

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

**SCCY INDUSTRIES, LLC and JOSEPH
V. ROEBUCK,**

Plaintiffs,

v.

Case No: 6:17-cv-1495-Orl-31KRS

**PAUL JANNUZZO, E. MONIKA
BERECZKY and JOHN DOES 1-5,**

Defendants.

ORDER

This Matter comes before the Court on the Defendants' Motion to Dismiss the First Amended Complaint (Doc. 34) and the Response filed by the Plaintiffs (Doc. 36).

In ruling on a motion to dismiss, the Court must view the complaint in the light most favorable to the Plaintiff, *see, e.g., Jackson v. Okaloosa County, Fla.*, 21 F.3d 1531, 1534 (11th Cir. 1994), and must limit its consideration to the pleadings and any exhibits attached thereto. *See Fed. R. Civ. P. 10(c); see also GSW, Inc. v. Long County, Ga.*, 999 F.2d 1508, 1510 (11th Cir. 1993). The Court will liberally construe the complaint's allegations in the Plaintiff's favor. *See Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). However, "conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal." *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003).

In reviewing a complaint on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), "courts must be mindful that the Federal Rules require only that the complaint contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *U.S. v. Baxter Intern., Inc.*, 345 F.3d 866, 880 (11th Cir. 2003) (citing Fed. R. Civ. P. 8(a)). This is a

liberal pleading requirement, one that does not require a plaintiff to plead with particularity every element of a cause of action. *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 683 (11th Cir. 2001).

The Defendants first argue that the Amended Complaint “suffers from the fatal defect of being a shotgun pleading.” Mot. at 9. Rule 8 of the Federal Rules of Civil Procedure requires a “short and plain statement of the claim,” and because of this, the Eleventh Circuit has deemed shotgun pleadings, such as those “where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint,” to be improper. *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). Here, each Count incorporates every preceding paragraph of the entire Amended Complaint, including all of the allegations within the preceding counts. The Amended Complaint is clearly an impermissible shotgun pleading and, on that basis alone, should be dismissed. See *Rizzo-Alderson v. Eihab H. Tawfik, M.D., P.A.*, No. 5:17-cv312-OC-37PRL, 2017 WL 4410096, at *1 (M.D. Fla. Oct. 4, 2017); *Kendall v. Boston Sci. Corp.*, No. 6:17cv1888ORL37GJK, 2017 WL 6042020, at *1 (M.D. Fla. Dec. 6, 2017).

For the foregoing reasons, it is hereby **ORDERED** that the Defendants’ Motion to Dismiss is **GRANTED** (Doc. 34). The Amended Complaint (Doc. 30) is **DISMISSED** without prejudice. If the Plaintiff wishes to file an amended complaint, he must do so by February 9, 2018.

DONE and **ORDERED** in Chambers, Orlando, Florida on January 24, 2018.

Copies furnished to:

Counsel of Record
Unrepresented Party