Case No.

In the Supreme Court of the United States

* * *

JEREMY C. SOUTHGATE,

Petitioner,

- v. -

LYOR COHEN, *et al.*,

Respondents.

* * *

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Fourth Circuit.

* * *

APPENDIX TO THE PETITION

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March 7, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JEREMY C. SOUTHGATE d/b/a SOUND SPARK STUDIOS, *Plaintiff*, v. UNITED STATES OF AMERICA, et al., *Defendants*.	Civil No. 1:17-cv-1047 Hon. Liam O'Grady

MEMORANDUM OPINION & ORDER

This matter comes before the Court on multiple motions to dismiss, filed by Defendants Spotify AB (Dkt. 43); Academy of Motion Picture Arts and Sciences (Dkt. 58); Starbucks Corporation (Dkt. 73); Bill, Hillary & Chelsea Clinton Foundation ("the Clinton Foundation") (Dkt. 89); SoundSpark, Inc. (Dkt. 99); Lyor Cohen, Theory Entertainment, LLC, Warner Music Group Corp., and Time Warner Inc. (Dkt. 102); National Academy of Recording Arts & Sciences, Inc. (Dkt. 106); IAC/InterActivCorp (Dkt. 121); Massachusetts Institute of Technology (Dkt. 127); Alphabet, Inc. (Dkt. 130); the United States of America, United States District Judge Allison Burroughs, and former President Barack Obama[1] (Dkt. 168); International Business Machines Corporation (Dkt. 192); and Barack H. Obama[2] (Dkt. 202). Also before the Court are Plaintiff's Motion for Leave to File a Surreply (Dkt. 197) and Motion to Stay (Dkt. 210).

For the reasons explained below, the motions to dismiss are **GRANTED** and this case is **DISMISSED WITH PREJUDICE**. Plaintiff's Motion for Leave to File a Surreply (Dkt. 197) is **DENIED**, and Plaintiff's Motion to Stay (Dkt. 210) is **DENIED AS MOOT**.

[1] United States District Judge Allison Burroughs in her official and individual capacities, and former President Barack Obama in his official capacity.
[2] In his individual capacity.

I. Background

Plaintiff's Complaint asserts nine claims for relief against eighteen named defendants,[3] alleging a racketeering scheme created for the purpose of usurping Plaintiff's intellectual property. Exceeding 200 pages and containing more than 600 numbered paragraphs, the Complaint is difficult to summarize. Below, however, is a brief overview of the most relevant facts of this case.

Plaintiff Jeremy C. Southgate is a Massachusetts resident who conducts business using the name "Sound Spark Studios." Complaint at ¶¶ 18, 49. Pursuant to this business, Plaintiff owns certain intellectual property, including federal trademark registrations. *Id.* at ¶¶ 42-48, 55. Plaintiff alleges that in April 2014, he published an album of musical sound recordings titled "SoundSpark." *Id.* at ¶¶ 80-82. In August 2014, he was contacted by a student launching a music startup at the Massachusetts Institute of Technology ("MIT"). *Id.* at ¶ 87. The student explained that she was launching a music startup called SoundSpark, and wanted to speak to Plaintiff because her trademark registration process revealed that he had a very similar trademark. *Id.* Plaintiff concluded that the student's startup was affiliated with music industry executive Lyor Cohen, who visited MIT in November 2013. *Id.* at ¶¶ 75-77, 87-93. The Complaint alleges that two MIT students and Mr. Cohen founded a music enterprise they named "SoundSpark" (now SoundSpark, Inc.) and that the name was chosen to undermine Plaintiff's rights in the Sound Spark Studios mark. *Id.* at ¶¶ 78-79. Plaintiff asked the students to change the name, and they did so. *Id.* at ¶¶ 94-95. Plaintiff learned that Mr. Cohen had previously served as CEO of Warner Music Group Corporation, and was currently CEO of Theory Entertainment, LLC ("Theory Entertainment"). *Id.* at ¶¶ 66-69.

[3] The Complaint also names Defendants Does 1-10,000.

In addition to his trademark allegations, Plaintiff makes various other claims, which the Court will not address in their entirety. Merely as an example, Plaintiff claims that Google bribed former President Barack Obama to deprive Plaintiff of his property rights by making false representations at the 2015 Grammy Awards telecast, and that the Academy of Motion Picture Arts and Sciences allegedly contributed to this scheme through use of stage decorations at the Oscars telecasts from 2013 to 2016. *Id.* at ¶¶ 254, 270-282.

