[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11272
Non-Argument Calendar

D.C. Docket No. 0:16-cv-60960-WPD

JOHN M. BARONE

Plaintiff - Appellant,

versus

WELLS FARGO BANK, N.A.,
a.k.a WELLS FARGO HOME MORTGAGE,
a.k.a WELLS FARGO HOME LENDING,

Defendant - Appellee

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

(December 10, 2018)

Before TJOFLAT, JORDAN, AND ROSENBAUM Circuit Judges.

PER CURIAM:

John Barone, proceeding *pro se*, appeals the district court's dismissal with prejudice of his lawsuit against Wells Fargo Bank, N.A. ("Wells Fargo"), for failure to file a second amended complaint that cured the deficiencies identified by the court in a prior dismissal order. After careful review, we affirm the district court.

I.

Barone brought this federal action in May 2016, complaining of Wells Fargo's conduct both before and after Wells Fargo obtained a foreclosure judgment against him in October 2013. The district court dismissed the complaint in August 2016. The court concluded that it lacked subject-matter jurisdiction under the *Rooker-Feldman*[1] doctrine because Barone appeared to be challenging the foreclosure judgment. Alternatively, it found that abstention was warranted due to a similar lawsuit Barone had filed in state court.

We vacated the dismissal and remanded for further proceedings. *Barone v. Wells Fargo Bank, N.A.*, 709 F. App'x 943 (11th Cir. 2017). We concluded that abstention was not warranted and that the *Rooker-Feldman* doctrine did not appear to "require the dismissal of Barone's entire action, even if it applies to some or most of his claims." *Id.* at 947. We noted that Barone had alleged wrongdoing by Wells Fargo after the foreclosure judgment and that "at least some of the claims . . do not appear to invite review of the correctness of the state foreclosure judgment." *Id.*

However, because Barone's complaint—containing 811 numbered paragraphs and 165 pages of exhibits—was a "shotgun pleading" that did not provide fair notice of its claims, we were "unable to delineate with more precision the claims to which the *Rooker-Feldman* doctrine does not apply." *Id.* at 947, 951– 52. We found two deficiencies that, combined, made it virtually impossible to know which allegations of fact were intended to support which claims for relief: (1) his "complaint contains '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 951 (quoting *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1323 (11th Cir. 2015)); and (2) his "rambling, disjointed, and often redundant complaint 'is guilty of the

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[1] *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action,'" id. (quoting *Weiland*, 792 F.3d at 1322).

Despite these deficiencies, we concluded that Barone should be afforded an opportunity to replead his complaint. Accordingly, we vacated the judgment and remanded for the district court to allow Barone that opportunity. We cautioned, however, that if he "fails to make meaningful changes to his complaint after an opportunity to replead, the court may dismiss the complaint under either Rule 41(b), Fed. R. Civ. P, or the court's inherent power to manage its docket." *Id.* at 952.

On remand, the district court entered an order permitting Barone to file an amended complaint that complied with two requirements: (1) it could allege only claims that are not subject to dismissal under the *Rooker-Feldman* doctrine; and (2) it had to comply with the pleading requirements of the Federal Rules.

Barone timely filed an amended complaint. He cut the total number of paragraphs by more than half, and for some of the counts he attempted to reference the specific factual allegations supporting the claim. Still, Barone's complaint spanned 87 pages and included an additional 354 pages of exhibits, and he continued to attack repeatedly the validity of the foreclosure judgment Wells Fargo obtained against him in October 2013. *See, e.g.*, Doc. 46 ¶ 15("Wells Fargo committed numerous unlawful acts in procuring a wrongful judgement against the Barone[s] . . . ."); *id.* ¶ 18 ("Wells Fargo initiated the wrongful foreclosure by falsely asserting that it was the party to which the debt was owed as the owner of the note . . . .").

