

STATE OF NORTH CAROLINA  
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 4170

MARY HARTSELL,

Plaintiff,

v.

MINDPATH CARE CENTERS,  
NORTH CAROLINA, PLLC f/k/a  
CAROLINA PARTNERS IN MENTAL  
HEALTHCARE, PLLC; MISO, LLC;  
STANLEY MONROE; and YVONNE  
MONROE,

Defendants.

**ORDER ON PLAINTIFF'S MOTION  
TO AMEND AND DEFENDANTS'  
PARTIAL MOTION TO DISMISS**

1. THIS MATTER is before the Court on Plaintiff Mary Hartsell's Motion to Amend (the "Motion to Amend"), (ECF No. 30), pursuant to Rule 15(a) of the North Carolina Rules of Civil Procedure (the "Rule(s)"), as well as Defendants' Partial Motion to Dismiss, pursuant to Rule 12(b)(6).

2. Plaintiff seeks leave to amend her complaint to add a claim for fraudulent concealment ("Count 7"), and a claim she titles "Conspiracy/Facilitation of Fraud" ("Count 8"). (Proposed First Am. Compl. ¶¶ 77–91 [hereinafter "Pl.'s Proposed Am."], ECF No. 30.1.) Plaintiff also seeks leave to add an allegation that Defendant Mindpath Care Centers, North Carolina, PLLC f/k/a Carolina Partners in Mental Health Care, PLLC ("Mindpath" or the "PLLC") and Defendant MISO, LLC ("MISO") were operated and controlled at all times by Defendants Stanley and Yvonne Monroe, (Pl.'s Proposed Am. ¶ 10), and to limit her assertion of Count One, "Failure to Respond to Record Demand," to Mindpath only. (Pl.'s Proposed Am. ¶¶ 38–43.)

3. Having considered the motions and related briefing, the arguments of counsel at the hearing on the motion, and other relevant matters of record, the Court, in the exercise of its discretion, hereby **GRANTS in part** and **DENIES in part** Plaintiff's Motion to Amend. The Court further **DENIES** without prejudice Defendants' Motion to Dismiss for the reasons explained herein.

## I. INTRODUCTION

4. This case arises out of a dispute regarding alleged misconduct by Stanley and Yvonne Monroe, as well as Mindpath, a professional limited liability company that provides mental health services. Yvonne Monroe ("Yvonne") is a member of the PLLC. Her brother, Stanley Monroe ("Stanley"), is the company's President.

5. Plaintiff's original Complaint, (Compl., ECF No. 3), filed 29 March 2021, alleges breach of fiduciary duty by both the officer, Stanley, and the member, Yvonne, for "engag[ing] in a series of interested transactions over a period of years whereby they took money out of Mindpath and transferred it" to another limited liability company, MISO. (Compl. ¶ 57.) MISO is owned and controlled by Stanley, Yvonne, and their brother, Steven Monroe ("Steven"). (Compl. ¶ 9.)

6. In addition to breach of fiduciary duty claims, the original Complaint purports to assert claims against all Defendants for failure to respond to Plaintiff's demands to inspect Mindpath's records, (Compl. ¶¶ 37–42), and for constructive fraud, (Compl. ¶¶ 67–75). Plaintiff also asserts a breach of contract claim against Mindpath only. (Compl. ¶¶ 43–47.)

## II. PROCEDURAL BACKGROUND

7. Plaintiff initiated this action by filing her Complaint on 29 March 2021. (ECF No. 3.) The case was designated as a mandatory complex business case by Order of the Chief Justice of the Supreme Court of North Carolina, (ECF No. 1), and assigned to the undersigned on 6 May 2021, (ECF No. 6).

8. On 28 July 2021, Defendants filed their Answer to Plaintiff's Complaint. Mindpath asserts counterclaims for breach of fiduciary duty and two claims for breach of contract. (ECF No. 16.)

9. On 26 October 2021, almost three months after filing their Answer, Defendants filed a Partial Motion to Dismiss. (ECF No. 22.)

10. On 7 January 2022, Plaintiff filed her Motion to Amend. (ECF No. 30.) The Motion to Amend has been fully briefed, and the parties were heard through counsel at a hearing on 4 March 2022. The Motion is now ripe for decision.

## III. FACTUAL BACKGROUND

11. The Court does not find facts but rather recites the facts as alleged that are relevant for purposes of resolving the present motions.