In October 2014, Plaintiff filed a trademark infringement suit in Massachusetts against Defendants Cohen, Theory Entertainment, Warner Brothers Entertainment, Warner Music Group, and others alleging a conspiracy to acquire Plaintiff's Sound Spark mark. *Id.* at ¶¶ 110-15. The Massachusetts court dismissed Plaintiff's Complaint, and the district court's decision was affirmed by the First Circuit. *See Southgate v. Soundspark, Inc., et al.*, No. 14-cv-13861-ADB, 2016 WL 1268253 (D. Mass. Mar. 31, 2016), *aff'd sub nom. Southgate v. SoundSpark, Inc.*, No. 16-1365, 2017 WL 3374542 (1st Cir. Jan. 4, 2017) (the "Massachusetts lawsuit"). Included in Plaintiff's allegations in this case are claims that the presiding District Judge in the Massachusetts lawsuit, the Honorable Allison Burroughs, was biased because she had previously worked for a law firm that had represented MIT, and because she attended the same law school as an in-house MIT lawyer. *See* Complaint at ¶¶ 118-125.

II. Legal Standard

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must contain sufficient factual information to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 550 (2007). A motion to dismiss pursuant to Rule 12(b)(6) must be considered in combination with Rule 8(a)(2) which requires "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), so as

to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555.

While "detailed factual allegations" are not required, Rule 8 demands that a plaintiff provide more than mere labels and conclusions stating that the plaintiff is entitled to relief. *Id.* Because a Rule 12(b)(6) motion tests the sufficiency of a complaint without resolving factual disputes, a district court "'must accept as true all of the factual allegations contained in the complaint' and 'draw all reasonable inferences in favor of the plaintiff.'" *Kensington Volunteer Fire Dep't v. Montgomery County*, 684 F.3d 462, 467 (4th Cir. 2012) (quoting *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011)).

III. Analysis

a. Lack of Jurisdiction

Federal district courts may exercise personal jurisdiction "only to the degree authorized by Congress acting under its constitutional power to 'ordain and establish' the lower federal courts." *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 622 (4th Cir. 1997). Federal courts exercise jurisdiction in the manner provided by state law, so the court must first determine whether Virginia law authorizes jurisdiction over the defendant and, if so, must then determine whether exercise of jurisdiction is consistent with the Due Process Clause of the Fourteenth Amendment. *New Wellington Fin. Corp. v. Flagship Resort Dev. Corp.*, 416 F.3d 290, 294 (4th Cir. 2005). Because Virginia's long-arm statute extends personal jurisdiction to the outer bounds of due process, the two-prong test collapses into a single inquiry when Virginia is the forum state. *Tire Engineering and Distribution, LLC v. Shandong Linglong Rubber Co.*, 682 F.3d 292, 301 (4th Cir. 2012).

Here, none of the defendants are residents of Virginia. The residences of the individual named defendants, as alleged by Plaintiff, are as follows: Barack Obama (District of Columbia); Allison Burroughs (Massachusetts); Massachusetts Institute of Technology (Massachusetts); Alphabet, Inc. (a/k/a Google) (Delaware); Lyor Cohen (New York); Warner Music Group Corporation (Delaware); Time Warner, Inc. (Delaware); Theory Entertainment, LLC (Delaware); IAC/InterActiveCorp (Delaware); Academy of Motion Picture Arts and Sciences (California); National Academy of Recording Arts & Sciences, Inc. (Delaware); International Business Machines Corporation (New York); Spotify AB (Sweden); Starbucks Corporation (Washington); the Clinton Foundation (Arkansas); Soundspark, Inc. (Delaware). Complaint at ¶¶ 20-36.

Thus, to satisfy due process, these defendants must have "minimum contacts" with Virginia "such that the maintenance of the suit does not offend traditional notices of fair play and substantial justice." *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945) (internal quotations omitted). A non-resident may have "minimum contacts" if he has purposefully taken actions that "create a substantial connection with the forum state." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). A plaintiff may establish personal jurisdiction over a defendant either through "general or all-purpose jurisdiction" or by "specific or case-linked jurisdiction." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). In assessing whether specific jurisdiction exists, the Court considers the "relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (internal quotations omitted). The defendant's suit-related conduct must create a substantial connection with the forum state. *Id.*

i. General or Specific Jurisdiction

Former President Barack Obama has clearly had extensive contact with the Commonwealth of Virginia in the course of his campaign and presidential activities. However, given that he engaged in similar activities in nearly every other state, the Court does not find that these contacts render Mr. Obama "essentially at home' in Virginia. *See Goodyear*, 564 U.S. at 919. The Court also declines to find that specific jurisdiction exists. Plaintiff has alleged no actions by Mr. Obama taking place in Virginia; all of the alleged actions take place in the District of Columbia (or, arguably, in California). *See* Complaint at ¶¶ 240-59. The Court thus has no jurisdiction over Mr. Obama.[4]

The Court also finds no jurisdiction over U.S. District Judge Allison Burroughs. Plaintiff's Complaint makes no allegations that Judge Burroughs has any contacts with the Commonwealth of Virginia, let alone any allegations that Judge Burroughs took any suit-related action in Virginia. The Court thus has no jurisdiction over Judge Burroughs.[5]

Similarly, Plaintiff has failed to allege any basis for this Court to exercise personal jurisdiction over the Academy of Motion Picture Arts and Sciences, the National Academy of Recording Arts & Sciences, Inc., IAC/InterActivCorp, Massachusetts Institute of Technology, IBM, SoundSpark, Inc., or Lyor Cohen. Plaintiff has not alleged that these defendants are subject to general jurisdiction in Virginia, nor has he identified any acts or omissions by any of these defendants that occurred in Virginia or gave rise to Plaintiff's claims.[6]

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[4] The Court notes that former President Obama is also protected by absolute immunity. This suit, brought against Mr. Obama in his individual capacity and predicated on his official acts, is exactly the type of suit the Supreme Court has found impermissible. *See Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982).

[5] The Court notes that Judge Burroughs is protected by judicial immunity. *See Dickson v. United States*, 2014 WL 12539408, at *1 (E.D. Va. June 14, 2014), *aff'd*, 588 F. App'x 283 (4th Cir. 2014).

[6] Once a defendant has challenged personal jurisdiction, the plaintiff bears the burden of proving facts to justify the assertion of jurisdiction. *See Willis v. Semmes, Bowen & Semmes*, 441 F. Supp. 1235, 1239 (E.D. Va. 1977). Here, Plaintiff has not countered defendants' motions by alleging facts sufficient to establish jurisdiction. *See, e.g.*, Dkt. 58 (arguing, without support, that the Academy of Motion Picture Arts and Sciences is subject to this Court's jurisdiction because the Academy "transacts business at the

ii. Service of Process

The Court also lacks jurisdiction over Defendants Interactiv Corporation, Spotify AB, and the Clinton Foundation due to insufficient service of process. Absent waiver or consent, a failure to obtain proper service on the defendant deprives the court of personal jurisdiction over the defendant. Fed. R. Civ. P. 12(b)(5); *Koehler v. Dodwell*, 152 F.3d 304, 306 (4th Cir. 1998). "The plaintiff bears the burden of proving adequate service once a motion to dismiss for insufficient service of process has been filed pursuant to Fed. R. Civ. P. 12(b)(5)." *Scott v. Maryland State Dep't of Labor*, 673 F. App'x 299, 304 (4th Cir. 2016).

1. Interactiv Corporation

Defendant Interactiv Corporation does not appear to have been served in this case. *See* Dkt. 136 (summons returned unexecuted). Plaintiff contends that Interactiv Corporation has been served because Interactiv Corporation is connected to IAC, a separate defendant in this case. *See* Dkt. 160 at 2-3. Plaintiff offers several arguments to support this position, all without a basis in fact. *See generally id.* IAC has presented an affidavit denying that it has a business or other relationship with Interactiv Corporation (Dkt. 123 at ¶ 8). On the record before the Court, the Court must conclude that Plaintiff has failed to properly serve Interactiv Corporation, and thus this Court has no jurisdiction over Interactiv Corporation.

2. Spotify AB

On October 17, 2017, Plaintiff had a United States Marshal deliver a copy of the Complaint to Spotify USA.[7] Dkt. 19 at 31. However, the Marshal left a copy of the Complaint

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United States Patent and Trademark Office and conducts its business so as to affect Plaintiff's business); Dkt. 162 (similarly asserting that jurisdiction arises due to SoundSpark, Inc.'s filing of a trademark application at the USPTO); Dkt. 159 (same).

