

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10493

Non-Argument Calendar

FBG, LLC,
Relator; a limited liability company,

Plaintiff-Appellant,

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA,
STATE OF GEORGIA,
COMMONWEALTH OF MASSACHUSETTS,
STATE OF FLORIDA,
ex rel FGB, LLC.,

Movants-Appellants,

versus

OPKO HEALTH INC, LLC,
a Delaware corporation,

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PHILLIP FROST,
MARC D. GRODMAN,
CHARLES TODD,
individuals,
BIOREFERENCE HEALTH, LLC,
a Delaware limited liability company
f.k.a. Bio-Reference Laboratories, Inc. et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:18-cv-00166-WWB-JBT

Before WILSON, LUCK, and BLACK, Circuit Judges.

PER CURIAM:

FBG, LLC, appeals the district court's *sua sponte* dismissal with prejudice of FBG's Second Amended Complaint against OPKO Health Inc., LLC, Phillip Frost, Marc D. Grodman, Charles

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Todd, and Bioreference Health, LLC (Appellees) as an impermissible shotgun pleading. After review,¹ we affirm the district court.

I. BACKGROUND

FBG filed a Complaint on January 26, 2018, asserting violations of the False Claims Act (FCA), 31 U.S.C. §§ 3729, *et seq.*, as well as state law claims for the States of Florida, Georgia, California, and the Commonwealth of Massachusetts based on FBG’s allegations that Appellees provided illegal kickbacks to doctors and clinics to receive more business, costing Medicare and Medicaid, and the states participating in those programs to pay for unnecessary exams and tests. The action was filed *in camera* and under seal to give the United States time to determine whether it would intervene on the FCA claims. The United States declined to intervene, and the district court unsealed the action on January 13, 2022. On February 9, 2022, the states jointly declined to intervene on their respective state law claims.

On April 25, 2022, Appellees filed a joint motion to dismiss the Complaint, arguing FBG’s Complaint failed to allege plausibility under Rule 8(a) and particularity under Rule 9(a). On March 24, 2023, the then-presiding district judge, Judge Brian Davis, dismissed the action as both a shotgun pleading and for failure to allege fraud with particularity, without prejudice and with leave to amend. As to the shotgun pleading, the district court stated, “[FBG’s]

¹ “We review a dismissal on Rule 8 shotgun pleading grounds for an abuse of discretion.” *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1294 (11th Cir. 2018).

allegations are repeated, and [FBG] included claims specific to one state, such as California, and incorporates those claims into the claims brought on behalf of other states, such as Florida. Plaintiff also routinely consolidates [Appellees] as a single bad actor. As such the Complaint constitutes a ‘shotgun pleading.’” Additionally, the district court stated, “[FBG] elongates the Complaint by describing the history and administration of state Medicare programs—which again, are incorporated in other counts regarding different states—and reciting case law and news articles.”

On April 13, 2023, FBG filed its First Amended Complaint, and on June 20, 2023, Appellees filed a motion to dismiss the First Amended Complaint. On December 29, 2023, Judge Davis struck FBG’s First Amended Complaint as it constituted a shotgun pleading and granted leave to amend. The district court specified that “each of [FBG’s] 15 counts lumps each of the six Defendants together, without specifying which Defendant committed what specific act.”

On January 2, 2024, the action was reassigned to Judge Wendy Berger. FBG filed a Second Amended Complaint on January 19, 2024. On January 23, 2024, Judge Berger *sua sponte* dismissed with prejudice the Second Amended Complaint, as it “continues to be an impermissible shotgun pleading.” Specifically, each count of the Second Amended Complaint “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.” As FBG’s Complaint and First Amended

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Complaint were dismissed as shotgun pleadings, the court found FBG had “ample notice of the shotgun pleading standards and the issues in its prior filings,” and dismissed the Second Amended Complaint with prejudice.

II. DISCUSSION

The district court did not abuse its discretion when it dismissed the Second Amended Complaint as a shotgun pleading. When a complaint contains multiple counts, and “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,” it fails to give defendants “adequate notice of the claims against them and the grounds upon which each claim rests.” *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1321, 1323 (11th Cir. 2015). This Court condemns shotgun pleadings and has “repeatedly held that a District Court retains authority to dismiss a shotgun pleading on that basis alone.” *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1357 (11th Cir. 2018).

The district court found “each count of the Second Amended Complaint reincorporates by reference every allegation of the entire pleading.” FBG acknowledges that paragraphs 142, 153, 163, 174, 187, 200, and 213 incorporate all allegations in all causes of action that precede them, but argues that the organization of the Second Amended Complaint excuses the adoption of all allegations in each count. Our precedent supports that a complaint that causes each count to adopt the allegations of each preceding count is a shotgun pleading. *See Weiland*, 792 F.3d at 1321.

“When a litigant files a shotgun pleading, is represented by counsel, and fails to request leave to amend, a district court must sua sponte give him one chance to replead before dismissing his case with prejudice on non-merits shotgun pleading grounds.” *Bar-mapov v. Amuial*, 986 F.3d 1321, 1326 (11th Cir. 2021) (quotation marks omitted). FBG had sufficient notice of its shotgun pleading issues as the first two complaints had been dismissed as shotgun pleadings, FBG had an opportunity to replead two times, and FBG was represented by counsel. The district court did not abuse its discretion in dismissing FBG’s Second Amended Complaint as a shotgun pleading and dismissing the action with prejudice.²

AFFIRMED.

² As we affirm the district court, there is no need to address FBG’s argument that the action should be reassigned to a new district judge on remand.