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[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13796
Non-Argument Calendar

HENRI N. BEAULIEU, JR.,

Plaintiff-Appellant,

versus

SAMUEL POWELL,
individually, and in his official capacity as a State Trooper for the State of Alabama,
CALERA, CITY OF,
a municipality located in and a political subdivision of Shelby County, Alabama,
CALERA POLICE DEPARTMENT, CITY OF,
a department of the City of Calera in Shelby County, Alabama,
ANDREW BELL,
individually and in his official as a law enforcement officer/ former law enforcement officer for the City of Calera, Alabama,
JORDAN MATTHEW LAWLEY,
an individual, et al.,

Defendants-Appellees,

JESSICA SELF, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:22-cv-00878-ACA

(Filed May 8, 2023)

Before ROSENBAUM, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Henri Beaulieu appeals the district court's order dismissing his amended 42 U.S.C. § 1983 civil-rights complaint on "shotgun pleading" grounds and denying further amendment. After careful review, we affirm.

I.

According to the amended complaint, Beaulieu and his family live on property adjacent to a public swimming pool in a nearby subdivision. They have repeatedly complained to the Calera Police Department about excessive noise at the pool during the summer months, but officers have done little and the noise continues unabated. Beaulieu's wife—an attorney who represents Beaulieu in this case—and parents also filed a nuisance lawsuit in Alabama state court relating to the pool noise, for which Beaulieu has attempted to conduct surveillance and gather evidence.

Beaulieu asserts constitutional claims under § 1983 stemming from this noise dispute. His claims largely relate to an encounter on July 16, 2020, when he drove to the subdivision to try to confirm the identities of pool users for the lawsuit, as he had done

several times before. While Beaulieu was stopped in his vehicle on a public street in the subdivision, Officer Andrew Bell approached and said he had received a couple of calls about Beaulieu. Bell was aware of Beaulieu and the nuisance lawsuit, and he said that the surveillance conduct was legal but that Beaulieu "had to keep moving," despite the presence of other parked vehicles on the street.

Beaulieu kept moving through the subdivision and then "circled back around" to the same area, where Bell was speaking with Samuel Powell, a state trooper and former Calera police officer who lived in the subdivision, as well as a "Third Responding Officer" and Jordan Lawley, a subdivision resident. While working as a Calera officer, Powell had responded to a noise complaint at Beaulieu's residence and had become confrontational with Beaulieu and his wife, whom Powell had accused in Facebook posts of lying about the pool noise. Powell was also named as a defendant in the nuisance lawsuit.

When Beaulieu stopped to check with the officers, Powell said he had received a call about a suspicious vehicle outside his house, and he accused Beaulieu of "disorderly conduct." He took no further action, though, and Beaulieu left the subdivision. Before Beaulieu left, Bell told Beaulieu he was free to be in the area so long as he complied with the traffic code. The Third Responding Officer, for his part, "pace[d] nervously." As this happened, Rachel Lawley, who was married to Jordan Lawley, made disparaging comments about Beaulieu on Facebook.

The next day, July 17, 2018, Beaulieu observed Powell and Jordan Lawley speaking together at the pool and pointing out Beaulieu's surveillance cameras. Beaulieu called out "smile" so they would look towards the camera and he could identify them. Not long after that, an attorney for the subdivision's homeowners' association called Beaulieu's wife based on a complaint that Beaulieu had been taking pictures of children at the pool.

After these events, Powell and Jordan Lawley filed harassment complaints with the police department, and Powell obtained a no-contact order against Beaulieu. This "quasi-civil matter" was dismissed when Beaulieu agreed to stay out of the subdivision for nine months.

Neither Beaulieu nor his family has returned to the subdivision, making it "virtually impossible" to identify pool users for the lawsuit. Nor has Beaulieu been able to obtain body-camera footage from the City related to the July 16 encounter or other incidents.

II.

Beaulieu filed his initial complaint in July 2022 against eight named defendants, two described-but-unnamed defendants, and other John Doe defendants. The complaint was thirty-one pages and eighty-four numbered paragraphs long, with various lettered subparagraphs. It included causes of action under both federal and state law, organized into two sections titled simply, "Constitutional Claims" and "State Law

Claim(s).” Under Constitutional Claims, Beaulieu alleged not only myriad due-process violations, but also an unlawful seizure, First Amendment retaliation, defamation, false light, and conspiracy.

