[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13675
Non-Argument Calendar

D.C. Docket No. 2:18-cv-14005-JEM

DARIO RODRIGUEZ,

Plaintiff-Appellant,

versus

RICK SCOTT,
PETER KEISHER,
GLENN FINE,
ALICE FISHER,
WARDEN BRYNER, and
WAN KIM

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(May 31, 2019)

Before TJOFLAT, JORDAN, and GRANT, Circuit Judges.

PER CURIAM:

A pro se prisoner, Dario Rodriguez, appeals the sua sponte dismissal of his complaint as an impermissible shotgun pleading. Before the district court dismissed the complaint—which alleges various constitutional violations under 42 U.S.C. § 1983—it gave Rodriguez the opportunity to amend the complaint, warned him that his initial complaint was an impermissible shotgun pleading, and even provided a detailed roadmap explaining how to fix the flaws in the initial complaint. Yet Rodriguez filed an amended complaint that fared no better than his initial one. The court therefore dismissed the amended complaint with prejudice for failure to state a claim. After careful review of the record, we affirm.

I.

Rodriguez filed a pro se complaint against the Florida Governor, the warden of a Florida correctional institution, and three federal employees in Washington, D.C. His complaint contains three counts. *First*, he alleges that prison guards followed him from unit to unit within a prison, secretly shared information about him with other guards, and stole or gave away his mail. In his view, these actions violated the First, Eighth, and Fourteenth Amendments. *Second*, a prison guard not named as a defendant allegedly intentionally tripped him in front of other prisoners, beat him, and threated to kill him; guards also allegedly placed him in a prison cell with cellmates who beat him and threatened to kill him. In his telling, these actions constitute reckless endangerment of an inmate and violate the Fifth,

Sixth, and Eighth Amendments. *Third*, he contends that prison guards obstructed justice when they "rubbed" him, spoke to him in a negative way, and "passed by" him "in disrespect"—allegedly in violation of the Eighth and Fourteenth Amendments.

The magistrate conducted a frivolity review of these allegations, as required by 28 U.S.C. § 1915A(a), and issued an order describing the complaint as an impermissible shotgun pleading riddled with "rambling and disjointed" allegations. The magistrate explained that the named defendants did not appear to have any involvement in the alleged wrongdoing. And those who Rodriguez *did* accuse of mistreating him were not named as defendants. The magistrate gave Rodriguez an opportunity to fix these problems by amending his complaint and, to assist Rodriguez with amending the complaint, the magistrate provided an eight-page outline of the pleading rules and the applicable legal standards.

Rodriguez then filed an amended complaint that suffered from many of the same flaws as the initial complaint. In addition to adding another defendant, the amended complaint "makes reference to alleged assaults by staff, threats of retaliation, a compact with the Governor of Nevada, multiple officials falsifying documents, secret information, events that occurred at Tomoka CI and 'CFRC,' being assaulted by other prisoners, gang issues, dangerous conditions, falsification of disciplinary reports, inmates 'snitching,' denials of medical treatment, and self

defense." Even though the magistrate had previously created a roadmap for Rodriguez to follow in amending his complaint, Rodriguez failed to set forth a chronology of events, the allegations in the amended complaint were still vague and disjointed, and the factual allegations did not even mention the named defendants. The magistrate therefore issued a report and recommendation (R&R) concluding that the amended complaint should be dismissed with prejudice for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). Having not received any objections to the R&R, the district court adopted the R&R and entered final judgment against Rodriguez.

Rodriguez eventually appealed that order. We received Rodriguez's appeal, but remanded to the district court because, after the district court entered final judgment, Rodriguez filed objections to the magistrate's R&R, which the district court never addressed due to the unusual timing of the filing of those objections. On remand, the district court considered Rodriguez's objections, but again decided to dismiss his complaint. Rodriguez again appeals, seeking reversal of the district court's order dismissing his complaint.

II.

A.

Before we consider the merits, we must resolve Rodriguez's pending motions for appointment of counsel and leave to file a supplemental brief.

As to the request for court-appointed counsel, a "plaintiff in a civil case has no constitutional right to counsel." *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999). And courts should "appoint counsel only in exceptional circumstances"—for example, when the action involves complex facts or novel legal issues. *Id.* The claims here do not contain any novel issues of constitutional interpretation or statutory construction. Nor do the factual allegations appear particularly complex. Because this action does not involve any exceptional circumstances that would warrant the appointment of counsel, we deny that motion.

