

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LARRY HOLMBERG,

Case No. 17-CV-1577 (PJS/LIB)

Plaintiff,

v.

JEFFREY B. PEEL; TARA PEEL;
BENJAMIN B. STERN; BENJAMIN A.
THORUD; TACTACAM, LLC, a/k/a
TACTACAM LIMITED LIABILITY
COMPANY,

ORDER

Defendants.

Mark K. Thompson, MKT LAW PLC, for plaintiff.

Terrance C. Newby, David E. Suchar, and Jevon C. Bindman, MASLON
LLP, for defendants.

This matter comes before the Court on defendants' motion to dismiss or, in the alternative, for a more definite statement. Defendants argue that the complaint of plaintiff Larry Holmberg is deficient in two respects: First, the complaint does not identify the specific products that defendant Tactacam, LLC, sold and that triggered defendant Jeffrey B. Peel's obligation to pay royalties—an obligation that he allegedly breached. Second, the complaint does not adequately inform the individual defendants (save Peel) as to the basis on which Holmberg seeks to hold them personally liable. The Court agrees with the first but not the second of defendants' arguments.

As to the first argument: To recover royalties from Peel, Holmberg must prove that Tactacam sold a product that was defined as a “Licensed Product” under § 2.2 of the Holmberg Patent License Agreement (“Agreement”). ECF No. 1-1 at 35. To prove that a product sold by Tactacam was a “Licensed Product,” Holmberg must prove, in essence, that the product was covered by a patent owned by Holmberg. *Id.* The Court agrees that the complaint neither gives fair notice of Holmberg’s royalty-related claims nor pleads a plausible basis for those claims because it fails to identify a single product that Holmberg alleges (1) was sold by Tactacam and (2) was a “Licensed Product” under the Agreement.

As to the second argument: Holmberg makes only two substantive claims against the individual defendants (save Peel). First, Holmberg alleges that the individual defendants have been unjustly enriched, because they have benefitted from Peel’s breach of the Agreement. Second, Holmberg alleges that the individual defendants tortiously interfered with the Agreement by inducing and assisting Peel to breach the Agreement in specified ways.

The “general, if not universal rule” is that corporate officers are personally liable for any torts that they commit, even if they commit these torts on behalf of the corporation. *Kamensky v. Roemer Indus., Inc.*, 1 Pa. D. & C. 4th 497, 499 (1988) (quoting *Wicks v. Milzoco Builders, Inc.*, 470 A.2d 86, 90 (Pa. 1983)). This rule also “applies to

limited liability companies.” *Ventres v. Goodspeed Airport, LLC*, 881 A.2d 937, 964 (Conn. 2005). So “if a member of a limited liability company injures another person while working in the course of the firm’s business, the member is personally liable for that harm . . . , just as the member would be if he worked for a firm organized as a corporation, a partnership, or any other business form.” *Estate of Countryman v. Farmers Coop. Ass’n*, 679 N.W.2d 598, 603-04 (Iowa 2004). In other words, “[w]hen . . . a member or manager commits . . . a tort, whether or not he acts on behalf of his LLC, he is liable to third persons injured thereby.” *Mbahaba v. Morgan*, 44 A.3d 472, 476 (N.H. 2012) (citing *Sturm v. Harb Dev., LLC*, 2 A.3d 859, 866 (Conn. 2010)). The Court finds that the complaint gives the individual defendants fair notice of Holmberg’s claims against them and pleads sufficient facts to make those claims plausible.

For these reasons, the Court grants the motion to dismiss. The Court will, however, give Holmberg leave to file an amended complaint to correct the deficiency identified above. That amended complaint must identify every “Licensed Product” that Holmberg contends has been sold by defendants. Moreover, the amended complaint must, with respect to each such “Licensed Product,” identify the patent or patents that Holmberg contends cover the product. Obviously, if Holmberg should then learn, during the course of discovery, of additional “Licensed Products” on which he is owed royalties, he can move for leave to amend his complaint.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Defendants' motion to dismiss [ECF No. 8] is GRANTED.
2. This matter will be dismissed without prejudice unless Holmberg files an amended complaint by Friday, September 8, 2017, and in that amended complaint (a) identifies each "Licensed Product" that Tactacam allegedly sold and with respect to which Peel allegedly breached his obligation to pay royalties and (b) with respect to each such "Licensed Product," identifies the patent or patents that cover that product.

Dated: August 11, 2017

s/Patrick J. Schiltz
Patrick J. Schiltz
United States District Judge