Wells Fargo moved to dismiss the case with prejudice, asserting that Barone had not cured the deficiencies in his complaint or complied with the district court's order. Barone responded, in pertinent part, that he had reduced the length of the complaint and had more clearly outlined which allegations pertained to each count.

The district court granted in part the motion to dismiss, finding that the complaint still suffered from the same flaws we had identified in Barone's first appeal. Far from providing a "short and plain statement of the claim," the court explained, Barone's complaint was "disjointed, meandering, [and] often redundant," with allegations "not clearly connected to any particular causes of action." Additionally, the court found that the complaint still contained multiple counts where each count adopted the allegations of all preceding counts.

The district court further stated that Barone had violated its prior order permitting amendment by alleging many claims that were subject to dismissal under the *Rooker-Feldman* doctrine. The court noted that the complaint appeared to attack the foreclosure and invite review of the correctness of the state foreclosure judgment. But the claims barred by *Rooker-Feldman* could not be discerned easily, the court explained, because "[a]llegations covering events both before and after Wells Fargo obtained a state-court foreclosure judgment in October of 2013 are still incorporated into and/or alleged in each of the thirteen counts."

Concluding that the amended complaint, like the initial complaint, was a shotgun pleading, the district court dismissed it. Although Wells Fargo requested dismissal with prejudice, the court found that because Barone was *pro se* he should be given one last opportunity to file an amended complaint that corrected the flaws identified by the court. The court permitted Barone to file a second amended complaint within 10 days. But the court warned that the failure to file a second amended complaint that complied with the court's order would result in dismissal with prejudice.

Instead of filing a second amended complaint, Barone filed a motion to recuse the district judge under 28 U.S.C. § 455(a). Barone argued that the judge's impartiality could reasonably be questioned because of the "judge's relationship with Wells Fargo," the initial wrongful dismissal, and the current dismissal in Wells Fargo's favor. He sought either to vacate the dismissal order or to have it reconsidered by a different district judge.

The district court denied the motion, finding that recusal was not warranted. The court explained that adverse rulings did not provide a basis for recusal and that the judge's home mortgage with Wells Fargo Home Mortgage had been disclosed to Barone at the outset of the case, and he had not objected earlier. The district court then entered judgment dismissing the action with prejudice for Barone's failure to file a second amended complaint. Barone now brings this appeal.

II.

We review for an abuse of discretion a district court's dismissal for failure to comply with a court order or with the rules of court. *Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1337 (11th Cir. 2005); *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985). "Discretion means the district court has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law." *Betty K*, 432 F.3d at 1337 (quotation marks omitted).

Pro se pleadings are to be construed liberally. *Evans v. Ga. Reg'l Hosp.*, 850 F.3d 1248, 1253 (11th Cir.), cert. denied, 138 S. Ct. 557 (2017). However, liberal construction of *pro se* pleadings "does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014) (quotation marks omitted).

III.

Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include "a short and plain statement of the claim showing that the pleader is entitled to relief." Although there is no "technical form" required, the plaintiff's allegations "must be simple concise, and direct." Fed. R. Civ. P 8(d)(1). The purpose of these rules is "to 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 (2007) (citation, ellipsis, and quotation marks omitted). What this Court has deemed "shotgun" pleadings fail,

to varying degrees and in various ways, to fulfill that essential purpose. *Weiland*, 792 F.3d at 1323.

"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, Inc. v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018) (quotation marks omitted). In the case of a dismissal on shotgun-pleading grounds, "we have required district courts to sua sponte allow a litigant one chance to remedy such deficiencies." *Id.* But where a plaintiff is afforded that chance and "fails to make meaningful modifications to her complaint, a district court may dismiss the case under the authority of either Rule 41(b) or the court's inherent power to manage its docket." *Weiland*, 792 F.3d at 1321 n.10; see Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.").