The district court *sua sponte* reviewed and struck the complaint as an improper “shotgun pleading.” In the court’s view, the complaint was deficient under Rules 8 and 10, Fed. R. Civ. P., because the causes of action were not separated into counts or claims but were instead grouped together into two broad sections. Plus, those sections both “incorporate[d] by reference every preceding paragraph,” further muddying the claims and their supporting factual allegations.

The district court ordered Beaulieu to file an amended complaint that “contained a separate count for each claim that contains a factual basis for that claim only,” with a heading for each count that identified “the specific [d]efendant(s) against whom the claim is asserted” and “the statute or law under which the claim is brought.”

In an amended complaint, Beaulieu reduced the length of the pleading to twenty-three pages and seventy-two numbered paragraphs, and he dropped two named defendants and a described-but-unnamed defendant. The causes of action remained split into two sections: “Section 1983 Action for Violations of the Fourteenth Amendment Due Process Clause Under Color of Law” and “State Law Claim(s).” As before, both sections incorporated by reference all preceding paragraphs.

The first section begins by asserting claims based on Beaulieu's July 16 encounter with Bell and Powell. It alleges, first, that Bell, Powell, the Third Responding Officer, and the Lawleys, individually and in conspiracy with each other, denied Beaulieu due process of law by preventing him from stopping on a public street to gather evidence. The alleged wrongful conduct included the following: (a) Bell told Beaulieu that he could not stop on a public street; (b) Powell "threatened and intimidated" him with a show of force and a false claim of disorderly conduct; (c) the Third Responding Officer "did nothing to intervene and appeared nervous"; and (d) Rachel Lawley made malicious statements about him on Face-book. Second, and relatedly, the amended complaint asserts that Bell, Powell, and the Third Responding Officer conspired with each other and the City to destroy or not preserve body-camera footage from the July 16 encounter.

The first section also reaches more broadly. One paragraph asserts that, after the encounter, Powell and Jordan Lawley filed false reports of harassment with the police department, that Beaulieu had to "surrender his liberty without cause" to resolve Powell's false complaint, and that the "Defendants' actions" were motivated by evil intent or reckless indifference to Beaulieu's "federally protected rights." Another paragraph charges the City with failing to enforce its police-camera policies and failing to properly train and instruct its officers in the use and preservation of camera footage, not just in relation to the July 16

encounter but to other prior encounters and the civil nuisance lawsuit.

The defendants moved to dismiss the amended complaint on several grounds, including that the amended complaint remained a shotgun pleading. Beaulieu responded in opposition and also filed two additional amended complaints, which prompted additional motions to dismiss.

The district court dismissed the amended complaint as a shotgun pleading and rejected Beaulieu's attempts at further amendment. In the court's view, the amended complaint suffered from the "same deficiencies" as the original complaint, which the court had instructed Beaulieu to cure when it *sua sponte* dismissed that complaint as a shotgun pleading. The court further found that Beaulieu's second and third amended complaints were procedurally improper, and that, in any case, the amendments were futile because they failed to remedy the deficiencies of the prior complaints. Because Beaulieu "made no meaningful effort to correct" those deficiencies despite receiving notice and specific instructions on how to cure them, the court dismissed Beaulieu's federal claims with prejudice and the supplemental state-law claims without prejudice. Beaulieu now appeals.

III.

We first consider Beaulieu's challenge to the dismissal of his amended complaint as a shotgun pleading. We review for abuse of discretion a district court's

decision to dismiss a complaint as an impermissible shotgun pleading. *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1294 (11th Cir. 2018).

"Shotgun pleadings" are complaints that violate federal pleading rules by "fail[ing] 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." *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015); *see* Fed. R. Civ. P. 8(a)(2) & 10(b). We have "little tolerance for shotgun pleadings" because they "waste judicial resources, inexorably broaden the scope of discovery, wreak havoc on appellate court dockets, and undermine the public's respect for the courts." *Vibe Micro*, 878 F.3d at 1295 (cleaned up).

We have identified four rough types of shotgun pleadings. *Weiland*, 792 F.3d at 1321–24. A complaint may qualify as a shotgun pleading if it (1) "contain[s] multiple counts where each count adopts the allegations of all preceding counts"; (2) is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action"; (3) does not separate "each cause of action or claim for relief" into a different count; or (4) "assert[s] 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 bottom, though, the issue is not one of form or pleading technicalities, but rather substance—that is, whether the complaint gives defendants fair "notice of the specific claims against them

and the factual allegations that support those claims." *Id.* at 1325.

