No. 21-146

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTINE CLIFFORD (AS ADMINISTRATOR OF THE ESTATE OF JOHN CLIFFORD), et al.,
Petitioners,

v.

RICHARD FEDERMAN, et al., Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeal for the Eleventh Circuit

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI FOR RESPONDENTS TODD GUTHRIE AND TECHCXO, LLC

SWIFT, CURRIE, McGHEE & HIERS, LLP
Roger E. Harris # 241120 *
1355 Peachtree Street, NE
Suite 300
Atlanta, Georgia 30309
(404) 874-8800
Roger.harris@swiftcurrie.com
Attorney for Respondents Todd Guthrie and TechCXO, LLC
* *Counsel of Record*

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COUNTERSTATEMENT OF QUESTION PRESENTED

This case does not involve new or novel issues. It does not involve a question of law concerning a division between circuits or a departure from the precedent set forth by this Court. Instead, it involves an all-too-common practice that has plagued the courts for decades. The issue of shotgun pleadings, i.e., the practice of throwing all conceivable claims against all conceivable defendants against the proverbial wall to see what sticks, is pervasive and has been consistently handled by federal courts around the country for decades. This case is simply another example of a litigant "cough[ing] up an unsightly hairball of factual and legal allegations, stepp[ing] to the side, and invit[ing] the defendants and the Court to pick through the mess and determine if plaintiffs may have pleaded a viable claim or two." *Gurman v. Metro Housing and Redevelopment Authority*, 842 F.Supp.2d 1151, 1153 (D. Minn. 2011).

Remarkably, despite orders from two District Court judges and the United States Court of Appeals for the Eleventh Circuit finding that the Petitioners' Complaint and Amended Complaint were egregiously procedurally deficient and failed to provide adequate notice to the Respondents of the claims made against them and the facts supporting those claims, Petitioners now seek the review of this Court, hoping that such review will provide the opportunity to proceed with their convoluted and

disjointed claims. Petitioners seek yet another chance to amend their Complaint, despite that the District Court provided Petitioners with clear and detailed guidance as to how to properly amend their complaint in order to achieve that very same goal, which the Petitioners wholly ignored.

This Court recently denied a Petition for Writ of Certiorari on shotgun pleading issues in the Eleventh Circuit, *in Huong L. Tran and Richard W. Hazen, Petitioners v. City of Holmes Beach, Florida; City Officials in Official Capacity; Florida Department of Environmental Protection; Department Officials in Official Capacity, Respondents*, 2021 WL 1725178 (Mem), (U.S., May 3, 2021) (*cert. denied*). For the reasons outlined below with respect to shotgun pleadings, this Court should reach the same decision and deny Certiorari in this Petition now before it.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Supreme Court Rule 29.6, TechCXO, LLC certifies that it has no parent corporation and no public corporation owns 10% or more of its stock.

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Procedural Background

On May 3, 2018, Petitioners filed their Complaint in the Northern District of Georgia. The Complaint, which was 195 pages long, contained an unnumbered "Preliminary Statement" that was more than 6 pages long and contained an additional 578 numbered paragraphs. The first 312 numbered paragraphs identified the parties and contained the factual allegations. Thereafter, Petitioners asserted fifty (50) counts against forty-two (42) Defendants (now Respondents).

In the Complaint, the claims against any particular Respondent were not clear. For instance, in Count I of the Complaint, Petitioners incorporated the prior 312 paragraphs by reference, alleged that "Federman's, Johnson's, GMC's, Arnold's, Guthrie's, TechCXO's, Kostensky's, Su's and Cascade's actions, conduct, inactions and omissions set forth above constitute breach of their fiduciary duties of loyalty to plaintiffs as GMC shareholders, convertible note holders and investors," and alleged that Petitioners would be damaged as a result. However, the particular acts or omissions of each Respondent, many of whom were separately represented, were not clear. The problem then compounded itself exponentially. In each of the 50 separate Counts, Petitioners incorporated all prior paragraphs of the Complaint.