Whether the district court acts under Rule 41(b) or its inherent authority to manage its docket, a dismissal *with prejudice* is an extreme sanction that "may be properly imposed only when (1) a party engages in a clear pattern of delay or willful contempt (contumacious conduct); and (2) the district court specifically finds that lesser sanctions would not suffice." *Betty K*, 432 F.3d at 1337–38 (quotation marks omitted). A finding that lesser sanctions would not suffice may be implicit in the court's order. *Mingo v. Sugar Cane Growers Co-op of Fla.*, 864 F.2d 101, 102 (11th Cir. 1989). While dismissal with prejudice is an extreme sanction, "dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion." *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989). Additionally, "the harsh sanction of dismissal with prejudice is thought to be more appropriate in a case where a party, as distinct from counsel, is culpable." *Betty K*, 432 F.3d at 1338.

Here, the district court did not abuse its discretion by dismissing Barone's action with prejudice. To begin with, we see no error in the district court's dismissal, with leave to amend, of Barone's

first amended complaint. Barone claims that the district court failed to give his pleading the liberal construction to which it was due, but we agree with the district court that Barone's complaint, even liberally construed, was unmanageable and failed to give fair notice of its claims.

Despite Barone's attempt to fix some of the problems with his initial complaint, his first amended complaint still suffered from the same flaws we had identified in Barone's first appeal. The first amended complaint, like the initial complaint, contained a multitude of factual allegations that were difficult to follow and not clearly connected to any particular cause of action, as well as multiple counts where each count adopted the allegations of all preceding counts.

While Barone cut the 811 paragraphs of the initial complaint by more than half, he more than doubled its 165 pages of exhibits. Additionally, despite a court order to remove any claims that were subject to dismissal under the *Rooker-Feldman* doctrine, Barone continued to attack the foreclosure and invite review of the correctness of the state foreclosure judgment. And the claims barred by *Rooker-Feldman* could not be easily discerned because, as the court explained, "[a]llegations covering events both before and after Wells Fargo obtained a state-court foreclosure judgment in October of 2013 are still incorporated into and/or alleged in each of the thirteen counts." This was essentially the same problem we had noted on appeal in regard to Barone's initial complaint. *Barone*, 709 F. App'x at 947.

In short, the district court reasonably concluded that Barone had failed to "make *meaningful* modifications to [his] complaint." *Weiland*, 792 F.3d at 1321 n.10 (emphasis added). Although the court was required to liberally construe the complaint, it was not required, or permitted, to "rewrite an otherwise deficient pleading in order to sustain an action." *Campbell*, 760 F.3d at 1168–69. Accordingly, the court was authorized to "dismiss the case under the authority of either Rule 41(b) or the court's inherent power to manage its docket." *Weiland*, 792 F.3d at 1321 n.10.

Further, we conclude that the "extreme sanction" of dismissal with prejudice was justified under the circumstances. When the district court dismissed Barone's first amended complaint, giving Barone another opportunity to cure the deficiencies, the court expressly warned Barone that the failure to file a second amended complaint that complied with the court's order would result in dismissal with prejudice. But Barone failed to file any second amended complaint, let alone a compliant one. Instead, he sought to disqualify the district judge based primarily on the judge's rulings against him.

Because Barone willfully disregarded the district court's order, despite being warned about the consequences, it was not an abuse of discretion to dismiss the complaint with prejudice. See *Moon*, 863 F.2d at 839. In addition, Barone, and not any attorney, was the culpable party, which further supports the appropriateness of "the harsh sanction of dismissal with prejudice." *See Betty K*, 432 F.3d at 1338. The record also supports the district court's implicit finding that lesser sanctions than dismissal would not have served the interests of justice. *See Mingo*, 864 F.2d at 102. Barone had multiple opportunities to plead his claims, and permitting him another chance would have prejudiced Wells Fargo. *See Goforth*, 766 F.2d at 1535. We therefore conclude that the district court acted within the bounds of its discretion by dismissing Barone's complaint with prejudice. *See Betty K*, 432 F.3d at 1337

IV.

