UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KATHRYN NOVAK,

     Plaintiff,

v.   Case No. 6:18-cv-922-Orl-37TBS

BRANDON SIMPSON; DELTA SIGMA
PHI; ████████████████████
████████████████████████████
████████████,

     Defendants.

_____

ORDER

Plaintiff Kathryn Novak initiated this action on June 14, 2018. (Doc. 1 ("**Complaint**").) On *sua sponte* review, the Court finds the Complaint is due to be dismissed for: (1) jurisdictional deficiencies; and (2) as an impermissible shotgun pleading.

First, the Court takes issue with Plaintiff's attempt to invoke diversity jurisdiction under 28 U.S.C. § 1332. Federal courts "have the power to decide only certain types of cases" — including cases brought based on diversity jurisdiction under 28 U.S.C. § 1332. *See Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1260–61 (11th Cir. 2000). Federal courts also have the obligation, in every case, to "zealously insure that jurisdiction exists." *See Smith v. GTE Corp.*, 236 F.3d 1292, 1299 (11th Cir. 2001). Thus, when an action is brought under § 1332, the Court must be sure that the plaintiff has alleged that the citizenship of the parties is completely diverse and the amount in controversy exceeds $75,000.00. *See*

28 U.S.C. § 1332.

Here, Plaintiff represents "[u]pon information and belief" that several of the defendants are citizens of Florida residing in Orlando, Florida. (Doc. 1, ¶¶ 3, 4, 7, 8, 9, 10.) Plaintiff bases that allegation on the fact that the individual defendants are enrolled at the University of Central Florida. (Doc. 1, ¶¶ 3, 4, 7, 8, 9, 10.) But alleging citizenship on "information and belief" will not do. *See Walsh Chriopractic, Ltd. V. StrataCare, Inc.*, 757 F. Supp. 2d 896, 901 (7th Cir. 2010); *see also Payne v. Ivy*, No. 6:18-cv-3-Orl-18KRS, 2018 WL 1155987, at *2 (M.D. Fla. Jan. 22, 2018). Rather, Federal Rule of Civil Procedure 11 imposes a "duty of reasonable precomplaint inquiry not satisfied by rumor or hunch." *Bankers Trust Co. v. Old Republic Ins. Co.*, 959 F.2d 677, 683 (7th Cir. 1992); *see also Comprehensive Care Corp. v. Katzman*, No. 8:09-cv-1375-T-24-TBM, 2010 WL 2293248, at *3 (M.D. Fla. June 7, 2010). So if Plaintiff chooses to replead, the amended complaint must have sufficient factual support for the assertion that the individual defendants are citizens of Florida.

Second, a shotgun complaint "is [one] containing 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." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). Such pleadings impose on the Court the onerous task of sifting out irrelevancies to determine which facts are relevant to which causes of action. *See id.* at 1323. Described as "altogether unacceptable" by the U.S. Court of Appeals for the Eleventh Circuit, when a shotgun pleading is filed in this Court, repleader is required. *Cramer v. Florida*, 117 F.3d 1258, 1263 (11th Cir. 1997); *see also Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1125–28 (11th Cir.

2014). If the Court does not require repleader, then "all is lost." *Johnson Enters. of Jacksonville, Inc. v. FPL Grp., Inc.*, 162 F.3d 1290, 1333 (11th Cir. 1998). Here, as all six causes of action in the Complaint incorporate each of the preceding allegations (*see* Doc. 1, ¶¶ 33, 43, 53, 58, 63, 68), it constitutes an impermissible shotgun pleading and must be dismissed. Again, if Plaintiff chooses to replead, the amended complaint must clearly delineate which factual allegations are relevant to each claim.

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

1.   The Complaint (Doc. 1) is **DISMISSED WITHOUT PREJUDICE**.

2.   On or before Friday, **June 29, 2018**, Plaintiff may refile an amended complaint correcting the deficiencies identified in this Order. Failure to refile may result in this action being closed without further notice.

DONE AND ORDERED in Chambers in Orlando, Florida, on June 15, 2018.

ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record