IN THE UNITED DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DISH NETWORK L.L.C.,
SLING TV L.L.C., and
NAGRASTAR LLC,

Plaintiffs,

CASE NO. 8:22-cv-00603-KKM-SPF

v.

JASON LABOSSIERE, **SEAN BEAMAN**,
STEFAN GOLLNER, and **OSIVETTE BRITO**,
Individually and collectively d/b/a
EXPEDITE TV, **MUNDO TV** and **MUST TV**,

Defendants.
_____/

SEAN BEAMAN'S
MOTION TO DISMISS COMPLAINT OR
FOR A MORE DEFINITE STATEMENT

Sean Beaman ("**Beaman**"), pursuant to Federal Rules of Civil Procedure 8(a)(2) and 12(b)(6), moves to dismiss the Complaint [Dkt. 1] filed by Dish Network L.L.C. ("**Dish**"), Sling TV L.L.C. ("**Sling**"), and NagraStar LLC ("**NagraStar**") [collectively "**Plaintiffs**"]. In the alternative, Beaman moves for a more definite statement of the allegations in the Complaint pursuant to Federal Rule of Civil Procedure 12(e).

Relevant Procedural History

1. On March 15, 2022, Plaintiffs filed the Complaint asserting claims for both monetary and equitable relief against Beaman, Jason LaBossiere ("**LaBossiere**"), Stefan Gollner ("**Gollner**"), and Osivette Brito ("**Brito**"), individually and collectively d/b/a ExpediteTV, Mundo TV, and Must TV [collectively "**Defendants**"] for alleged violations of the Federal Communications Act ("**FCA**") and of the Digital Millennium Copyright Act ("**DMCA**").

2. On March 16, 2022, Plaintiffs served the Complaint on LeBossiere and Brito [Dkt. 7 & 8].

3. On March 17, 2022, Plaintiffs served the Complaint on Gollner [Dkt. 9].

4. On April 6, 2022, Plaintiffs filed the Motion for Preliminary Injunction and Asset Freeze (the "**Motion for Preliminary Injunction**") [Dkt. 13].

5. On April 6, 2022, the Court ordered Plaintiffs: (a) to complete service of process on all Defendants on or before April 12, 2022; and (b) to confirm by April 15, 2022 that process had been served on all Defendants.

6. On April 15, 2022, Plaintiffs filed the return of service on Beaman [Dkt. 20] and the Notice of Service of Complaint and Motion for Preliminary Injunction [Dkt. 21]. Although the return of service on Beaman is inaccurate and the service was defective, Beaman has appeared through counsel and will not challenge service of process.

Memorandum of Law

The Complaint should be dismissed because it fails to contain a short statement showing that Plaintiffs are entitled to relief requested. Fed. R. Civ. P. 8(a)(2) and 12(b)(6). The shotgun pleading filed by Plaintiffs is a morass of undated, irrelevant, and conclusory allegations that fail to allege any facts sufficient to entitle Plaintiffs' to relief against Beaman for actions taken by Beaman *after* Plaintiffs released Beaman from all claims based on conduct alleged in the prior litigation between the parties [Middle District of Florida Case No. 8:18-cv-1332-VMC-AAS] and that occurred on or before the effective date of the release instrument, to wit: October 23, 2018.

Courts have been critical of shotgun pleadings.

> A shotgun pleading is a complaint that violates either Federal Rule of Civil Procedure 8(a)(2) or Rule 10(b), or both. *Weiland v. Palm Beach Cnty. Sheriff's*

> *Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). Rule 8(a)(2) requires the complaint to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Rule 10(b) requires a party to "state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b). The "self-evident" purpose of these rules is "to require the pleader to present his claims discretely and succinctly, so that[ ] his adversary can discern what he is claiming and frame a responsive pleading." *Weiland*, 792 F.3d at 1320 (quoting *T.D.S. Inc. v. Shelby Mut. Ins. Co.*, 760 F.2d 1520, 1544 n.14 (11th Cir. 1985) (Tjoflat, J., dissenting)). These rules were also written for the benefit of the court, which must be able to determine "which facts support which claims," "whether the plaintiff has stated any claims upon which relief can be granted," and whether evidence introduced at trial is relevant. *Id.* (quoting *T.D.S.*, 760 F.2d at 1544 n.14 (Tjoflat, J., dissenting)).
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> "[W]e have identified four rough types or categories of shotgun pleadings." *Weiland*, 792 F.3d at 1321…. The second is a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id.* at 1322…. And the [fourth] type of shotgun pleading is a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.

Barmapov v. Amuial, 986 F.3d 1321, 1324–25 (11th Cir. 2021).

The Complaint in the case at bar falls within the second and fourth types or categories of shotgun pleadings. The Complaint (a) is rife with conclusory, vague, and immaterial facts not connected to the causes of action asserted in the Complaint (¶¶ 15-18) and (b) asserts multiple claims against multiple defendants without specifying which defendant is allegedly responsible for which actions at which time.