"A district court has the inherent authority to control its docket and ensure the prompt resolution of lawsuits, which includes the ability to dismiss a complaint on shotgun pleading grounds." *Vibe Micro*, 878 F.3d at 1295 (quotation marks omitted). Before dismissing a complaint on shotgun-pleading grounds, though, the court must "*sua sponte* allow a litigant one chance to remedy such deficiencies." *Id.* The court should "explain how the offending pleading violates the shotgun pleading rule" and order the plaintiff to replead the case. *Id.* at 1295–96. "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 America, N.A.*, 898 F.3d 1348, 1358 (11th Cir. 2018).

Here, the district court did not abuse its discretion in dismissing the amended complaint as a shotgun pleading. As the court observed, the amended complaint falls into the first and third rough types of shotgun pleadings. It "contain[s] multiple counts where each count adopts the allegations of all preceding counts." *Weiland*, 792 F.3d at 1321. And it does not separate "each cause of action or claim for relief" into a different count, which we described more fully above. *Id.* at 1323. Beaulieu does not dispute that the amended complaint bears these characteristics. Because Beaulieu received notice of these same deficiencies and instructions to cure them when the court

struck the original complaint and ordered him to replead, it follows that the court "d[id] not abuse its discretion in dismissing the case with prejudice on shotgun pleading grounds." *Jackson*, 898 F.3d at 1358.

Beaulieu responds that, despite these "technical[]" deficiencies, the amended complaint still provided adequate notice of the specific claims against the defendants. We disagree.

To start, while Beaulieu correctly notes that Rule 10(b) does not require plaintiffs to state each cause of action in a separate count unless "doing so would promote clarity," Fed. R. Civ. P. 10(b), he ignores the court's order to comply with that requirement after reviewing his initial complaint.[1] In other words, the court determined that "doing so would promote clarity" for Beaulieu's claims, but Beaulieu offers no justification for his failure to follow the court's instructions and separate his claims into distinct counts.

Not only that, but Beaulieu's amended complaint fails "to identify his claims with sufficient clarity to enable the defendant to frame a [responsive] pleading." *Sledge v. Goodyear Dunlop Tires N. Am., Ltd.*, 275 F.3d

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[1] Fed. R. Civ. P. 10(b) states,

> 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.

1014, 1018 n.8 (11th Cir.2001). The pleading essentially presents a narrative detailing the history of the noise dispute and Beaulieu's and his family's grievances with the City, police officers, and subdivision residents arising from that dispute. It then broadly asserts that the defendants' conduct, both public and private, amounts to a violation of his due-process rights.

Yet Beaulieu fails to identify with any clarity how the defendants denied him due process, other than to assert he had a right to be on a public street to gather evidence for a lawsuit. And when we omit the unsupported assertions of "conspiracy" and "collusion," the connection between the denial of that purported right and much of the alleged wrongful conduct—including malicious comments on Facebook, false reports of harassment, or the failure to preserve evidence—is difficult to discern. "If [Beaulieu] himself cannot offer a coherent explanation for how [or at what point he was denied due process], we cannot expect the defendants" or the court to do it for him by digging through his scattershot allegations. *Barmapov v. Amuial*, 986 F.3d 1321, 1325 (11th Cir. 2021).

Given the vague and expansive nature of the alleged constitutional injury, the amended complaint was likely to generate equally unfocused responsive pleadings and to "impose unwarranted expense" on the litigants and the court. *See Jackson*, 898 F.3d at 1356–57. Because the district court provided Beaulieu—who is represented by counsel—notice and an opportunity to cure, and Beaulieu failed to remedy the deficiencies,

our shotgun-pleading caselaw permitted the district court to dismiss with prejudice. *See id.* at 1358; *Vibe Micro*, 878 F.3d at 1295.

IV.

Finally, Beaulieu maintains that the district court abused its discretion by denying him the right to amend once as a matter of course and by concluding that the second and third amended complaints were still subject to dismissal as shotgun pleadings. For the reasons explained below, we need not decide whether the second amended complaint was filed "as a matter of course." *See* Fed. R. Civ. P. 15(a)(1).

Rather, we agree with the district court that, even assuming without deciding it was procedurally proper, the second amended complaint did not fix the shotgun-pleading issues the court identified when it struck the original complaint and ordered repleading. Despite some changes in the presentation of the causes of action, the second amended complaint continues to "contain[] multiple counts where each count adopts the allegations of all preceding counts" and to not separate "each cause of action or claim for relief" into a different count. *See Weiland*, 792 F.3d at 1321–23. Nor can we say that it provides the defendants with any more clarity about the "claims against them and the grounds upon which each claim rests" than the amended complaint, since it does little to narrow the vague and expansive nature of the alleged constitutional injury. *See id.* at 1323. As for the third amended complaint, it

violated the court's order not to incorporate other pleadings. And because it purported to incorporate the whole of the second amended complaint, it was likewise subject to dismissal on shotgun-pleading grounds. The district court acted within its discretion by rejecting these amendments.

