

DOCKET NO. FST-CV15-5014808-S)	SUPERIOR COURT
)	
WILLIAM A. LOMAS)	JUDICIAL DISTRICT OF
)	STAMFORD/NORWALK
Plaintiff,)	
)	
v.)	AT STAMFORD
)	
PARTNER WEALTH MANAGEMENT, LLC,)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,)	
WILLIAM P. LOFTUS)	
)	NOVEMBER 7, 2016
Defendants.)	

PLAINTIFF’S REQUEST TO REVISE DEFENDANTS’ COUNTERCLAIM

Pursuant to Connecticut Practice Book § 10-35, Plaintiff William A. Lomas (“Lomas”) hereby requests that Defendants Partner Wealth Management, LLC, Kevin G. Burns, James Pratt-Heaney and William P. Loftus (collectively the “Defendants”) revise their Answer and Counterclaim Complaint (the “Counterclaim”) (Dkt. No. 184) dated September 23, 2016.

I. INTRODUCTION

On September 23, 2016, Defendants filed their Counterclaim. It is unwieldy, including 73 pages, 12 causes of action and 210 separately numbered paragraphs. Rather than following the directive expressed in Practice Book Section 10-1 to plead “a plain and concise statement of the material facts on which the pleader relies, but not of the evidence by which they are to be proved, such statement to be divided into paragraphs ... each containing as nearly as may be a separate allegation,” Defendants filed what amounts to an adversarial brief. It includes (i) lengthy argument, (ii) recitations to what Defendants hope the evidence will be, (iii) statements intended to explain or illustrate the evidence, (iv) opinion, (v) speculation, (vi) hypotheticals, (vii) inappropriate references to privileged matters about which Defendants can only speculate,

and (viii) repetition. The Counterclaim contains 154 paragraphs of factual background broken into themed subsections including a “Preliminary Statement,” which itself comprises 20 lengthy numbered paragraphs. The 154 paragraphs, which routinely fail to separate or segregate individual allegations, are then incorporated into each and every one of the 12 legal causes of action that follow, without distinguishing which facts relate to which claims. Certainly, Defendants do not rely upon every fact alleged for each count.

Lomas has a right to fair notice of the material facts that support the individual claims against him, set forth in a properly formatted pleading which permits him to adequately and fairly respond. Defendants should be required to revise and conform their Counterclaim Complaint to the fact-pleading standards required by the Connecticut Rules of Court.

II. REQUESTED REVISIONS

A. Defendants Have Improperly Incorporated All Facts Alleged Into All Counts.

1. FIRST REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

First through Ninth Counts of the Counterclaim.

b. REQUESTED REVISION

Revise the First through Ninth Counts to limit each cause of action to the facts that are pertinent to that cause of action.

c. REASON FOR REVISION

Practice Book § 10-35(3) allows a party to seek the separation of causes of action which may be united in one complaint when they are improperly combined in one count. Defendants’ Counterclaim sounds in 12 separate and distinct causes of action, yet the Complaint contains a

single set of facts, which is incorporated into each and every count. “The proper method for [a party]... to challenge the failure to plead separate counts is by way of a request to revise.” *Davenport v. Quinn*, 53 Conn. App. 282, 291 (1999). “It is well settled that [a] cause of action is that single group of facts which is claimed to have brought about the unlawful injury to the plaintiff and which entitles plaintiff to relief.” *Bridgeport Harbour Place I, LLC v. Ganim*, 131 Conn. App. 99, 176 (2011). Here, Lomas cannot determine which facts support which counts since Defendants have pled a single set of facts and incorporated those facts into each and every one of their twelve causes of action. See Paragraphs 155, 169, 178, 186, 192, 211, 219, 226, 238, 250, 257, and 262 “repeat[ing] and re-alle[ging] the allegations contained” in all prior paragraphs of the Counterclaim. Certainly, the factual allegations supporting a breach of contract (First, Second, Third, Fourth and Sixth Counts) must be different and separate from the allegations supporting fraud (Fifth Count). Likewise, the allegations supporting breach of contract must be different from the allegations supporting breach of fiduciary duty (Seventh and Eighth Counts) and willful and wanton conduct (Ninth Count). Accordingly, the First through Ninth Counts of the Counterclaim should be revised to segregate the factual allegations related to each count or cause of action.

d. RESPONSE

B. Defendants Have Improperly Alleged Facts Based Upon Evidence Subject To The Attorney-Client Privilege And The Allegations Are Merely Speculative.

2. SECOND REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraphs 97, 98, 111 and 198.

Paragraph 97 states,

Unbeknownst to the other Principals, at around this same time, Lomas was working with an attorney in furtherance of his scheme to defraud the other Principals. Now that it was 2014, Lomas believe [sic] if noticed a new withdrawal he could attempt to claim he was entitled to a purchase price based upon the 2013 Management Fee instead of the lower 2012 Management Fee. Lomas communicated with attorney Sam Braunstein for the purpose of and in furtherance of carrying out his scheme to defraud the other partners on:

- a. January 17, 2014;
- b. January 24, 2014;
- c. January 28, 2014;
- d. January 29, 2014;
- e. February 1, 2014;
- f. February 2, 2014;
- g. February 4, 2014;
- h. February 6, 2014;
- i. February 7, 2014;
- j. February 12, 2014; and
- k. March 10, 2014.

Paragraph 98 states,

With the aid of Braunstein, Lomas began to modify his fraudulent scheme. By late 2013, Lomas would have known that the 2014 Management Fee was projected to be even higher than the 2013 Management Fee. Lomas had successfully delayed the implementation of the new compensation structure and believed that he could successfully delay its implementation further, thereby delaying changes to the way PWM was valued. While Lomas' original plan was to withdraw in early 2014, Lomas, in consultation with his attorney, now looked to stay until at least October 2014. Under the 2009 PWM Agreement, a Partner must give at least 90 days' notice of his intent to withdraw. Lomas knew if he could make it until at least October 2014, he could notice his withdrawal for 90 days and have it be effective in January 2015 and thereby attempt to claim a buyout based upon the 2014 Management Fee.

