

**IN THE 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 FILE
	:	
SOUTHERN FILM REGIONAL CENTER LLC;	:	NO. 1:15-CV-724SCJ
DOMINIC "NIC" APPLGATE; GATES	:	
INDUSTRIES LLC; MAURICE ANDERSON;	:	
RATLIFF ENTERTAINMENT LLC; and	:	
THEOPHILUS RATLIFF,	:	
	:	
Defendants.	:	

**ORDER**

This matter is before the Court on Defendants' motion to dismiss [7].

Plaintiffs, Open Rivers Media Group Inc. d/b/a Open Rivers Pictures, Alvin Williams, and Tammy Williams, filed suit against Defendants, Southern Film Regional Center LLC, Dominic "Nic" Applegate, Gates Industries LLC, Maurice Anderson, Ratliff Entertainment LLC, and Theophilus Ratliff, on March 11, 2015, alleging various contractual, fraud, conversion, defamation, tortious interference, RICO, and conspiracy claims. In general terms, Plaintiffs appear to allege that some or all of Defendants promised to enter into an agreement whereby the parties would seek "EB5" international funding to undertake activities in the entertainment

industry. Plaintiffs allege that some or all of Defendants then conspired to exclude Plaintiffs from certain business opportunities. Plaintiffs seek at least \$45,000,000 from Defendants.

Defendants filed a motion to dismiss contending that Plaintiffs' complaint was an example of impermissible shotgun pleading. Defendants ask the Court to direct Plaintiffs to re-plead their complaint in a proper manner. Plaintiffs responded to Defendants' motion to dismiss by stating in a conclusory manner that their complaint was not an example of shotgun pleading. Plaintiffs also contend that their complaint is "further clarified" through exhibits attached to the complaint. In their response brief, Plaintiffs re-state portions of their complaint and add argument and/or factual material about why each Defendant is named in the complaint. Plaintiffs state that they pled their complaint in this manner because of the numerous bad acts of the numerous Defendants.<sup>1</sup>

The Eleventh Circuit has long discussed the problems inherent in "shotgun" pleading. See, e.g., Davis v. Coca-Cola Bottling Co. Consol., 516 F.3d 955, 979 n.54

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<sup>1</sup>In addition to responding to Defendants' motion to dismiss, Plaintiffs filed their own motion and amended motion for summary judgment before discovery even began. Plaintiffs failed to follow this Court's Local Rules for motions for summary judgment by not providing a separate statement of material undisputed facts. On April 17, 2015, the Court denied with leave to renew Plaintiffs' motion and amended motion for summary judgment. The Court also stayed further proceedings until it could address Defendants' motion to dismiss. See Doc. No. [17].

(11th Cir. 2008); Sledge v. Goodyear Dunlop Tires North America, Ltd, 275 F.3d 1014, 1018 n.8 (11th Cir. 2001) (“The failure of the plaintiff to identify his claims with sufficient clarity to enable the defendant to frame a responsive pleading constitutes shotgun pleading.”). While Federal Rule of Civil Procedure 10(c) allows for statements in a pleading to be adopted by reference elsewhere in the same pleading, problems can develop 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.” Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp., 305 F.3d 1293, 1295 (11th Cir. 2002); see also PVC Windoors, Inc. v. Babbitbay Beach Constr., N.V., 598 F.3d 802, 806 & n.4 (11th Cir. 2010) (when each count of complaint incorporates all preceding counts, last count becomes “an amalgamation of all counts of the complaint” which is “typical shotgun pleading”).

Even more difficult are cases with multiple defendants where the complaint fails to specify which defendant is responsible for each act alleged. See, e.g., Beckwith v. Bellsouth Telecomms., Inc., 146 F. App'x 368, 372 (11th Cir. 2005). Such pleadings are disfavored because “it is virtually impossible to know which allegations of fact are intended to support which claim[s] for relief.” Anderson v. Dist. Bd. of Trustees of Cent. Fla. Cmty. Coll., 77 F.3d 364, 365 (11th Cir. 1996). In

these circumstances, the court may order the repleading of the complaint or even dismiss the complaint. See Davis, 516 F.3d at 983-84; Byrne v. Nezhad, 261 F.3d 1075, 1131-34 (11th Cir. 2001).