On July 9, 2018, former Defendant Eric Spellman filed a Motion to Dismiss Petitioners' Complaint, arguing in part that it was a shotgun pleading because: (1) every count of the Complaint adopted the allegations of all preceding counts, making it virtually impossible for Spellman and the District Court to determine which allegations the Petitioners believed supported each count; (2) the Complaint was replete with conclusory, vague, and immaterial facts not tied to any particular cause of action (i.e., clumsily attempting to tie Spellman to Gotham Media Corporation ("GMC"), though he was not alleged to be a part of it); (3) the Complaint did not separate each cause of action or claim for relief into separate counts; for example, by alleging in Count 28 "legal fraud, fraud in the inducement & alter-ego liability" as to multiple Defendants; and (4) the Complaint asserted multiple claims against multiple Defendants without specifying which Defendant was allegedly responsible for which act or omission.

On July 10, 2018, Respondents Guthrie and TechCXO served their Answer. While Petitioners suggest that by filing the Answers, Respondents concede they could discern the Complaint, this statement is inaccurate. In fact, their First Affirmative Defense was "Plaintiffs' Complaint fails to state a claim upon which relief can be granted." These Respondents admitted very limited facts, such as their existence and place of business. However, the phrase "without knowledge or information sufficient to form a belief as to the truth of the [allegations or remaining allegations]" appears 469

times in TechCXO's Answer. The Answers of these Respondents can hardly be construed as surgically precise responses to the convoluted and compounding factual allegations of Petitioners' Complaint and Amended Complaint.

On July 23, 2018, Respondent Robert Half International ("RHI") filed a Motion for Judgment on the Pleadings, arguing in part that Petitioners' Complaint was a shotgun pleading because: (1) each count incorporated by reference the allegations of its predecessors, leading to a situation where most of the counts contained irrelevant factual allegations and legal conclusions; and (2) the Complaint failed to specify which Defendant was responsible for each act alleged.

On August 7, 2018, TechCXO and Guthrie filed a Motion for Judgment on the Pleadings, based in part on their argument that "the Complaint is a textbook shotgun pleading, which runs afoul of Fed. R. Civ. P. 8(a)(2) and 10(b)."

Petitioners contend that "virtually all respondents filed either Answers and/or [Federal] Rule 12 motions to dismiss… without moving to strike on 11th Circuit shotgun grounds" until Johnson filed a motion to strike on August 8, 2018. As illustrated above, this contention is patently false.

After the motions to strike and motions for judgment on the pleadings filed were fully briefed by the parties, in an order authored by Judge Amy

Totenberg, the District Court found that Petitioners' original Complaint was found to have several deficiencies. Specifically, the District Court engaged in the "painstaking task of wading through and deciphering" the allegations, including the creation of a chart of the counts, claims, and parties involved. The District Court found the following deficiencies:

> (a) The Complaint incorporates by reference 312 paragraphs of factual allegations into each of its 50 enumerated causes of action;
> (b) each cause of action incorporates by reference each and every prior cause of action;
> (c) many of its enumerated causes of action are actually comprised of multiple sub-causes of action;
> (d) each enumerated cause of action is asserted against multiple defendants; and
> (e) Plaintiffs essentially accuse all defendants of being responsible for all alleged acts and omissions, such that no one defendant can identify what exactly he or she did wrong.

Petition for Writ of Certiorari, Appendix, p. 56a.

The District Court not only pointed out the defects in the original complaint, but also provided specific, detailed guidance to correct the defects. Petitioners were permitted to file an amended

complaint and were ordered to comply with the following guidelines to avoid further deficiencies in the amended complaint:

> (i) Petitioners may not incorporate all 312 factual paragraphs into each count, but instead indicate which of the factual paragraphs are alleged to support each individual count;
> (ii) Each individual count may only be based on a single legal claim for recovery (legal fraud, fraud in the inducement and alter-ego all separated);
> (iii) Plaintiffs could assert a single count against multiple defendants provided they identify the precise conduct attributable to each defendant separately in each count.
>
> Petition for Writ of Certiorari, p. 8.

On April 23, 2019, Petitioners filed their First Amended Complaint. Despite dropping six Defendants, the First Amended Complaint ballooned from 195 pages in the Original Complaint to 255 pages and from 578 numbered paragraphs in the Original Complaint to 782 paragraphs in the First Amended Complaint.

On May 13, 2019, Respondents Guthrie and TechCXO filed their Answers and a Motion to Dismiss, showing that, like the Original Complaint,

the First Amended Complaint was a shotgun pleading. Other Respondents filed similar pleadings.