Paragraph 111 states,

Lomas knew full well these issues. In a set of hand-written notes that he took sometime in early 2014 – presumably January, February, or March 2014, when he was having extensive communications with his lawyer Sam Braunstein about his fraudulent scheme to withdraw – he noted that the “FIRST MAN OUT OF PARTNERSHIP [HAS A] HIGHER LIKELIHOOD OF RECEIVE PAYOUT

WITH CURRENT CONDITIONS.” (all capitals in original). Indeed, Lomas feared that “IF SOMEONE LEAVES EARLIER [HE’D BE] HAVING TO STAY ON AND PAY THEM OUT.” (all capitals in original). Lomas also made clear that he had no desire to spend any more time with “JPH, KB, [or] WPL.” And Lomas also knew that a “POTENTIAL OPERATING AGREEMENT CHANGE” was coming. (all capitals in original).

Paragraph 198 states,

Working with his lawyer, Sam Braunstein, Lomas adjusted his scheme between January and March of 2014. The two had numerous communications between this time concerning Lomas’ intention to withdraw.

b. REQUESTED REVISION

Delete Paragraphs 97, 98, 111, and 198, including all purported facts, inferences or references to documents, which in any way relate to the attorney-client relationship.

c. REASON FOR REVISION

Each of these paragraphs is premised upon confidential attorney-client meetings/communications between Lomas and his counsel. These completely inappropriate and misguided allegations constitute speculative conclusions concerning the basic information described by Lomas in a privilege log produced in discovery. That log is intended only to provide notice of what has been withheld. It is not substantive evidence, and it is improper to use it as such in a counterclaim.

A request to revise is the proper method of seeking removal of “otherwise improper allegations.” *Royce v. Town of Westport*, 183 Conn. 177, 180 (1981). Although the rules of practice do not require a party to provide detailed factual allegations, they do require that a party plead something more than conclusory allegations that invite speculation. *Bridgeport Harbour Place I, L.L.C. v. Ganim*, 111 Conn.App. 197, 209, 958 A.2d 210 (2008). “A pleading is defective in alleging a conclusion without facts to support it.” *Smith v. Furness*, 117 Conn. 97,

99, 166 A.2d 759 (1933). Here, Paragraphs 97, 98, 111 and 198 contain no factual allegations. They contain speculation and legal conclusions based upon the perceived content of privileged materials – matters derived solely and exclusively from Lomas’ privilege log produced during discovery. Neither the documents identified in the privilege log, nor the privilege log itself, are evidence in this case. Any inferences drawn from them necessarily take aim at the attorney-client privilege and the content that the privilege is designed to protect. A privilege log is merely a tool to facilitate discovery, not an independent piece of evidence that proves or disproves an alleged fact. *See Old Republic Ins. Co. v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 2006 WL 3782994 (N.D. Ill. 2006) (stating “the privilege log itself is not evidence; rather, the document named in the privilege log is the evidence.”) By making these speculative allegations, Defendants are attempting to end-run the attorney-client privilege by forcing Lomas to admit or deny allegations and thereby reveal the content of those communications. Defendants’ allegation in Paragraph 111 expressly states, “presumably.” But presumptions, added for the sole purpose of bolstering Defendants’ narrative, are not appropriate in a complaint or counterclaim.

Accordingly, Paragraphs 97, 98, 111, and 198 are “unnecessary... scandalous... or otherwise improper allegations,” Practice Book § 10-35(2), because they are subject to the attorney-client privilege, not supported by facts, and improperly plead evidence. They should be deleted.

d. RESPONSE

C. Defendants Have Improperly Pled Evidence – Specifically, Self-Serving Portions of Their Own Deposition Testimony.

3. THIRD REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraphs 84, 136, 137, 138, 139, 141, 142, 143 and 145.

b. REQUESTED REVISION

Delete all references to deposition testimony, most of which (excepting only the allegation in paragraph 136) is nothing but self-serving testimony given by Defendants themselves. Alternatively, revise these paragraphs to provide allegations of fact.

c. REASON FOR REVISION

Practice Book § 10-1 requires fact pleading – that is “a plain and concise statement of the material facts on which the pleader relies, **but not the evidence by which they are to be proved...**” (emphasis added.) These allegations fail to plead material facts. Inclusion of evidence in a complaint is a violation of our rules of practice. *Fort Trumbull Conservancy, LLC v. Alves*, 286 Conn. 264, 277 n. 13, 943 A.2d 420 (2008). Here, Defendants should delete Paragraphs 84, 136, 137, 138, 139, 141, 142, 143 and 145 and revise them, if at all, to state the material facts upon which Defendants rely.

d. RESPONSE

D. Defendants Have Improperly Alleged Unnecessary, Repetitious, Scandalous, Impertinent, Immaterial and Otherwise Improper Allegations Including Attorney Opinion and Hypotheticals.

4. FOURTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Preliminary Statement of the Counterclaim, contained in paragraphs 13 through 32.

b. REQUESTED REVISION

Delete the so-called “Preliminary Statement” -- Paragraphs 13 through 32. These 20 paragraphs comprise a lengthy narrative that might be appropriate for a motion or brief, but not a complaint or a counterclaim. The allegations are stated in a conclusory manner and include unnecessary, repetitious, scandalous, impertinent, immaterial and other improper allegations including the opinions of counsel, narrative statements, argument, hypotheticals and Defendants’ characterization of the facts. Further, each of the statements made in the preliminary statement are repeated elsewhere in the paragraphs that follow. It is Defendants’ opening statement at trial, not a plain and concise statement of material facts. The following improper allegations are exemplary of the entire Preliminary Statement:

Paragraph 13 states,

While the Business had experienced enormous success over the past eight years, that success has been in spite of the obstacles and challenges created by Lomas. Although Lomas had never been the strongest performer, in the Business’ first few years his work was adequate. But over time, Lomas’ performance began to decline. Over the course of 2013 and 2014, he had not only substantially underperformed, but was actively harming the Business by, among other things...