12. Plaintiff was formerly employed by Mindpath, then known as Carolina Partners in Mental Healthcare ("CPMH"), as a psychiatric nurse practitioner.<sup>1</sup> (Pl.'s Proposed Am. ¶¶ 1, 11.)

13. Plaintiff signed an operating agreement and became a member of CPMH in April 2001. Plaintiff's percentage interest is not alleged except that she was a

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<sup>1</sup> CPMH became Mindpath in 2019. The Proposed Amended Complaint addresses facts and allegations that occurred before CPMH was doing business as Mindpath.

minority interest holder. (Pl.'s Proposed Am. ¶¶ 11, 13.) Yvonne was also a member of Mindpath, and her percentage interest is also not alleged. (Pl.'s Proposed Am. ¶ 5.)

14. Plaintiff alleges that Defendants told her that her "take home" compensation as a clinical provider would be fifty percent (50%) of her "gross collections each month from seeing patients." The remaining fifty percent (50%) would be retained by CPMH to pay overhead expenses. (Pl.'s Proposed Am. ¶ 13.)

15. Defendants also allegedly told Plaintiff that MISO, an LLC owned by Stanley, Yvonne, and their brother, Steven, was responsible for CPMH's billing and overhead and that CPMH paid MISO to provide these services. (Pl.'s Proposed Am. ¶ 14.) Stanley is alleged to be MISO's managing member. (Pl.'s Proposed Am. ¶ 4.)

16. Each month, Plaintiff received a written statement of her clinical hours worked and the gross receipts resulting from those hours. (Pl.'s Proposed Am. ¶ 20.) The monthly statements reflected large deductions in categories described only as "Practice Management," "Global," and "Local." (Pl.'s Proposed Am. ¶ 21.) These expenses reduced Plaintiff's compensation to an amount below fifty percent (50%) of her gross collections, the amount she expected to receive pursuant to Defendants' promises. (Pl.'s Proposed Am. ¶ 21.)

17. Plaintiff alleges that she asked Stanley about the discrepancy but that Stanley did not provide any specific details or satisfactory explanations. (Pl.'s Proposed Am. ¶ 22.)

18. Because of Yvonne's ownership interest in both CPMH and MISO, and because of Stanley's ownership interests in MISO and his status as an officer of

CPMH, Plaintiff alleges that the transactions between the two entities were interested transactions. (Pl.'s Proposed Am. ¶¶ 16–17.) However, Plaintiff “was never given detailed information about the interested insider transactions.” (Pl.'s Proposed Am. ¶ 23.)

19. After sixteen years of working for CPMH as a “partner,” Plaintiff gave notice of her resignation effective 30 November 2017. (Pl.'s Proposed Am. ¶ 24.) She requested that her interest in the PLLC be redeemed. (Pl.'s Proposed Am. ¶¶ 25–26.)

20. To determine the value of her membership interest, and pursuant to N.C.G.S. § 57D-3-04, Plaintiff demanded an inspection of the PLLC's records. (Pl.'s Proposed Am. ¶ 32.) CPMH responded to Plaintiff's request through counsel, allegedly conceding that Hartsell's interest was valued at over \$9,000, but denying her inspection demand. CPMH claimed that Plaintiff had “actively solicited CPMH's patients to leave CPMH[,]” accused Plaintiff of breaching fiduciary obligations to CPMH, and concluded that Plaintiff's conduct had damaged CPMH in excess of the value of Plaintiff's “partnership interest.” (Pl.'s Proposed Am. ¶¶ 33–34.)

21. Plaintiff responded on 7 May 2018, denying the allegations and again requesting detailed records explaining how CPMH had calculated the value of her interest in the PLLC. (Pl.'s Proposed Am. ¶ 36.) In turn, CPMH provided Plaintiff with a Form K-1 but refused to provide any of the other records sought. (Pl.'s Proposed Am. ¶ 37.) This litigation ensued.

#### IV. LEGAL STANDARD

22. Rule 15(a) provides that leave to amend “shall be freely given when justice so requires.” N.C. R. Civ. P. 15(a). “Reasons justifying denial of an amendment include: (1) undue delay, (2) bad faith, (3) undue prejudice, (4) futility of amendment, and (5) repeated failure to cure defects by previous amendments.” *Window World of St. Louis, Inc. v. Window World, Inc.*, 2015 NCBC LEXIS 79, at \*18 (N.C. Super. Ct. Aug. 10, 2015) (citing *Martin v. Hare*, 78 N.C. App. 358, 361 (1985)).