On January 7, 2020, in an order authored by Judge J.P. Boulee, the District Court granted Respondents' Motions to the extent they sought dismissal on shotgun pleading grounds and dismissed Petitioners' First Amended Complaint with prejudice. The District Court found that the First Amended Complaint was a quintessential shotgun pleading and was not a short and plain statement of the claim as required by pleading rules. It was virtually impossible to know which of the over 200 factual allegations incorporated into each cause of action were intended to support its claims for relief. Specifically, the District Court found as follows:

> (1) Petitioners failed to follow its instruction not to incorporate all 312 jurisdictional, venue related, party identifying, and background factual paragraphs of the original Complaint into each count. Although Petitioners did not technically incorporate all 312 factual paragraphs into each count, they incorporated the entirety of the 250-paragraph, 104-page "The Facts" section in the vast majority of the First Amended Complaint's 52 counts, omitting only introductory facts relating to party identity, jurisdiction, and venue. Because Petitioners chose to replead in this fashion, each count

was replete with factual allegations that could not possibly be material to that specific count, and any allegations that were material were buried beneath innumerable pages of rambling irrelevancies.

(2) Petitioners failed to follow its instruction that when a single count was brought against multiple Respondents, Petitioners must identify the precise conduct attributable to each Defendant.

(3) Despite its instruction, Petitioners changed their original Complaint only in minor ways and never attempted to segregate the alleged wrongdoing of the Respondents, with many of its factual section paragraphs referring to all Respondents or groupings of Respondents. The First Amended Complaint's pleading method was no clearer than the original Complaint's, and it remained a shotgun pleading.

Petition for Writ of Certiorari, Appendix, pp. 99a-101a.

The District Court dismissed the First Amended Complaint without leave to amend because, although the District Court's Order and Respondents' shotgun pleading motions provided Petitioners with notice of the original Complaint's defects, Petitioners did not meaningfully amend

their original Complaint when given the opportunity to do so.

On January 31, 2020, Petitioners filed a Motion for Reconsideration, which was denied by the District Court. They subsequently appealed to the Eleventh Circuit Court of Appeals, which also denied the appeal.

Petitioners now seek a Writ of Certiorari to this Court, hoping for yet another opportunity to try and comply with well-established pleading requirements, despite having ignored express instructions from and having squandered the opportunity provided to them by the District Court.

REASONS FOR DENYING CERTIORARI

A petition for a writ of certiorari will be granted only for compelling reasons. *See* Rule 10. Here, the Petitioners have presented no such compelling issue for this Court's review. There is no conflict between circuit courts on decisions involving a matter of an important federal question. There is no conflict between a decision of a circuit court and a state court of last resort on a matter of an important federal question. The Eleventh Circuit has not so far departed from the accepted and usual course of judicial proceedings so as to require this Court's intervention. This fact is confirmed, as noted above, by this Court's recent denial of Certiorari in a shotgun pleading case from the Eleventh Circuit. On May 3, 2021, this Court denied Certiorari in *Huong L. Tran and Richard W. Hazen, Petitioners v. City of*

Holmes Beach, Florida; City Officials in Official Capacity; Florida Department of Environmental Protection; Department Officials in Official Capacity, Respondents, 2021 WL 1725178 (Mem), (U.S., May 3, 2021) (*cert. denied*). There is no conflict regarding an important federal question between a U.S. Court of Appeals decision and other Supreme Court decisions. Instead, the Petitioners are asking this Court to dedicate precious and limited judicial resources to reaffirming a basic, but essential, pillar of American jurisprudence – a Plaintiff's obligation to plead its complaint in a clear and concise manner that is sufficient to give a Defendant adequate notice of the claims against it and the grounds upon which each claim rests. Because the Eleventh Circuit has repeatedly adhered to this paramount principle for nearly four decades and its decisions are consistent with the Federal Rules of Civil Procedure and this Court's previous holdings, this Court should deny the Petitioner's petition for certiorari.

