

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
FLORIDA, TAMPA DIVISION

Marcosquared, LLC v. Wilkes

Marcosquared · No. 8:25-cv-3146-CEH-LSG · Decided November 28, 2025

SUMMARY

The United States District Court for the Middle District of Florida sua sponte addressed deficiencies in a complaint asserting abuse of process and conspiracy to commit abuse of process. The court found that the complaint inadequately alleged the citizenship of the members of the plaintiff limited liability company and constituted a shotgun pleading under Federal Rule of Civil Procedure 8(a). The complaint was dismissed without prejudice, with deadlines for filing Rule 7.1 disclosure statements and a jurisdictionally sufficient amended complaint.

CASE DETAILS

COURT	United States District Court for the Middle District of Florida, Tampa Division
WRITING FOR THE COURT	Charlene Edwards Honeywell
JURISDICTION	United States District Court for the Middle District of Florida, Tampa Division
DECIDED	November 28, 2025
DOCKET	8:25-cv-3146-CEH-LSG
DISPOSITION	dismissed
PROCEDURAL POSTURE	On the court's sua sponte review of an initial complaint invoking diversity jurisdiction and asserting abuse of process and conspiracy to commit abuse of process, the district court dismissed the complaint without prejudice, required Rule 7.1 disclosure statements, and granted leave to amend.
STANDARD OF REVIEW	The court sua sponte reviewed whether subject matter jurisdiction was adequately established and whether the complaint complied with Federal Rule of Civil Procedure 8(a).
PRECEDENTIAL VALUE	Unknown

TOPICS

- subject matter jurisdiction
- pleadings
- civil procedure

PRACTICE AREAS

civil procedure

federal jurisdiction

pleading

QUESTIONS PRESENTED

1. Whether the complaint adequately alleged the citizenship of Marcosquared, LLC and therefore established diversity jurisdiction under 28 U.S.C. § 1332(a).
2. Whether the complaint violated Federal Rule of Civil Procedure 8(a) by constituting a shotgun pleading.
3. Whether the complaint should be dismissed without prejudice with an opportunity to amend.

HOLDINGS

1. A complaint invoking diversity jurisdiction must identify all members of a limited liability company and each member's citizenship; alleging only that the LLC is a California LLC and identifying individual plaintiffs as founding partners and majority owners is insufficient.
2. A complaint that is lengthy, contains conclusory, vague, and immaterial allegations not clearly connected to a particular claim, and fails to give adequate notice of the claims and grounds for relief is an impermissible shotgun pleading and violates Rule 8(a).
3. The deficient complaint should be dismissed without prejudice, with leave to file an amended complaint curing the jurisdictional and pleading defects.

KEY QUOTATIONS

“The jurisdiction of a court over the subject matter of a claim involves the court’s competency to consider a given type of case, and cannot be waived or otherwise conferred upon the court by the parties.” (Discussion § A)

“The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” (Discussion § B)

FACTUAL BACKGROUND

Plaintiffs Marcosquared, LLC, Marco Morante, and Christopher Psaila sued attorney James L. Wilkes, II, for abuse of process and conspiracy to commit abuse of process. The complaint relied on diversity jurisdiction but did not identify Marcosquared, LLC's members or their citizenships. The complaint devoted most of its thirty-two pages to allegations concerning nonparties and unrelated events, while providing few specific facts connecting Wilkes to the alleged claims or identifying the predicate proceedings for the abuse-of-process theories.

PROCEDURAL HISTORY

Plaintiffs filed a complaint against James L. Wilkes, II, alleging abuse of process and conspiracy to commit abuse of process and invoking diversity jurisdiction under 28 U.S.C. § 1332(a). The court determined that the complaint did not adequately allege the citizenship of Marcosquared, LLC's members and therefore did not

establish diversity jurisdiction. The court also found that the thirty-two-page complaint was an impermissible shotgun pleading under Federal Rule of Civil Procedure 8(a), dismissed it without prejudice, and allowed plaintiffs 21 days to amend.