Barone also appeal the denial of his recusal motion. We review a judge's recusal decision for an abuse of discretion. *Murray v. Scott*, 253 F.3d 1308, 1310 (11th Cir. 2001). Recusal is required in any proceeding in which the judge's impartiality might reasonably be questioned—that is, where an objective, fully informed lay observer would entertain significant doubt about the judge's impartiality. 28 U.S.C. § 455(a); *Curves, LLC v. Spalding Cty.*, Ga., 685 F.3d 1284, 1287 (11th Cir. 2012).

Here, the district court did not abuse its discretion by denying Barone's recusal motion. First, Barone primarily sought recusal based on the judge's adverse rulings, but "except where pervasive bias is shown, a judge's rulings in the same or a related case are not a sufficient basis for recusal." *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000). No such pervasive bias has been shown here.

Second, Barone appears to have sought recusal in part based on the judge's personal home mortgage with Wells Fargo, but standard consumer transactions made in the ordinary course of business generally do not warrant recusal. *See Delta Air Lines, Inc. v. Sasser*, 127 F.3d 1296, 1297–98 (11th Cir. 1997). And there is no indication that the judge's home mortgage could be "substantially affected" by the outcome of this proceeding. *See id.*

Finally, Barone knew of the judge's home mortgage as early as May 2016, but he did not raise that issue to the district court until 2018, after an adverse ruling. A party who seeks to have a judge disqualified under § 455 must do so in a timely manner upon learning of the grounds for disqualification. *Summers v. Singletary*, 119 F.3d 917, 920 (11th Cir. 1997). Barone's failure to raise the issue in a timely manner further supports the judge's refusal to recuse.

V.

For the reasons stated, we affirm the district court's dismissal with prejudice of Barone's action against Well Fargo and the denial of his recusal motion.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-60960-CIV-DIMITROULEAS

JOHN M. BARONE,
An Individual,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., a corporation a/k/a
WELLS FARGO HOME MORTGAGE
a/k/a WELLS FARGO HOME LENDING,

Defendant. /

FINAL ORDER OF DISMISSAL

THIS CAUSE is before the Court upon the Court's Order Granting Defendant's Motion to Dismiss Amended Complaint, entered on February 12, 2018. *See* [DE 56].

Therein, the Court determined the Plaintiff's Amended Complaint [DE 46] must be dismissed as an impermissible shotgun pleading and for failure to comply with the Court's October 29, 2017 Order Allowing Plaintiff to File Amended Complaint [DE 45]. In an abundance of caution, the Court allowed Plaintiff one additional opportunity to file a Second Amended Complaint on or before February 22, 2018 which (1) complies with all pleading requirements and (2) pleads only claims not subject to dismissal under the *Rooker-Feldman* doctrine. The Court warned Plaintiff that a failure to file a complaint Second Amended Complaint would result in dismissal with prejudice. No amendment was filed.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The above-styled action is hereby **DISMISSED with prejudice**;

2. The Court will enter a separate judgement of dismissal.

DONE and ORDERED in Chambers in Fort Lauderdale, Broward County, Florida, on this 26th day of February, 2018.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of record

John M. Barone, pro se
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Lighthouse Point, FL 33074

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-60960-CIV-DIMITROULEAS

JOHN M. BARONE,
An Individual,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., a corporation a/k/a
WELLS FARGO HOME MORTGAGE
a/k/a WELLS FARGO HOME LENDING,

Defendant. _____/

JUDGEMENT

THIS CAUSE is before the Court upon the Court's Final Order of Dismissal, entered earlier today. Pursuant to Fed. R. Civ. P. 58(a) the Court enters this separate judgement.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The above-styled action is hereby **DISMISSED** with prejudice;
2. The Clerk is directed to **CLOSE** this case and **DENY AS MOOT** any pending motions.

