

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.)

**BRIEF IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS
PLAINTIFFS’ FIRST AMENDED COMPLAINT AS A
“SHOTGUN PLEADING,” PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendants file this Brief in Support of their Motion to Dismiss Plaintiffs’
First Amended Complaint (the “FAC”) [Doc. No. 25] as a “Shotgun Pleading,”
Pursuant to Fed. R. Civ. P. 12(b)(6).

I. INTRODUCTION.

The Court dismissed Plaintiffs’ initial Complaint [Doc. No. 1] because it
was a “shotgun pleading” and then gave Plaintiffs a final chance to file a proper

complaint. Because the FAC suffers from the same infirmities as their initial Complaint, Defendants have again responded by filing a Motion to Dismiss the entire FAC as another “shotgun pleading,” for the reasons explained below.

In the event that the Court fails to find that the entire FAC should be dismissed as a “shotgun pleading,” Defendants have also filed herewith a Motion to Dismiss the federal and state RICO claims (Counts II and III) of the FAC. In addition to being pleaded in a “shotgun” manner, Plaintiffs’ RICO claims also fail to meet the statutory elements needed to state claims upon which relief can be granted. Because Plaintiffs have also pleaded their RICO claims in a confusing and deficient manner, Defendants hereby incorporate by reference their contemporaneously filed Brief in support of their Motion to Dismiss Plaintiffs’ RICO claims.

II. STATEMENT OF FACTS.

A. The Court Has Dismissed Plaintiffs’ Initial Complaint as an Improper “Shotgun Pleading” and Granted Defendants’ “One Final Opportunity” to File a Proper, Amended Complaint.

Plaintiffs filed their initial Complaint [Doc. No. 1] on March 11, 2015. Defendants responded on April 3, 2015 by filing a Motion to Dismiss [Doc. No. 7] based on the argument that the Complaint was a “shotgun pleading,” because it was confusing and unclear about which allegations support each of the ten counts

alleged in the Complaint, and which of the Defendants are the subject of each allegation. In response, Plaintiffs filed a premature Motion for Summary Judgment (on April 10, 2015) [Doc. No. 9], an opposition Brief (on April 15, 2015) [Doc. No. 10], and an Amended Motion for Summary Judgment (on April 16, 2015) [Doc. No. 13].

On April 17, 2015, the Court denied the Plaintiffs' Motions for Summary Judgment as procedurally defective and premature in an Order [Doc. 17] that also stayed the case pending its ruling on Defendants' Motion to Dismiss—presumably to stem the tide of improper filings by Plaintiffs.

In an Order entered on November 12, 2015 [Doc. No. 24] (the “November 12 Order”), the Court granted the Defendants' Motion to Dismiss and agreed that the Complaint was indeed a “shotgun pleading” for the two reasons argued by Defendants. Specifically, the Court found that (1) “Plaintiffs have not specified which Defendants they believe have committed which acts,” and (2) “Defendants are . . . correct that Plaintiffs have adopted by reference nearly all of the paragraphs in the Complaint into each count of the Complaint.” (November 12 Order, p. 6.) The Court also found that the many “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.” (*Id.*)

Ultimately, the Court gave Plaintiffs “one final opportunity to amend their Complaint to make more clear [1] the identification of Defendants and [2] the discussion of factual circumstances as to each cause of action,” to be filed within 30 days from entry of the Order. (*Id.*, p. 7.) Thereafter, the Court gave Defendants 30 days to respond to Plaintiffs’ Amended Complaint in a responsive pleading or motion and otherwise continued the stay it imposed on April 17, 2015—except that the parties have been ordered to brief any additional motions (such as the instant one) filed in opposition to the Amended Complaint. (*Id.*, p. 8.)

On December 4, 2015, Plaintiffs filed their FAC, causing the deadline for Defendants’ response by pleading or motion fall on Monday, January 4, 2016. Because the FAC continues to suffer from many of the same deficiencies that caused the Court to dismiss the initial Complaint, Defendants are responding to the FAC by filing another Motion to Dismiss for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6). This is because Plaintiffs have again filed a confusing and inappropriate “shotgun pleading” and have thus blown the “final opportunity” granted by the Court to fix the many errors in their initial Complaint. In addition, Defendants have also filed herewith a companion Motion to Dismiss the federal

and Georgia RICO claims asserted in Counts II and III, respectively, of the FAC—out of an abundance of caution, to preserve Defendants’ arguments with respect to those counts. Defendants also incorporate by reference, herein, the arguments made in support of their other, contemporaneously filed Motion to Dismiss those RICO counts.