DISPOSITION

dismissed

CASES CITED

- Cadet v. Bulger, 377 F.3d 1173, 1179 (11th Cir. 2004)
- Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999)
- Jackson v. Seaboard Coast Line R.R. Co., 678 F.2d 992, 1000 (11th Cir. 1982)
- Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994)
- Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 292 F.3d 1334, 1337 (11th Cir. 2002)
- Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998)
- McCormick v. Aderholt, 293 F.3d 1254, 1257 (11th Cir. 2002)
- Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C., 374 F.3d 1020, 1022 (11th Cir. 2004) (per curiam)
- Plevin v. U.S. Bank Nat'l Ass'n for Fla. Mortg. Resolution Trust, Series 2014-4, No. 6:15-cv-412-CEM-KRS, 2015 WL 12859413, at *1 (M.D. Fla. May 13, 2015)
- Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1341-42 (11th Cir. 2011)
- Moss & Assocs., LLC v. E Light Elec. Servs., Inc., No. 1:16-cv-702-WSD, 2016 WL 3355892, at *2 (N.D. Ga. June 16, 2016)
- Weiland v. Palm Beach Cnty. Sheriff's Off., 792 F.3d 1313, 1320-23 (11th Cir. 2015)
- Trump v. New York Times Co., No. 8:25-CV-2487-SDM-NHA, 2025 WL 2680597, at *2 (M.D. Fla. Sept. 19, 2025)
- Johnson Enters. of Jacksonville, Inc. v. FPL Grp., Inc., 162 F.3d 1290, 1333 (11th Cir. 1998)
- Ebrahimi v. City of Huntsville Bd. of Educ., 114 F.3d 162, 165 (11th Cir. 1997)
- Davis v. Coca-Cola Bottling Co. Consol., 516 F.3d 955, 984 (11th Cir. 2008)

OPINION

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION
MARCOSQUARED, LLC, MARCO MORANTE, and CHRISTOPHER PSAILA, Plaintiffs, v.
Case No: 8:25-cv-3146-CEH-LSG JAMES L. WILKES, II, Defendant. ORDER This matter is before the Court sua sponte. Plaintiffs Marcosquared, LLC; Marco Morante, and Christopher Psaila initiated this action against attorney James L. Wilkes, II, alleging abuse of process and conspiracy to commit abuse of process.

Doc. 1. Plaintiffs seek to invoke the Court's diversity jurisdiction under 28 U.S.C. § 1332(a). Because the citizenship of the Plaintiff limited liability company (Marcosquared, LLC) is not adequately alleged, the Court cannot determine whether jurisdiction exists in this case.

Accordingly, Plaintiffs will be ordered to promptly file a disclosure statement pursuant to Fed. R. Civ. P. 7.1 and to file an Amended Complaint that adequately alleges the parties' citizenship. Additionally, because Plaintiffs' Complaint fails to comply with Fed. R. Civ. P. 8(a)'s dictate that the complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief," the Complaint will be stricken as a shotgun pleading and Plaintiffs will be given the opportunity to amend.

DISCUSSION A. Jurisdiction Federal courts must sua sponte inquire into an action's subject matter jurisdiction whenever such jurisdiction may be lacking. *Cadet v. Bulger*, 377 F.3d 1173, 1179 (11th Cir. 2004); accord *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999) ("[O]nce a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue."). "The jurisdiction of a court over the subject matter of a claim involves the court's competency to consider a given type of case, and cannot be waived or otherwise conferred upon the court by the parties." *Jackson v. Seaboard Coast Line R.R.*

Co., 678 F.2d 992, 1000 (11th Cir. 1982). The bases for federal courts' subject matter jurisdiction are confined, as federal courts are "empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution or otherwise authorized by Congress." *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994).

Here, Plaintiffs seek to invoke the diversity jurisdiction of this Court. Federal jurisdiction based upon diversity exists where the lawsuit is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interests and costs. 28 U.S.C. § 1332(a)(1).

For diversity jurisdiction to exist, each defendant must be diverse from each plaintiff. *Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 292 F.3d 1334, 1337 (11th Cir. 2002). A complaint's allegations, when federal jurisdiction is based on diversity, must include the citizenship of each party, so that the court is satisfied that no plaintiff is a citizen of the same state as any defendant.

Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998). It is the burden of the party seeking federal jurisdiction to establish that diversity exists by a preponderance of the evidence. *McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002).

For purposes of diversity jurisdiction, a limited liability company is deemed "a citizen of any state of which a member of the company is a citizen." *Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004) (per curiam). Plaintiffs' Complaint fails to allege who are the members of the limited liability company. While Marco Morante and Chris

Psaila are alleged to be the “founding partners and majority owners” of Plaintiff Marcosquared, LLC, a California limited liability company and successor in interest to Marco Marco LLC, Doc.

1 ¶ 4, nowhere in the Complaint do Plaintiffs identify the members of the Plaintiff LLC, nor the members’ citizenship. If the members of the LLC are corporations, a corporation is “a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

To the extent the members are individuals, the Eleventh Circuit has repeatedly stressed that “[c]itizenship, not residence, is the key fact that must be alleged... to establish diversity for a natural person.” Taylor, 30 F.3d at 1367. A natural individual is a citizen of the state in which he or she is domiciled. Plevin v. U.S. Bank Nat’l Ass’n for Fla. Mortg.

Resolution Trust, Series 2014-4, No. 6:15-cv-412-CEM-KRS, 2015 WL 12859413, at *1 (M.D. Fla. May 13, 2015) (Spaulding, Mag.) (citing McCormick v. Aderholt, 293 F.3d 1254, 1257 (11th Cir. 2002)). “A person’s domicile is the place of his true, fixed and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom.” McCormick, 293 F.3d at 1257 (internal quotations and alterations omitted). “Domicile is not synonymous with residence; one may temporarily reside in one location, yet retain domicile in a previous residence.” Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1341–42 (11th Cir.

2011). In addition to failing to identify the citizenship of the LLC’s members, Plaintiffs fail to identify who are the members of the LLC. Such allegations are insufficient. See Moss & Assocs., LLC v. E Light Elec. Servs, Inc., No. 1:16-cv-702-WSD, 2016 WL 3355892, at *2 (N.D. Ga. June 16, 2016) (stating that the allegations as to a limited liability company’s citizenship were insufficient where the plaintiff did not identify the members of the companies and instead alleged only that the members were citizens of Florida).

Plaintiffs must identify all members of the limited liability company and their respective citizenships. Only then will the Court be able to determine whether the parties are diverse. B. Rule 8 – Shotgun Pleading Rule 8(a) requires a pleading stating a claim to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.

R. Civ. P. 8(a). Plaintiffs’ thirty-two-page Complaint is neither plain, nor short. The two counts, which are only a few paragraphs each, appear on pages 30 and 31 of the complaint. While the Complaint sues only Defendant James L. Wilkes II, the majority of the allegations in the preceding 29 pages recount, in sensational fashion, the rich and famous opulent lifestyle of Real Housewife of Beverly Hills’ cast member Erikah Jayne Girardi and her decades-older ex-husband, disbarred California attorney Tom Girardi, who is currently serving a federal sentence for wire fraud.

Neither Tom nor Erikah Girardi are parties to this lawsuit and yet most of the allegations of the Complaint focus on the couple's lavish lives and their alleged wrongful conduct, as well as the alleged misconduct of California bankruptcy counsel, Evan Borges. See, e.g., the table of "wrongful conduct" at Doc. 1 at 15– 19. This case stems from the Girardis' financial troubles and Psaila's alleged wrongful indictment for Plaintiffs' charging \$800,000 on Tom Girardi's American Express card in 2016–2017.

Very few actual facts are pleaded regarding the Defendant's conduct as it relates to the claims of abuse of process and any harm allegedly suffered by these Plaintiffs as a result. And the statements that are made regarding Defendant are vague, conclusory, lack specificity, and are without connection to the alleged claims.¹ By way of example, Plaintiffs allege that Wilkes "directed" California bankruptcy counsel Evan Borges "to obstruct and misdirect the bankruptcy proceedings in order to obfuscate, confuse, and misdirect the Trustee and the trial judges in several bankruptcy proceedings." Doc.

¹ ¶ 28. Wilkes does not appear to have been counsel of record in any of the California bankruptcy cases, and Plaintiffs fail to allege any specific facts as to what Wilkes purportedly did. Plaintiffs' Complaint includes a diatribe of irrelevant facts—including allegations of Tom Girardi's role in the Erin Brockovich investigation (id. ¶ 7), Wilkes' PPP loan fraud (id. ¶¶ 41– 44), Wilkes' appearance on a documentary "The Housewife and the Hustler" (id. ¶ 37), Wilkes' attaching himself to the flashy lifestyle of the Girardis (id. ¶ 24), Erikah's failure to pay income taxes (id. ¶ 15), Tom Girardi's Ponzi scheme (id. ¶ 33), Girardi's embezzlement of millions of dollars from his law firm clients (id. ¶¶ 9, 14)—that is more focused on garnering tabloid headlines than presenting a clear and plain statement of facts supporting Plaintiffs' claim for relief.

As another judge in this District recently stated, "a complaint is not a public forum for Complaints that violate Rule 8(a)(2) are often referred to as "shotgun pleadings." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015).

The Eleventh Circuit has identified four general types of shotgun pleadings. *Id.* at 1321. Relevant here, a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action" is a shotgun pleading. *Id.* at 1322. "The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* at 1323.

Plaintiffs sue Defendant for abuse of legal process under Florida law. Scattered throughout the Complaint are various references to at least seven other civil lawsuits,² only one of which is pending in Florida, and a 2017 criminal indictment of Chris Psaila in the Central District of California for credit card fraud, which was dismissed in 2021. It is wholly unclear from Plaintiffs'

Complaint which one or more of these cases vituperation and invective.” *Trump v. New York Times Co.*, No. 8:25-CV-2487-SDM-NHA, 2025 WL 2680597, at *2 (M.D.

Fla. Sept. 19, 2025). 2 Plaintiffs reference three bankruptcy cases (*In Re Girardi Keese*, Case No. 20-bk-21022; *Trustee Miller v. Erika Girardi*, Case No. 21-ap-01155; and *In Re Tom Girardi*, Case No. 20-bk-21020); a 2020 divorce of Tom and Erikah Girardi; a California civil case brought by Psaila (*Psaila v. Erika Girardi, et al.*, Case No. 23-cv-07120, in the United States District Court for the Central District of California); a California state court case (*Sheldon Law Offices v. Girardi, EJ Global et al.*, Case No. 20STCV47160, in the Superior Court of the State of California for the County of Los Angeles, Central District); and a Miami civil case brought by Morante (*Marco Morante v. Erika Girardi, et al.*, Case No. 2024-CA-015118, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida).

Plaintiffs contend serves as the predicate for their abuse of process claims against Wilkes. Cases that begin with a long list of general allegations, “most of which are immaterial to most of the claims for relief” are considered shotgun pleadings. *Johnson Enters. of Jacksonville, Inc. v. FPL Grp., Inc.*, 162 F.3d 1290, 1333 (11th Cir. 1998).

The Eleventh Circuit has recognized that when district courts permit a shotgun pleading to proceed, it results in “a massive waste of judicial and private resources; moreover, ‘the litigants suffer, and society loses confidence in the court[s’] ability to administer justice.’” *Id.* (quoting *Ebrahimi v. City of Huntsville Bd. of Educ.*, 114 F.3d 162, 165 (11th Cir.

1997)). Thus, when faced with such a pleading, a court should strike the complaint and instruct plaintiff to file a more definite statement. See *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 984 (11th Cir. 2008).

Because Plaintiffs’ Complaint violates Rule 8(a) and is a shotgun pleading, it is due to be stricken. Accordingly, it is ORDERED: 1. Plaintiffs’ Complaint (Doc. 1) is dismissed without prejudice. 2. Within 14 days, Plaintiffs shall file disclosure statements pursuant to Fed. R. Civ. P. 7.1. 3. Within 21 days, Plaintiffs may file an Amended Complaint that cures the jurisdictional and shotgun pleading defects referenced herein and that otherwise complies with the Federal Rules of Civil Procedure, including Rule 8(a).

4. Plaintiffs’ failure to file an Amended Complaint that corrects the deficiencies referenced in this Order or that fails to be filed within the time permitted will result in dismissal of this action without prejudice and without further notice. DONE and ORDERED in Tampa, Florida on November 28, 2025. Charlene Edwards Honeywell United States District Judge Copies furnished to: Counsel of Record Unrepresented Parties