I. THE ELEVENTH CIRCUIT FOLLOWS AND APPLIES THE STANDARDS SET FORTH BY FEDERAL RULES OF CIVIL PROCEDURE 8, 10, 12, AND THE TENETS OF *BELL ATLANTIC CORP. V. TWOMBLY* AND *ASHCROFT V. IQBAL*; THUS ITS HOLDINGS DO NOT CONFLICT WITH THE FEDERAL RULES OF CIVIL PROCEDURE OR THE PRIOR DECISIONS OF THIS COURT.

The essence of this dispute can be summarized in one word: clarity. Petitioners'

Complaint and Amended Complaint were dismissed by the District Court for failing to provide clear, adequate notice to the Respondents in three different ways:

1) The Complaint incorporated all factual paragraphs into each count, failing to indicate which facts support each count alleged;
2) The Complaint incorporated multiple legal claims and bases for recovery in one count;
3) The Complaint alleged a single count against multiple defendants, failing to identify the precise conduct attributable to each defendant.

Petition for Writ of Certiorari, Appendix, p. 56a.

Although the Petitioners claim that the clarity requested by the District Court somehow created a "strict 'form' requirement" that deviates from this Court's *Twombly/Iqbal* standard, a review of the applicable rules and standards shows that this is not the case. Petitioners' procedural deficiencies are more fundamental.

a. Federal Rules of Civil Procedure 8 and 10 Created the Blueprint for Pleading Standards.

The primary purpose of Fed. R. Civ. P. 8 and 10(b) is "to give defendants fair notice of the claims against them and the grounds supporting the

claims." *Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 946 (7th Cir. 2013); see also *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). Fed. R. Civ. P. 8 sets forth the general rules of pleading and specifies that a claim for relief must contain a short and plain statement of the grounds for the court's jurisdiction, a short and plain statement of the claim showing that the pleader is entitled to relief, and a demand for the relief sought. Fed. R. Civ. P. 8(a). Importantly, the Rule requires that the statements contained in the pleading be short and plain. This is consistent with the notion that clarity in the initial pleading is essential to providing adequate notice to the persons being sued of the claims against them and the grounds for such claims.

Fed. R. Civ. P. 10(b) provides:

> A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence – and each defense other than a denial – must be stated in a separate count or defense.

Fed. R. Civ. P. 10(b).

Fed. R. Civ. P. 8 and 10 work in tandem to ensure the required clarity is present to provide adequate notice to the defendant. As the Seventh Circuit noted, parties are required "to make their pleadings straightforward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud." *U.S. ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003). The purpose of Fed. R. Civ. P. 8 is to eliminate prolixity in pleading and to achieve brevity, simplicity, and clarity. *Knox v. First Sec. Bank of Utah*, 196 F.2d 112, 117 (10th Cir. 1952). Further, the crux of the Fed. R. Civ. P. 10(b) requirement to state claims in separate counts is to enable litigants and the court to clarify the issues at the outset of the case. *Williamson v. Columbia Gas & Elec. Corp.*, 186 F.2d 464, 469 (3d Cir. 1950). Courts have been clear that the focus of Fed. R. Civ. P. 10(b) is to promote clarity regarding the claims alleged and the facts which support those claims, not mere repetition, as "[m]ultiplicity does not always equate with clarity." *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313, 1331 at n.18 (11th Cir. 2015).

b. This Court Used the Blueprint from Fed. R. Civ. P. 8 and 10(b) to Create a Framework for Litigants in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal (Twombly/Iqbal)*

In 2007, this Court was presented with the question of whether dismissal of a complaint was proper where the complaint alleged that multiple defendants engaged in parallel conduct unfavorable

to competition but did not include some factual context suggesting agreement sufficient to suggest conspiracy. *Bell Atlantic Corp v. Twombly*, 550 U.S. 544 (2007). In upholding the dismissal, this Court expounded upon Fed. R. Civ. P. 8 and 10(b) to create a more detailed framework for litigants in the pleading stage, finding that the need at the pleading stage for plausible allegations reflects the threshold requirement of Fed. R. Civ. P. 8(a)(2) that the "plain statement" possess enough heft to show that the pleader is entitled to relief. *Id.*, 550 U.S. at 557. 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. *Id.*, at 555 (internal citations omitted). This Court cautioned that its holding did not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. *Id.*, at 570. Where a plaintiff has not "nudged their claims across the line from conceivable to plausible," dismissal of the complaint is warranted. *Id.*