For these reasons, we affirm the dismissal with prejudice of Beaulieu's federal claims and the dismissal without prejudice of the supplemental state-law claims. *See Vibe Micro*, 878 F.3d at 1296–97 (where a complaint has been dismissed with prejudice on shotgun pleading grounds, supplemental state law claims should be dismissed "without prejudice as to refiling in state court").

AFFIRMED.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13796

HENRI N. BEAULIEU, JR.,

Plaintiff-Appellant,

versus

SAMUEL POWELL,
individually, and in his official capacity as a
State Trooper for the State of Alabama,
CALERA, CITY OF,
a municipality located in and a political
subdivision of Shelby County, Alabama,
CALERA POLICE DEPARTMENT, CITY OF,
a department of the City of Calera in Shelby
County, Alabama,
ANDREW BELL,
individually and in his official as a law
enforcement officer/ former law enforcement
officer for the City of Calera, Alabama,
JORDAN MATTHEW LAWLEY,
an individual, et al.,

Defendants-Appellees,

JESSICA SELF, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:22-cv-00878-ACA

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: May 8, 2023

For the Court: DAVID J. SMITH, Clerk of Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

HENRI N. BEAULIEU, JR.,	]	
Plaintiff,	]	
v.	]	**Case No.: 2:22-cv-00878-ACA**
SAMUEL POWELL, et al.,	]	
Defendants.	]	

MEMORANDUM OPINION

(Filed Oct. 13, 2022)

Plaintiff Henri N. Beaulieu, Jr., through counsel, filed this lawsuit against a number of defendants for alleged violations of his constitutional rights and for defamation under Alabama state law, arising from conflicts relating to Mr. Beaulieu's monitoring of the noise level at a community pool near his house. (Doc. 1). Upon a *sua sponte* review of Mr. Beaulieu's complaint, the court found that the complaint was a shotgun pleading and directed Mr. Beaulieu to file an amended complaint. (Doc. 2). After Mr. Beaulieu did so (doc. 3), the defendants filed three separate motions to dismiss (docs. 12–14). Two of those motions seek dismissal of the amended complaint with prejudice on the ground that it remains a shotgun pleading. (Doc. 12 at 9–12; doc. 13 at 1–2).

While the motions to dismiss were pending, Mr. Beaulieu filed a second amended complaint without

written consent from the defendants or leave of the court. (Doc. 17). Some defendants filed motions to dismiss Mr. Beaulieu's second amended complaint. (Docs. 18, 21). Mr. Beaulieu then filed a third amended complaint, again without written consent from the defendants or leave of the court. (Doc. 20). One of the defendants filed a motions for a more definite statement in response to both the second and third amended complaints. (Docs. 23, 24).

The court agrees that Mr. Beaulieu's amended complaint remains a shotgun pleading. In addition, his second and third amended complaints are procedurally improper, and even if they were not, they also are shotgun pleadings.

Because Mr. Beaulieu's operative complaint (the first amended complaint) is a shotgun pleading and his improperly filed second and third amended complaints also would be shotgun pleadings, the court: (1) **WILL GRANT** the two motions to dismiss the amended complaint to the extent they seek dismissal on shotgun pleading grounds and **WILL DENY** as **MOOT** the balance of those motions (docs. 12–13); (2) **WILL DENY** as **MOOT** the third motion to dismiss the amended complaint (doc. 14); (3) **WILL STRIKE** Mr. Beaulieu's second and third amended complaints (docs. 17, 20); and (4) **WILL DENY** as **MOOT** the motions to dismiss Mr. Beaulieu's second amended complaint (docs. 18, 21) and the motions for a more definite statement (docs. 23, 24).

The court **WILL DISMISS** Mr. Beaulieu's federal claims with prejudice and **WILL DISMISS** his state law claims without prejudice.