As to the motion for permission to file a supplemental appellate brief, we typically allow a litigant to file a supplemental brief when it addresses "intervening decisions or new developments" regarding the issues raised in the initial brief. *United States v. Nealy*, 232 F.3d 825, 830 (11th Cir. 2000); *see also* 11th Cir. R. 28 I.O.P. 5. Rodriguez's proposed supplemental brief does not reference any intervening judicial opinion or new factual development—instead, it primarily rehashes the arguments made in his initial brief and in his motion for appointment of counsel. We therefore deny that motion, too.

B.

Turning to the merits, we review de novo the district court's dismissal of Rodriguez's complaint under § 1915(e)(2)(B)(ii) for failure to state a claim, using "the same standard as a dismissal under Rule 12(b)(6) of the Federal Rules of Civil

Procedure." *Evans v. Ga. Reg'l Hosp.*, 850 F.3d 1248, 1253 (11th Cir. 2017); *see also* 28 U.S.C. § 1915A(a) (requiring courts to sua sponte review civil complaints that seek redress from a government entity or officer); *id.* § 1915(e)(2)(B)(ii) (requiring courts to dismiss certain actions that fail to state a claim). "*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam). But pro se litigants still must comply with the Federal Rules of Civil Procedure; so, for Rodriguez to prevail on appeal, he must prove that his complaint made "a short and plain statement of the claim showing that" he "is entitled to relief." Fed. R. Civ. P. 8(a)(2); *see also Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (explaining that IFP litigants are subject to the Federal Rules of Civil Procedure). In other words, the "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* So "conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

Complaints that fail to meet the Rule 8 short-and-plain-statement standard "are often disparagingly referred to as 'shotgun pleadings.'" *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). We have previously explained that shotgun pleadings can take several forms, two of which are relevant here. The first is a complaint that "is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id.* at 1322. The second is a pleading that asserts "multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Id.* at 1323. "The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.*

Rodriguez's complaint falls squarely within these descriptions of shotgun pleadings. To begin with, we note that the magistrate judge gave Rodriguez the opportunity to fix his complaint, and even provided an eight-page roadmap detailing how to appropriately amend the complaint. Despite receiving a second shot at filing a complaint, Rodriguez's amended complaint still suffered from the same flaws that the magistrate identified in the first pleading and warned Rodriguez to correct. Nowhere in the amended complaint's "rambling statement

of facts" does Rodriguez "appear to even mention any of the named defendants." And the amended complaint—like the initial complaint—put the blame for the alleged wrongdoing on individuals not named as defendants. "All that" Rodriguez's amended complaint did, as the magistrate explained, was "set forth a series of cryptic and disjointed vague facts and conclusory claims, none of which seem to have anything to do with any of the named defendants." What's more, Rodriguez ignored the magistrate's specific instruction to explain why venue was proper in Florida—given that some of the alleged facts occurred in Nevada and some of the named defendants resided in D.C.

Although the district court and magistrate judge were required to liberally construe Rodriguez's pro se complaint, they were not required to "rewrite an otherwise deficient pleading in order to sustain an action." *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1169 (11th Cir. 2014) (internal quotation marks omitted) (citation omitted). We therefore affirm the district court.

III.

In short, we **AFFIRM** the district court's order dismissing Rodriguez's complaint for failure to state a claim.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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May 31, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 18-13675-DD
Case Style: Dario Rodriguez v. Rick Scott, et al
District Court Docket No: 2:18-cv-14005-JEM

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Cheyenne Jones, DD at 404-335-6174.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

Case Number: 18-14005-CIV-MARTINEZ-WHITE

DARIO RODRIGUEZ,

Plaintiff,

vs.