Paragraph 16 states,

But an equal distribution is only fair and equitable if everyone contributes equally.

Paragraph 17 states,

When it became apparent to Lomas that his free-riding would be much more difficult under a system that linked compensation to performance, he informed the other Principals in late February 2013 that he wanted to withdraw from the Business.

Paragraph 19 states,

Lomas knew he wanted more money than he’d been offered and he knew that he had to persuade the other Partners – who were all excited that he was leaving – to let him stay. And so he hatched a scheme.

Paragraph 22 states,

Lomas knew that as soon as the Partners fixed the broken compensation system, the next step in the process was to change the way PWM was valued to match the changes in the compensation structure... They entertained Lomas' delays because they sought to build consensus – they thought they were dealing with a fellow Partner who was acting in good faith.

Paragraph 26 states,

Lomas misled them and told them “I don't know” when he knew full well that he intended to withdraw as he'd been planning for months, if not longer.

Paragraph 28 states,

And so in or around May 2014 – after months of stonewalling and delays by Lomas – the Principals unanimously agreed to change the compensation structure and adopted the 2014 Amendment.

Paragraph 31 states,

The remaining Principals are seeking to protect the Business they have worked hard to build and grow and which Lomas has damaged. The 2015 PWM Agreement was duly voted on while Lomas was still a full Member of PWM. PWM and the Remaining Principals seek a declaration that the 2015 PWM Agreement controls the valuation of Lomas' interest in PWM and they seek a declaration that none of the provisions of the 2009 PWM Agreement affect the valuation of a Member's interest in the case of a voluntary withdrawal. In addition, Counterclaim Plaintiffs seek a set off and damages against any amount to be paid to Lomas under the 2015 PWM Agreement (or in addition to or alternatively under the 2009 PWM Agreement) by virtue of: (i) his breach of the implied covenant of good faith and fair dealing; (ii) his negligent performance of his duties; (iii) his breach of his obligation to use any and all good faith efforts in connection with the transitioning of his clients; (iv) the failure to devote his full time and energy to the Business in breach of the 2009 PWM Agreement; (v) for the fraud he perpetrated against the other Principals when he falsely promised them he would work to grow the business; (vi) his breach of the non-solicitation covenants; (vii) his breaches of his fiduciary duties to PWM; (viii) his breach of his fiduciary duties to the Remaining Principals; and (ix) for punitive damages for his willful and wanton misconduct.

Paragraph 32 states,

Counterclaim Plaintiffs also seek their costs and attorneys' fees in connection with the foregoing, to which they are contractually entitled to.

c. REASON FOR REVISION

A request to revise is the proper method of seeking removal of “otherwise improper allegations.” *Royce v. Town of Westport*, 183 Conn. 177, 180 (1981). Here, the Preliminary Statement is simply an argumentative narrative that is repetitious of what follows.¹

Argumentative pleadings are inappropriate. *See McDermott Rd., LLC v. Hammonasset Const., LLC*, 2014 WL 5286598, at *3 (Conn. Super. Sept. 17, 2014). Further, the preliminary statement contains few if any specific factual allegations. As demonstrated by the paragraphs enumerated above, it merely sets forth Defendants' self-serving speculation, narration, summation and/or

¹ To demonstrate a few examples of the unnecessarily repetitive nature of Defendants' Counterclaim:

Compare Paragraph 13 (alleging that Lomas “was actively harming the Business, by among other things, failing to develop himself as an advisor; by his frequent absenteeism; by his failure to originate any meaningful Business since at least 2013... causing unnecessary delays in the implementation of wealth management strategies... delaying and preventing necessary reform to PWM's compensation valuation structure...”) *with* Paragraph 61 (“Lomas' failure to develop himself and failure to keep abreast of new products”); Paragraph 162 (“Lomas failed to develop himself as an adviser”); Paragraph 166 (“by his failure to develop himself as an adviser...by his delays in connection with the reformation of the compensation and valuation structure...”); Paragraph 175 (“Lomas failed to develop himself as an advisor...”); Paragraph 86 (“Lomas...resumed his familiar pattern of frequent absenteeism”); Paragraph 55 (“Lomas scarcely originated any Business”); Paragraph 58 (“scarcely originated business”); Paragraph 61 (“[Lomas] could and would delay the adoption of new investment strategies.”)

Compare Paragraph 17 stating Lomas was “free-riding” *with* Paragraphs 65 (“one of the Principals is free-riding off the hard work of the others”); Paragraph 128 (“Lomas had been free-riding”); Paragraph 234 (“Lomas schemed to keep both keep collecting his generous salary while free-riding...”).

Compare Paragraph 19 (“[Lomas] hatched a scheme”) *with* Paragraph 80 (“Lomas hatched a scheme”); Paragraph 196 (“And so he hatched a scheme.”).

characterization of the facts, together with legal conclusions, which does not comply with the requirement of Practice Book § 10-1, requiring fact pleading. Thus, the Preliminary Statement sets forth “unnecessary... scandalous, impertinent, immaterial or otherwise improper allegations,” which should be revised. Practice Book § 10-35(2).

d. RESPONSE

5. FIFTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraphs 41 through 43.

Paragraph 41 states:

One way to think about the difference between the Principals’ compensation and the valuation of a Member’s interest in PWM is the time horizon. Compensation in a given year is based upon how well LLBH and an individual Partner’s book of business does in that year in terms of fees. Valuation is based upon looking at a Partner’s book’s past fee generation and then projecting that into the future.

