

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SHARON REIS,

Plaintiff,

v.

Case No: 8:17-cv-1833-JDW-TGW

**BANK OF AMERICA, N.A. and
PENNYMAC LOAN SERVICES, LLC,**

Defendants.

ORDER

BEFORE THE COURT are Defendant PennyMac Loan Services, LLC's Motion to Dismiss Amended Complaint (Dkt. 36), and Plaintiffs' response (Dkt. 41). Upon consideration, PennyMac's Motion to Dismiss (Dkt. 36) is **GRANTED** on the grounds that Plaintiff's Amended Complaint (Dkt. 31) is a shotgun complaint and will be dismissed.

A complaint should contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This Rule does not require detailed factual allegations, but a plaintiff's complaint must contain more than unadorned or conclusory accusations of harm. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The complaint must "plead all facts establishing an entitlement to relief with more than 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action.'" *Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1324 (11th Cir. 2012) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007)). "A claim has facial plausibility when the plaintiff pleaded factual content allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

Each count of Plaintiff’s Amended Complaint (Dkt. 31) purports to incorporate all sixty-one (61) paragraphs of general and factual allegations.¹ “‘Consequently, allegations of fact that may be material to a determination of count one, but not count four, are nonetheless made a part of count four [I]t is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.’” *Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1125-26 (11th Cir. 2014) (quoting *Anderson v. Dist. Bd. of Trs. of Cent. Florida Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir.1996)). Indeed, some allegations are inconsistent with certain claims, but are nevertheless incorporated into those claims.² The Eleventh Circuit has recognized the impropriety of shotgun pleadings for years. *See id.*; *Jackson v. Bank of America, N.A.*, --- F.3d ----, 2018 WL 3673002, at *3 (11th Cir. August 3, 2018); *Weiland v. Palm Beach Cnty. Sheriff’s Office*, 792 F.3d 1313, 1321-22 (11th Cir. 2015). The proper remedy for a shotgun complaint is to strike the complaint and order a repleader. *Weiland*, 792 F.3d at 1321 n.10 (citing *Wagner v. First Horizon Pharm. Corp.*, 464 F.3d 1273, 1280 (11th Cir. 2006)).

Accordingly, the Amended Complaint (Dkt. 31) is **DISMISSED without prejudice**.

¹ Although Plaintiff’s Amended Complaint does not adopt the allegations of all preceding counts, the incorporation of each and every factual allegation in all three counts has been characterized by the Eleventh Circuit as a shotgun complaint. *See Jackson v. Bank of America, N.A.*, --- F.3d ----, 2018 WL 3673002, at *3 (11th Cir. August 3, 2018) (“The amended complaint was . . . a shotgun pleading: it incorporated all of the factual allegations into each count without delineating which allegations pertained to each count.”).

² For example, it is not apparent how the allegation that “Defendants are considered a ‘person’ within the meaning of the FCCPA . . .” (Dkt. 31, ¶ 17) is relevant to Plaintiff’s Telephone Consumer Protection Act (“TCPA”) claim brought under Count II.

Plaintiff shall file a Second Amended Complaint within **fourteen (14) days** of this Order.³ Failure to do so will result in dismissal of this action without further notice.

DONE AND ORDERED this 23rd day of August, 2018.


JAMES D. WHITEMORE
United States District Judge

Copies to:
Counsel of Record

³ Additionally, to the extent Plaintiff's Response in Opposition to PennyMac's Motion to Dismiss (Dkt. 41) attempts to clarify which factual allegations go to which claim, the Amended Complaint still is shotgun complaint.