

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

OULAWLESSNESS PRODUCTIONS INC.;
BAND OF OUTLAWS TOURING, INC.; and
GUITAR ARMY PUBLISHING, INC.,

Plaintiffs,

CASE NO.: 8:10-cv-00024-RAL-TBM

v.

HENRY PAUL; MONTE YOHO;
CHRIS ANDERSON; BILLY CRAIN;
RANDY THREET; JOHN COLEMAN;
JOHN GELLMAN; BLACKHAWK;
and THE HENRY PAUL BAND;

Defendants.

**DEFENDANTS' MOTION TO DISMISS, OR, IN THE
ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT
AND SUPPORTING MEMORANDUM OF LAW**

Pursuant to Rules 12 (b)(6) and 12(e), Federal Rules of Civil Procedure, and Local Rule 3.01, Rules of the Middle District of Florida, Defendants, Henry Paul, Monte Yoho, Chris Anderson, Billy Crain, Randy Threet, John Coleman, John Gellman, Blackhawk, and The Henry Paul Band (collectively, the "Defendants"), move on the following grounds for the Court to dismiss the Complaint¹ or, in the alternative, to order that the Plaintiffs provide a more definite statement of the Complaint:

¹ The Complaint was filed by an attorney *not* admitted to practice before this Court, via *pro hac vice* or otherwise. Although Local counsel who is admitted to practice before this Court subsequently appeared, no motion for *pro hac vice* admission has been filed by Plaintiffs' lead counsel. This is a continuing concern. Plaintiffs' lead counsel, not local counsel, was the sole participant for Plaintiffs at the Rule 26 conference.

1. Plaintiffs filed a six (6) count Complaint, consisting of 148 paragraphs. Unfortunately, the Complaint is pled in such a manner that it impossible to discern whether all, some, or only one plaintiff is suing all, some, or only one defendant in any of the six (6) counts.

2. Specifically, each count of the Complaint incorporates all preceding paragraphs contained within the Complaint.

3. Moreover, although there are three (3) different plaintiffs identified in the Complaint, none of the counts specifies the particular plaintiff (or plaintiffs) bringing the claim. Rather, the generic singular term "Plaintiff" used.

4. Finally, the Complaint contains a single prayer for relief for all three (3) Plaintiffs and all six (6) claims, which lumps together all forms of relief without differentiating which Plaintiff is seeking what relief against which, or which group, of Defendants.

5. As a result of the pleading defects identified above, the Complaint constitutes a "shotgun" pleading prohibited in both the Eleventh Circuit and in the Middle District of Florida. Thus, the Court should dismiss the Complaint.

6. Alternatively, Defendants cannot respond to the Complaint as presently pled because they cannot determine which Plaintiff is bringing which cause of action against which of them, and also cannot not determine what relief each Plaintiff seeks against each Defendant for each claim.

7. The Court should accordingly require Plaintiffs to provide a more definite statement of each claim for relief in the Complaint.

WHEREFORE, Defendants respectfully request the Court grant their Motion to Dismiss and dismiss the Complaint, or, alternatively, grant their Motion for More Definite Statement and require Plaintiffs to amend the Complaint, and grant such other and further relief which this Court deems just and appropriate.

MEMORANDUM OF LAW

Pursuant to Local Rule 3.01 (a), Rules of the Middle District of Florida, Defendants submit this Memorandum of Law in support of their Motion to Dismiss, or, in the alternative, Motion for More Definite Statement.

Plaintiffs' Complaint fails to comply with the procedural rules governing pleadings, and should be dismissed. In particular, the Complaint violates Rule 8 (a)(2), Federal Rules of Civil Procedure, which requires that a pleading contain a "short and plain statement of the claim" showing that the plaintiff is entitled to relief. The Complaint also violates the requirement of Rule 10(b), Federal Rules of Civil Procedure, that the allegations "shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances...[and][e]ach claim found upon a separate transaction or occurrence ...shall be stated in a separate count."

The Complaint presently contains six (6) counts, each of which incorporates by reference the allegations contained within each preceding paragraph. As a result, five of the counts contain redundant and irrelevant factual allegations and legal conclusions. This is, "in no sense the 'short and plain statement of the claim' required by Rule 8." *Magluta v. Samples*, 256 F.3d 1282, 1284-85 (11th Cir. 2001).

Incorporation of all preceding allegations into each count of the Complaint constitutes a “shotgun pleading” which the Eleventh Circuit has repeatedly condemned. *Id.* “Shotgun pleadings ... impede[] the due administration of justice and, in a very real sense, amount[] to obstruction of justice.” *Byrne v. Nezhat*, 261 F.3d 1075, 1128-34 (11th Cir. 2001). “[I]t 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. Fl. Comm. College*, 77 F.3d 364, 366 (11th Cir. 1996).

Plaintiffs’ “shotgun” complaint should be dismissed. *Strategic Income Fund, L.L.C. v. Spear, Leads & Kellogg Corp.*, 305 F.3d 1293, 1297 (11th Cir. 2002)(affirming dismissal of ‘shotgun’ complaint); *Roundtree v. Countrywide Home Loans, Inc.*, 2009 WL 5215334 *3-4 (M.D. Fla. December 29, 2009)(dismissing ‘shotgun’ complaint).

Alternatively, because a “shotgun” complaint “presents an unfair burden on the defendant, the plaintiff should be required to provide a more definite statement of his complaint.” *Beckwith v. Bellsouth Telecomm., Inc.*, 146 Fed. Appx. 368, 2005 WL 2012667 (11th Cir. August 22, 2005)(affirming district court order directing plaintiff to file more definite statement of its claim); *see Anderson*, 77 F.3d at 366 (opining that district court would have granted a motion for more definite statement of plaintiff’s “shotgun” complaint had defendant actually moved for one).

Plaintiffs should also be required to provide a more definite statement of their prayer for relief because it is impossible to know which plaintiff is seeking what remedy. The present *ad damnum* clause lumps together all three plaintiffs in one request, and purports to seek all possible remedies for all six counts for all Plaintiffs against all

Defendants. If the Complaint is not dismissed in its entirety, Plaintiffs should be ordered to amend their Complaint to add a prayer for relief following each count specifically stating what relief is sought by which Plaintiff against which Defendant.

CONCLUSION

For all of the foregoing reasons, Plaintiffs' Complaint should be dismissed, or, in the alternative, Plaintiffs should provide a more definite statement of their claims.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 23, 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: David MacTavish, Esq., 8N341 Thomas Rd., Maple Park, IL 60151.

s/ Richard E. Fee
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