Two years later, this Court further explained the interplay between Fed. R. Civ. P. 8 and 10(b) and the federal pleading requirements in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) in determining whether the respondent plead sufficient facts to state a claim for deprivation of certain constitutional rights. As an initial matter, this Court found that Fed. R. Civ. P. 8 requires more than an unadorned, the defendant-unlawfully-harmed-me accusation and does not "unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Id.*, 556 U.S. at

678 - 679. Further, a complaint was deemed improper if it made naked assertions devoid of further factual enhancement, as "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.,* at 678 (internal citation omitted). While determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense, this Court noted that a claim has facial plausibility when the factual content pled allows the court to draw the reasonable inference that the defendant is liable for the alleged misconduct. *Id.*

Petitioners misconstrue this as a limited issue of whether *Iqbal* and *Twombly* have been misapplied. The requirement that parties comply with the federal pleading requirements of Fed. R. Civ. P. 8 and 10 predates those cases. Indeed, since 1985, the Eleventh Circuit has rejected shotgun pleadings more than fifty times relying on the pleading blueprint established by Fed. R. Civ. P. 8 and 10. *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 980 (11th Cir. 2008).

c. Circuit Courts Throughout the Country Have Implemented the Framework Outlined in *Twombly/Iqbal* to Ensure Pleadings Are Sufficient to Provide the Requisite Notice to Respondents.

The important guidance provided by both *Twombly* and *Iqbal* did not serve to eradicate or eviscerate Fed. R. Civ. P. 8 and 10(b). Instead, those decisions provided a framework for lower courts to use when examining and evaluating potentially deficient pleadings that complemented and built upon the blueprint set forth in the Federal Rules. Likewise, district and circuit courts around the country have used the framework outlined in these cases to implement standards in their courts that are consistent with these holdings and the Federal Rules, and serve to ensure adequate notice is provided to defendants regarding the claims against them and the facts supporting such claims.

"District courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases." *Dietz v. Bouldin*, 136 S. Ct. 1885, 1888-89 (2016). The court's "exercise of an inherent power must be a 'reasonable response to the problems and needs' confronting the court's fair administration of justice." *Id.,* at 1892 (internal citation omitted). A district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed. *Twombly*, 550 U.S. at 558. District courts also have the ability and, indeed, the "supervisory obligation" to act *sua sponte* and order repleading "when a shotgun complaint fails to link adequately a cause of action to its factual predicates." *Wagner v. First Horizon Pharmaceutical Corp.,* 464 F.3d 1273, 1275 (11th Cir. 2006). This is exactly what occurred in the District Court below where Judge Totenberg ordered

the Petitioners to replead and spelled out exactly how it should be done. Petitioners should not be heard in this Court to complain when they brought dismissal on themselves by failing to heed the District Court's clear instructions regarding how to correct their deficiencies.

"When a party indiscriminately incorporates assertions from one count to another, for example, by incorporating all facts or defenses from all previous counts into each successive count, it can result in an unnecessarily long and confusing pleading and counts that contain irrelevant facts or defenses, and it can prevent the opposing party from reasonably being able to prepare a response or simply make the burden of doing so more difficult." 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1326 (4th ed. 2021). This is the core of the defective nature of a shotgun pleading. The blueprint established by Fed. R. Civ. P. 8 and 10, and the framework for litigation developed in *Twombly/Iqbal*, is manifest in the decisions throughout the Circuit Courts.

While the Petitioners suggest that shotgun pleadings are only pervasive in the Eleventh Circuit, the reality is that shotgun pleadings have been disfavored in federal courts around the country for decades. While some circuits may use different terminology to describe these pleadings, the issues with these pleadings are the same. *See*, *e.g.*, *Gurman v. Metro Housing and Redevelopment Authority*, 842 F.Supp.2d 1151, 1153 (D. Minn. 2011) (defining a "kitchen-sink" complaint as one in which a plaintiff

brings every conceivable claim against every conceivable defendant). Where a complaint is verbose, includes nearly identical counts, and fails to clearly identify which counts are against which defendant(s), the possible substance of the claim is hidden in prolixity and is violative of Fed. R. Civ. P. 8. *Kuehl v. F.D.I.C.*, 8 F.3d 905, 907 (1st Cir. 1993). However, length alone is not a determinative factor. *Stanard v. Nygren*, 658 F.3d 792, 798 (7th Cir. 2011) (holding that length alone is generally insufficient to justify rejecting a complaint). Indeed, a short complaint can be just as defective. In *Lee v. Ohio Education Association*, 951 F.3d 386 (6th Cir. 2020), the Court found a one-sentence complaint that included seven causes of action to be in violation of both Fed. R. Civ. P. 8(a)(2) and Rule 10(b) because it failed to connect specific facts or events with the various causes of actions asserted and failed to separate each cause of action or claim for relief into separate counts. *Id.*, 392 – 93.