Here, the Court finds that Plaintiffs' complaint suffers from both of these "shotgun pleading" infirmities. Defendants point to the fact that Plaintiffs have not sufficiently identified which of the multiple Defendants is responsible for each act alleged. In their complaint, Plaintiffs group certain Defendants by multiple names. For example, Plaintiffs states that Defendant Gates Industries LLC is also referred to in the complaint as "Applegate" or "Regional." See Cmpl., ¶ 6. But "Applegate" and "Regional" are the short-form names for Defendants Nic Applegate and Defendant Southern Film Regional Center LLC. Id., ¶¶ 5-6. Thus, when Plaintiffs use the term Defendant Gates Industries, it is not possible for Defendants Applegate and Southern Film Regional Center LLC to know whether Plaintiffs refer also to one or both with respect to those factual allegations. Similarly, Plaintiffs state that Defendant Maurice Anderson is known by Anderson, or Entertainment, or Ratliff. Id., ¶ 9. But Entertainment and Ratliff are short form names of two other defendants. Id., ¶¶ 7-8.

The exhibits touted by Plaintiffs do not add in clarification. For example, Plaintiffs contend that they signed a contract with "Regional" to assist Plaintiffs in

obtaining EB-5 funding. Id., ¶ 10. But “Regional” could refer to Southern Film Regional Center LLC and/or Gates Industries LLC and/or Nic Applegate. Defendants have no way of determining with which entities Plaintiffs claim to have signed a contract. Plaintiffs attach Exhibit B to their complaint and contend it supports existence of the Agreement. Exhibit B, however, consists only of a copy of a check for \$100,000 made out to Gate Industries, LLC. See Cmplt., ¶ 10, Ex. B.

Plaintiffs also contend they signed an Investment Agreement with Entertainment to share in the profits and proceeds of the EB5 applications. Id., ¶ 12. Plaintiffs, however, do not attach this Investment Agreement to their complaint; they attach only a press release describing the Agreement. See Cmplt., Ex. C. Moreover, based on the manner in which Plaintiffs grouped Defendants, “Entertainment” could refer to Ratliff Entertainment LLC, or Ratliff, or Anderson. Id., ¶¶ 7-9.

In their motion, Defendants illustrated this problem by taking just one paragraph of Plaintiffs’ complaint and bolding in brackets the Defendants that may or may not be referenced in that paragraph based on Plaintiffs’ defined groups of Defendants. The Court finds this example useful.

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.

See Cmpl., ¶ 21. It is clear from just this one example that Plaintiffs have not specified which Defendants they believe have committed which acts. Because Defendants cannot identify which defendant is alleged to have committed which acts, they cannot properly answer Plaintiffs' complaint. Contrary to Plaintiffs' offered explanations, the specific identification of Defendants is all the more important in cases of multiple defendants and multiple causes of action. Defendants are also correct that Plaintiffs have adopted by reference nearly all of the paragraphs in the complaint into each count of the complaint.

All of these difficulties inherent in Plaintiffs' complaint have been compounded by Plaintiffs' exposition on the facts in their response to Defendants' motion to dismiss and their motion and amended motion for summary judgment. The argument of counsel in pleadings cannot be considered as a means of amending a complaint or of correcting any deficiencies in a complaint. The

complaint is a document which must stand on its own. The addition of factual material and explanation for various causes of action in Plaintiffs' response brief has only served to further confuse the allegations of an already confusing complaint.

For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss [7]. The Court will give Plaintiffs one final opportunity to amend their complaint to make more clear the identification of Defendants and the discussion of factual circumstances as to each cause of action.

### **Conclusion**

The Court GRANTS Defendants' motion to dismiss [7]. Plaintiffs are DIRECTED to file an amended complaint within thirty (30) days from the date of entry of this order. Within thirty (30) days thereafter, Defendants are DIRECTED to either answer Plaintiffs' Amended Complaint or file some other appropriate responsive pleading. In all other respects, the stay imposed by the Court remains in effect.

If Defendants file an answer to Plaintiffs' Amended Complaint, the stay shall be lifted and the parties shall proceed in accordance with the Federal Rules of Civil Procedure and this Court's Local Rules. The Court notes that it granted Defendants' motion for leave to file counterclaims. See Doc. No. [23]. The Court finds that Defendants are permitted to re-state those compulsory and permissive

counterclaims in their answer should they choose to answer Plaintiffs' Amended Complaint.

If Defendants file a responsive pleading, the stay will remain in effect and the parties are DIRECTED to brief that motion.

**IT IS SO ORDERED** this 10<sup>th</sup> day of November 2015.

  
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HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE