

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMED HAMED by his authorized agent)	
WALEED HAMED,)	
Plaintiff,)	CIVIL NO. SX-12-CV-370
v.)	
FATHI YUSUF and UNITED CORPORATON,)	ACTION FOR DAMAGES, <i>et al.</i>
Defendants.)	

ORDER DENYING MOTION TO DISMISS

This matter is before the Court on Defendants’ Renewed Motion to Dismiss, and in the Alternative for a More Definite Statement, and Motion to Strike Pursuant to Rules 12(b)(6), 12(e), and 12(f) Respectively of the Federal Rules of Civil Procedure (“Motion to Dismiss”), filed November, 5, 2012; Plaintiff’s Opposition to Defendants’ Rule 12 Motion (“Plaintiff’s Opposition”), filed November 12, 2012; and Defendants’ Reply to Plaintiff’s Opposition to Defendants’ Rule 12 Motion (“Defendants’ Reply”), filed December 13, 2012.¹ For the reasons that follow, Defendants’ Motion to Dismiss is denied.

BACKGROUND

Plaintiff and Defendant Fathi Yusuf (“Yusuf”) have a familial history which precedes their present day business dealings. In 1979, Yusuf incorporated United Corporation (“United”) in the U.S. Virgin Islands. Defendant Yusuf, through United, subsequently began construction of a shopping center located at Estate Sion Farm, St. Croix, where Yusuf intended to include a supermarket. Subsequently, when Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, he turned to his brother-in-law

¹ This matter was removed to the District Court of the Virgin Islands by Defendants on October 4, 2012 by Defendants’ Notice of Removal pursuant to 28.U.S.C. §1446 and was remanded to the Superior Court pursuant to motion of Plaintiff by Memorandum Opinion and Order of Hon. Wilma A. Lewis dated November 16, 2012. Defendants’ Motion to Dismiss was filed in the District Court but is properly before this Court pursuant to the Order of remand.

Mohammad Hamed (“Hamed”). Hamed eventually agreed to sell his two grocery stores, invest the proceeds with Yusuf and join in the business of opening the new Plaza Extra supermarket in Estate Sion Farm.

The factual history of the parties’ relationship and of the businesses of the initial and two subsequent Plaza Extra stores is set forth in detail in multiple filings of the parties and was thoroughly reviewed in this Court’s April 25, 2013 Memorandum Opinion. That history is not reviewed again here.

By his Amended Complaint, Plaintiff alleges that throughout their course of dealing spanning twenty-seven (27) years, Hamed and Yusuf have shared the profits and losses of the Plaza Extra businesses. Plaintiff alleges that the parties’ history and relationship, through their prior, present and consistent dealings, established a legal partnership recognized under Virgin Islands law. Defendants deny the existence of a partnership and, by their Motion to Dismiss, contend that Plaintiff’s Amended Complaint fails to state a cognizable cause of action.

PROCEDURAL HISTORY

Plaintiff filed the instant action on September 18, 2012 and filed his Amended Complaint on October 19, 2012, seeking declaratory and injunctive relief pursuant to the Uniform Partnership Act, codified in V.I. CODE Ann. Tit. 26, §1, et seq. Plaintiff also seeks an equal share of the partnership’s profits, equal participation in the partnership’s operations, and the removal of Defendant Yusuf from the partnership due to his alleged wrongful acts. Additionally, Plaintiff seeks declaratory relief against Defendant United Corporation under the legal theories of unjust enrichment, constructive trust, and piercing the corporate veil.

Defendants, in their Motion to Dismiss, argue that Plaintiff's Amended Complaint fails to specify the "nature, ownership and scope of the alleged partnership, and why Defendant United is named as a party to the suit." Defendants' Motion to Dismiss, at 2. Defendants argue that Plaintiff's Amended Complaint "makes only bald assertions of a 50/50 partnership" which lack the requisite specificity to survive a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). *Id.*, at 8. Defendants assert that none of the five exhibits attached to Plaintiff's Amended Complaint shows that either partner ever "adopted the position that a partnership called the 'Hamed and Yusuf Partnership' ever existed." *Id.*, at 6. Therefore, according to Defendants, since Plaintiff does not set forth sufficient facts entitling him to a finding of the existence of a partnership, no action for relief is available to him under 26 V.I.C. §75. Because Plaintiff's Amended Complaint fails to satisfy the "plausibility standard," Defendants argue that it must be dismissed pursuant to Rule 12(b)(6).