DONE and ORDERED in Chambers in Fort Lauderdale, Broward County, Florida, on this 26th day of February, 2018.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of record

John M. Barone, pro se
P.O. Box 5193
Lighthouse Point, FL 33074

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-60960-CIV-DIMITROULEAS

JOHN M. BARONE,
An Individual,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., a corporation a/k/a
WELLS FARGO HOME MORTGAGE
a/k/a WELLS FARGO HOME LENDING,

Defendant. /

ORDER DENYING MOTION TO RECUSE OR DISQUALIFY JUDGE; DENYING MOTION FOR RECONSIDERATION OF DISMISSAL ORDER

THIS CAUSE is before the Court upon *pro se* Plaintiff John M. Barone ("Plaintiff")'s motion to Address Recusal/Disqualification Left Open on Remand and to Vacate, or Alternatively Alter/Amend Order [DE 57], filed herein on February 20, 2018. The Court has carefully considered the Motion, and is otherwise fully advised in the premises.

Plaintiff asserts that the Court has been ignoring his request that the Court recuse or disqualify itself from presiding over this case. However, up until the filing of the instant motion there was no motion to recuse or disqualify pending before the Court. The phrase in the conclusion paragraph of Plaintiff's response to Defendant's Motion to Dismiss Amended Complaint requesting that the Court "address the recusal left open on remand" could not reasonably construed as a motion to recuse or disqualify. *See* [DE 54] at p. 20. Plaintiff also appears to misconstrue footnote 18 in the Eleventh Circuit's September 21, 2017 opinion which stated "[a]s for Barone's contention that the district judge should have recused himself, he did not raise this argument below, and the judge may address this issue on remand," as an instruction

for the district court to *sua sponte* rule on this issue. The Court rejects Plaintiff's position and rather construes the Eleventh Circuit's footnote as directing Plaintiff to raise the issue directly with the district court, if he so desired.

As for the merits of Plaintiff's motion for disqualification pursuant to 28 U.S.C. § 455(a), the Court finds the motion to be without merit. § 455(a) states as follows:

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. § 455. Here it appears that the grounds presented by the instant motion for disqualification are that the undersigned has a home mortgage with Wells Fargo Home Mortgage, and the adverse rulings to Plaintiff entered in this litigation. First, the district court filed a notice of his mortgage on May, 3, 2016 nearly two years ago, which Plaintiff timely acknowledged and did not appear to take any issue with. *See* [DE's 8, 15]. Second adverse rulings do not constitute a basis for recusal or disqualification; rather, judicial rulings are proper grounds for appeal. *Liteky v. United States*, 510 U.S. 540, 550-56 (1994).

Finally, as to Plaintiff's motion for reconsideration under Fed. R. Civ. P. 59(e) or 60(b), the Court finds that Plaintiff merely disagrees with the Court's legal rulings, and fails to meet the requirements for the extraordinary relief of reconsideration.

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion to Address Recusal/Disqualification Left Open on Remand and to Vacate, or Alternatively Alter/Amend Order [DE 57] is **DENIED**.

DONE and ORDERED in Chambers in Fort Lauderdale, Broward County, Florida, on this 21st day of February, 2018.

WILLIAM P. DIMITROULEAS
United States District Judge

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-60960-CIV-DIMITROULEAS

JOHN M. BARONE,
An Individual,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., a corporation a/k/a
WELLS FARGO HOME MORTGAGE
a/k/a WELLS FARGO HOME LENDING,

Defendant. /

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS THE AMENDED COMPLAINT

THIS CAUSE is before the Court upon Defendant Wells Fargo Bank, N.A. ("Wells Fargo")'s Motion to Dismiss Plaintiff's Amended Complaint [DE 50], filed herein on December 11, 2017. The Court has carefully considered the Motion, Plaintiff John M. Barone ("Plaintiff" or "Barone")'s Response [DE 54], Defendant's Reply [DE 55], and is otherwise fully advised in the premises.

