UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.: 1:23-cv-21894-FAM

WORLD MEDIA ALLIANCE LABEL INC.,

Plaintiff,

v.

BELIEVE SAS, aka BELIEVE Co., aka BELIEVE,
aka BELIEVE DIGITAL *et al,*

Defendants.
____/

DEFENDANT BELIEVE SAS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND ORDER OF DISMISSAL FOR LACK OF JURISDICTION

Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Defendant Believe SAS aka Believe Co. aka Believe aka Believe Digital ("Believe") files its Response in Opposition to Plaintiff's Motion to Alter or Amend Order of Dismissal for Lack of Jurisdiction (D.E. 36) and states as follows:

INTRODUCTION

Plaintiff, World Media Alliance Label Inc. ("WMA") sued Believe claiming copyright infringement and tortious interference with business relationships related to musical works published in Russia dating back to 1989. (*See* Compl. D.E. 1). The Court dismissed WMA's Complaint on January 24, 2024, because it lacks personal jurisdiction over French company Believe (the "Order") (D.E. 35). On February 18, 2024, WMA filed its Motion Under Rule 59(e) to Alter or Amend Order of Dismissal for Lack of Jurisdiction (the "Motion"). WMA's Motion should be denied because it fails to show that there is a change in the controlling law, new evidence available, or manifest error in dismissing this action. Rather, WMA is using this

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Motion to improperly relitigate issues that were already considered prior to dismissal. Accordingly, WMA's Motion should be denied.

ARGUMENT

Rule 59(e) allows for alteration or amendment of a judgment only in certain circumstances, at the Court's discretion. Rule 59(e) Fed. R. Civ. P., *Am. Home Assur. Co. v. Glenn Estess & Assocs., Inc.*, 763 F.2d 1237, 1238–39 (11th Cir. 1985) ("The decision to alter or amend judgment is committed to the sound discretion of the district judge . . . .").

The grounds that justify the grant of a Rule 59(e) motion are (1) an intervening change in controlling law; (2) newly discovered evidence; or (3) the need to correct or manifest errors of law or fact. *PG Creative, Inc. v. Affirm Agency, LLC*, No. 18-CV-24299, 2020 WL 837182, at *1 (S.D. Fla. Feb. 20, 2020). In bringing a Rule 59(e) motion, "the moving party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Williams v. Cruise Ships Catering & Serv. Int'l*, 320 F. Supp. 2d 1347, 1358 (S.D. Fla. 2004) (internal quotations omitted); *see also Wendy's Int'l, Inc. v. Nu-Cape Constr., Inc.*, 169 F.R.D. 680, 684 (M.D. Fla. 1996). It is an "extraordinary remedy" that should be employed "sparingly" to protect judicial resources. *See Wendy's Int'l*, 169 F.R.D. at 685. Moreover, a motion to alter or amend should not be used as an opportunity to "relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Michael Linet, Inc. v. Village of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005).

As an initial matter, Rule 59 may not be the appropriate procedural mechanism because a dismissal based on lack of personal jurisdiction is not an adjudication on the merits. *See Madara v. Hall*, 916 F.2d 1510, 1514 n.1 (11th Cir. 1990) (explaining that a dismissal for personal jurisdiction is without prejudice); *Dupree v. Owens*, 92 F.4th 999 (11th Cir. 2024) (same). Cases

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in this Circuit have also hesitated to allow Rule 59 as a vehicle for amending a decision that is not "on the merits." *See Emergency Recovery, Inc. v. Hufnagle*, No. 19-CV-329-T-24JSS, 2021 WL 8775767, at *1 (M.D. Fla. Dec. 9, 2021) (finding a Rule 59(e) motion improper because the court's order was entered without prejudice pursuant to Rule 41(a)(2) and therefore not a decision on the merits); *Flava Works Inc. v. A4A Reseau Inc.*, No. 14-23208, 2016 WL 4054917 (S.D. Fla. Jan. 6, 2016) (denying Rule 59 motion to amend order granting attorneys' fees because attorneys' fees order was not on the merits). WMA's Rule 59(e) Motion asks the court to amend its Order on personal jurisdiction, which did not include a decision "on the merits" of the purported copyright claims. Thus, WMA's Motion is likely improper.

