

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

OSCAR INSURANCE COMPANY OF
FLORIDA,

Plaintiff,

v.

Case No: 6:18-cv-1944-Orl-40TBS

BLUE CROSS AND BLUE SHIELD OF
FLORIDA, INC., FLORIDA HEALTH
CARE PLAN INC. and HEALTH
OPTIONS INC.,

Defendants.

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ORDER


This cause comes before the Court upon *sua sponte* review of the Complaint. (Doc. 1). The Complaint contains six counts: (1) Sherman Act § 2 Claim for Monopolization; (2) Sherman Act § 2 Claim for Attempted Monopolization; (3) Sherman Act § 1 Claim; (4) Florida Antitrust Act Restraint of Trade § 542.18 Claim for Monopolization and Attempted Monopolization; (5) Florida Antitrust Act Restraint of Trade § 542.18 Claim Based on Florida Blue's Exclusive Agreements with Brokers; and (6) Tortious Interference with a Business Relationship. (Doc. 1, ¶¶ 95–135). Importantly, the first paragraph of each discrete count incorporates all preceding allegations by reference. (*Id.*). This creates a problem, of course, in that Count II incorporates by reference the allegations of Count I, Count III incorporates by reference the allegations of both Counts I and II, and so on. This problem—that the Complaint is a “shotgun pleading”—must be rectified by repleader.

“When presented with a shotgun complaint, the district court should order repleading *sua sponte*.” *Ferrell v. Durbin*, 311 F. App’x 253, 259 n.8 (11th Cir. 2009) (per curiam).¹ The Eleventh Circuit Court of Appeals has “been roundly, repeatedly, and consistently condemning [shotgun pleadings] for years” *Davis v. Coca-Cola Bottling Co.*, 516 F.3d 955, 979 (11th Cir. 2008), *abrogated on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662 (2009). There are numerous varieties of shotgun pleadings, the most common being a pleading “containing multiple counts, where each count adopts the allegations of all preceding counts.” *Weiland v. Palm Beach Cty. Sheriff’s Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). The instant Complaint is a quintessential shotgun pleading, in that all counts incorporate by reference all preceding paragraphs. See *id.*

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

1. The Complaint (Doc. 1) is **DISMISSED WITHOUT PREJUDICE**.
2. Defendants’ Motion to Dismiss (Doc. 70) is **DENIED** as moot.
3. On or before, February 13, 2019, Plaintiff may file an Amended Complaint.
4. **Plaintiff is cautioned that failure to file an Amended Complaint within the time provided will result in the Court dismissing this case and closing the file without further notice.**

DONE AND ORDERED in Orlando, Florida on February 6, 2019.


PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

¹ “Unpublished opinions are not controlling authority and are persuasive only insofar as their legal analysis warrants.” *Bonilla v. Baker Concrete Const., Inc.*, 487 F.3d 1340, 1345 (11th Cir. 2007).

Copies furnished to:

Counsel of Record
Unrepresented Parties