Whether denominated shotgun pleadings, kitchen sink complaints, or puzzle pleadings, such pleadings are fundamentally improper because they do not place the defendant on fair notice of the plaintiff's claim or the grounds upon which it rests. *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993). Further, such pleadings waste limited judicial resources, as it is not the role of either the court or the defendant to sort through a lengthy, poorly drafted complaint and voluminous exhibits in order to construct plaintiff's causes of action. *McNamara v. Brauchler*, 570 Fed.Appx. 741, 743 (10th Cir. 2014).

In an effort to limit the use of shotgun pleadings and provide guidance to litigants, the Eleventh Circuit has established categories of recognized deficiencies in pleadings that might lead to a finding that the pleading is defective. This categorization of known issues is not an attempt to discourage or prevent litigants from filing legitimate claims in its court. Nor is it a circumvention of Fed. R. Civ. P. 8 or 10, or a deviation from standards set forth in *Twombly* and *Iqbal*. Instead, the Eleventh Circuit endeavors to educate litigants and put them on notice of potential pitfalls to avoid prior to filing a pleading in its court. Simply put, this well-defined body of jurisprudence is the Eleventh Circuit's practical implementation of the *Twombly* and *Iqbal* framework.

A careful review of the categories identified by the Eleventh Circuit shows that they are entirely consistent with Fed. R. Civ. P. 8 and 10 and *Twombly* and *Iqbal*. For instance, the first category identified issues where multiple counts adopted the allegations of all preceding counts. Petition for Writ of Certiorari, p. 5. Such a pleading violates both Fed. R. Civ. P. 8 and 10(b), as it essentially rolls all of the allegations into each successive count, making it unclear which facts support each claim. Where there are multiple defendants, it also makes it unclear which count is alleged against which defendant(s). Category two includes pleadings "replete with conclusory, vague and immaterial" facts that are not connected to any particular cause of action. *Id.* Pleadings that fall into this category violate Fed. R. Civ. P. 8(a)(2)'s short and plain statement

requirement, as well as *Iqbal*'s caution against the improper inclusion of "mere conclusory statements." Category three, which recognizes pleadings that fail to separate different counts into separate causes of action or claims for relief, is essentially a recitation of Fed. R. Civ. P. 10(b). *Id.* Finally, category four includes pleadings which assert multiple claims against multiple defendants without specifying which defendants are responsible for each act or omission or which defendants the claim is against. *Id.* This supports the underlying tenets of Fed. R. Civ. P. 8 and 10 and *Twombly* and *Iqbal,* that the defendant must have adequate notice of the claims against him and the facts supporting such claims. As such, the Eleventh Circuit's categories do not contradict, but rather implement, the blueprint and framework set forth by Fed. R. Civ. P. 8 and 10 and *Twombly* and *Iqbal*.

II. THE PETITIONERS WERE AFFORDED AN OPPORTUNITY TO CORRECT THE DEFICIENCIES IN THEIR COMPLAINT, BUT FAILED TO DO SO; THEREFORE, DISMISSAL OF THE AMENDED COMPLAINT WAS PROPER.

When reviewing a case, the question is not whether this Court, or whether the Court of Appeals, would as an original matter have dismissed the action; it is whether the District Court abused its discretion in so doing. *Nat'l Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 641-42 (1976). Moreover, the standard of review for the circuit court is not "whether we would have imposed

a more lenient penalty had we been sitting in the trial judge's place, but whether the trial judge abused his discretion in imposing the penalty he did." *Spiller v. U.S.V. Laboratories, Inc.*, 842 F.2d 535, 537 (5th Cir. 1988). Here, the District Court Orders, issued by two different judges and affirmed by the Eleventh Circuit Court of Appeals, do not constitute an abuse of discretion.