I. BACKGROUND AND PROCEDURAL HISTORY

Mr. Beaulieu and his family live on property adjacent to a neighborhood swimming pool. (Doc. 1 at 7–8 ¶¶ 16–17). Mr. Beaulieu's wife and parents filed a lawsuit in state court claiming that the noise level at the pool was a nuisance. (*Id.* at 8 ¶ 18). After Mr. Beaulieu tried to gather evidence for his family's state court lawsuit, he filed this action, seeking damages and injunctive relief against a number of defendants for alleged violations of his constitutional rights and for defamation under state law. (*See generally* doc. 1).

Mr. Beaulieu's original complaint was thirty-one pages long and contained eighty-four numbered paragraphs, as well as various lettered sub-paragraphs. (Doc. 1). The complaint listed eight named defendants, two specifically described fictitious defendants, and an unspecified number of non-specifically described fictitious defendants. (*Id.* at 4–7 ¶¶ 5–13). The complaint was not separated into counts or claims, but instead into two sections titled "Constitutional Claims" and "State Law Claim(s)." (*Id.* at 21–29). Both sections in the complaint incorporated by reference every preceding paragraph. (*Id.* at 21 ¶ 59, 27 ¶ 74).

The "Constitutional Claims" section referenced due process, unlawful seizures, free speech, conspiracy,

defamation, and false light. (Doc. 1 at 22–27 ¶¶ 61–72). Some of the paragraphs described the conduct of Defendants Samuel Powell, Andrew Bell, Blake Atkins, the fictitious defendants identified as the "Parking Lot Officer" and the "Third Responding Officer," the City of Calera, the Calera Police Department, Jordan Lawley, and Rachel Lawley. (*Id.* at 21–26 ¶¶ 60–67, 27 ¶ 71). Some of the paragraphs referred to "Defendants" generally without identifying which of the numerous defendants' conduct was at issue. (*Id.* at 22 ¶ 61, 25–26 ¶ 66).

The "State Law Claim(s)" section and referenced slander, false light, and defamation. (*Id.* at 28, ¶¶ 75, 78–79). The paragraphs within the second section described conduct of Ms. Lawley and the "Parking Lot Officer." (Doc. 1 at 28 ¶¶ 75–76).

The court struck the original complaint *sua sponte* after determining it was a shotgun pleading that violated Federal Rules of Civil Procedure 8(a)(2) and 10(b). (Doc. 2). The court's order striking the complaint identified the specific shotgun pleading deficiencies: the counts improperly incorporated every allegation and preceding count, and the complaint improperly attempted to assert multiple claims in one count. (*Id.* at 3). The court ordered Mr. Beaulieu to file an amended complaint that conformed with Rules 8(a)(2) and 10(b), as well as the Eleventh Circuit's instructions about pleading a complaint. (*Id.*). The court explained that "[t]he amended complaint should contain a separate count for each claim that contains a factual basis for that claim only. In addition, each count's heading must

identify: (1) the specific Defendant(s) against whom the claim is asserted, and (2) the statute or law under which the claim is brought." (*Id.* at 4) (emphasis added). The court also instructed Mr. Beaulieu that his amended complaint must include all of his claims in this action and should not incorporate by reference the original complaint. (Doc. 2 at 4).

Mr. Beaulieu filed an amended complaint in response to the court's order. (Doc. 3). The amended complaint is twenty-three pages long and contains seventy-two numbered paragraphs and various lettered sub-paragraphs. (*Id.*). It drops two of the named defendants and one of the specifically identified fictitious defendants, leaving six named defendants, one specifically identified fictitious defendant, and some number of unidentified fictitious defendants. (*Id.* at 3–5, ¶¶ 5–12).

The amended complaint remains split into two sections: one titled "Section 1983 Action for Violations of the Fourteenth Amendment Due Process Clause Under Color of Law" and one titled "State Law Claim(s)." (*Id.* at 17–23). Both sections continue to incorporate by reference all preceding paragraphs. (Doc. 3 at 17 ¶ 52, 21 ¶ 62).

The first section asserts at least two different claims—a 42 U.S.C. § 1983 due process claim and a § 1983 conspiracy claim—against Mr. Powell, Mr. Bell, the "Third Responding Officer," Mr. Lawley, Ms. Lawley, the City of Calera, and the Calera Police Department. (*Id.* at 17–20 ¶¶ 53–61). The numbered