B. Plaintiffs’ FAC Fails to Address the Deficiencies Noted by the Court and Is Another Improper “Shotgun Pleading.”

The FAC very closely resembles the Complaint and suffers from the same problems that caused the initial Complaint also to be a “shotgun pleading.” Although the FAC states the same claims as initially asserted in the Complaint, the FAC has split what initially was one claim for breach of contract against Ratliff, Ratliff Entertainment, and Anderson into two claims for breach of contract that, together, assert claims against those same three Defendants.¹

The only other substantive difference between the Complaint and the FAC is that Plaintiffs have changed the defined terms for the parties so that each party is individually referenced. Although this partially addresses one of the two fundamental defects in the Complaint that made it a “shotgun pleading,” by clarifying references to each of the Defendants, the FAC is still overly confusing

¹ The FAC ends with two counts for breach of contract, each of which is identified as “Count X” in the FAC.

and imprecise because its eleven counts still depend upon an amalgamation of essentially all of the allegations in the FAC. As noted in Defendants' companion Motion to Dismiss regarding specific problems with Plaintiffs' RICO claims, Plaintiffs' continued lack of specificity in the FAC prevents the Court and Defendants from being able to readily identify (if at all) the specific components of such complex claims with many statutory requirements.²

Specifically, the FAC fails to address the following problems noted by the Court in the November 12 Order: "most of the counts . . . contain irrelevant factual allegations and legal conclusions" (November 12 Order, p. 3), and "that Plaintiffs have adopted by reference nearly all of the paragraphs in the complaint into each count of the Complaint" (*id.*, p. 6).

In this regard, the FAC is not really different from the Complaint. In the Complaint, each count expressly incorporated by reference all of the preceding allegations, resulting in a situation where each of the many counts incorporated

² As explained in Defendants' Motion to Dismiss Plaintiffs' RICO claims, Plaintiffs RICO claims should also be dismissed because Plaintiffs have failed to satisfy the statutory requirements of showing a pattern of racketeering activity or an enterprise. Plaintiffs have not even attempted to specify the specific statutory basis for each of their RICO claims and instead rely upon conclusory legal statements.

prior allegations and, in many cases, all of the allegations in the Complaint.³ In the FAC, Plaintiffs state eleven counts, each of which begins with an incorporation by reference of all of the introductory “facts” alleged in the preceding 64 paragraphs. (FAC, ¶¶ 65, 71, 76, 84, 89, 93, 99, 102, 111, 118, 129.) Although each of the counts in the FAC also appear to be supported by specific allegations, a closer analysis reveals that most of these “specific” allegations add nothing in the form of clarity, because they are either a near-verbatim copy of previously asserted allegations, or they are conclusory statements of law or relief. The end result, then, is the same as what resulted from Complaint—an imprecise specification of the allegations that support each claim.

The federal and state RICO claims stated in Counts II and III of the FAC are prime examples of the lack of clarity that remains despite Plaintiffs’ attempt to avoid filing another “shotgun pleading.” For example, the *federal RICO claim in Count II* consists of five paragraphs stated in Paragraphs 71-75:

- Paragraph 71 simply incorporates by reference the 64 paragraphs previously alleged in the “facts” section of the FAC.

³ This is demonstrated in Exhibit "B" to Defendants initial Motion to Dismiss [Doc. No. 7], entitled "Table Identifying Paragraphs Alleged in Support of Plaintiffs' Claims."

- Paragraph 72 is a statement of law regarding federal RICO that (1) is a verbatim copy of Paragraph 28 (which was already incorporated in the prior paragraph) and (2) contains no factual allegations or reference to any party.
- Similarly, Paragraph 73 is a nearly verbatim copy of Paragraphs 29 and 30 (already incorporated) and which even contains the same incorrect reference to allegedly supporting Exhibit “D,” which is not the document it is represented to be.
- Paragraph 74 consists of conclusory allegations of wrongdoing by Defendants.
- Finally, Paragraph 75 is another, short conclusory allegation that alleges, in its entirety, that “[t]he Defendants have harmed Pictures.”

As another example, the *Georgia state RICO claim in Count III* consists of eight paragraphs stated in Paragraphs 76-83:

- Paragraph 76 simply incorporates by reference the 64 paragraphs previously alleged in the “facts” section of the FAC.
- Paragraphs 77 through 80 are simply statements of law regarding RICO that contain no factual allegations or references to any party.