A district court has the power to dismiss a complaint with prejudice when a plaintiff fails to comply with Fed. R. Civ. P. 8(a)(2)'s short and plain statement requirement. *Valkalis v. Shawmut Corp.*, 925 F.2d 34, 36 (1st Cir. 1991). Where the lack of organization and basic coherence renders a complaint too confusing to determine the facts that constitute the alleged wrongful conduct, dismissal is an appropriate remedy. *Stanard v. Nygren*, 658 F.3d 792, 798 (7th Cir. 2011). Further, where a complaint uses a kitchen sink approach and contains several causes of action in a single claim, it violates Fed. R. Civ. P. 10(b) and dismissal is appropriate. *Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 946-47 (7th Cir. 2013). While courts often attempt to "discern the kernel of the issues" in such complaints, they must refrain from "assum[ing] the role of advocate for that litigant." *Hart v. Salois*, 605 Fed.Appx. 694, 698 (10th Cir. 2015) (internal citations omitted) (affirming dismissal of 231-page complaint containing 60 counts and 1227 paragraphs not based on the "sheer length of [the] filing, the number of paragraphs, or the number of claims" but due to Plaintiff's "failure to connect his 60 separate claims to the Complaint's hundreds of factual allegations" and "multiple

collective allegations against the defendants and his corresponding failure to identify each individual defendant's culpable actions.") Further, when the district court provides detailed instructions as to how to fix the problems and gives the plaintiff a chance to amend the complaint, but the plaintiff fails to comply with those instructions, dismissal with prejudice is proper. *Destfino v. Reiswig*, 630 F.3d 952, 959 (9th Cir. 2011).

As is commonplace in other circuits, the Eleventh Circuit requires that a district court give the plaintiff one chance to remedy deficiencies contained in a shotgun complaint. *See, e.g., Vibe Micro v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018). Further, the Eleventh Circuit takes a careful and thoughtful approach to its obligation of reviewing the facts and circumstances preceding a potential dismissal of a shotgun pleading.

> What matters is function, not form: the key is whether the plaintiff had fair notice of the defects and a meaningful chance to fix them. If that chance is afforded and the plaintiff fails to remedy the defects, the district court does not abuse its discretion in dismissing the case with prejudice on shotgun pleading grounds.

Jackson v. Bank of Am., N.A., 898 F.3d 1348, 1358 (11th Cir. 2018).

The Petitioners in this case not only had fair notice of the defects in their Complaint but were also provided detailed guidance as to how to remedy the defects. Indeed, the District Court provided a detailed roadmap for the Petitioners to follow in order to proceed with their case. Rather than follow the District Court's roadmap, Petitioners chose a tortured path, ignoring the District Court's instruction at their peril. The Petitioners had a meaningful chance to fix the defects but refused to do so. As such, the District Court did not abuse its discretion in dismissing the Petitioners' claims. This action was not only consistent with the holdings in the Eleventh Circuit, but also with several other circuits that have been faced with similar issues. As the Seventh Circuit has aptly recognized, "[d]espite receiving express directions about what they had to do, counsel did not do it. At some point the train of opportunity ends." *America's Best Inns, Inc. v. Best Inns of Abilene, L.P.*, 980 F.2d 1072, 1074 (7th Cir. 1992). Here, too, the Petitioners' train of opportunity should end.

CONCLUSION

Based upon the foregoing arguments and authorities, and because neither the District Court nor the Circuit Court abused its discretion in this case, the Respondents, Todd Guthrie and TechCXO, LLC, respectfully request that this Honorable Court DENY the Petition for Writ of Certiorari.

Respectfully submitted,

SWIFT, CURRIE, McGHEE & HIERS, LLP
Roger E. Harris # 241120 *
Roger.harris@swiftcurrie.com
Rebecca E. Strickland # 315021*
Rebecca.strickland@swiftcurrie.com
Kori E. Eskridge # 314972
Kori.eskridge@swiftcurrie.com
1355 Peachtree Street, NE
Suite 300
Atlanta, Georgia 30309
(404) 874-8800
Attorneys for Respondents Todd Guthrie and TechCXO, LLC
* *Counsel of Record*