paragraphs within this section also confusingly refer to conduct of certain defendants that does not appear connected to that of other defendants. For example, the section complains that Mr. Powell, Mr. Bell, and the Third Responding Officer prevented Mr. Beaulieu from driving on a public street and failed to preserve or destroyed video footage of their encounter with Mr. Beaulieu. (*Id.* at 17 ¶ 55, 18 ¶¶ 57–58). It also complains that Ms. Lawley made malicious statements on a social media posting. (*Id.* at 18 ¶ 55). The section then alleges that Mr. Powell and Mr. Lawley filed false reports of harassment against Mr. Beaulieu. (Doc. 3 at 18 ¶ 56). It goes on to allege that the City of Calera and the Calera Police Department did not enforce its police camera policies and procedures and failed to properly train and instruct its officers in the use and preservation of camera footage. (*Id.* at 19 ¶ 59). In addition, this section states in conclusory fashion that the defendants acted "in conspiracy with each other" (*id.* 17 ¶ 54) at or "in collusion" (*id.* at 19 ¶ 60) without identifying what specific conduct forms the basis of the § 1983 conspiracy claim.

The second section of the amended complaint asserts a state law claim for defamation against Ms. Lawley and a state law claim for spoliation of evidence against Mr. Powell, Mr. Bell, the fictitious defendant identified as the "Third Responding Officer," the City of Calera, and the Calera Police Department. (Doc. 3 at 21–24 ¶¶ 63–72).

The defendants filed three separate motions to dismiss the amended complaint. (Docs. 12–14). While

the parties were briefing those motions, Mr. Beaulieu filed a putative second amended complaint without defendants' written consent or the court's leave. (Doc. 17). The putative second amended complaint dropped one named defendant but expanded in length, running thirty-two pages with seventy-four numbered paragraphs, separated into three "counts." (*Id.*). Each count continues to incorporate all preceding factual allegations. (*Id.* at 22 ¶ 50, 26 ¶ 63, 30 ¶ 68).

The first "count" asserts § 1983 due process claims against Mr. Powell, Mr. Bell, the "Third Responding Officer," Mr. Lawley, and Ms. Lawley. (*Id.* at 22–26 ¶¶ 50–62). The second "count" asserts a § 1983 conspiracy claim against Mr. Powell, Mr. Bell, the "Third Responding Officer," Mr. Lawley, Ms. Lawley, the City of Calera, and the Calera Police Department. (*Id.* at 26–30 ¶¶ 63–67). The third "count" asserts a state law defamation claim against Ms. Lawley. (Doc. 17 at 30–32 ¶¶ 68–74).

After some defendants moved to dismiss the putative second amended complaint (docs. 18, 21), Mr. Beaulieu filed a putative third amended complaint without the defendants' written consent or the court's leave (doc. 20). This putative amendment did not restate all the factual allegations, defendants, and claims but instead—and in violation of the court's first order in the case—sought to incorporate by reference the putative second amended complaint while adding two claims against one defendant. (Doc. 20). The two counts in the putative third amended complaint incorporate by reference all preceding paragraphs of both the

putative second amended complaint and the putative third amended complaint. (*Id.* at 2–3, ¶ 75, 6 ¶ 83).

II. DISCUSSION

As an initial matter, the court must clarify which pleading is the operative complaint in this case. Mr. Beaulieu believes it is his putative third amended complaint (*see* doc. 20), and various defendants have moved to dismiss the putative second amended complaint or have moved for a more definite statement of the putative second and third amended complaints (docs. 18, 21, 23, 24).

Under Federal Rule of Civil Procedure 15, a plaintiff may amend his pleading once as a matter of course within certain time limits. Fed. R. Civ. P. 15(a)(1)(A). Otherwise, a plaintiff may amend his pleading "only with the opposing party's written consent of the court's leave." Fed. R. Civ. P. 15(a)(1)(2).

By filing his amended complaint in response to the court's order to replead, Mr. Beaulieu amended his complaint once as a matter of course. (Doc. 3). Therefore, Mr. Beaulieu could not amend his complaint again unless he received written consent from the defendants or leave of court, which he did not do. (*See* docs. 17, 20). Therefore, the court **WILL STRIKE** the second and third amended complaints as procedurally improper. The operative pleading in this case is the amended complaint. (Doc. 3).

To the extent the filing of the second amended complaint and third amended complaint could be construed as motions for leave to amend, the court denies the motions as futile. As the court will explain, the second and third amended complaints remain shotgun pleadings, so amendment is not appropriate. *See Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1262–63 (11th Cir. 2004) ("[A] district court may properly deny leave to amend the complaint under Rule 15(a) when such amendment would be futile.").

Two of the three pending motions to dismiss the amended complaint seek dismissal of the amended complaint on, among other things, shotgun pleading grounds. (Doc. 12 at 9–12; doc. 13 at 1–2). The court agrees that the amended complaint is a shotgun pleading and finds that further amendment would be futile. Therefore, dismissal is appropriate.