Allegations in the Complaint

Paragraphs 15 through 18 of the Complaint make reference to the prior litigation [Middle District Case No. 8:18-cv-1332-VMC-AAS (M.D. Fla.) (the "**2018 Litigation**")] that Plaintiffs had filed against LaBossiere and "other defendants"; however, the "other defendants" are never identified or named. Beaman was not a party to the 2018 Litigation, but was a party to the settlement of the 2018 Litigation referenced in the Complaint (¶ 16) and to the release that

was a component of the settlement. Accordingly, because the terms of the settlement or of the October 24, 2018 Final Judgment and Permanent Injunction in the 2018 Litigation are not alleged clearly, it is impossible for Beaman to respond properly to the allegations in paragraphs 15 through 18 or to determine the relevancy of those allegations to the claims asserted against him in this case.

Paragraphs 19 through 29 are equally vague because they fail to state when the alleged violations occurred, or what each Defendant did to cause or to contribute to the alleged violation, which of Defendants allegedly did what to violate the law and when each Defendants engaged in specific violative conduct. Specifically, the following allegations are illustrative of the deficiency in pleading because each fails to specify:

(a) "Defendants rebranded their SetTV as ExpediteTV" [¶ 19].

(b) "Defendants rebranded their ExpediteTV service as Mundo TV and Must TV" [¶ 20].

(c) "Defendants directly engage in, aid and abet, or act within the scope of a principal-agent relationship with other persons in establishing and controlling DISH and Sling subscription accounts used to obtain DISH Programming and Sling Programming retransmitted on the Services." [¶ 25].

(d) "Defendants directly engage in, aid and abet, or act within the scope of a principal-agent relationship with other persons in the circumvention of DRMs that control access to the internet communications of DISH Programming and Sling Programming in order to retransmit DISH Programming and Sling Programming on their Services." [¶ 26].

> (e) "Defendants retained two brothers to set up entities and establish bank and merchant accounts in the name of those entities to process credit card payments for Device Codes sold through ExpediteTV.com. The brothers previously assisted Defendants in processing payments in connection with their SetTV service. Proceeds from the sale of ExpediteTV Device Codes were deposited into a bank account established by Gollner, among other accounts." [¶ 29].

The Complaint contains no facts that tie Beaman to ExpediteTV, to Mundo TV, to Must TV, or to any of the alleged misconduct. While two background paragraphs [¶¶ 30 & 31] mention Beaman's name, these allegations are merely conclusory and do not qualify as a basis for claims against Beaman. Paragraph 30 alleges that Defendants processed payments through a fictitious business "linked" to Beaman, but fails to identify the business, fails to assert how, when, or to what extent the unidentified business is linked to Beaman, when the payments were processed, or whether Beaman had any interest in the unnamed business at the time the payments were allegedly processed. Similarly, paragraph 31 alleges that Beaman created and paid for Avochato, a text/SMS messaging and live chat service used to deliver device codes to ExpediteTV users, but fails to allege facts to show the connection between the creation of Avochato and Beaman's alleged misconduct. Paragraph 31 fails to allege when Avochato was created, or when Avochato was used to communicate with ExpediteTV users. The date of the alleged violations is relevant because if they precede the October 24, 2018 Judgment rendered in the 2018 Litigation, the facts would not be relevant to the claims asserted in this case.

> Rule 8's standard does not require that a pleading contain "'detailed factual allegations,' but it demands **more than an unadorned, the-defendant-unlawfully-harmed-me accusation**." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). . . . **Allegations that are merely consistent with a defendant's potential liability "fall short of being facially plausible**." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337 (11th Cir. 2012) (citations omitted). Thus, a plaintiff's

> grounds for relief must consist of "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Rather, "[f]actual allegations must be enough to raise a right to relief above the speculative level." . . .
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> . . . **"[C]onclusory allegations, ... or legal conclusions masquerading as facts will not prevent dismissal**," and that is exactly the case here. *Oxford Asset Mgmt., Ltd. V. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

Bryan v. Swisher, 7:20-CV-00253 (WLS), 2021 WL 4342721, at *1-2 (M.D. Ga. Sept. 23, 2021) (emphasis added).

Because the Complaint fails to distinguish what Beaman allegedly did from what the other Defendants allegedly did or why Beaman is liable for FCA or DMCA violations, Beaman cannot understand the grounds for each claim against him or mount a proper defense to such claims.

WHEREFORE the Court should dismiss the Complaint and order Plaintiffs to file an amended complaint that complies with the requirements or Rule 8(a)(2).

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Certificate of Service

I certify that a copy of the foregoing **SEAN BEAMAN'S MOTION TO DISMISS** has been furnished by e-service through the CM/ECF system to James A. Boatman, Jr., Timothy M. Frank, David S. Delrahim, Julia Reidy Kapusta, Joel W. Walters [emails: jab@boatman-law.com, timothy.frank@hnbllc.com, ddelrahim@eflegal.com, jkapusta@eflegal.com, jwalters@walterslevine.com], on May 19, 2022.

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