In the alternative, Defendants move the Court to order Plaintiff to amend his Amended Complaint by adding a more definite statement. *Id.*, at 21-22. Defendants argue that the Amended Complaint's references to acts done by Hamed and/or Yusuf and/or their respective family members are "convoluted" and "leaves Defendants - and the Court - guessing about the allegations asserted." *Id.*, at 22.

Defendants also raise multiple affirmative defenses, such as judicial estoppel, quasi-estoppel, issue preclusion, laches, the statute of frauds, and the doctrine of unclean hands. *Id.*, at 2, 14, 19 and 26. Defendants' Motion to Dismiss focuses on statements made by Plaintiff, through his agent Waleed Hamed, in a pending federal criminal case to which Plaintiff Hamed has never been a party. According to Defendants, Plaintiff "represented to the government that no partnership existed between Plaintiff Hamed and Defendant Yusuf in the case of *U.S. v.*

United’ (*Id.*, at 15) but rather their relationship was a “contractual joint venture” (*Id.*, at 2). Defendants argue that Plaintiff should be bound by the principles of equity and estopped from changing his position regarding the parties’ relationship in this action when it is advantageous to him to do so.

Finally, Defendants move to strike certain pleadings, such as Plaintiff’s reference to settlement discussions, which Defendants argue would be inadmissible at trial and should be stricken pursuant to Rule 12(f). According to Defendants, these settlement negotiations were private and, since they would not be admissible at trial, are immaterial and subject to an order striking them under Rule 12(f). *Id.* at 23-24.

Plaintiff, in his Opposition, argues that whether the Hamed and Yusuf partnership is called a partnership or a joint venture is purely a matter of semantics, as a joint venture is a subspecies of a partnership. *See* Plaintiff’s Opposition, at 2. Plaintiff summarizes the factual evidence asserted in his Complaint and Amended Complaint, focusing on the sufficiency of his evidence which, he contends, establishes a partnership and meets the pleading standards required to overcome Defendants’ Rule 12(b)(6) Motion to Dismiss.

Plaintiff responds that Defendant United is a named party because United is holding the partnership funds which Plaintiff seeks in Counts I and II of his Amended Complaint. Plaintiff contends that “Defendants argue multiple (mostly factual) defenses” (e.g. Affirmative Defenses of Estoppel, etc.) which are inappropriate when “challenging the sufficiency of the pleadings” under Rule 12(b)(6). *Id.*, at 15.

Plaintiff also argues that courts disfavor striking pleadings pursuant to Rule 12(f), stating that it is “premature to make such an evidentiary ruling at this stage” (*Id.*, at 18), and that the

proposed evidence to be stricken is “not [a] settlement communication but [a] statement of fact.”
Id., at 20.

Plaintiff contends that the Amended Complaint meets the required pleading standard, and that he should not be compelled to further amend his Amended Complaint in response to Defendants’ motion for a more definite statement, which should be denied. Defendants’ Reply introduces no new legal arguments, but rather restates many of the arguments asserted in their Motion to Dismiss.

DISCUSSION

Pursuant to Federal Rule of Civil Procedure 12(b)(6), “[A] complaint should not be dismissed for failure to state a claim ‘unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *Matheson v. Virgin Islands Community Bank Corp.*, 297 F.Supp.2d 819, 824 (D.V.I App. 2009), *citing Conley v. Gibson*, 355 U.S. 41, 45–46 (1957). *See also Bostic v. AT&T of the Virgin Islands*, 166 F.Supp.2d 350, 354 (D.V.I. 2001). “In considering whether a complaint should be dismissed for failure to state a claim upon which relief can be granted, the Court must consider only those facts alleged in the complaint and accept all of the allegations as true, drawing all reasonable inferences in the plaintiff’s favor.” *Matheson*, 297 F.Supp.2d at 825. *See also ALA v. CCAIR, Inc.*, 29 F.3d 855, 859 (3d Cir. 1994).

Federal Rule of Civil Procedure 8(a)(2) requires only that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” For a complaint to survive a Rule 12(b)(6) dismissal motion, it must reach the “plausibility” standard, meaning that the complaint must recite “plausible grounds to infer a [right to relief]...[and] calls for enough

fact to raise a reasonable expectation that discovery will reveal evidence” supportive of the claims of the complaint. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007), *citing Conley v. Gibson*, 355 U.S. at 47.