23. “There is no more liberal canon in the rules than that leave to amend ‘shall be freely given when justice so requires.’” *Duke Energy Carolinas, LLC v. AG Ins. SA/NV*, 2019 NCBC LEXIS 105, at \*4 (N.C. Super. Ct. Dec. 10, 2019) (quoting *Vaughan v. Mashburn*, 371 N.C. 428, 434 (2018)). “Rule 15 encourages trial courts to permit amendment liberally and evinces our State’s ‘general policy of allowing an action to proceed to a determination on the merits.’” *Id.* (quoting *House of Raeford Farms, Inc. v. Raeford*, 104 N.C. App. 280, 282 (1991)).

24. However, the right to amend pursuant to Rule 15 is not unfettered. *See e.g., Vaughan*, 371 N.C. at 433 (“[A]mendments should be freely allowed unless some material prejudice to the other party is demonstrated.” (quoting *Mauney v. Morris*, 316 N.C. 67, 72 (1986))). The burden is upon the nonmovant to establish that the motion should not be granted. *See e.g., Global Textile Alliance, Inc. v. TDI Worldwide, LLC*, 2018 NCBC LEXIS 30, at \*9–10 (N.C. Super. Ct. Apr. 6, 2018); *Mauney*, 316 N.C. at 72.

25. “The futility standard under Rule 15 is essentially the same standard used in reviewing a motion to dismiss under Rule 12(b)(6), but provides the Court liberal discretion to find that an amendment lacks futility.” *Simply the Best Movers, LLC v. Marrins’ Moving Sys., Ltd.*, 2016 NCBC LEXIS 28, at \*5–6 (N.C. Super. Ct. Apr. 6, 2016). A claim should be dismissed under Rule 12(b)(6) if “(1) the complaint on its face reveals no law supports the plaintiff’s claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff’s claim.” *Azure Dolphin, LLC v. Barton*, 371 N.C. 579, 598 (2018) (citing *Wood v. Guilford Cnty.*, 355 N.C. 161, 166 (2002)).

26. “Ultimately, whether to allow an amendment rests in the trial judge’s discretion.” *KRG New Hill Place, LLC v. Springs Inv’rs, LLC*, 2015 NCBC LEXIS 20, at \*8 (N.C. Super. Ct. Feb. 27, 2015) (citing *House of Raeford Farms, Inc.*, 104 N.C. App. at 282).

## V. ANALYSIS

### A. Defendants’ Partial Motion to Dismiss

27. As stated above, Defendants’ Partial Motion to Dismiss came almost three months after they filed their Answer. (ECF No. 22.) The motion is untimely. This Court has previously held that a “Rule 12(b) motion to dismiss for failure to state a claim must be filed prior to an answer.” *New Friendship Used Clothing Collection, LLC v. Katz*, 2017 NCBC LEXIS 72, at \*24 (N.C. Super. Ct. Aug. 18, 2017). Therefore,

Defendants' motion is **DENIED without prejudice** to any potential relief pursuant to Rule 12(c) once the pleadings close.

**B. Plaintiff's Motion to Amend**

28. Defendants first contend that Plaintiff's Motion to Amend, filed 7 January 2022, should be denied based on undue delay. (Defs.' Mem. Opp. Pl.'s Mot. Am. 16–19, ECF No. 34.) However, the Case Management Order entered in this matter, (Case Mgmt. Ord., ECF No. 20), specifically provides a deadline of 7 January 2022 to file all motions to amend, and states that objections to any motion brought on or before this date may not be based on undue delay. (Case Mgmt. Ord. ¶ IV(B)(3).) Consequently, this argument is without merit.

29. To allow some portions of the Plaintiff's requested amendment, however, would be an exercise in futility. As discussed below, with respect to those portions, Plaintiff's Motion is denied.