- Paragraph 81 is a nearly verbatim copy of previously alleged Paragraph 33, which adds no additional details and was already incorporated by Paragraph 76.
- Similarly, Paragraph 82 is a nearly verbatim copy of previously alleged Paragraph 34, which adds no additional details and was already incorporated by Paragraph 76.
- Finally, Paragraph 83 is another, short conclusory allegation that alleges, in its entirety, that “[a]ll of Defendants’ actions were committed for financial gain. These actions have harmed Pictures in its business.”

As another example, the *Fraud claim in Count IV* consists of five paragraphs stated in Paragraphs 84-88:

- Paragraph 84 simply incorporates by reference the 64 paragraphs previously alleged in the “facts” section of the FAC.
- Paragraph 85 is simply a statement of law regarding fraud that contains no factual allegations or references to any party.
- Paragraph 86 is a verbatim copy of previously alleged Paragraph 35, which adds no additional details and was already incorporated by Paragraph 84.
- Paragraph 87 consists of conclusory allegations of wrongdoing by Defendants.

- Finally, Paragraph 88 is simply a conclusory allegation that “Defendants’ scheme to defraud and harm Plaintiffs” has damaged Plaintiffs in an amount of at least \$45,000,000.00.

A final example is the *negligent misrepresentation claim in Count V*, which consists of four paragraphs stated in Paragraphs 89-92, and which literally does not even attempt to identify a single alleged misrepresentation:

- Paragraph 89 simply incorporates by reference the 64 paragraphs previously alleged in the “facts” section of the FAC.
- Paragraph 90 is a conclusory statement that states as follows without identifying any alleged misrepresentation: “The Defendants have all engaged in misrepresentations to defraud Plaintiffs of monies paid and business opportunities created by Pictures.”
- Similarly, Paragraph 91 is a conclusory statement that states as follows without identifying any alleged misrepresentation: “The actions of the Defendants were negligent and without regard for any harm to Pictures.”
- Finally, Paragraph 92 is simply another conclusory allegation that “Defendants’ negligent actions” have damaged Plaintiffs in an amount of at least \$45,000,000.00.

III. ARGUMENT AND CITATION OF AUTHORITIES.

Defendants incorporate by reference the arguments stated in the Briefs [Doc. Nos. 7, 11] that they previously filed in opposition to Plaintiffs' initial Complaint. In those Briefs, Defendants successfully demonstrated that the initial Complaint was an improper "shotgun pleading." Because the FAC suffers from nearly all of the same infirmities as the Complaint, Defendants' prior Briefs apply in the instant Brief, as well. As previously noted in Defendants' past Briefs, Plaintiffs' casual and imprecise manner of pleading is deficient under the heightened requirements that have followed the *Twombly/Iqbal* jurisprudence that has heightened the pleading requirements for federal practice.

To survive a motion to dismiss under Rule 12(b)(6), Plaintiff must present factual allegations "enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.* at 679.

When compared against this heightened standard of pleading, Plaintiffs' FAC clearly falls short. The "conclusions" and "formulaic recitations" that the United States Supreme Court has rejected in its *Twombly/Iqbal* jurisprudence is exactly what pervades the FAC, as demonstrated in the bulleted analysis of certain claims, above.

IV. CONCLUSION.

After filing a clearly deficient "shotgun pleading," this Court granted 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." (November 12 Order, p. 7.) As demonstrated above, and on the face of the FAC, Plaintiffs have failed to properly amend their Complaint to comport with the pleading requirements in this Court. Although the FAC now defines each party individually rather than as overlapping groups, it still fails to clarify "factual circumstances as to each cause of action" as directed by the Court.

At the end of the day, the FAC is deficient in the same way that the Complaint was—because both fail to make clear which specific allegations support which of Plaintiffs' eleven claims. Defendants also incorporate and reference their other contemporaneously filed Motion to Dismiss, which outlines the serious deficiencies in the Plaintiffs' unsuccessful attempt to state federal and state RICO

claims. Defendants therefore respectfully request that the Court dismiss the FAC with prejudice.

Respectfully submitted this 4th day of January, 2016.

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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 4th day of January, 2016.

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CERTIFICATE OF SERVICE

I have this day filed the foregoing **Brief in Support of Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint as a "Shotgun Pleading," 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 4th day of January, 2016.

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