I. Background

On May 2, 2016, Plaintiff, proceeding *pro se* filed a 171-page Complaint (plus 165 pages of exhibits) in federal court against Wells Fargo, consisting of over 800 paragraphs and approximately thirteen (13) claims: (1) violation of Racketeer Influenced and Corrupt Organizations Act ("RICO") violation; (2) RICO violation pursuant to 18 U.S.C § 1962(d); (3) breach of fiduciary duty; (4) breach of good faith and fair dealing; (5) breach of contract; (6) "defamation/slander per se;" (7) unjust enrichment; (8) conversion; (9) constructive fraud; (10) fraudulent inducement; (11) tortious interference with a business relationship; (12) violation of Truth in Lending Act ("TILA") 15 U.S.C. § 1601 *et seq.*; and (13) "Theft, Robbery and Related Crimes" pursuant to section 812.012(d)(1). *See* [DE 1].

On August 18, 2016, after considering the allegations of the complaint, the arguments and case law set forth in the parties' briefs, and taking judicial notice of the public record filings of the Florida state court foreclosure action[1] as well as the pending nearly identical Florida state court action[2], the Court entered a Final Order of Dismissal, dismissing the case for lack of jurisdiction pursuant to the *Rooker-Feldman* doctrine[3] and , alternatively, abstaining from hearing the case under the *Younger*[4] and/or the *Colorado River*[5] abstention doctrines. See [DE 38].

Plaintiff appealed the Final Order of Dismissal to the Eleventh Circuit. See [DE 39]; Appellate Case No. 16-16079-CC. On September 21, 2017, the Eleventh Circuit entered its opinion, ruling that it appeared some of the Plaintiff's claims may not have been barred by the *Rooker-Feldman* doctrine, that application of the *Younger* and *Colorado River* abstention doctrines were not warranted in this case, but Plaintiff's Complaint was nonetheless required to be dismissed as an impermissible "shotgun" pleading, with leave to amend to allow Plaintiff an opportunity to replead his claims. *Barone v. Wells Fargo Bank, N.A.*, No. 16-16079, 2017 WL 4179820 (11th Circ. Sept. 21, 2017). On October 26, 2017, the Mandate issued. See [DE 44].

On October 29, 2017, the Court entered an Order Allowing Plaintiff to File Amended Complaint. *See* [DE 45]. Therein, the Court permitted to file an Amended Complaint "which (1) may only allege claims that are not subject to dismissal pursuant to

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[1] *Wells Fargo v. John Barone, et al.*, No. CACE-111025064(the "Foreclosure Action")

[2] *John M. Barone v. Wells Fargo Bank, N.A.*, Case No. 15-21684 CACE(the "State Action")

[3] *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415-16(1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 463, 476-82 (1983)

[4] *Younger v. Harris*, 401 U.S. 37 (1941)

[5] *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976)

the *Rooker-Feldman* doctrine[6]; and (2) complies with the pleading requirements of Rule 8, Fed. R. Civ. P., *Bell Atlantic Corp v. Twombly,* 550 U.S. 544, 555 (2007), and *Ashcroft v. Iqbal,* 129 S. Ct.1937, 1949 (2009)." [DE 45] at ¶ 2. The Court warned that a failure to comply would result in dismissal of this case. *Id.* at ¶3.

On November 9, 2017, Plaintiff filed his Amended Complaint. [DE 46]. The Amended Complaint is 83 pages (plus 354 pages of exhibits), consisting of approximately 320 paragraphs and the same thirteen (13) claims that were pled in his original Complaint, albeit some numbered in a different order: (1) violation of Racketeer Influenced and Corrupt Organizations Act ("RICO") violation; (2) RICO violation pursuant to 18 U.S.C § 1962(d); (3) violation of Truth in Lending Act ("TILA") 15 U.S.C. § 1601 *et seq.*; (4) unjust enrichment; (5) conversion; (6) constructive fraud; (7) tortious interference; (8) fraudulent inducement; (9) "defamation/slander per se;" (10) violation of Florida Statute 812.012(d)(1) "Theft, Robbery and Related Crimes"; (11) breach of contract; (12) breach of good faith and fair dealing; and (13) breach of fiduciary duty. *See* [DE 46].

I. Discussion

Defendant moves to dismiss the Amended Complaint in its entirety, with prejudice. First, Defendant argues that the Amended Complaint, like the original Complaint, is an impermissible shotgun pleading. Second, Defendant contends that a number of Plaintiff's claims are barred by the *Rooker-Feldman* doctrine as they are inextricably intertwined with the prior state court foreclosure action and judgement and seek to collaterally attack the foreclosure judgement. Third Defendant argues that Plaintiff fails to state a claim in each of his thirteen counts.

The Court, upon careful consideration of the Amended Complaint, finds that it still suffers from the same flaws identified by

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[6] *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415-16(1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 463, 476-82 (1983)

the Eleventh Circuit when it determined that the original Complaint must be dismissed as an impermissible shotgun pleading. See *Barone*, 2017 WL 4179820, at *7. The Amended Complaint is not "a short and plain statement of the claim showing the pleader is entitled to relief," nor are the allegations "simple, concise and direct." *See* Fed. R. Civ. P. 8(a); 8(d)(1). Rather, the allegations are disjointed, meandering, often redundant and not clearly connected to any particular causes of action. In fact, the "factual allegations" section of the Amended Complaint, which is incorporated into each of the thirteen causes of action, is approximately forty-three pages of rambling paragraphs. Furthermore, the Amended Complaint also contains "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." See *Barone*, 2017 WL 4179820, at *7 (quoting *Weiland v. Palm Beach Cty. Sherriff's Office*, 793 F.3d 1313, 1321 (11th Circ. 2015). This lengthy convoluted, incomprehensible pleading must again be dismissed as an impermissible shotgun pleading.

Moreover, in direct violation of this Court's Order Allowing Plaintiff to File Amended Complaint, Plaintiff has again alleged many claims which are subject to dismissal pursuant to the *Rooker-Feldman* doctrine. *See* [DE 45]. The *Rooker-Feldman* doctrine eliminates federal court jurisdiction over those claims that are essentially an appeal by a state court loser seeking to relitigate a claim that has already been decided in state court. The doctrine is designed to ensure that the inferior federal courts do not impermissibly review decisions of state courts-a role reserved to the United States Supreme Court." *Target Media Partners v. Specialty Mktg. Corp.*, No. 16-10141, 2018 WL 706524, at *1 (11th Circ. Feb. 5, 2018). As the Eleventh Circuit recently explained:

~ Consistent with the directions of the Supreme Court, we now apply *Rooker-Feldman* to bar only claims asserted by parties who have lost in state court and then ask the district court, ulti-

mately, to review and reject a state court's judgements. *Nicholson v. Shafe*, 558 F.3d 1266, 1268 (11th Cir. 2009) (quoting *Exxon Mobil Corp v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)).

To determine which claims invite rejection of a state court decision, we continue to apply an inquiry similar to the one that preceded *Exxon Mobil*.

We continue to consider whether a claim was either (1) one actually adjudicated by a state court judgement. See *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Circ. 2009) (per curiam). And we have continued to describe a claim as being "inextricably intertwined" if it asks to "effectively nullify the state court judgement, or it succeeds only to the extent that the state court wrongly decided the issues." *Id.* (internal quotation marks and citation omitted).

Notably, however, a federal claim is not "inextricably intertwined" with a state court judgment when there was no "reasonable opportunity to raise" that particular claim during the relevant state court proceeding. *Id.* (quoting *Powell v. Powell*, 80 F.3d 464, 467 (11th Cir. 1996)). Thus, the class of federal claims that we have found to be "inextricably intertwined" with state court judgements is limited to those raising a question that was or should have been properly before the state court. ~

Target Media Partners, 2018 WL 706524, at *5.