Paragraph 42 states:

Consider compensation first. If the Management Fee in a given year is \$1 million and if the Management Fee is split equally without regard to performance, then all four Partners would receive \$250,000 in that year. If compensation is based, in whole or in part, upon performance, then the Partners will divide up that \$1 million Management Fee according to their relative performance.

Paragraph 43 states:

Next consider valuation. The economic value of a Partner’s interest in PWM is not a function of equity – it is a function of the fees that his book of business has generated and is expected to generate in the future. When, for example, a Member withdraws, the withdrawing Member is selling and the remaining Members are buying – not equity – but cash flow, *i.e.* a Member’s book of business. The expectation is that a departing partner’s book of business will continue to produce fees generated in a particular year, but the expected future value his or her book of business will generate for LLBH/PWM. And so a multiple needs to be applied.

b. REQUESTED REVISION

Delete Paragraphs 41 through 43. These paragraphs currently allege hypotheticals, defense counsel’s argument, illustrative comments and opinion – not facts.

c. REASON FOR REVISION

A request to revise is the proper method of seeking removal of “otherwise improper allegations.” *Royce v. Town of Westport*, 183 Conn. 177, 180 (1981). Here, Paragraphs 41 through 43 do not contain any allegations of fact. Practice Book § 10-1 requires that a pleading contain “a plain and concise statement of the material facts on which the pleader relies...” Likewise, Practice Book § 10-35 permits Lomas to seek the deletion of any “unnecessary... impertinent, immaterial or otherwise improper allegations...” Paragraphs 41 through 43 are improper self-serving arguments, opinions and illustrations in the form of hypotheticals. They should be deleted entirely.

d. RESPONSE

6. SIXTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

That part of Paragraph 48 which states: “And indeed, it was the farthest thing from anyone’s mind.”

b. REQUESTED REVISION

Delete the cited portion of paragraph 48.

c. REASON FOR REVISION

A request to revise is the proper method of seeking removal of “otherwise improper allegations.” *Royce v. Town of Westport*, 183 Conn. 177, 180 (1981). Here, Paragraph 48 contains a statement of speculation and opinion rather than a factual allegation. Practice Book § 10-1 requires that a pleading contain “a plain and concise statement of the material facts on which the pleader relies...” Likewise, Practice Book § 10-35 permits Lomas to seek the deletion of any “unnecessary... impertinent, immaterial or otherwise improper allegations...” The portion of Paragraph 48 cited above is not an allegation of fact and Lomas cannot respond to a claim of what was in another’s mind just as Defendants cannot credibly claim what was in the mind of another. Defendants should delete the sentence in its entirety.

d. RESPONSE

7. SEVENTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 50, which states:

For better or worse, no one understood the provision mentioning the 5.0x multiple as having any bearing on the valuation of a Partner’s interest who was voluntarily withdrawing.

b. REQUESTED REVISION

Delete Paragraph 50.

c. REASON FOR REVISION

A request to revise is the proper method of seeking removal of “otherwise improper allegations.” *Royce v. Town of Westport*, 183 Conn. 177, 180 (1981). The use of evidence outside the four corners of a contract is forbidden to vary or contradict the written terms of an integrated contract because it is legally irrelevant. *Schilberg Integrated Metals Corp. v. Cont’l*

Cas. Co., 263 Conn. 245, 277, 819 A.2d 773, 794 (2003). Here, Paragraph 50 contains a statement of opinion and/or Defendants' speculation concerning what was in the minds of the partners in PWM. First, Lomas cannot respond to a claim of what was in another's mind just as Defendants cannot credibly claim what was in the mind of all of the partners. Further, what was in their minds is irrelevant, since what controls is not what they thought but what the contract language actually said. The "provision mentioning the 5.0x multiple" is a provision of a contract which speaks for itself. Practice Book § 10-1 requires that a pleading contain "a plain and concise statement of the material facts on which the pleader relies..." Likewise, Practice Book § 10-35 permits Lomas to seek the deletion of any "unnecessary... impertinent, immaterial or otherwise improper allegation..." Paragraph 50 cited above contains an improper self-serving opinion and/or speculative statement rather than an allegation of fact. Defendants should delete the allegation entirely.

d. RESPONSE

8. EIGHTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 51, which states,

When the Principals left Merrill Lynch and struck out on their own on October 17, 2008, the financial world was in chaos: Lehman Brothers had filed for bankruptcy on September 15, 2008, which remains the largest bankruptcy filing in U.S. history; Bear Stearns had collapsed and had been sold in a fire-sale to JPMorgan Chase in March 2008; by the fall of 2008 the credit markets had completely seized up; and between August 15, 2008 and October 17, 2008 the Dow Jones Industrial Average fell from 11659.90 to 8852.22. Against this backdrop, the Principals were scrambling to keep their clients, set up a business, and then grow it.

b. REQUESTED REVISION

Delete Paragraph 51.

c. REASON FOR REVISION

A request to revise is the proper method of seeking “the deletion of any unnecessary... impertinent, immaterial or otherwise improper allegation...” Practice Book § 10-35. Here, Paragraph 51 contains unnecessary, impertinent and immaterial background information about the time period during which Lomas and the Defendants formed PWM. This background information is irrelevant to the issues presented in Defendants’ counterclaim and does not adhere to the requirement that Defendants file a pleading containing a “short and concise statement of material facts...” Practice Book § 10-1. Rather, Paragraph 51 is a self-serving statement of Defendants’ opinion about the time period when the Principals left Merrill Lynch. Defendants should delete the paragraph entirely.