Should the Court consider the Motion to be brought forth properly under Rule 59(e), it is still unfounded. The Motion is simply an attempt by WMA to revive its copyright claim and rehash arguments already presented in its Response in Opposition to Believe's Motion to Dismiss (the "Opposition") (D.E. 29) and sets forth no valid basis to disturb this Court's dismissal. First, there is no intervening change in controlling law. Second, WMA does not present any new relevant evidence that was not available before the entry of the judgment. Third, the Court did not commit any manifest errors of law or fact. Dismissal was proper, and any amendment would be futile. Thus, this Motion should be denied.

I. <u>WMA does not show an intervening change in controlling law</u>

The first basis for challenging a decision under Rule 59 fails at the outset. Notably, WMA's Motion does not articulate any intervening change in controlling law regarding personal jurisdiction or otherwise. WMA also does not otherwise challenge the Court's application of well-established Florida Statutes and cases applying the Florida long-arm and due process framework. *See* (D.E. 35 at 4) (citing *Carmouche v. Tamborlee Mgmt, Inc.*,789 F.3d 1201,1203–

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04 (11th Cir. 2015) (providing the two-step inquiry framework for personal jurisdiction); Fla. Stat. § 48.193; *Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201, 1215 (providing the framework for personal jurisdiction in internet-based defamation cases)).

In analyzing specific and general jurisdiction under current controlling law, this Court found that WMA failed to allege the accessibility of the works in Florida as required. (D.E. at 5) (citing *Jackson-Bear Group, Inc. v. Amirjazil*, No. 2:10-CV-332-FTM-20, 2011 WL 1232985, at *6 (M.D. Fla. Mar. 30, 2011). Similarly, the Court found that there was no "substantial contact between Believe and Florida," as required by a general jurisdiction analysis in Florida. (D.E. 35 at 6) (citing *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1352 (11th Cir. 2013); Fla. Stat. § 48.193(2). The Court further noted that WMA's own allegations concede that Believe is a "French type business entity registered in France," "enacted under the French law," with "no registration in Florida" in correctly concluding that this Court lacks jurisdiction over Believe. (D.E. 35 at 6). Because the Court adopted the proper jurisdictional framework and no laws have changed the relevant jurisdictional analysis within Florida, the Motion should be denied.

II. <u>WMA does not present any new evidence</u>

The second basis with which to challenge a decision under Rule 59 also fails. To succeed on a Rule 59(e) motion based on newly discovered evidence, "the movant must show either that the evidence is newly discovered or, if the evidence was available at the time of the decision being challenged, that counsel made a diligent yet unsuccessful effort to discover the evidence." *Chery v. Bowman*, 901 F.2d 1053, 1057 n.6 (11th Cir. 1990) (denying a Rule 59(e) motion where the plaintiff offered additional evidence in the form of an affidavit following the court's dismissal).

There is no evidence here that would form the basis for this Court to alter or amend its

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decision (D.E. 35). WMA's purported "new evidence" is not new (or relevant) evidence at all. To that end, WMA contends that Believe registered a Designated Agent in the Digital Millenium Copyright Act ("DMCA") Designated Agent Directory ("DMCA Directory") within the Copyright Office on February 6, 2024. (D.E. 36 at 2–4). WMA's "evidence" related to a designated agent listed with the Copyright Office is flawed because it both existed prior to this lawsuit and does not tend to prove jurisdiction. To that end, a simple search of the DMCA Directory shows that Believe's listing was submitted in 2018—public information readily available to WMA before filing its Complaint. In fact, WMA's Complaint included a homepage link to the DMCA Directory generally, which tends to prove that WMA was aware of the DMCA Directory (although irrelevant) and could have easily taken steps to locate Believe's listing. (D.E. 1 ¶ 18). Further, Believe's listing only serves to bolster this Court's conclusion that personal jurisdiction is not appropriate in Florida because the listing displays Believe's French headquarters address. WMA also cited to no authority—and Believe is unaware of any—that simply registering with the DMCA Directory subjects an international company to jurisdiction in Florida. Even so, the listing is not substantial activity within Florida (or any state, for that matter). [1] All of the "evidence" presented was in existence prior to the filing of WMA's Complaint and is irrelevant to jurisdiction.

III. <u>There is no manifest error of law or fact</u>

Much like the above, WMA has similarly failed to show any manifest error of fact or law as required by Rule 59. Courts have held that a manifest error arises when a court fails to apply the correct legal standard, reaches a decision foreclosed by precedent, or commits a plain or

[1] WMA also complains about YouTube's actions related to videos on its platform. YouTube's actions are irrelevant to the jurisdiction analysis as applied to Believe and improper because YouTube was dismissed from this case. (*See* D.E. 36 at 11–13).

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