The Eleventh Circuit has "filled many pages of the Federal Reporter condemning shotgun pleadings and explaining their vices." *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1356 (11th Cir. 2018); *see also Est. of Bass v. Regions Bank*, 947 F.3d 1352, 1356 n.3 (11th Cir. 2020) ("As of 2008, [the Eleventh Circuit] had explicitly condemned shotgun pleadings upward of fifty times.") (quotation marks omitted); *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1321 (11th Cir. 2015) (stating that as of 2015, the Eleventh Circuit had published more than sixty opinions about shotgun pleadings).

Shotgun pleadings fall into "four rough types or categories." *Weiland*, 792 F.3d at 1323. The first "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.* at 1321. The second is a complaint "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id.* at 1322. The third is one that does "not separate[e] into a different count each cause of action or claim for relief." *Id.* at 1323. And the fourth complaint "assert[s] 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." *Weiland*, 792 F.3d at 1323.

In response to an order that notified Mr. Beaulieu that his original complaint was a shotgun pleading of the first and third types, Mr. Beaulieu filed an amended complaint that suffers from the same deficiencies. For example, the amended complaint continues to improperly assert multiple claims for relief in the first count. Specifically, it seeks a judgment declaring that the defendants violated Mr. Beaulieu's due process rights and also a judgment declaring that the defendants conspired to violate Mr. Beaulieu's due process rights. (Doc. 3 at 17–20). As the court previously warned Mr. Beaulieu (*see* doc. 2 at 3), this is not a permissible pleading practice. *See Cesnik v. Edgewood Baptist Church*, 88 F.3d 902, 905 (11th Cir. 1996)

(noting that a complaint stating multiple theories of relief within each cause of action was "framed in complete disregard of the principle that separate, discrete causes of action should be plead in separate counts"); *Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 366–67 (11th Cir. 1996) (explaining that the failure to "present each claim for relief in a separate count, as required by Rule 10(b)" makes the complaint a shotgun pleading).

Each count in the amended complaint also continues to improperly incorporate by reference every preceding paragraph. (Doc. 3 at 17 ¶ 52, 21 ¶ 62, 22 ¶ 69). This is especially problematic with respect to the defamation and spoliation claims because the defamation claim incorporates the entirety of the claim or claims asserted under the "count" labeled "Section 1983 Action for Violations of the Fourteenth Amendment Due Process Clause Under Color of State Law" and the spoilation claim incorporates the entirety of both the defamation claim and the entirety of the claim or claims asserted under the section labeled "Section 1983 Action for Violations of the Fourteenth Amendment Due Process Clause Under Color of State Law." Therefore, despite the court's warning against doing so, the amended complaint "employs a multitude of claims and incorporates by reference all of its factual allegations into each claim, making it nearly impossible" for the defendants or the court "to determine with any certainty which factual allegations give rise to which claims for relief." *Jackson*, 898 F.3d at 1356.

The Federal Rules of Civil Procedure require that a plaintiff plead "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The amended complaint is twenty-three pages long and contains at least seventy-two paragraphs of allegations, all of which have been incorporated by reference into each count. Then, within each count, several sentences contain new or additional facts or summarize certain facts. Thus, the amended complaint is neither "short" nor "plain." *Jackson*, 898 F.3d at 1356 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1359 n.9 (11th Cir. 1997) (noting that a four-count complaint where each count incorporated by reference all "forty-three numered paragraphs of factual allegations" was "an all-too-typical shotgun pleading").

Nor do Mr. Beaulieu's putative second and third amended complaints remedy the deficiencies of the initial and amended complaints. Although the second amended complaint separates the § 1983 conspiracy claim into a standalone count, it continues to improperly adopt every preceding paragraph by reference. (Doc. 17 at 22 ¶ 50, 26 ¶ 63, 30 ¶ 68). With respect to the third amended complaint, setting aside the confusing nature of adopting in full the putative second amended complaint, the two new counts contained in the third amended complaint still improperly adopt every preceding paragraph by reference. (Doc. 20 at 2 ¶ 75, 6 ¶ 83).

Shotgun pleadings "exact an intolerable toll on the trial court's docket, lead to unnecessary and

unchannelled discovery, and impose unwarranted expense" on both the parties and the court. *Cramer v. Florida*, 117 F.3d 1258, 1263 (11th Cir. 1997). District courts retain the authority and discretion to dismiss a shotgun complaint on that basis alone as long as the court explains defects in the complaint and "give[s] the plaintiff one chance to remedy" a shotgun pleading before dismissing the case. *Jackson*, 898 F.3d at 1358 (quotation marks omitted).

