UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-61852-CIV-SINGHAL

JOSHUA HELMUTH,

Plaintiff,

vs.

FRIEDLAND & ASSOCIATES, P.A. d/b/a Accident Claims, and JOHN DOE CORPORATIONS 1 through 10,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court on the Motion to Dismiss (DE [14]) filed by Defendant Friedland & Associates, P.A. ("Friedland"). Plaintiff filed a Response in Opposition (DE [15]) and no reply was filed. The Motion is, therefore, ripe for review. For the reasons discussed below, the Motion to Dismiss is denied.

I. INTRODUCTION

Plaintiff, Joshua Helmuth ("Plaintiff" or "Helmuth") seeks damages and injunctive relief under the Telephone Consumer Protections Act ("TCPA"), 27 U.S.C. § 277 and its enabling regulations, 47 C.F.R. § 64,1200, *et seq.* (DE [12]). He sues Defendants Friedland & Associates, P.A. ("Friedland") and 10 John Doe Defendants ("Doe Defendants").

Plaintiff alleges he received more than 130 unsolicited live and pre-recorded telephone marketing calls despite having his number on the National Do-Not-Call List. (DE [12] ¶¶ 3, 27-28). The calls continued after Plaintiff requested that they stop. *Id.* ¶ 21.

Plaintiff alleges the calls were placed by the Doe Defendants, acting as an agent of Friedland, to prescreen Plaintiff as a potential client for Friedland and, if so, "to conduct a so-called hot transfer" to Friedland. *Id.* ¶ 2, 3, 13. Plaintiff alleges the calls were made by the Doe Defendants (*id.* ¶ 5) and that the calls placed to Plaintiff by the Doe Defendants, "including the timing of their transmission and content, were authorized, controlled, and/or ratified by" Friedland. *Id.* ¶ 5. Plaintiff also alleges the Doe Defendants provided his cell number to Friedland, which called Plaintiff to offer legal services. *Id.* ¶ 18. After he spoke with an employee of Friedland, Plaintiff received a follow-up call from the Doe Defendants asking how the intake process with Friedland went. *Id.* ¶ 19. The phone calls are continuous and ongoing, even after the do-not-call request. *Id.* ¶¶ 20, 54.

Friedland moves to dismiss the Complaint on the grounds that (1) the Complaint is a shotgun pleading that fails to identify which actions Friedland is accused of taking; (2) the Complaint is based on conclusory assertions rather than factual allegations to establish direct and vicarious liability; and (3) the Complaint fails to establish Article III standing for injunctive relief because there are no allegations suggesting any risk of future harm.

II. LEGAL STANDARDS

A. Shotgun Pleadings

Federal Rule of Civil Procedure ("Rule") 8 requires a complaint to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The opposite of a short and plain statement of the claim is what is known as a "shotgun" pleading. "'Shotgun' pleadings are cumbersome, confusing complaints that do not comply with these pleading requirements." *See Weiland v. Palm Beach Cty.*

Sheriff's Office, 792 F.3d 1313, 1321–23 (11th Cir. 2015). Shotgun pleadings make it "virtually impossible to know which allegations of fact are intended to support which claim(s) for relief." *Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cmty. College*, 77 F.3d 364, 366 (11th Cir. 1996).

There are four basic types of shotgun pleadings: (1) those in which each count adopts the allegations of all preceding counts; (2) those that do not re-allege all preceding counts but are replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action; (3) those that do not separate each cause of action or claim for relief into different counts; and (4) those that assert multiple claims against multiple defendants without specifying which applies to which. *See Weiland*, 792 F.3d at 1321–23 (quotations omitted); *see also Strategic Income Fund, LLC. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 (11th Cir. 2002). "The unifying characteristic of all types of shotgun pleadings is that they fail to . . . give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* at 1323.

B. Failure to State a Claim

At the pleading stage, a complaint must contain "a short and plain statement of the claim showing the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a). Although Rule 8(a) does not require "detailed factual allegations," it does require "more than labels and conclusions . . . a formulaic recitation of the cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To survive a motion to dismiss, "factual allegations must be enough to raise a right to relief above the speculative level" and must be sufficient "to state a claim for relief that is plausible on its face." *Id.* at 555. "A claim has facial

plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In considering a Rule 12(b)(6) motion to dismiss, the court's review is generally "limited to the four corners of the complaint." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009) (quoting *St. George v. Pinellas Cty.*, 285 F.3d 1334, 1337 (11th Cir. 2002)). Courts must review the complaint in the light most favorable to the plaintiff, and must generally accept the plaintiff's well-pleaded facts as true. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1057 (11th Cir. 2007). However, pleadings that "are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Iqbal*, 556 U.S. at 679.

III. DISCUSSION

Friedland argues the Amended Complaint is a shotgun pleading because it fails to attribute specific conduct to either Friedland or the Doe Defendants; instead, the Amended Complaint frequently refers collectively to "Defendants" without distinguishing who is responsible for what conduct. Friedland also moves to dismiss the Amended Complaint for failure to state a claim because the "conclusory nature of the allegations deprives the Court of the factual basis necessary to assess the plausibility of the claims asserted." (DE [14] p. 6). Both arguments hinge, in large part, on the allegations that attempt to link Friedland with the actions of the Doe Defendants.

"Courts have held that, 'at the pleadings stage, plaintiff must allege facts to support his conclusion or belief that defendant is the party that made the calls to plaintiff's cellular

phone.'" *Belleville v. Fla. Ins. Servs., Inc.,* 2024 WL 2342337, at *5 (S.D. Fla. May 23, 2024), *report and recommendation adopted in part, rejected in part on other grounds,* 2024 WL 2794108 (S.D. Fla. May 31, 2024)(quoting *Scruggs v. CHW Grp., Inc.*, 2020 WL 9348208, at *10 (E.D. Va. Nov. 12, 2020) ("The sole factual allegation linking [defendant] to the calls is that the caller identified himself as 'associated with [defendant]' which is insufficient under the *Iqbal* pleading standards")). "A person or entity 'initiates' a telephone call when it takes the steps necessary to physically place a telephone call." *Hossfeld v. American Financial Security Life Ins.,* 544 F. Supp. 3d 1323, 1331 (S.D. Fla. 2021) (quotations omitted). Initiating a phone call does not include calls made by third-party telemarketers and insurance lead generators. *Id.* A defendant may, however, be liable under a common law agency theory for calls made by telemarketers and lead generators. *Id.*

The Amended Complaint alleges an agency relationship between Friedland and the Doe Defendants. Plaintiff asserts that the calls specifically "encouraged Plaintiff to engage the legal services" of Friedland. (DE [12] ¶ 15). Additionally, Plaintiff alleges that the "Doe Defendants provided Plaintiff's number to Defendant Friedland, which proceeded to call Plaintiff offering its legal services." *Id.* ¶ 18. After Plaintiff spoke with Friedland, one of the Doe Defendants made a follow up call asking how the intake process with Friedland went. *Id.* ¶ 19.

These allegations are sufficient to withstand the Motion to Dismiss. The callers identified Friedland and followed up after Plaintiff spoke with Friedland. These allegations suggest that the phone calls were made with the knowledge, direction, and ratification of Friedland. *See Taylor v. Suntuity Solar Ltd. Liability Co.,* 2024 WL 964199, at *6 (M.D.

Fla. Mar. 6, 2024) (motion to dismiss denied where defendant was identified by name during the call and plaintiff received an email confirming that plaintiff spoke with defendant's representative); *Keim v. ADF Midatlantic, LLC,* 2015 WL 11713593, at *8 (S.D. Fla. Nov. 10, 2015) (allegations that Pizza Hut approved or authorized marketers to promote its brand sufficient to withstand motion to dismiss TCPA claim). The Amended Complaint sufficiently alleges the existence of a relationship that could plausibly give rise to liability against Friedland.

Friedland argues the Amended Complaint should be dismissed because it does not identify the phone numbers the calls came from and does not state when the opt-out occurred in relation to the 130 alleged calls. These facts are matters for discovery, not pleading. Plaintiff alleges the calls continued after he requested that they stop. (DE [12] ¶ 22). The regulation requires that a do-not-call request must be honored "within a reasonable time" and not more than 30 days from the date the request is made. 47 C.F.R. § 1200(d)(3). Although Plaintiff does not specify when the do-not-call request was made, it is more than plausible -- given a total of more than 130 calls -- that the calls continued beyond 30 days. This again is a subject of discovery.

Friedland moves to dismiss on the ground that the Amended Complaint fails to plausibly allege that Friedland failed to maintain an internal do-not-call policy in violation of 47 C.F.R. § 64.1200(d). Plaintiff alleges having received more than 130 telephone calls, despite a do-not-call request. Given the scope of the calls, it is reasonable to conclude that there is some problem with Defendants' compliance with the governing regulations. Discovery will permit the parties (and the Court) to ascertain whether the regulations were

in fact violated. For now, the Amended Complaint alleges enough to withstand the Motion to Dismiss.

Friedland moves to dismiss Plaintiff's claims for treble damages and injunctive relief because there are no allegations in the Amended Complaint to support those claims. Treble damages are available if the violations are willful or knowing. 47 U.S.C. § 227(b)(3), (c)(5). Willful and knowing are subject to proof at trial, but at this stage, the number of calls alleged to have been made are enough to survive a motion to dismiss.

To have standing to pursue injunctive relief, a plaintiff must allege facts showing a likelihood of future injury. *Cone Corp. v. Fla. Dep't of Transp.,* 921 F.2d 1190, 1203-04 (11th Cir. 1991); *Zononi v. CHW Group, Inc.,* 2023 WL 2667941, at *5 (S.D. Fla. Mar. 7, 2023) (recommending dismissal where complaint failed to show likelihood of future injury). Plaintiff alleges that he has received more than 130 calls and that the calls are ongoing and continuing. (DE [12] ¶ 54). The Amended Complaint, therefore, alleges facts that plausibly suggest Plaintiff has a reasonable likelihood of future injury. Again, whether Plaintiff is entitled to injunctive relief will depend on the proof adduced at trial. But the Amended Complaint again is sufficient to withstand Friedland's Motion to Dismiss. Accordingly, it is hereby

ORDERED AND ADJUDGED that Friedland's Motion to Dismiss Amended Complaint (DE [14]) is **DENIED.** Friedland shall file an answer to the Amended Complaint by February 25, 2025.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 10th day of February 2025.

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished counsel via CM/ECF