

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

RONALD COX,

Plaintiff,

v.

Case No: 8:15-cv-1111-T-24AEP

BAY AREA CREDIT SERVICES, LLC,

Defendant.

---

**ORDER**

This cause comes before the Court on Defendant's Motion to Dismiss Plaintiff's First Amended Complaint (Dkt. 27), and Plaintiff's Response in Opposition (Dkt. 28). The Court, having reviewed the motion, response, and being otherwise advised, concludes that the motion should be granted, and the First Amended Complaint should be dismissed without prejudice.

**I. STANDARD OF REVIEW**

Federal Rule of Civil Procedure 8(a)(2) requires a complaint to make "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A Plaintiff must make sufficient factual allegations "to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569 (2007). Plausibility requires that the "plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The complaint need not include detailed factual allegations, but it must set forth more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Christman v. Walsh*, 416 F. App'x 841, 844 (11th Cir. 2011) (internal quotation marks and citation omitted).

The Eleventh Circuit follows a two-step approach in evaluating a motion to dismiss: “1) eliminate any allegations in the complaint that are merely legal conclusions; and 2) where there are well-pleaded factual allegations, assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Am. Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010) (citation omitted). Factual allegations satisfy the plausibility standard if they “raise a reasonable expectation that discovery will reveal evidence” that supports the plaintiff’s claim. *Twombly*, 551 U.S. at 556.

## II. DISCUSSION

Defendant argues the First Amended Complaint should be dismissed because it fails to provide Defendant fair notice of Plaintiff’s claims, contains confusing paragraph references in Counts I and II, and is a “shotgun” pleading. (Dkt. 27, p. 4). Defendant also asserts the First Amended Complaint contains “multiple choice alternatives” in contravention of the Court’s Order dismissing Plaintiff’s original complaint (Dkt. 13). Plaintiff concedes the First Amended Complaint still contains paragraphs plead in the alternative, and includes incorrect paragraph references in the individual counts. (Dkt. 28, p. 2). Plaintiff requests leave to amend the complaint in order to correct the issues raised by Defendant. *Id.* at 3.

As with the original complaint, the First Amended Complaint does not provide Defendant adequate notice of the claims against it as required by Fed. R. Civ. P. 8(a)(2). The First Amended Complaint cites to the Fair Debt Collection Practices Act’s (“FDCPA”) section on Congressional findings and declaration of purpose, 15 U.S.C. §§ 1601, 1692(c), and 1692(d) without explanation.<sup>1</sup> The purpose of Rule 8(a)(2) is to “give the defendant fair notice of what the ... claim

---

<sup>1</sup> In Count I, Plaintiff asserts claims under 15 U.S.C. § 1601. (Dkt.19, p. 7). Count I also references 15 U.S.C. § 1692(c) and 15 U.S.C. § 1692(d). Sections 1601, 1692(c), and 1692(d) refer to Congressional findings and the declaration of purpose for the FDCPA, thus, Plaintiff’s claims are not properly plead pursuant to these provisions.

is and the grounds upon which it rests.” *Twombly, supra*, 127 S. Ct. at 1959. Here, the First Amended Complaint incorrectly identifies the statutory provisions under which Plaintiff purportedly seeks relief; thus, it falls short of providing Defendant notice of Plaintiff’s claims. *See W. Coast Roofing & Waterproofing, Inc. v. Johns Manville, Inc.*, No. 206CV-118FTM-29DNF, 2006 WL 3837366, at \*4 (M.D. Fla. Dec. 29, 2006) (finding that a complaint’s vague references to statutory provisions supporting the plaintiff’s claims fell short of the adequate pleading notice requirement, stating: “Neither defendants nor the Court should be required to guess at the identity of the applicable statutory claims.”).

The First Amended Complaint also fails to meet Rule 8(a)(2)’s requirements because it constitutes a “shotgun” pleading. As Plaintiff concedes in his response, the First Amended Complaint does not contain the correct paragraph references in the individual counts. (Dkt. 28, p. 2). Counts I and II of the First Amended Complaint both “re-allege and incorporate[]” every preceding allegation. (Dkt. 19, ¶¶ 57, 60). Count Three re-alleges nearly all of the preceding allegations, including those included in Count I. A pleading drafted in this manner contravenes Rule 8(a)(2)’s requirement for a short and plain statement of the claim and disregards Fed. R. Civ. P. 10(b)’s requirement that discrete claims should be plead in separate counts. *See Magluta v. Samples*, 256 F.3d 1282, 1284 (11th Cir. 2001) (per curiam). Moreover, due to Plaintiff’s “inadvertent” inclusion of several contradictory factual allegations, each count of the First Amended Complaint incorporates factual allegations that are irrelevant to its claim, requiring the Court to “sift through the facts presented and decide for [itself] which were material to the particular cause of action asserted.” *Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 n. 9 (11th Cir.2002) (citations omitted). Therefore, the First Amended Complaint is due to be dismissed. *See Frantz v. Walled*, 513 F. App’x 815, 821 (11th Cir. 2013).

### III. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** that the motion to dismiss is **GRANTED** without prejudice. Plaintiff shall have until **October 16, 2015** to file an amended complaint. No further amendments will be allowed without a showing of good cause. Plaintiff's amended complaint should comply with the Court's directions contained in this Order and the Court's previous Order (Dkt. 13). Specifically, the amended complaint should: (1) identify the correct statutory provisions pursuant to which Plaintiff seeks relief; (2) comply with the Federal Rules of Civil Procedure, including Rules 8(a)(2) and 10(b); and (3) not plead multiple choice alternatives.

**DONE AND ORDERED** at Tampa, Florida, this 2nd day of October, 2015.

  
SUSAN C. BUCKLEW  
United States District Judge

Copies To: Counsel of Record and Parties