“[W]here there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief.” *Brady v. Cintron*, 55 V.I. 802, 823 (V.I. 2011), *citing Joseph v. Bureau of Corrections*, 54 V.I. 644, 650 (V.I. 2011) (*quoting Santiago v. Warminster Tp.*, 629 F.3d 121, 130 (3d Cir. 2010)). This standard does not require that the pleading show that it is probable that plaintiff is entitled to relief. “A complaint is required to simply ‘give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.’” *James v. Morgan*, 50 V.I. 764, 766 (D.V.I. App. 2008), *quoting Conley v. Gibson*, 355 U.S. at 47.

I. Plaintiff’s Amended Complaint is sufficiently well-pled to survive Defendants’ Motion to Dismiss.

In this case, the well-pleaded factual allegations, assumed to be true, must plausibly give rise to a finding of the existence of a partnership under Virgin Islands law, which would entitle Plaintiff to the relief sought. Pursuant to 26 V.I.C. §21, a partnership is “an association of two or more persons to carry on as co-owners a business for profit.” In this regard, “A person who receives a share of the profits of a business is presumed to be a partner in the business...” 26 V.I.C. §22(c)(3).

Drawing all reasonable inferences in Plaintiff’s favor, Plaintiff’s Amended Complaint is sufficiently well-pled and contains sufficient factual allegations to plausibly give rise to an entitlement of relief.

- a. Plaintiff's Amended Complaint contains sufficient factual allegations to plausibly give rise to an entitlement of relief.

Defendants attempt to elevate beyond what is legally sufficient the pleading requirements necessary for a complaint to withstand a Rule 12(b)(6) motion to dismiss. Defendants ultimately argue that Plaintiff's Amended Complaint fails to meet the "plausibility standard" as set out by the U.S. Supreme Court in *Twombly*, arguing that it contains only "bald assertions of a 50/50 partnership" and lacks the requisite adequate factual basis to sustain relief. *See* Defendants' Motion to Dismiss, at 2.

However, Plaintiff's Amended Complaint contains multiple statements of fact which, if true, would prove the necessary elements to establish the existence of a partnership, thereby entitling Plaintiff to certain rights under 26 V.I.C. §71 ("Each partner is entitled to an equal share of the partnership profits...").

Plaintiff alleges that a partnership exists between Hamed and Yusuf by citing to the existence of a profit sharing arrangement between the two parties, a fact which, if true, creates a presumption of the existence of a partnership. *See* 26 V.I.C. §22(c)(3). Plaintiff supports this proposition by Exhibit 1 to his Amended Complaint, an Affidavit of Fathi Yusuf concerning the creation of the alleged partnership: "You [Hamed] better take 50%... Every single Arab in the Virgin Islands knew that Mr. Mohammed Hamed is my partner..." *See* Plaintiff's Amended Complaint, Exhibit 1, at 20.

Plaintiff's Amended Complaint also alleges the existence of bank accounts under the name of United, but separate from the United's corporate accounts, that held funds of the Plaza Extra supermarket businesses and were shared by Hamed and Yusuf or their agents. *Id.*, at 6. These bank accounts were "open to both partners for the expenses and profits of the

Partnership.” *Id.* This allegation, if substantiated, supports Plaintiff’s claim that a partnership existed between Plaintiff and Defendant Yusuf.

Plaintiff also alleges that he or members of his immediate family maintained “an active role in the operations of the three stores” during the course of their partnership. *See* Plaintiff’s Amended Complaint, at ¶13. Plaintiff’s Amended Complaint describes that one member of the Hamed family and one of the Yusuf family were required to “sign each check written on these supermarket bank accounts...” *Id.*, at ¶16. These factual assertions support the proposition that Hamed and Yusuf, individually and through their agents, exercised joint management and control over the three Plaza Extra supermarkets.

Defendants argue that Plaintiff’s Amended Complaint fails to adequately plead facts entitling Plaintiff to maintain this action against Defendant United. Defendants claim that Yusuf is not the majority shareholder of United, that United was incorporated seven years before Hamed and Yusuf even met, and that the alleged partnership of Hamed and Yusuf was completely separate from United Corporation. *See* Defendants’ Motion to Dismiss, at 10-11. Therefore, according to Defendants, “Plaintiff seems incapable of asserting any claim against Defendant United.” *Id.*, at 10.