RICK SCOTT, et al.,

Defendants.
_____/

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

THIS MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, for a Report and Recommendation on Plaintiff's *pro se* amended civil rights complaint, filed pursuant to 42 U.S.C. § 1983 [ECF No. 15]. Magistrate Judge White filed a Report and Recommendation [ECF No. 21], recommending that Plaintiff's *pro se* amended civil rights complaint be DISMISSED in its entirety (without leave to amend) pursuant to 28 U.S.C. §1915(e)(2)(ii) and 28 U.S.C. §1915A(b)(1) for failure to state a claim upon which relief may be granted. This Court has reviewed the entire file and record and notes that no objections have been filed. After careful consideration, it is hereby:

ADJUDGED that United States Magistrate Judge White's Report and Recommendation [ECF No. 21] is **AFFIRMED** and **ADOPTED**. Accordingly, it is:

ADJUDGED that Plaintiff's *pro se* civil rights complaint, filed pursuant to 42 U.S.C. § 1983 [ECF No. 15], is **DISMISSED** in its entirety (without leave to amend) pursuant to 28 U.S.C. §1915(e)(2)(ii) and 28 U.S.C. §1915A(b)(1) for failure to state a claim upon which relief

may be granted. This case is **CLOSED**, and all pending motions are **DENIED** as **MOOT**. Final judgment shall be entered by separate order.

DONE AND ORDERED in Chambers at Miami, Florida, this 21 day of May, 2018.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge White
All Counsel of Record
Dario Rodriguez, *pro se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-CIV-14005-MARTINEZ
MAGISTRATE JUDGE P.A. WHITE

DARIO RODRIGUEZ, :

Plaintiff, : PRELIMINARY REPORT OF MAGISTRATE JUDGE

v. :

RICK SCOTT, :

Defendants. :

Introduction

The plaintiff Dario Rodriguez, currently housed at Martin Correctional Institution, has filed an amended pro se civil rights complaint pursuant to 42 U.S.C. §1983 (DE#15), along with a memorandum of law (DE#16) and affidavit (DE#17) in support thereof. This cause is presently before the Court for initial screening pursuant to 28 U.S.C. §1915, because the plaintiff is proceeding *in forma pauperis* and seeks redress from a government entity or officer or employee of a governmental entity.

Plaintiff's Initial Complaint

As the record reflects, Plaintiff initiated this action with a rambling and disjointed complaint, naming Governor Rick Scott of Florida, what appeared to be various federal employees in Washington D.C., and Warden Bryner, apparently of Martin CI. The original filing was truly incomprehensible, and the undersigned thus concluded that it was an impermissible "shotgun" pleading. (See DE#14). However, in keeping with the rule that a pro se complaint should not be dismissed under the PLRA without first affording him or her an opportunity to amend (if it appears that they might be able to state a claim), the undersigned ordered

Plaintiff to file an amended complaint, rather than recommending outright dismissal. (Id.).

The court's order to amend, while not purporting to have identified the universe of claims Plaintiff may have been trying to raise, painstakingly advised Plaintiff of the applicable legal standards that might be implicated by Plaintiff's allegations. (Id. at 9-15). The order also alerted Plaintiff to the venue and joinder issues that seemed to be in question, in light of his cryptic references to things that happened in Nevada, or perhaps in federal custody elsewhere, and in light of the fact that Plaintiff appeared to be suing defendants in both Florida and Washington. (Id. at 7-8).

The order to amend also clearly advised Plaintiff regarding the prohibition on shotgun-style complaints, and what the rules of pleading required. (Id. at 5-6). In addition, the order specifically required Plaintiff to file an amended complaint that set forth a "short and plain" statement of his claims, with sufficient supporting facts showing what each defendant did, and why that person was being sued. (Id. at 15-16).

Plaintiff's Amended Complaint and Related Filings

In his amended complaint, Plaintiff again sues Governor Rick Scott of Florida, Warden Bryner of the Florida Department of Corrections, and a variety of what appear to be federal employees in Washington, D.C.

On the form of his complaint regarding the event that give rise to his claims, Plaintiff alleges that they started in 1999 upon entry to the Nevada Department of Corrections, followed an initial complaint filed March 1, 2015, and transfer to the Florida Department of Corrections on March 7, 2017. Plaintiff then makes reference to some dates in 2017 and 2018.

Beyond that, Plaintiff's amended complaint is truly incomprehensible. It makes reference to alleged assaults by staff, threats of retaliation, a compact with the Governor of Nevada, multiple officials falsifying documents, secret information, events that occurred at Tomoka CI and "CFRC,"[1] being assaulted by other prisoners, gang issues, dangerous conditions, falsification of disciplinary reports, inmates "snitching," denials of medical treatment, and self defense. And Plaintiff's purported memorandum of law and affidavit are similarly disjointed, conclusory, and rambling.

