintiff’s [sic] face when dealing will [sic] multiple bad acts by multiple defendants acting in concert, is overlap of facts.” (Plaintiffs’ Opposition Brief, p. 9.) Similarly, Plaintiffs claim that, “[i]f not for multiple defendants, engaging [sic] this [sic] bad acts, the Complaint would not be so voluminous or multifaceted.” (*Id.*) Continuing on this theme, Plaintiffs state that “[t]he Complaint is not a shotgun pleading, but rather a necessary product of the numerous bad acts of multiple people representing themselves and entities.” (*Id.* at 12.)

But, isn’t this the nature of complex civil litigation—complex claims leveled against numerous parties acting in different capacities? Similarly, the government faces a much greater burden in meting its pleading obligations in complex business cases involving RICO claims, such as those asserted by Plaintiffs in their Complaint. It is unclear how the presence of multiple defendants and claims

⁴ Paragraph Nos. 3-8 of Plaintiffs’ Opposition Brief are literally *identical* to the confusing references to Defendants in Paragraph Nos. 5-9 of the Complaint. (Due to an error in numbering, the Complaint contains two paragraphs numbered “5.”)

should somehow excuse Plaintiffs from fulfilling their procedural obligations when bringing claims in a Federal Court. Moreover, this Court has recognized the serious harms that result from “shotgun pleadings” involving multiple defendants: *“[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 v. Young Kings Enters.*, 36 F. Supp. 3d 1380, 1387 (N.D. Ga. 2014) (emphasis added) (citing *Beckwith v. Bellsouth Telecomms. Inc.*, 146 F. App’x 368, 372 (11th Cir. 2005)).

B. In Addition to Filing an Improper Complaint, Plaintiffs Have Failed to Comply with Numerous Rules of This Court.

Defendants respectfully request that the Court read Plaintiffs’ Complaint and Plaintiffs’ Opposition Brief with an eye toward Plaintiffs’ clear disregard for the applicable Federal and local rules of procedure. Plaintiffs’ disregard is evidenced by the following:

- Failing to support a motion for summary judgment with the requisite “separate, concise, numbered statement of the material facts to which the movant contends there is no genuine issue to be tried” with “[e]ach material fact numbered separately and supported by a citation to evidence proving such fact,” as required by LR 56.1(B)(1), NDGa.;

- Failing to include a certificate of service on any filings, as required by Fed. R. Civ. P. 5(a)(1)(D) and 5(d)(1);
- Failing to use a typeface as required by LR 5.1(C), NDGa; although the Brief is printed in Times New Roman, it is clearly in a font smaller than the 14-point font requirement in this Court;
- Failing to include in briefs and memoranda the certification of typeface compliance required by LR 7.1(D), NDGa;
- Failing to adhere to the 25-page limit set by LR 7.1(D), NDGa., given that Plaintiffs have filed a 22-page brief that is printed in a point size which is markedly less than that required by the Local Rules; and
- Failing to obtain permission to practice in this Court pursuant to LR 83.1(B), NDGa., before signing pleadings filed in this case (*see* signature of Boston attorney Christopher Brown on the last page of the Complaint).

III. CONCLUSION.

One would think that Plaintiffs would have responded to Defendants' Motion to Dismiss by objecting to that Motion, along with filing an amended complaint that is drafted with the requisite specificity to address the serious and obvious problems identified by Defendants in their Motion to Dismiss. Instead, Plaintiffs have chosen to stand on that same defective Complaint and to devote

substantial time to drafting what amounts to a similarly defective “shotgun motion for summary judgment” that will needlessly waste this Court’s and the Defendants’ time and resources.

Consequently, Defendants respectfully request that this Court dismiss the Complaint. Furthermore, so that Plaintiffs are not effectively rewarded for their improper practices—even after being called on them—Defendants request that the Court also grant Defendants’ forthcoming motion for attorney’s fees. Otherwise, Defendants will have been left to pay the substantial costs required to identify, and inform the Court of, the many serious problems with Plaintiffs’ filings which are impeding Defendants’ ability and right to know exactly what claims have been filed against each of them.

Respectfully submitted this 15th 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 15th day of April, 2015.

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CERTIFICATE OF SERVICE

I have this day filed the foregoing **Reply 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 15th day of April, 2015.

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