d. RESPONSE

9. NINTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 55, which states:

Although Lomas scarcely originated any Business, by virtue of his role in leading the planning process, Lomas was able to ingratiate himself into the lead adviser role for several accounts solely by virtue of the frequency of contact he had with the client during the planning process – notwithstanding the fact that the client had been originated by one of the other Principals.

b. REQUESTED REVISION

Revise Paragraph 55 to state factual allegations in a short and concise manner without the inclusion of opinion and/or unnecessarily scandalous language.

c. REASON FOR REVISION

A request to revise is the proper method of seeking “the deletion of any unnecessary... scandalous... otherwise improper allegations...” Practice Book § 10-35. Here, Paragraph 55 contains unnecessarily scandalous characterizations of the factual allegations including the words “scarcely” and “ingratiating.” These characterizations go beyond fact pleading, are inflammatory, and do not adhere to the requirement that Defendants file a pleading containing a “short and concise statement of material facts...” Practice Book § 10-1. Rather, Paragraph 55 is a self-serving statement of Defendants’ opinion about Lomas’ performance without supporting the characterization with any factual allegation. Additionally, the phrase “scarcely originated any Business” is ambiguous as Defendants have failed to quantify Lomas’ business origination. The allegation is also ambiguous because Defendants have not identified the clients referenced in this allegation and thus Lomas cannot identify whether the clients at issue were or were not originated by him or one of the other Principals. Defendants should revise the paragraph to state unambiguous factual allegations which adequately put Lomas on notice of Defendants’ claims, and delete the unnecessary inflammatory characterizations or delete the paragraph entirely.

d. RESPONSE

10. TENTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 74.

b. REQUESTED REVISION

Delete the portion of Paragraph 74 which states, “Although the 5.0x multiple mentioned in the 2009 PWM Agreement has no bearing on the valuation of the value of a Principal’s

interest who is voluntarily withdrawing, the offer was based on that multiple and contemplated an upfront lump sum payment rather than installment payments” to state a factual allegation in a short and concise manner without the inclusion of opinion. Additionally, Defendants should cite to the provision of the 2009 PWM Agreement at issue in this allegation and further, Defendants’ characterization of the Agreement is improper because the contract speaks for itself.

c. REASON FOR REVISION

A request to revise is the proper method of seeking “the deletion of any unnecessary... scandalous... otherwise improper allegations...” Practice Book § 10-35. Here, Paragraph 74 contains Defendants’ interpretation regarding whether the 2009 PWM Agreement was binding upon them in 2013. This statement is argumentative and thus unnecessary, scandalous, impertinent and immaterial to Defendants’ claims. It is additionally unnecessary, impertinent, and immaterial to Defendants’ claims because the contemplated buy out of Lomas’ interest in 2013 is not at issue in Defendants’ Counterclaim. Thus, this sentence of Paragraph 74 goes beyond fact pleading and does not adhere to the requirement that Defendants file a pleading containing a “short and concise statement of material facts...” Practice Book § 10-1. Rather, it is a self-serving statement of Defendants’ opinion about their obligations to repurchase Lomas’ interest in PWM in 2013 and of the meaning of the contract language at issue in this case.²

² In contrast to Defendants’ self-serving attempt to revise the 2009 PWM Agreement, it expressly applies to the valuation of the value of a Principal’s interest that is voluntarily withdrawing. Sections 8.2 through 8.4 of the Agreement relates to “Family Transfers”, “Death” and “Disability”. Section 8.5 then states,

Withdrawal. If any Members withdraws from the Company for any reason *except* as provided in Sections 8.2 through 8.4, the Company or the remaining Members shall be obligated to purchase from the Member, and the Member shall be obligated to sell to the Company or the remaining Members, all of his Interests in

d. RESPONSE

11. ELEVENTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 78.

b. REQUESTED REVISION

Delete the portion of Paragraph 78 which states that the other Principals could have terminated Lomas for cause.

c. REASON FOR REVISION

A request to revise is the proper method of seeking “the deletion of any unnecessary... scandalous, impertinent, immaterial or otherwise improper allegations...” Practice Book § 10-35. Here, Defendants state their opinion that Lomas “certainly could have been terminated...for cause”. Lomas was not terminated for cause and it is merely Defendants’ opinion that he could have been terminated on that basis. As such, the sentence is not an allegation of a material fact but rather improper opinion and/or speculation. It is irrelevant and immaterial to this action whether Lomas could have been terminated for cause, just as it is irrelevant in any litigation what might have or could have happened, but did not. Thus, this sentence of Paragraph 78 goes beyond fact pleading and does not adhere to the requirement that

the Company at the price established in accordance with the provisions of Section 8.7(b).

Thus, the 5.0x multiple described in §§ 8.7 and 8.8 of the 2009 PWM Agreement has direct bearing on the valuation of the value of a withdrawing partner’s Interests for all reasons except family transfers, death or disability.

Defendants file a pleading containing a “short and concise statement of material facts...”

Practice Book § 10-1. It should be deleted.

d. RESPONSE

12. TWELFTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 89.

b. REQUESTED REVISION

Delete the portion of Paragraph 89 which states, “valuation and compensation are two sides of the same coin.”

c. REASON FOR REVISION

A request to revise is the proper method of seeking “the deletion of any unnecessary... or otherwise improper allegations...” Practice Book § 10-35. Here, the colloquial phrase “two sides of the same coin” is informal, vague as to meaning and not the “plain and concise statement of the material facts” required by Practice Book § 10-1. “Filing a request to revise... is especially useful where a... count is legally sufficient as a whole, but also includes superfluous language or vague allegations.” *A.J. Tonon Dedicated Logistics, LLC v. Bozzuto's, Inc.*, No. CV136043396S, 2014 WL 4290619, at *5 (Conn. Super. Ct. July 21, 2014) (“[o]ne of the purposes for seeking a request to revise is to set up the complaint in order to file a motion to strike testing the legal sufficiency of the allegations of the complaint”). Defendants should delete this language.

d. RESPONSE

13. THIRTEENTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraphs 109 through 111.

b. REQUESTED REVISION

Delete Paragraphs 109 through 111. These paragraphs allege hypotheticals and/or assumptions, including argument and defense counsel's opinion.