Standard of Review

As amended, 28 U.S.C. §1915 of the Prison Litigation Reform Act, which permits *in forma pauperis* proceedings, reads in pertinent part:

> (e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -
>
> * * *
>
> (B) the action or appeal -
>
> * * *
>
> (I) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or
>
> (iii) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. §1915(e)(2).

Section 1915A of the PLRA further provides:

> (a) Screening.--The court shall review, before docketing, if feasible or, in any event, as soon as practicable

[1]Presumably the Central Florida Reception Center.

> after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
>
> (b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--
>
> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. §1915A(a), (b).

A complaint is frivolous under the PLRA "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11th Cir. 1998).

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."' Estelle v. Gamble, 429 U.S. 97, 106

(1979) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). The allegations of the complaint are taken as true and are construed in the light most favorable to Plaintiff. Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11th Cir. 1997). The complaint may be dismissed if the plaintiff does not plead facts that do not state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007) (retiring the oft-criticized "no set of facts" language previously used to describe the motion to dismiss standard and determining that because plaintiffs had "not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed" for failure to state a claim); Watts v. FIU, 495 F.3d 1289 (11th Cir. 2007). While a complaint attacked for failure to state a claim upon which relief can be granted does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 127 S.Ct. at 1964-65. The rules of pleading do "not require heightened fact pleading of specifics . . . ." The Court's inquiry at this stage focuses on whether the challenged pleadings "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007) (quoting Twombly, 127 S.Ct. at 1964). When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.[2]

Although federal courts give liberal construction to the pleadings of pro se litigants, "we nevertheless have required them to conform to procedural rules." Albra v. Advan, Inc., 490 F.3d

[2]Application of the Twombly standard was clarified in Ashcroft v. Igbal, 129 S.Ct. 1937 (2009).

826, 829 (11th Cir. 2007) (per curiam) (quotation omitted). Rule 8 requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Though there is no required technical form, "[e]ach allegation must be simple, concise, and direct." Id. at 8(d)(1). The statement must "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964 (2007) (quotation omitted) (ellipses in original). Additionally, each separate claim should be presented in a separate numbered paragraph, with each paragraph "limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b).

"Precedent also teaches, however, that a court, of course, should not abandon its neutral role and begin creating arguments for a party, even an unrepresented one." Sims v. Hastings, 375 F.Supp.2d 715, 718 (N.D.Ill.2005)(*citing* Anderson v. Hardman, 241 F.3d 544, 545 (7th Cir. 2001)). A district court may not rewrite a pleading to include claims that were never presented, Barnett v. Hargett, 174 F.3d 1128, 1133 (10th Cir. 1999), construct a litigant's legal arguments for him, Small v. Endicott, 998 F.2d 411, 417-18 (7th Cir.1993), or "conjure up questions never squarely presented" to the court, Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985). When read liberally, rather, a pro se pleading "should be interpreted 'to raise the strongest arguments that [it] suggest[s].'" Graham v. Henderson, 89 F.3d 75, 79 (2nd Cir. 1996)(*quoting* Burgos v. Hopkins, 14 F.3d 787, 790 (2nd Cir. 1994).

In addition, the leniency afforded to pro se litigants does not permit them to file an impermissible "shotgun" pleading. The Eleventh Circuit has identified four rough types or categories of shotgun pleadings. See Weiland v. Palm Beach Cty. Sheriff's Office, 792 F.3d 1313, 1321-23 (11th Cir. 2015)(citations omitted)

The most common type of shotgun pleading is a "complaint containing multiple counts 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." Id. The next most common type is a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." Id. The third type of shotgun pleading is one that does not separating into a different count each cause of action or claim for relief. Id. Fourth, and finally, there is the relatively rare shotgun pleading that asserts multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against. Id. "The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." Id. The Eleventh Circuit has repeatedly condemned the use of shotgun pleadings for "imped[ing] the administration of the district courts' civil docket." PVC Windoors, Inc. v. Babbitbay Beach Constr., N.V., 598 F.3d 802, 806 n. 4 (11th Cir. 2010). Indeed, shotgun pleadings require the court to sift through rambling and often incomprehensible allegations in an attempt to separate the meritorious claims from the unmeritorious, resulting in a "massive waste of judicial and private resources." Id. (citation omitted). The Eleventh Circuit thus has established that shotgun pleading is an unacceptable form of establishing a claim for relief. Strategic Income Fund, LLC v. Spear, Leeds & Kellogg Corp., 305 F.3d 1293, 1296 (11th Cir. 2002).