However, Plaintiff’s Amended Complaint alleges that Defendant Yusuf or his agents utilized bank accounts under United’s direct control to unlawfully divert partnership funds into accounts outside of Plaintiff’s control. *See* Plaintiff’s Amended Complaint, at ¶29. While this factual allegation supports Plaintiff’s claim for relief sought in Count II (a partner’s expulsion by judicial determination pursuant to 26 V.I.C. §121(5)(ii) for acts in contravention of the partnership agreement or of a duty owed to the partnership or other partner), this allegation of fact also supports the notion that Defendant United is a necessary party to this litigation.

Plaintiff alleges that

United was at the time of the formation of the Partnership, controlled by Yusuf, who, as the partner making financial arrangements for the Partnership, committed it to do acts and hold funds and property for the Partnership either as an agent or, alternatively under an agreement or under a trust. United which is also an alter ego of Yusuf, now refuses to pay over said funds—which breaches the agreement and the duties due to the Partnership and his Partner. Plaintiff’s Amended Complaint, ¶41.

This statement supports Defendant United being a part of this litigation because, if United is in possession of unlawfully obtained or retained partnership funds, United is responsible for returning said funds to the partnership in a manner to be determined by the Court.

- b. Defendants’ Motion to Dismiss prematurely challenges Plaintiff’s factual assertions.

Defendants devote a large portion of their Motion to Dismiss to challenging and refuting Plaintiff’s factual assertions. For example, Defendants argue that Plaintiff never risked any pecuniary loss during the course of the purported Hamed - Yusuf partnership. *See* Defendants’ Motion to Dismiss, at 4, 11-12. However, Plaintiff’s Amended Complaint clearly alleges that Hamed risked both the loss of his initial investment and risked being responsible for 50% of all future losses. *See* Plaintiff’s Amended Complaint, at ¶10.

It is necessary to note that Defendants’ Motion to Dismiss is not the proper platform to contest factual discrepancies or to present defenses that require greater factual support. *See Epstein v. Fancelli Panneling, Inc.*, 55 V.I. 150, 165 (V.I. Super. Ct. 2011) (“these are defenses that require further factual development and are not proper subjects for this Motion to Dismiss”). “To survive a motion to dismiss, a ... plaintiff must allege facts that ‘raise a right to relief above the speculative level on the assumption that the allegations in the complaint are true (even if

doubtful in fact).” *McGrogan v. C.I.R.*, 2011 WL 3472336, at *2 (D.V.I. 2011), *citing Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007) (*quoting Bell Atlantic Corp.*, 550 U.S. at 544).

Defendants argue that Plaintiff’s Amended Complaint lacks sufficient facts to reach the “plausibility” standard, yet use much of their motion to contest facts alleged by the Amended Complaint. Defendants’ Motion to Dismiss is not the proper vehicle by which to attempt to refute Plaintiff’s various factual assertions that may require discovery, “greater factual support,” or final adjudication at trial.

c. The Court will not rule on Defendants’ affirmative defenses at this time.

Defendants advance several affirmative defenses, including the doctrine of issue preclusion, judicial estoppel, and the statute of frauds, which are premature for consideration in the context of Defendants’ Rule 12(b)(6) Motion to Dismiss. “Considering that a motion to for judgment on the pleadings challenges the sufficiency of the pleadings rather than disputed factual allegations, a Court will not generally grant a motion to dismiss based on either Fed. R. Civ. P. 12(c) or Fed. R. Civ. P. 12(b)(6) that solely asserts an affirmative defense.” *United Corporation v. Hamed*, 2013 WL 3724921, at *2 (V.I. Super. Ct. 2013).

Where a court grants a Rule 12(b)(6) or Rule 12 (c) motion based on an affirmative defense, the facts establishing that defense must: (1) be definitively ascertainable from the complaint and other allowable sources of information, and (2) suffice to establish the affirmative defense with certitude. *Id.*, n.9, *quoting Gray v. Evercore Restructuring L.L.C.*, 544 F.3d 320, 324 (1st Cir. 2008) (internal quotations omitted) (*citing Nisselson v. Lernout*, 469 F.3d 143, 150 (1st Cir. 2006)).