The court gave Mr. Beaulieu—who is represented by counsel—notice of the defects in the original complaint and specific instructions on how to cure those errors. (Doc. 2). And, as explained above, Mr. Beaulieu made no meaningful effort to correct the deficiencies. Accordingly, the court **WILL GRANT** the two motions to dismiss the amended complaint to the extent they seek dismissal of the amended complaint as a shotgun pleading. *See Jackson*, 898 F.3d at 1358 ("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."); *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1297 (11th Cir. 2018) ("The district court sua sponte gave [the plaintiff] an opportunity to correct the shotgun pleading issues in his complaint, and provided him with specific instructions on how to properly do so. He did not fix it. We will not adopt a rule requiring district courts to endure endless shotgun pleadings.").

The court **WILL DISMISS** Mr. Beaulieu's federal claims **WITH PREJUDICE** and his supplemental state law claims **WITHOUT PREJUDICE**. *See Vibe Micro*, 878 F.3d. at 1296–97 (explaining that where a court properly dismisses federal claims with prejudice on shotgun pleading grounds, supplemental state law claims pleaded in the same complaint should be dismissed without prejudice).

III. CONCLUSION

The court **WILL GRANT** the two motions to dismiss the amended complaint to the extent they seek dismissal on shotgun pleading grounds and **WILL DENY** as **MOOT** the balance of those motions. (Docs. 12–13).

The court **WILL DENY** as **MOOT** the third motion to dismiss the amended complaint. (Doc. 14)

The court **WILL STRIKE** Mr. Beaulieu's putative second amended complaint (doc. 17) and putative third amended complaint (doc. 20).

The court **WILL DENY** as **MOOT** the motions to dismiss Mr. Beaulieu's putative second amended complaint (docs. 18, 21) and the motions for a more definite statement of the putative second and third amended complaints (docs. 23, 24).

The court **WILL DISMISS** the federal claims asserted in the amended complaint **WITH PREJUDICE** and **WILL DISMISS** the state law claims asserted in the amended complaint **WITHOUT PREJUDICE**.

The court will enter a separate order consistent with this memorandum opinion.

DONE and **ORDERED** this October 13, 2022.

/s/ Annemarie Carney Axon
ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

HENRI N. BEAULIEU, JR.,	]	
Plaintiff,	]	
v.	]	**Case No.: 2:22-cv-00878-ACA**
SAMUEL POWELL, et al.,	]	
Defendants.	]	

FINAL ORDER

(Filed Oct. 13, 2022)

Consistent with the accompanying memorandum opinion, the court **GRANTS** the two motions to dismiss the amended complaint (doc. 3) to the extent the motions seek dismissal on shotgun pleading grounds and **DENIES** as **MOOT** the balance of those motions. (Docs. 12–13). The court **DENIES** as **MOOT** the third motion to dismiss the amended complaint. (Doc. 14).

The court **STRIKES** the putative second amended complaint (doc. 17) and putative third amended complaint (doc. 20). The court **DENIES** as **MOOT** the motions to dismiss the second amended complaint (docs. 18, 21) and the motions for a more definite statement of the second and third amended complaints (docs. 23, 24).

The court **DISMISSES** the federal claims asserted in the amended complaint **WITH PREJUDICE**

and **DISMISSES** the state law claims asserted in the amended complaint **WITHOUT PREJUDICE**.

The court **DIRECTS** the Clerk to close the file.

DONE and **ORDERED** this October 13, 2022.

/s/ Annemarie Carney Axon
ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13796

HENRI N. BEAULIEU, JR.,

Plaintiff-Appellant,

versus

SAMUEL POWELL,
individually, and in his official capacity as a
State Trooper for the State of Alabama,
CALERA, CITY OF,
a municipality located in and a political
subdivision of Shelby County, Alabama,
CALERA POLICE DEPARTMENT, CITY OF,
a department of the City of Calera in Shelby
County, Alabama,
ANDREW BELL,
individually and in his official as a law
enforcement officer/ former law enforcement
officer for the City of Calera, Alabama,
JORDAN MATTHEW LAWLEY,
an individual, et al.,

Defendants-Appellees,

JESSICA SELF, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:22-cv-00878-ACA

(Filed Jul. 17, 2023)

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before ROSENBAUM, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.