Finally, before a complaint is dismissed as frivolous or for failure to state a claim upon which relief can be granted under the PLRA, a pro se plaintiff should generally be permitted to amend the

complaint in an attempt to cure pleading deficiencies, if possible. "Section 1915(e)(2)(B)(ii) does not allow the district court to dismiss an *in forma pauperis* complaint without allowing leave to amend when required by Fed.R.Civ.P. 15." Troville v. Venz, 303 F.3d 1256, 1260 (11th Cir. 2002)(citations omitted); see also Temple v. Dahm, 905 F. Supp. 670, 671 (D. Neb. 1995)(when prisoner files complaint without assistance of counsel and magistrate grants leave to amend, magistrate should identify deficiencies in complaint and indicate what factual allegations are necessary to cure those deficiencies); Muhammad v. Sisto, No. 2:09-CV-0582 KJN P, 2010 WL 4322993, at *1 (E.D. Cal. Oct. 25, 2010)(a district court must construe a pro se pleading liberally to determine if it states a claim and, prior to dismissing a complaint, identify the deficiencies therein and accord plaintiff an opportunity to cure them), *citing* Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.2000); Tia v. Paderes, No. CIV. 11-00459 LEK, 2012 WL 487992, at *4 (D. Haw. Feb. 14, 2012)("Plaintiff may be allowed to file an amended complaint to cure any deficiencies that the court identifies.").

Discussion

In this case, Plaintiff's amended complaint is no better than his first. And Plaintiff's memorandum of law and affidavit add nothing to the analysis. Plaintiff's factual allegations are beyond vague and disjointed, and fail to set forth any comprehensible chronology of events, much less who allegedly did what. Indeed, nowhere in the rambling statement of facts does Plaintiff appear to even mention any of the named defendants.

As set forth above, the court expended significant resources screening Plaintiff's original complaint, and laying out in detail the legal standards and elements of the potential causes of action that Plaintiff's allegations seemed to implicate. As such, the Court gave Plaintiff a veritable road map of how to plead his

claims. Moreover, as further set forth above, the court also specifically advised Plaintiff that he could not file an impermissible "shotgun" pleading that would require the court to sift through rambling allegations to determine whether Plaintiff had stated any claims. But Plaintiff has done just that.

Not withstanding, the court has nevertheless endeavored to see if it could make any sense of Plaintiff's latest filings. And the court cannot. All that Plaintiff has done is set forth a series of cryptic and disjointed vague facts and conclusoy claims, none of which seem to have anything to do with any of the named defendants. As such, Plaintiff's latest filings amount to nothing other than an incomprehensible "shotgun" pleading that, despite the court's best efforts to decipher, fails to state any cognizable claims.

Conclusion

Based on the foregoing, it is recommended that this case be dismissed in its entirety pursuant to 28 U.S.C. §1915(e)(2)(ii) and 28 U.S.C. §1915A(b)(1) for failure to state a claim upon which relief may be granted. It is further recommended that Plaintiff not be granted any further leave to amend. See Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962)(factors counseling against include, *inter alia*, failure to cure deficiencies by amendments previously allowed).

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report. Failure to file timely objections shall bar plaintiff from a *de novo* determination by the district judge of an issue covered in this report and shall bar the parties from attacking on appeal factual findings accepted or adopted by the district judge except upon grounds of plain error or manifest injustice. See 28 U.S.C. §636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790,794 (1989); LoConte v. Dugger, 847 F.2d 745

(11th Cir. 1988); RTC v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993).

It is so recommended at Miami, Florida, this 30th day of April, 2018.

UNITED STATES MAGISTRATE JUDGE

Copy furnished:

Dario Rodriguez
C11435
Martin Correctional Institution
Inmate Mail/Parcels
1150 SW Allapattah Road
Indiantown, FL 34956