[7] Spotify AB is the named defendant in this case, and Spotify USA is merely Spotify AB's subsidiary and domestic agent. *See* Dkt. 43-1 at 1-2. Spotify AB is a Swedish company, is organized under the laws of Sweden, does not have corporate offices in the United States, and is not registered to do business in any

with the security guard in the lobby of Spotify USA's New York office. Dkt. 43-1 at 2; *see also* Dkt. 93 (Return of Service form). Spotify has submitted an affidavit from Elizabeth Kim, IP and Litigation Counsel for Spotify USA, averring that the security guard was not employed by Spotify USA, nor had the guard been authorized by Spotify USA to accept service on its behalf. Dkt. 43-2 at ¶¶ 11, 17. Thus, the Complaint and Summons were not personally delivered to any employees of Spotify or anyone authorized to accept service of process on Spotify's behalf. *See* Dkt. 93; *see also* Kim Declaration at Dkt. 43-2 at ¶¶ 11, 17. Plaintiff admits in his Opposition (Dkt. 110) that service was made on the security guard (whom Plaintiff describes, without support or explanation, as a "mail-intake agent"), and argues that the Marshal intended for the security guard to act as the Marshal's agent to effectuate service on Spotify. Dkt. 110 at 6-7.

Federal Rule of Civil Procedure 4(h) provides that a corporation can be served in the same manner as an individual under Rule 4(e)(1) by "following state law for serving a summons in an action brought in courts of general jurisdiction where the district court is located or where service is made." Fed. R. Civ. P. 4(h). (e)(1). Virginia and New York are the relevant states here, and notice to a third party is insufficient to effect personal service under Virginia or New York law.[8] *See Hsui Tsai v. Commonwealth*, 51 Va. App. 649, 654 (2008); *Stanley Agency, Inc. v. Behind the Bench, Inc.*, 23 Misc. 3d 1107(A), *6-8 (N.Y. Sup. Ct. Apr. 13, 2009). Therefore, on the record before the Court, the Court finds no basis on which to conclude that Spotify AB was properly served. The Court therefore has no jurisdiction over Spotify AB.

3. The Clinton Foundation

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jurisdiction of the United States. Dkt. 43-1 at 3. Spotify AB's motion to dismiss identified deficiencies in service arising from Plaintiff's service of Spotify USA as opposed to Spotify AB. Because the Court finds service on the security guard clearly insufficient, the Court does not reach the other issue.

[8] Under Federal Rule of Civil Procedure 4, personal service is permitted pursuant to the state where the district court is located or where service is made.

On November 7, 2017, Plaintiff attempted to serve the Clinton Foundation by sending documents via FedEx to the "Clinton Foundation" and to "Bill, Hillary & Chelsea Clinton." *See* Dkt. 22; *see also* Dkt. 90 at 10. The FedEx tracking information reveals that the documents were delivered to a "Receptionist/Front Desk" recipient. *See* Dkt. 22 at 2. The Clinton Foundation submits that this constituted insufficient service of process under the law of the relevant state: Arkansas.[9]

Arkansas law permits service of a summons and complaint on a defendant "by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee. The addressee must be a natural person specified by name, and the agent of the addressee must be authorized in accordance with U.S. Postal Service regulations." Ark. R. Civ. P. 4(d)(8)(A)(i). Here, the documents were delivered to an unnamed receptionist, rather than the addressee or an agent of the addressee, as required under Arkansas law. *See Broadway v. Adidas Am., Inc.*, No: 3-07-cv-000149-SWW, 2008 WL 2705566, at *3 (E.D. Ark. Jul. 10, 2008) ("The requirements under Ark. R. Civ. P. 4 . . . must be strictly followed . . . and to accomplish service by mail under Rule 4, the return receipt must be signed by the addressee or the agent of the addressee . . . plaintiffs must establish the agency of the person or entity receiving process.").