In this case, there are multiple competing factual assertions alleged by both Plaintiff and Defendants which tend to prove and disprove Defendants’ affirmative defenses. It is therefore inappropriate, when testing the sufficiency of Plaintiff’s Amended Complaint pursuant to Rule

12(b)(6), to dismiss any of the counts pled based upon the strength of Defendants' affirmative defenses.

d. Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) is denied.

Drawing all reasonable inferences in Plaintiff's favor as it must, the Court finds that Plaintiff's Amended Complaint is sufficiently well-pled with respect to the allegations against Defendant Yusuf and Defendant United. Plaintiff's Amended Complaint asserts facts which, if true, would establish the existence of a Hamed - Yusuf partnership with respect to the operations of the three Plaza Extra supermarkets. Furthermore, Plaintiff's Amended Complaint and Plaintiff's Opposition support the inclusion of Defendant United as the entity that participated in certain acts in contravention of the partnership agreement and that is custodian of certain partnership assets.

Defendants are given fair notice of Plaintiff's claims and the grounds upon which they are founded. At this stage, it cannot be said that Plaintiff's Amended Complaint fails to meet the plausibility standard. Rather, Plaintiff's Amended Complaint alleges enough facts to raise a reasonable expectation that discovery will reveal evidence sufficient for Plaintiff to establish the existence of a partnership (Count I); to establish his right to an equal share of the partnership's profits (Count II); and to seek declaratory relief against Defendant United on the theories of unjust enrichment, constructive trust, and piercing the corporate veil. As such, Defendants' Motion to Dismiss will be denied.

II. Plaintiff's Amended Complaint is sufficiently well-pled and does not require a more definite statement under Rule 12(e).

Defendants argue that Plaintiff's Amended Complaint is "fatally defective" and requires a more definite statement. *See* Motion to Dismiss, at 22. Defendants' primary concern is that

Plaintiff's Amended Complaint collectively references actions taken by Mohammad Hamed, Fathi Yusuf and their authorized agents without specifying, for example, actions taken by Hamed personally as opposed to actions taken by Hamed's authorized agent. *Id.* Defendants argue that this makes "[t]he vast majority, if not all, of the material allegations in the Amended Complaint... unintelligible." *Id.*, at 23.

Rule 12(e) allows a party to "move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Courts in the Virgin Islands construe Rule 12(e) in the context of the liberal pleading requirements of Rule 8(a) and are not disposed to granting motions for a more definite statement unless the complaint provides no guidance that would allow a defendant the fair ability to reply. "Under the Rules' liberal pleading standard, all that is required is that the plaintiff set forth allegations that are sufficiently understandable to reasonably permit the defendant to frame an answer." *Michael v. McIntosh*, 2007 WL 3124670, at *3 (D.V.I. 2007).

Plaintiff's Amended Complaint is clearly "sufficiently understandable to reasonably permit the defendant to frame an answer" as evidenced by Defendants' well-developed arguments in response to Plaintiff's Amended Complaint. Defendants' only issue with the clarity of Plaintiff's Amended Complaint concerns the collective, and at times, interchangeable references to Hamed, Yusuf, and their "authorized agents."

The first example Defendants cite in support of their confusion is unpersuasive. Specifically, Defendants claim confusion regarding whether Hamed and Yusuf started the initial partnership, or whether their undisclosed agents actually formed the partnership. Any claimed confusion can be simply cleared by reference to the actual words of the Amended Complaint

(“both Mohammed Hamed and Yusuf agreed to contribute their time and their personal funds to create this Partnership...” Plaintiff’s Amended Complaint, at ¶10).

Because the Court finds that the allegations of the Amended Complaint are not so vague or ambiguous that Defendants cannot reasonably prepare a response, Defendants are not entitled to an order requiring Plaintiff to provide a more definite statement under Rule 12(e).

III. There is no basis to strike any part of Plaintiff’s Amended Complaint pursuant to Rule 12(f).

Defendants seek to have certain documents stricken from Plaintiff’s Amended Complaint pursuant to Rule 12(f), arguing that Plaintiffs “cherry-picked selective documents exchanged between Hamed and Yusuf during settlement discussions.” *See* Motion to Dismiss, at 24. Since settlement discussions are inadmissible at trial pursuant to Federal Rule of Evidence 408, Defendants argue that “the only way to effectuate Rule 408’s intent and purpose is to utilize Rule 12(f) to strike the offending exhibits and references in the Complaint.” *Id.*

Under Rule 12(f), a “court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” However, courts in the Virgin Islands are hesitant to do so.

It is well-established that because of the drastic nature of the remedy motions to strike are usually viewed with disfavor and will generally be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties, or if the allegations confuse the issues. *Charleswell v. Chase Manhattan Bank, N.A.*, 2009 WL 4981730, at *2 (D.V.I. 2009), citations and internal quotations omitted.

Plaintiff notes in his Opposition that “any doubt about whether the challenged material is redundant, immaterial, impertinent, or scandalous should be resolved in favor of the non-moving party.” *See* Plaintiff’s Opposition, at 18, *citing* 5C Wright, Miller & Kane, *Federal Practice and Procedure* §1382 (3d ed. 2004).

Defendants' reliance upon Fed. R. Evid. 408 is misplaced in the context of their Rule 12(f) motion. In essence, Defendants seek a premature ruling that certain evidence should be barred under Rule 408(a) as statements made during compromise negotiations about Plaintiff's claims, not subject to the exceptions to inadmissibility set forth in Rule 408(b). This issue may be more properly addressed by a motion in limine at a later stage of these proceedings. Questions of admissibility are distinct from the issue of whether the allegations of the Amended Complaint are "redundant, immaterial, impertinent, or scandalous matter" subject to being stricken under Rule 12(f). As it is premature to strike a pleading simply because it contains facts that may (or may not) be inadmissible at trial, Defendants' Motion to Strike Pursuant to Rule 12(f) is denied.

CONCLUSION

When drawing all reasonable inferences in Plaintiff's favor, Plaintiff's Amended Complaint contains sufficient factual assertions to survive a 12(b)(6) Motion to Dismiss. The Complaint satisfies the plausibility standard with respect to establishing the existence of a partnership under Virgin Islands law. Plaintiff's factual assertions raise a reasonable expectation that discovery will reveal evidence supportive of the claims of the Amended Complaint.

In testing the sufficiency of Plaintiff's Amended Complaint, it is premature to evaluate factual discrepancies between the litigants' pleadings, as this is the natural function of a trial. Rather, the Court's review consists primarily of determining the existence of sufficient factual assertions within Plaintiff's Amended Complaint.

Similarly, the litigants present multiple competing factual assertions which tend to prove and disprove Defendants' affirmative defenses. It is inappropriate, when testing the sufficiency of Plaintiff's Amended Complaint pursuant to Rule 12(6)(6), to dismiss any of the counts pled in

Plaintiff's Amended Complaint based on evidence adduced relative to the validity and strength of Defendants' affirmative defenses.

The Court finds that Plaintiff's Amended Complaint is sufficiently understandable to reasonably permit Defendants to frame an answer. Therefore, it is unnecessary to require a more definite statement pursuant to Rule 12(e).

Finally, the Court is unwilling to allow the drastic remedy of striking Plaintiff's pleadings simply because Plaintiff presents certain evidence which may be inadmissible at trial. In the absence of any specificity as to how any parts of Plaintiff's Amended Complaint are "redundant, immaterial, impertinent, or scandalous matter," the Court will not strike any part of Plaintiff's Amended Complaint at this time.

On the basis of the foregoing, it is hereby

ORDERED that Defendants' Renewed Motion to Dismiss, and in the Alternative for a More Definite Statement, and Motion to Strike Pursuant to Rules 12(b)(6), 12(e), and 12(f) Respectively of the Federal Rules of Civil Procedure is DENIED.

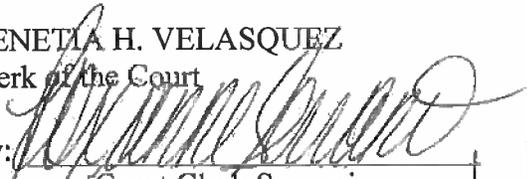
December 5, 2013



Douglas A. Brady
Judge of the Superior Court

ATTEST:

VENETIA H. VELASQUEZ
Clerk of the Court

By: 

Court Clerk Supervisor

10/5/13

CERTIFIED TO BE A TRUE COPY
This 5th day of Dec 2013
VENETIA H. VELASQUEZ, ESQ.
CLERK OF THE COURT
By: 

Court Clerk