UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOSEPH DEAN,
Plaintiff,
v. Case No. 8:24-cv-2242-MSS-TGW

META PLATFORMS, INC.,
Defendant.

REPORT AND RECOMMENDATION

The plaintiff filed two Motions to Proceed In Forma Pauperis under U.S.C. 1915 (Docs. 2, 11), seeking a waiver of the filing fee for his second amended complaint (SAC), which alleges against the defendant "anti-competitive behavior by a monopoly" (Doc. 14).

In my prior Report and Recommendation, I recommended that the first amended complaint (FAC) be dismissed, with leave for the plaintiff to file a second amended complaint that rectifies its deficiencies (id.). Before the district court had an opportunity to consider the Report and Recommendation, the plaintiff filed a Second Amended Complaint (Doc. 14).

Although the plaintiff made changes to the SAC, the pleading remains fatally deficient. I therefore recommend that the plaintiff's Second Amended Complaint be dismissed. Furthermore, because the plaintiff has not, despite three opportunities to do so, filed a pleading that complies with

the Federal Rules of Civil Procedure, I recommend that the Second Amended Complaint be dismissed with prejudice and the case closed.

I.

Under 28 U.S.C. 1915(a)(1), the court may authorize the filing of a civil lawsuit without prepayment of fees if the plaintiff submits an affidavit that includes a statement of all assets showing an inability to pay the filing fee and a statement of the nature of the action which shows that he is entitled to redress. Even if the plaintiff proves indigency, the case shall be dismissed if the action is frivolous or malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. 1915(e)(2)(B)(i), (ii).

Furthermore, although "allegations of a pro se complaint [are held] to less stringent standards than formal pleadings drafted by lawyers .... this leniency 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).

II.

The plaintiff alleges that Facebook engages in deceptive and unfair business practices and has monopolized the market as to social

networking services, in violation of the Sherman Act and the Clayton Act. As best as can be discerned, the basis of the plaintiff's claims is that that the plaintiff had a platform of applications, the functionality of which relied upon the defendant's technology, and the defendant discontinued support of those applications. Notably, the plaintiff's exhibits attached to the SAC contravene the plaintiff's allegations of anticompetitive conduct, as they indicate that service was discontinued due to unrelated community standards violations and technological issues.

In all events, the plaintiff's SAC, similar to the prior pleadings, does not comply with the Federal Rules of Civil Procedure. Rather, it is a quintessential shotgun pleading which is condemned by the Eleventh Circuit. Anderson v. District Board of Trustees of Central Florida Community College, 77 F.3d 364, 366-67 (11th Cir. 1996) (A "shotgun pleading" forces the court to sift through the facts presented and decide for itself which are material to the particular claims asserted.).

As the plaintiff was informed in the Report and Recommendation (Doc. 13), Rule 8(a)(2), F.R.Civ.P., requires a short and plain statement of the claim showing that the pleader is entitled to relief. See McNeil v. United States, 508 U.S. 106, 113 (1993) (pro se litigants must

comply with procedural rules that govern pleadings). Although the SAC is shorter than the FAC, it contains the same basic deficiencies as the FAC. Similar to the FAC, the SAC contains pages of purportedly "Relevant Legal Precedent," in which the plaintiff lists various cases and their purported holdings and findings (see, e.g., Doc. 14, pp. 6-8). This caselaw has no place in a pleading.

Further, both of the plaintiff's causes of action are problematic. The plaintiff alleges in Count I the violation of 15 U.S.C. 2 of the Sherman Act, despite being advised in the previous Report and Recommendation that 15 U.S.C. 2 does not state a private cause of action (see Doc. 13, p. 5). Thus, this claim is not cognizable.

Count II of the SAC, which alleges violations of the Clayton Act, includes more than two pages of purported holdings and findings from a Supreme Court case. The plaintiff relies heavily on this information, even though it is irrelevant to establishing the plaintiff's claim. As to the alleged factual allegations pertaining to this dispute, they are either conclusory, do not show unlawful conduct, or both, so that a cognizable Clayton Act claim is not apparent on the face of the SAC. See Barmapov v. Amuial, 986 F.3d 1321, 1326 (11th Cir. 2021) (affirming the dismissal with prejudice of a

shotgun pleading that is "replete with conclusory, vague, and immaterial" allegations).

In sum, although the plaintiff made changes to his Second Amended Complaint, the pleading remains fatally deficient. The SAC, like its predecessors, is a shotgun complaint that fails to comply with the Federal Rules of Civil Procedure. See Id. Therefore, even construing the plaintiff's complaint liberally, Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998), the plaintiff's complaint should be dismissed.

Moreover, because the plaintiff has been unable, despite three opportunities, to file a complaint that complies with the Federal Rules of Civil Procedure, I recommend that the plaintiff not be afforded leave to file a fourth pleading in this matter. See Vibe Micro, Inc. v. Shabanets, 878 F.3d 1291, 1295 (11th Cir. 2018) (explaining that a district court may dismiss a case with prejudice for failure to correct shotgun pleading deficiencies after first providing a represented plaintiff with notice and an opportunity to amend); Barmapov v. Amuial, supra, 986 F.3d at 1326 (affirming district court for dismissing shotgun pleading with prejudice when plaintiff "squandered [the] opportunity" to correct the previous complaint's flaws); Ho v. Att'y Gen., No. 22-11430, 2023 WL 2473272 at *2 (11th Cir. Mar. 13,

2023) (affirming dismissal of a pro se complaint as a shotgun pleading with prejudice after the plaintiff was provided with one opportunity to amend).

Accordingly, I recommend that the Second Amended Complaint (Doc. 14) be dismissed with prejudice and the case closed.

Respectfully submitted,

THOMAS G. WILSON
UNITED STATES MAGISTRATE JUDGE

DATED: November 26, 2024.

NOTICE TO PARTIES

The parties have fourteen days from the date they are served a copy of this report to file written objections to this report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. 636(b)(1)(C). Under 28 U.S.C. 636(b)(1), a party's failure to object to this report's proposed findings and recommendations waives that party's right to challenge on appeal the district court's order adopting this report's unobjected-to factual findings and legal conclusions.