In his Opposition (Dkt. 144), Plaintiff asserts that Bill, Hillary & Chelsea Clinton are natural persons specified by name as the addressees of the summons and Complaint, and that those three individuals are "capable of receiving mail-service for said corporation." Dkt. 144 at 20. However, he does not establish that the "Receptionist/Front Desk" recipient of service was the Clinton Foundation's agent. Rather, he asserts that the Clinton Foundation is an individual, and that 1200 President Clinton Avenue, Little Rock, Arkansas is the "usual place of abode" for

[9] As explained above, notice to a third party is insufficient to effect personal service under Virginia law.

the Clinton Foundation, and that the receptionist recipient was "some person therein who is at least 14 years of age." *Id.* at 21. Plaintiff cites no authority for this unusual proposition. *See id.* Therefore, on the record before the Court, the Court finds no basis on which to conclude that the Clinton Foundation was properly served, and concludes that it has no jurisdiction over the Clinton Foundation.

Thus, for the reasons explained above and for good cause shown, the Court finds that it has no jurisdiction over former President Barack Obama, United States District Judge Allison Burroughs, the Academy of Motion Picture Arts and Sciences, the National Academy of Recording Arts & Sciences, SoundSpark, IAC/InterActivCorp, Massachusetts Institute of Technology, IBM, SoundSpark, Inc., Lyor Cohen, Interactiv Corporation, Spotify AB, or the Clinton Foundation. The remaining defendants (the United States, Theory Entertainment LLC, Warner Music Group Corp., Time Warner Inc., Alphabet, Inc., and Starbucks) do not contest the Court's exercise of personal jurisdiction in this case. The Court will address Plaintiff's claims as to these defendants below.

b. This Court is not the Proper Venue

This Court is not a proper venue for this action. Under the general venue statute, a claim against defendants in their individual capacity "may be brought in" any of the following:

> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 1391(b). As explained above, none of the defendants are residents of the Commonwealth of Virginia, which eliminates venue under Section 1391(b)(1). Plaintiff has alleged no facts to suggest that a substantial part of the events or property at issue here occurred, or is situated, in this district, thus eliminating Section 1391(b)(2) as a possible basis for venue. Finally, Section 1391(b)(3) does not provide venue, because it applies only if "there is no district in which an action may otherwise be brought as provided in this section . . . ." Certainly there is a district in which this action could be brought, as the majority of the alleged actions appear to have taken place in Massachusetts or California.

Venue with respect to the United States, or an official of the United States sued in his or her individual capacity, is governed by 28 U.S.C. § 1391(e). The statute instructs that

> A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action.

28 U.S.C. § 1391(e)(1). Section 1391(e)(1)(A) does not authorize venue in any district of a plaintiff's choosing whenever he brings an action against the United States, simply because the United States can be found in every district. *See Misko v. United States*, 77 F.R.D. 425, 429 n.7 (D.D.C. 1978). Additionally, Section 1391(e)(1)(B) does not provide venue because none of the events giving rise to Plaintiff's claims occurred in the Eastern District of Virginia.[10] Finally,

[10] Plaintiff asserts that venue is proper because "the claims substantially arise from events occurring with respect to Plaintiff's federal property registrations situated at an agency of the United States Government, the United States Patent and Trademark Office [in] Alexandria, Virginia." *See* Complaint at ¶ 14. But the mere fact that Plaintiff's registrations at the USPTO are at issue does not confer venue in this District. *See Finmeccanica, S.P.A., et al. v. General Motors Corp.*, No. 1:07-cv-794, 2007 WL 4143074, at *4 (E.D. Va. Nov. 19, 2007) (rejecting plaintiffs' argument that defendant's transactions with the USPTO,

Plaintiff does not reside in this district. Complaint at ¶ 18. Therefore, the Court has no jurisdiction over this case because venue is improper in the Eastern District of Virginia.

c. Failure to State a Claim & Violation of Federal Rule of Civil Procedure 8

As explained above, Plaintiff has filed a 220-plus page Complaint comprising over 600 numbered paragraphs,[11] containing implausible allegations such as the bribery of a federal judge and a conspiracy by Barack Obama, Google, and other defendants to deprive Plaintiff of his intellectual property rights. *See* Complaint at ¶ 254. He references the Illuminati and Beyonce as part of his imagined conspiracy. *See id.* ¶¶ 334-48. He claims that a jury could find similarities between images that no reasonable person would consider alike. *See* Dkt. 111 at 3. He suggests that major corporations are working together based on "the exact same shade of green" in their advertisements. *See* Complaint at ¶¶ 351, 356.