Paragraph 109 states in pertinent part,

Under the collectively mistaken view of the Principals, a buy-out would work as follows: assume that the Management Fee was \$4 million and that each Principal's set of clients was responsible for generating \$1 million per annum. So if the for the sake of argument a 5.0x multiple is used, then a withdrawing principal would be entitled to \$5 million.

Paragraph 110 states in pertinent part,

If the Management Fee in a given year is \$4 million, but a departing Principal's contribution to the number is only \$500,000, then the remaining Principals would need to pay \$9.6 million for a \$500,000 book. This would not only be grossly inequitable, but would bankrupt LLBH/PWM.... But at least in his mind, his scheme only required that he delay the other partners until at least mid-October 2014 – when he could notice a withdrawal that would become effective in 2015 and get the benefit of the other Principals' hard work to increase net income over 38% over the prior year.

Paragraph 111 states,

Lomas knew full well these issues. In a set of hand-written notes that he took sometime in early 2014 – presumably in January, February, or March 2014...

c. REASON FOR REVISION

A request to revise is the proper method of seeking removal of “otherwise improper allegations.” *Royce v. Town of Westport*, 183 Conn. 177, 180 (1981). Here, the cited portions of Paragraphs 109 through 111 do not contain any allegations of fact. They contain illustrations,

explanations and arguments of counsel. Practice Book § 10-1 requires that a pleading contain “a plain and concise statement of the material facts on which the pleader relies...” Likewise, Practice Book § 10-35 permits Lomas to seek the deletion of any “unnecessary... impertinent, immaterial or otherwise improper allegations...” Paragraphs 109 through 111 are improper self-serving opinions about what Defendants presume, what Defendants think Lomas thought in his own mind (something they cannot possibly know), defense counsel’s hypotheticals about how the buy-out would work, what is or isn’t “grossly inequitable”, and what might hypothetically bankrupt LLBH/PWM. These paragraphs must be deleted.

d. RESPONSE

14. FOURTEENTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

The portion of Paragraph 123 which states, “Indeed, no sane or rational person would buy 85 cents for a \$1.00. (Worse, as previously described, the transaction is even more irrational since after the Pre-Tax Post Tax Issue is factored in, it would amount to asking someone to buy 85 cents for \$1.92.)” be revised.

b. REQUESTED REVISION

Delete the quoted language from Paragraph 123.

c. REASON FOR REVISION

A request to revise is the proper method of seeking removal of “otherwise improper allegations.” *Royce v. Town of Westport*, 183 Conn. 177, 180 (1981). Here, the cited portion of Paragraph 123 does not contain any allegations of fact. It is a hypothetical including argument and defense counsel’s opinion about what is and is not sane and/or rational, and what a sane or

rational person would not do. Lomas cannot respond to this. Practice Book § 10-1 requires that a pleading contain “a plain and concise statement of the material facts on which the pleader relies...” Likewise, Practice Book § 10-35 permits Lomas to seek the deletion of any “unnecessary... impertinent, immaterial or otherwise improper allegations...” Defendants and/or defense counsel’s opinion about what is sane and/or rational or what a sane or rational person would or would not do has no bearing on this case and does not allege any fact upon which Defendants rely. The cited portion of Paragraph 123 is merely speculative and argumentative and is thus unnecessary, impertinent, immaterial and otherwise improper. It should be deleted.

d. RESPONSE

15. FIFTEENTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

The portion of Paragraph 125 which states, “That is why, according to everyone present at the meeting, upon hearing Focus’ position regarding Pratt-Heaney, Lomas’ face turned white” be revised.

b. REQUESTED REVISION

Delete this statement in Paragraph 125.

c. REASON FOR REVISION

The statement “his face turned white” is a colloquial expression designed to indicate surprise or concern. It is inappropriate for a pleading such as a counterclaim. Lomas is Caucasian. His face is white. It did not turn white because of anything he learned at a meeting. Further, whether anyone, let alone everyone, said his face turned what is irrelevant to the issues

in this case. A request to revise is the proper method of seeking removal of “otherwise improper allegations.” *Royce v. Town of Westport*, 183 Conn. 177, 180 (1981). Here, the cited portion of Paragraph 125 does not contain any allegation of fact. It is a colloquial phrase that is informal, vague as to meaning and not the “plain and concise statement of the material facts” required by Practice Book § 10-1. “Filing a request to revise... is especially useful where a... count is legally sufficient as a whole, but also includes superfluous language or vague allegations.” *A.J. Tonon Dedicated Logistics, LLC v. Bozzuto's, Inc.*, No. CV136043396S, 2014 WL 4290619, at *5 (Conn. Super. Ct. July 21, 2014). Likewise, Practice Book § 10-35 permits Lomas to seek the deletion of any “unnecessary... impertinent, immaterial or otherwise improper allegations...” This improper language in Paragraph 125 should be deleted.

d. RESPONSE

16. SIXTEENTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 134.

b. REQUESTED REVISION

Delete Paragraph 134. Paragraph 134 states:

To slightly oversimplify, under this structure, the Principals created a floor – the Base Interest – that would be valued as a percentage of each Principal’s equity multiplied by 4.0. Any increase over the Base Interest as a result of a Principal’s acquisition of new clients or the growth of assets by existing clients – the Performance Interest – would be valued at a multiple of 6.0.

c. REASON FOR REVISION

Defendants and/or defense counsel’s interpretation of the contractual provision expressly stated in the previous paragraph is improper because the contract speaks for itself. Paragraph