1. Count Six - Fraudulent Concealment

30. Plaintiff seeks to add a new claim for fraudulent concealment. Rule 9(b) requires the plaintiff to state all averments of fraud "with particularity." N.C. R. Civ. P. 9(b). "The purpose of Rule 9(b) . . . is because fraud embraces such a wide variety of potential conduct that the alleged fraudulent party needs particularity of allegations in order to meet the evidentiary demands of the charges." *State Farm Fire & Cas. Co. v. Darsie*, 161 N.C. App. 542, 547 (2003) (citing *Terry v. Terry*, 302 N.C. 77 (1981)); *see also Breeden v. Richmond Cmty. Coll.*, 171 F.R.D. 189, 197 (M.D.N.C. 1997) ("One of the purpose[s] behind the specificity requirement of Rule



9(b) is to give defendants sufficient notice of the particular misconduct alleged to constitute fraud so they can adequately prepare for defense[.]” (citing *Andrews v. Fitzgerald*, 823 F. Supp. 356, 375 (M.D.N.C. 1993) (internal quotation marks omitted))).

31. This Court has recognized that “fraudulent concealment or fraud by omission is, by its very nature, difficult to plead with particularity.” *Lawrence v. UMLIC-Five Corp.*, 2007 NCBC LEXIS 20, at \*9 (N.C. Super. Ct. June 18, 2007) (quoting *Breeden*, 171 F.R.D. at 195). Because the proposed allegations do not satisfy the pleading requirements of Rule 9(b), Plaintiff’s Motion to Amend with respect to the claim for fraudulent concealment is denied.

32. Under Rule 9(b), Plaintiff must plead the following elements with “reasonable particularity”:

(1) the relationship [between the plaintiff and defendant] or situation giving rise to the duty to speak, (2) the event or events triggering the duty to speak, and/or the general time period over which the relationship arose and the fraudulent conduct occurred, (3) the general content of the information that was withheld and the reason for its materiality disclosures, (4) the identity of those under a duty who failed to make such disclosures, (5) what [the defendant] gained by withholding information, (6) why [the] plaintiff’s reliance on the omission was both reasonable and detrimental, and (7) the damages proximately flowing from such reliance.

*Breeden*, 171 F.R.D. at 195 (adopted by *Lawrence*, 2007 NCBC LEXIS 20, at \*10).

33. First, Plaintiff must identify a duty to disclose. Such a duty arises when: (1) “a fiduciary relationship exists between the parties to the transaction”; (2) “a party has taken affirmative steps to conceal material facts from the other”; or (3) “one party has knowledge of a latent defect in the subject matter of the negotiations about which

the other party is both ignorant and unable to discover through reasonable diligence.” *Herrera v. Charlotte Sch. Of L., LLC*, 2018 NCBC LEXIS 35, at \*38–39 (N.C. Super. Ct. Apr. 20, 2018) (quoting *Hardin v. KCS Int’l, Inc.*, 199 N.C. App. 687, 696 (2009)).

34. The parties disagree regarding whether a fiduciary relationship existed between the parties, but the Court need not resolve that dispute at this juncture. Plaintiff adequately alleges that Stanley, Yvonne, and Mindpath (CPMH) took affirmative steps to conceal material information from her. (*See, e.g.*, Pl.’s Proposed Am. ¶¶ 18, 20–23, 27, 35, 37.) Additionally, Plaintiff alleges that Stanley and Yvonne had knowledge regarding her compensation that she did not have and was unable to obtain despite reasonable efforts. (*See, e.g.*, Pl.’s Proposed Am. ¶ 82.) The Court finds that these allegations are sufficient at this stage. *See Tillery Envt’l LLC v. A&D Holdings, Inc.*, 2018 NCBC LEXIS 13, at \*20–21 (N.C. Super. Feb. 9, 2018) (citing *Hardin*, 199 N.C. App. at 696).

35. The second element requires Plaintiff to plead with particularity “the event or events triggering the duty to speak, and/or the general time period over which the relationship arose and the fraudulent conduct occurred[.]” *Breeden*, 171 F.R.D. at 195. Plaintiff alleges generally that the fraudulent concealment occurred “for years.” (Pl.’s Proposed Am. ¶ 79.) She provides no further specificity. The Court observes that Plaintiffs’ employment lasted for a period of sixteen years. Plaintiff argues—but does not allege in her claim—that “[o]ver this entire span, Defendants were engaged in insider transactions . . .” and that Defendants “have continuously engaged in a pattern of fraudulent conduct and deceptive conduct without pause.”

(Pl.'s Reply Br. Supp. Mot. Am. 5–6, ECF No. 37.) The Court finds that, without more specificity in the pleading, “[t]he uncertainty of the time and place of these alleged omissions makes it difficult, if not impossible, for [D]efendants to specifically address [these allegations] in adverse pleadings.” *Breeden*, 171 F.R.D. at 196.

36. Additionally, Plaintiff alleges this claim against all of the defendants as a group without specifically identifying who concealed what. (Pl.'s Proposed Am. ¶¶ 77–83.) The fourth *Breeden* element requires Plaintiff to plead with particularity “the identity of those under a duty who [failed to disclose].” *Breeden*, 171 F.R.D. at 195. “[W]here multiple defendants are asked to respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud.” *Id.* at 197 (citation omitted); *see also BIRTHA v. Stonemor, N. Carolina, LLC*, 220 N.C. App. 286, 297 (2012) (plaintiffs failed to satisfy Rule 9(b) where the allegations of wrongdoing by defendants generally failed to identify the particular person making the representation at issue); *Oberlin Cap., L.P. v. Slavin*, 147 N.C. App. 52, 57 (2001) (plaintiff “failed to allege sufficient facts of individual participation in any wrongdoing” by three corporate directors).

37. Although Plaintiff’s proposed amendment refers to “Defendants” collectively multiple times, there is no allegation specifically identifying MISO as participating in fraudulent concealment. Similarly, Yvonne is paired with Stanley several times and included in the collective “Defendants,” but the proposed amendment fails to specify her individual involvement with sufficient detail to satisfy Rule 9(b).

38. Plaintiff argues that—at a minimum— she has identified specific instances when *Stanley* committed acts of fraudulent concealment. For example, Plaintiff alleges that Stanley “would not give specifics or satisfactory explanations” when Plaintiff asked him about deductions in her monthly statements, and that he “concealed information from [Plaintiff] from which she could ascertain the circumstances.” (Pl.’s Proposed Am. ¶ 22). The Court agrees that this allegation sufficiently identifies Stanley as the wrongdoer, but even so, it does not provide the other necessary particulars regarding when, during the sixteen-year timeframe Plaintiff posed these questions to him, what he said, why his explanations were unsatisfactory, or specifically what information she sought.

39. Plaintiff also broadly alleges that, in response to Plaintiff’s several emails and letters requesting redemption, Stanley “engaged in a pattern of deception and obfuscation” by “promising Plaintiff that she would eventually be [redeemed] but never providing any specifics.” (Pl.’s Proposed Am. ¶ 27.) Again, the proposed pleading against Stanley is wanting of the specificity required by Rule 9(b).

40. The sixth *Breeden* element requires Plaintiff to plead with particularity “why [the] plaintiff’s reliance on the omission was both reasonable and detrimental[.]” *Breeden*, 171 F.R.D. at 195. Plaintiff first argues that she should be relieved from this requirement because reasonable reliance is a question of fact for the jury. But reasonable and detrimental reliance must be sufficiently pled to survive the Rule 12(b)(6) stage. *See, e.g., Lawrence*, 2007 NCBC LEXIS 20, at \*9 (explaining “why plaintiff’s reliance on the [fraudulent concealment] was both reasonable and

detrimental” is a “pleading requirement[ ] that a plaintiff must satisfy” under Rule 9(b)).

41. Plaintiff then argues that her allegation that she “reasonably relied on the omissions of Defendants because she had not [sic] access to the information, and no way of knowing the extent of the information being withheld” is sufficient to satisfy Rule 9(b). (Pl.’s Proposed Am. ¶ 82.) Defendants respond that merely stating that one reasonably relies on an act of fraudulent concealment is a legal conclusion that is insufficient to satisfy Rule 9(b). (Defs.’ Mem. Opp. Pl.’s Mot. Am. 10.)

42. The Court concludes that where Plaintiff has alleged that information was purposefully kept from her so that she was unable to learn the truth despite reasonable attempts to investigate, Plaintiff’s allegations of detrimental reliance are sufficient to satisfy Rule 9(b) at the pleadings stage. *See Howard v. IOMAXIS, LLC*, 2021 NCBC LEXIS 116, at \*25 (Dec. 22, 2021) (holding that “[w]hile reliance is not reasonable where the plaintiff could have discovered the truth of the matter through reasonable diligence but failed to investigate,” Plaintiffs have alleged that they tried to investigate but Defendants’ conduct prevented them from discovering the alleged fraud (citing *Aldridge v. Metro. Life Ins. Co.*, 2019 NCBC LEXIS 116, at \*110 (N.C. Super. Ct. Dec. 31, 2019))); *Flanders/Precisionaire Corp. v. Bank of N.Y. Mellon Trust Co.*, 2015 NCBC LEXIS 36, at \*36 (Apr. 7, 2015) (holding that the plaintiff’s allegations that it “was not privy to the information which would have allowed it to understand the nature of the Loan transaction” and would not have entered the transaction had it known the true facts were sufficient to satisfy Rule 9(b)). Even so,

Plaintiff's proposed claim is legally insufficient (and therefore futile) for the reasons set out above.

43. Accordingly, the Court **DENIES without prejudice** Plaintiff's proposed amendment to add Count Six – Fraudulent Concealment.

## 2. Count Seven - Conspiracy/Facilitation of Fraud

44. Plaintiff also moves to add Count Seven, a new claim she titles "Conspiracy/Facilitation of Fraud."

45. "There is not a separate cause of action for civil conspiracy[.]" *Lau v. Constable*, 2017 NCBC LEXIS 10, at \*20 (N.C. Super. Ct. Feb. 7, 2017) (citing *Strickland v. Hedrick*, 194 N.C. App. 1, 19 (2008)). "Only where there is an underlying claim for unlawful conduct can a plaintiff state a claim for civil conspiracy by also alleging the agreement of two or more parties to carry out the conduct and injury resulting from that agreement." *BDM Invs. V. Lenhil, Inc.*, 264 N.C. App. 282, 300 (2019) (citation omitted).

46. "In civil conspiracy, recovery must be on the basis of sufficiently alleged wrongful overt acts." *Shope v. Boyer*, 268 N.C. 401, 405 (1966). "The charge of conspiracy itself does nothing more than associate the defendants together and perhaps liberalize the rules of evidence to the extent that under proper circumstances the acts and conduct of one might be admissible against all." *Id.* Thus, to the extent Plaintiff attempts a conspiracy claim based on fraud, it must be dismissed because no fraud claim has yet been pled.

47. The Court, therefore, **DENIES without prejudice** the proposed amendment to add Count 8 – Conspiracy/Facilitation of Fraud.

3. Count One - Failure to Respond to Record Demand

48. Plaintiff seeks to amend Count One, her claim for records pursuant to N.C.G.S. § 57D-3-04, to dismiss the individual defendants and MISO so that the claim is asserted against Mindpath only. (Pl.’s Proposed Am. ¶¶ 38–43.)

49. Each member of an LLC “may inspect and copy or otherwise obtain from the LLC” certain records of the LLC of which they are a member. N.C.G.S. § 57D-3-04(a). In order to obtain the records from the LLC and exercise inspection rights, “a member must sign and deliver written notice of exercise to the LLC at least seven days before the date on which the inspection is to take place.” N.C.G.S. § 57D-3-04(d). Plaintiff alleges that she signed and delivered the required written notice. (Pl.’s Proposed Am. ¶¶ 33, 36, 39.) And, even though the demand was made after the effective date of her resignation from the PLLC, Plaintiff alleges that she was still a member as her shares had not yet been redeemed. (Pl.’s Proposed Am. ¶¶ 31, 47, 52.)

50. Accordingly, the Court **GRANTS** the proposed amendment to Count One.

51. In the Court’s discretion, Plaintiff’s remaining proposed amendments (adding paragraph 10, modifying the language of former paragraph 42 (now paragraph 43), and making non-substantive changes to paragraph and claim numbering), are **GRANTED**.

## VI. CONCLUSION

52. **WHEREFORE**, the Court, in its discretion, hereby **ORDERS** as follows:

(a) Defendants' Partial Motion to Dismiss is **DENIED** as untimely.

(b) Plaintiff's Motion to Amend is **GRANTED in part** and **DENIED in part** as provided herein. Plaintiff shall be permitted to file an amended complaint consistent with this Order within ten (10) days.

SO ORDERED, this the 8th day of April, 2022.

*/s/ Julianna Theall Earp*

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Julianna Theall Earp  
Special Superior Court Judge  
for Complex Business Cases