Plaintiff's allegations are improbable in the extreme, and contain no factual content that would allow the court "to draw the reasonable inference that [defendants are] liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Indeed, it is nearly impossible to discern from the Complaint precisely what each defendant is alleged to have done or how each defendant's action has caused Plaintiff harm.[12] Courts have dismissed complaints for lack of plausibility and for incomprehensibility, and such a dismissal would be proper here. *See Francis*

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including filing patent applications, created a 'substantial connection' between defendant and the Eastern District of Virginia, and noting that "if Plaintiffs' theory were correct, the mere fact of filing a patent application with the USPTO would create a substantial connection and make venue proper in this District").

[11] The Complaint is so lengthy that Plaintiff filed eleven additional docket entries styled as "continuations." *See* Dkts. 2-12.

[12] This is particularly true because Plaintiff asserts certain claims (the first eight of the nine claims) against "all defendants" without specifically referencing each defendant subsumed within those claims. As a result, these defendants have no notice of how their conduct allegedly contributed to Plaintiff's harm, and lack the information necessary to mount a defense. Therefore, to the extent that Plaintiff asserts a claim against "all defendants," but fails to set forth any facts or conduct by an individual defendant to explain why that defendant is included in the claim, Plaintiff has failed to show he is entitled relief. *See Ashcroft*, 556 U.S. at 677-79.

v. Giacomelli, 588 F.3d 186, 192-93 (4th Cir. 2009) (affirming a district court's dismissal of plaintiff's claims, where those claims failed to set forth a plausible claim for relief); *Perkins v. Bank of New York Mellon*, No. 3:10-cv-449, 2011 WL 486943, at *3-4 (E.D. Va. Feb. 4, 2011) (dismissing a pro se plaintiff's 57-page complaint because the complaint contained "no comprehensible factual allegations about any of the defendants" and, alternatively, because the complaint violated Rule 8's requirement of a short and plain statement of the claim showing that the pleader is entitled to relief); *Nichols v. Holder*, 828 F. Supp. 2d 250, 252 (D.D.C. 2011) (granting defendants' motion to dismiss pro se plaintiff's 140-page complaint due to its "length and incoherence"); *see also Walsh v. Hagee*, 900 F. Supp. 2d 51, 58 (D.D.C. 2012), *aff'd* 2013 WL 1729762 (D.C. Cir. Apr. 10, 2013); *Newby v. Obama*, 681 F. Supp. 2d 53, 54-56 (D.D.C. 2010).[13]

Indeed, in June of 2017, Plaintiff brought a similar action in the Eastern District of Virginia, alleging that Facebook and its subsidiary Instagram infringed Plaintiff's copyright in a photograph of a sunset, infringed Plaintiff's Sound Spark Studios trademarks, and violated the Sherman Act. *See Southgate v. Facebook, Inc.*, No. 1:17-cv-648, 2017 WL 6759867 (E.D. Va. Nov. 14, 2017), *aff'd* 2018 WL 1341578 (4th Cir. Mar. 15, 2018). The Court granted the defendants' motion to dismiss, finding that Plaintiff failed to state a claim on any count and that Plaintiff's allegations were "the very sort of unsupported, conclusory allegations the Supreme Court held in *Twombly* cannot survive a [Rule 12 challenge]." *Id.* at *4.

[13] Dismissal on these grounds is particularly appropriate because Plaintiff's claims include allegations of fraud, which must be pleaded with particularity under Federal Rule of Civil Procedure 9. *See* Fed. R. Civ. P. 9(b) (requiring a party alleging fraud to "state with particularity the circumstances constituting fraud"). The circumstances constituting fraud include the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby. *See Perkins*, 2011 WL 486943, at *3. Plaintiff's Complaint, despite its length, fails to clearly allege the circumstances giving rise to the alleged fraud.

Dismissal on these grounds is appropriate even in light of Plaintiff's pro se status. Although the Court must construe a claim submitted by a pro se litigant liberally, "district court judges cannot be expected to construct full blown claims from sentence fragments." *Id.* (internal citations omitted). Here, as in *Nichols*, Plaintiff's Complaint is "prolix, redundant, bloated with unnecessary detail, and full of vituperative charges." *Nichols*, 828 F. Supp. at 253 (internal quotations omitted). For these reasons, and for good cause shown, the Complaint is dismissed in its entirety.