134 is argumentative and is thus unnecessary, impertinent, immaterial and otherwise improper. A request to revise is the proper method of seeking removal of “otherwise improper allegations.” *Royce v. Town of Westport*, 183 Conn. 177, 180 (1981). Here, Paragraph 134 does not contain any allegations of fact. Practice Book § 10-1 requires that a pleading contain “a plain and concise statement of the material facts on which the pleader relies...” Likewise, Practice Book § 10-35 permits Lomas to seek the deletion of any “unnecessary... impertinent, immaterial or otherwise improper allegations...” Paragraph 134 should be deleted.

d. RESPONSE

17. SEVENTEENTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 150.

b. REQUESTED REVISION

Delete Paragraph 150. Paragraph 150 alleges what Defendants believe Lomas’ goals are and speculates about what may or may not happen in the future. The paragraph states, “Lomas’ goal appears to be to keep various relationship warm, while he waits for his non-compete to expire.”

c. REASON FOR REVISION

A request to revise is the proper method of seeking removal of “otherwise improper allegations.” *Royce v. Town of Westport*, 183 Conn. 177, 180 (1981). Here, Paragraph 150 does not contain any allegations of fact. Practice Book § 10-1 requires that a pleading contain “a plain and concise statement of the material facts on which the pleader relies...” Likewise, Practice Book § 10-35 permits Lomas to seek the deletion of any “unnecessary... impertinent, immaterial

or otherwise improper allegations...” Defendants can only speculate about what Lomas’ goals may be, and his goals are irrelevant. Unaccomplished and unfulfilled goals are not actionable. Allegations of fact related to specific acts are actionable. Paragraph 150 is argumentative and is thus unnecessary, impertinent, immaterial and otherwise improper.

d. RESPONSE

18. EIGHTEENTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 196.

b. REQUESTED REVISION

Delete Paragraph 196, which states,

And the other Principals could have terminated Lomas for cause for his non-performance under Section 8.10 of the 2009 PWM Agreement. Lomas knew he wanted more money than he’d been offered and he knew that he had to persuade the other Partners – who were all excited that he was leaving – to let him stay. And so he hatched a scheme.... But when Lomas made these representations, he knew they weren’t true. He knew he had no intention of originating new business. And he had no intention of letting FA Insight’s recommendations be implemented.

c. REASON FOR REVISION

A request to revise is the proper method of seeking “the deletion of any unnecessary... scandalous, impertinent, immaterial or otherwise improper allegations...” Practice Book § 10-35. Here, Defendants state their opinion that Lomas could have been terminated for cause. But Lomas was not terminated for cause. As such, the sentence is not an allegation of a material fact but rather improper opinion and/or speculation. Additionally, it is irrelevant and immaterial to this case whether Lomas could have been terminated for cause – the only fact that matters is that

Lomas was not terminated for cause. Additionally, Defendants impermissibly speculate about what Lomas knew and what his intentions were. Thus, the cited portion of Paragraph 196 goes beyond fact pleading and does not adhere to the requirement that Defendants file a pleading containing a “short and concise statement of material facts...” Practice Book § 10-1.

Accordingly, Paragraph 196 should be deleted.

d. RESPONSE

E. Defendants Have Failed To Disclose The Grounds For Their Claims And Should Revise The Allegations To Include A Fuller And More Particular Statement.

19. NINETEENTH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 215.

b. REQUESTED REVISION

Revise Paragraph 215 by identifying facts concerning how Lomas “has been and continues to initiate contact with clients of LLBH/PWM” as well as the names of all such clients.

c. REASON FOR REVISION

Pursuant to Practice Book § 10-35(1) a request to revise is the appropriate method for “obtain[ing] (1) a more particular statement of the allegations of an adverse party’s pleading...” In addition, Practice Book § 10-1 provides that the complaint “shall contain a plain and concise statement of the material facts on which the pleader relies,” and if it does not, “the court may order a fuller and more particular statement.” As the Connecticut Supreme Court has stated, “[t]he purpose of a complaint is to limit the issues at trial, and it is calculated to prevent surprise.” *Farrell v. St. Vincent’s Hospital*, 203 Conn. 554, 557 (1987). The complaint must

provide adequate notice of the facts to be claimed and the issues to be tried. *See, Tedesco v. Stamford*, 215 Conn. 450, 459 (1990); *see also, New Milford Savings Bank v. Roina*, 38 Conn. App. 240, 244 (1995). Here, a chief claim by Defendants is that Lomas has been and continues to initiate contact with clients of LLBH/PWM. However, this is a conclusory statement, which does not provide Lomas adequate notice of the facts supporting Defendants’ contention. Defendants should be required to explain how they believe Lomas has initiated contact with clients, whom he initiated such contact with, and on what dates the contact occurred.

d. RESPONSE

20. TWENTIETH REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 216.

b. REQUESTED REVISION

Revise Paragraph 216 to identify facts concerning how Lomas “initiated” the action described.

c. REASON FOR REVISION

Pursuant to Practice Book § 10-35(1) a request to revise is the appropriate method for “obtain[ing] (1) a more particular statement of the allegations of an adverse party’s pleading...” In addition, Practice Book § 10-1 provides that the complaint “shall contain a plain and concise statement of the material facts on which the pleader relies,” and if it does not, “the court may order a fuller and more particular statement.” As the Connecticut Supreme Court has stated, “[t]he purpose of a complaint is to limit the issues at trial, and it is calculated to prevent surprise.” *Farrell v. St. Vincent’s Hospital*, 203 Conn. 554, 557 (1987). The complaint must

provide adequate notice of the facts to be claimed and the issues to be tried. *See, Tedesco v. Stamford*, 215 Conn. 450, 459 (1990); *see also, New Milford Savings Bank v. Roina*, 38 Conn. App. 240, 244 (1995). Here, a chief claim by Defendants is that Lomas acted in violation of his non-solicitation covenant when he purportedly “undertook action on behalf” of Confidential Client No. 3³. However, the allegation is a conclusory statement, which does not provide Lomas adequate notice of the facts supporting Defendants’ contention. Defendants should be required to explain how Lomas initiated the contact with Confidential Client No. 3, when he initiated such contact, and what “advice and aid” he specifically provided in connection with a financial matter. While Defendants are not required to plead their evidence, without a fuller and more particular statement regarding Lomas’ action on behalf of Confidential Client No. 3, Lomas is not adequately on notice of the claim and cannot admit or deny the allegation.

d. RESPONSE

³ Both the 2009 and 2015 PWM Agreement contain materially identical non-solicitation covenants. The language of both agreements define “solicit” as:

...the initiation, whether directly or indirectly, of any contact or communication of any kind whatsoever, for the express or implicit purpose of inviting, encouraging or requesting a Client to: (i) transfer assets to any person or entity other than the Company; (ii) obtain investment advisory or similar related services from any person or entity other than the Company; or (iii) otherwise discontinue, change or reduce such Client’s existing business relationship with the Company.

The term solicit also includes,

...any mailing, e-mail message, or other verbal or written communication that is sent directly or indirectly to one or more Clients informing them: (i) that the Company is no longer providing any or all services, (ii) that the Company plans to no longer provide any or all services, (iii) that the Member is or will be no longer associated with the Company, or (iv) how to contact the Member in the event that the Member is no longer associated with the Company.

21. TWENTY FIRST REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraph 142 and 188.

b. REQUESTED REVISION

Revise Paragraphs 142 and 188 by identifying facts concerning which “eight clients” inquired whether Lomas was ill or sick as described in Paragraph 142 and 188.

c. REASON FOR REVISION

Pursuant to Practice Book § 10-35(1) a request to revise is the appropriate method for “obtain[ing] (1) a more particular statement of the allegations of an adverse party’s pleading...” In addition, Practice Book § 10-1 provides that the complaint “shall contain a plain and concise statement of the material facts on which the pleader relies,” and if it does not, “the court may order a fuller and more particular statement.” As the Connecticut Supreme Court has stated, “[t]he purpose of a complaint is to limit the issues at trial, and it is calculated to prevent surprise.” *Farrell v. St. Vincent’s Hospital*, 203 Conn. 554, 557 (1987). The complaint must provide adequate notice of the facts to be claimed and the issues to be tried. *See, Tedesco v. Stamford*, 215 Conn. 450, 459 (1990); *see also, New Milford Savings Bank v. Roina*, 38 Conn. App. 240, 244 (1995). Here, a chief claim by Defendants is that Lomas failed to employ good faith efforts in connection with transitioning clients. However, the allegation is a conclusory statement, which does not provide Lomas adequate notice of the facts supporting Defendants’ contention. Defendants should be required to detail Lomas’ specific failures with regard to the transition and to identify the “eight clients” who “inquired whether he was ill or sick” based upon Lomas’ mood during transition meetings. While Defendants are not required to plead their

evidence, without a fuller and more particular statement regarding Lomas' actions during transition meetings, Lomas is not adequately on notice of the claim and cannot admit or deny the allegation.

d. RESPONSE

22. TWENTY SECOND REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

The Second Count of the Counterclaim.

b. REQUESTED REVISION

Revise the Second Count by separating the breach of contract allegations from allegations of negligent performance of duties. The subtitle under the Second Count (p. 63) indicates that the Second Count includes a claim for negligent performance of duties. If so, that claim must be stated separately together with the allegations of fact that support such a cause of action.

c. REASON FOR REVISION

Pursuant to Practice Book § 10-35(3) a request to revise is the appropriate method for obtaining “separation of causes of action which may be united in one complaint when they are improperly combined in one count....” Here, Defendants appear to have combined two causes of action in a single cause of action. Defendants should separate their breach of contract count from their negligence count if one is being alleged.

d. RESPONSE

F. Defendants Have Improperly Asserted Multiple Allegations In A Single Paragraph.

23. TWENTY THIRD REQUEST TO REVISE

a. PORTION OF THE PLEADING SOUGHT TO BE REVISED

Paragraphs 48, 58, 60, 61, 65, 74, 81-85, 88, 92, 97-99, 106, 107-111, 118, 122, 125, 127, 128, 132, 139, and 140.

b. REQUESTED REVISION

Paragraphs 48, 58, 60, 61, 65, 74, 81-85, 88, 92, 97-99, 106, 107-111, 118, 122, 125, 127, 128, 132, 139, and 140 should be revised to comply with the directive of Practice Book Section 10-1 that a pleading contain “a plain and concise statement of the material facts on which the pleader relies, ... such statement to be divided into paragraphs ... each containing as nearly as may be a separate allegation.” Defendants should separate the facts contained in each paragraph so that each paragraph contains a single allegation.

c. REASON FOR REVISION

Pursuant to Practice Book § 10-1 each pleading shall contain statements “to be divided into paragraphs numbered consecutively, each containing as nearly as may be a separate allegation.” Here, Defendants have asserted multiple lengthy paragraphs containing numerous allegations within each. This makes it impractical, if not impossible, for Lomas to admit or deny the allegations contained in each paragraph. More so, it hampers Lomas’ ability to ferret out what the materials facts are on which Defendants rely. Accordingly, Paragraphs 48, 58, 60, 61, 65, 74, 81-85, 88, 92, 97-99, 106, 107-111, 118, 122, 125, 127, 128, 132, 139, and 140 must be revised to comply with the Practice Book.

d. RESPONSE

Dated: November 7, 2016
Hartford, Connecticut

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CERTIFICATE OF SERVICE

This is to certify that on November 7, 2016, a copy of the foregoing was served by e-mail and first class mail, postage prepaid, to all counsel of record as follows:

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