Here, all thirteen claims pled in the Amended Complaint are the same thirteen claims pled in the original Complaint, about which the Eleventh Circuit indicated: "[i]ndeed, we are unable to delineate with more precision the claims to which the *Rooker-Feldman* doctrine does not apply." See *Barone*, 2017 WL 4179820, at *3 (emphasis added).[7] Allegations covering events

[7] The motion to dismiss does not apply the *Rooker-Feldman* doctrine to each of the claims in Counts 3-13, which Defendant argues are barred under *Rooker-Feldman*. Given Plaintiff's convoluted Amended Complaint, this is understandable. However, in the event that Plaintiff files a second Amended

both before and after Wells Fargo obtained a state-court foreclosure judgement in October of 2013 are still incorporated into and/or alleged in each of the thirteen counts. The Amended Complaint alleges various acts of wrongdoing by Wells Fargo before the October 2013 foreclosure judgement, attacks the foreclosure, and appears to invite review of the correctness of the state foreclosure judgement, as well as to raise questions that were or should have been properly before the state court in the foreclosure action. Plaintiff may not continue to allege claims which depend on facts that predate the state court foreclosure judgement and were or should have properly been before the state court.

Plaintiff argues in his response to the motion to dismiss that some of the Defendant's allegedly wrongful schemes did not occur and/or unfold until after the state court judgement; thus these claims could not have been brought prior. See [DE 54] at p. 9. However, as the Amended Complaint is an impermissible shotgun pleading, *see supra*, this Court, like the Eleventh Circuit, is unable to cull through the rambling pleading to determine which claims might possibly not be barred by *Rooker-Feldman*. Additionally, the Court rejects Plaintiff's position that he can avoid the application of *Rooker-Feldman* to otherwise barred claims because Wells Fargo lacked standing and/or procured the foreclosure judgement through fraud. Significantly, even if the state court judgement was unconstitutional, *Rooker-Feldman* prevents the federal district court from correcting the error. *Feldman,* 460 U.S. at 486. *See also Valentine v. BAC Home Loans Servicing, L.P.,* 635 F. App'x 753, 757 (11th Cir. 2015) ("Finally, the only way to vindicate the Valentines' claims—all of which allege that the state court litigation turned on fraudulent evidence—is to hold the state court wrongly decided the foreclosure matter by relying on fraudulent evidence. The district court was

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Complaint that is not a shotgun pleading, any motion to dismiss relying on *Rooker-Feldman* should analyze the application of the doctrine as to each count for which it is asserted to apply.

thus correct in concluding that *Rooker-Feldman* barred post-judgment relief here.").

Because of the fatal flaws explained *supra*, which require dismissal of the entire Amended Complaint, the Court need not reach Defendant's argument that the claims, as pled, must be also dismissed for failure to state a claim. Defendant requests that the Court dismiss the Amended Complaint with prejudice because any amendment would be futile, as Plaintiff has proven incapable of filing a complaint that complies with the Eleventh Circuit's instructions and this Court's orders. However, as Plaintiff is *pro se*, the Court will, in an abundance of caution, allow Plaintiff one last opportunity to amend. However, Plaintiff is strongly cautioned that, in the event he files a Second Amended Complaint containing the same flaws identified in this Order, this case will be dismissed with prejudice for repeated failure to follow the Court's Orders.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant Wells Fargo's Motion to Dismiss Plaintiff's Amended Complaint [DE 50] is **GRANTED IN PART**;
2. Plaintiff's Amended Complaint [DE 46] is DISMISSED as an impermissible shotgun pleading and for failure to comply with the Court's October 29, 2017 Order Allowing Plaintiff to File Amended Complaint. *See* [DE 45].
3. Plaintiff is permitted to file a Second Amended Complaint on or before February 22, 2018 which (1) complies with all pleading requirements and (2) pleads only claims not subject to dismissal under the *Rooker*-Feldman doctrine.

DONE AND ORDERED in chambers at Fort Lauderdale, Broward County, Florida this 9th day of February, 2018.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
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