IV. Plaintiff's Additional Motions

Also before the Court are Plaintiff's Motion for Leave to File a Surreply (Dkt. 197) and Motion to Stay (Dkt. 210). Having considered the record and reviewed Plaintiff's Motion for Leave to File a Surreply, the Court finds that Plaintiff has not shown that good cause exists for this Court to grant such leave. Therefore, Plaintiff's Motion (Dkt. 197) is **DENIED**.

In his Motion to Stay, Plaintiff requested the Court to stay Defendant IBM's Motion to Dismiss pending the determination of Plaintiff's Motion to Enter Default against IBM. *See* Dkt. 210. Magistrate Judge Nachmanoff subsequently denied Plaintiff's Motion to Enter Default as moot. *See* Dkt. 211. Because the motion for which Plaintiff sought a stay has been addressed, Plaintiff's Motion to Stay (Dkt. 210) is **DENIED AS MOOT**.

V. Conclusion

For these reasons, and for good cause shown, the motions to dismiss (Dkts. 43, 58, 73, 89, 99, 102, 106, 121, 127, 130, 168, 192, 202) are **GRANTED**. Dismissal with prejudice is appropriate because the allegations in Plaintiff's Complaint, even if taken as true, are insufficient to show that any defendant has engaged in any activities that could possibly entitle Plaintiff to relief from this Court. Having considered the record, the Court finds that these deficiencies are

so complete that Plaintiff could not cure them through an amended Complaint. *See United States ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 376 (4th Cir. 2008).

Therefore, this case is hereby **DISMISSED WITH PREJUDICE**. The Clerk of Court is directed to enter judgment pursuant to Federal Rule of Civil Procedure 58.

It is **SO ORDERED.**

April 9 2018
Alexandria, Virginia

Liam O'Grady
United States District Judge

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1664

JEREMY C. SOUTHGATE, d/b/a Sound Spark Studios,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; BARACK H. OBAMA; ALLISON D. BURROUGHS; MASSACHUSETTS INSTITUTE OF TECHNOLOGY; ALPHABET INC., a/k/a Google; LYOR COHEN; WARNER MUSIC GROUP CORP.; TIME WARNER INC.; THEORY ENTERTAINMENT, LLC; IAC/InterActiveCorp; INTERACTIVECORPORATION; ACADEMY OF MOTION PICTURE ARTS AND SCIENCES; NATIONAL ACADEMY OF RECORDING ARTS & SCIENCES, INC.; INTERNATIONAL BUSINESS MACHINES CORPORATION; SPOTIFY AB; STARBUCKS CORPORATION; BILL, HILLARY & CHELSEA CLINTON FOUNDATION; SOUNDSPARK, INC.; DOES 1 - 10,000,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, District Judge. (1:17-cv-01047-LO-MSN)

Submitted: November 30, 2018 Decided: December 7, 2018

Before GREGORY, Chief Judge, FLOYD, Circuit Judge, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Jeremy C. Southgate, Appellant Pro Se. Dennis Carl Barghaan, Jr., Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia; Matthew Sheldon, GOODWIN PROCTER, LLP, Washington, D.C.; Wendy Cohen McGraw, HUNTON ANDREWS KURTH, LLP, Norfolk, Virginia; Seth Abram Schaeffer, MCGUIREWOODS, LLP, Richmond, Virginia; Craig Crandall Reilly, Alexandria, Virginia; Brian Hunt Rowe, Washington, D.C., Christopher Tayback, QUINN, EMANUEL, URQUHART & SULLIVAN, LLP, Los Angeles, California; Christopher Emrich Ondeck, PROSKAUER ROSE, LLP, Washington, D.C.; Steven F. Barley, Marc Andrew Marinaccio, Baltimore, Maryland, Jon M. Talotta, HOGAN LOVELLS US LLP, McLean, Virginia; Patrick John Curran, Jr., Daniel Peter Reing, DAVIS WRIGHT TREMAINE, LLP, Washington, D.C.; Joseph S. Cianfrani, David G. Jankowski, KNOBBE MARTENS OLSON & BEAR, LLP, Irvine, California; David G. Barger, GREENBERG TRAURIG, LLP, McLean, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jeremy C. Southgate, doing business as Sound Spark Studios, appeals the district court's order granting Defendants' motions to dismiss and dismissing with prejudice Southgate's civil complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Southgate v. United States*, No. 1:17-cv-01047-LO-MSN (E.D. Va. filed Apr. 9, 2018; entered Apr. 10, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED