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| No. FBT-CV-21-6105446-S  | : | SUPERIOR COURT    |
|  | : |                   |
| DAVID B. FORD, JR., EXECUTOR OF THE ESTATE OF DAVID B. FORD, JAMES M. FORD, EXECUTOR OF THE ESTATE OF DAVID B. FORD, 646 BELLEVUE, LLC, WARRENTON, LLC, and DBF ASSOCIATES, INC. | : | J.D. OF FAIRFIELD |
|  | : |                   |
|  | : | AT BRIDGEPORT     |
|  | : |                   |
| Plaintiffs,  | : |                   |
|  | : |                   |
| v.   | : |                   |
|  | : |                   |
| PAMELA LYNN FORD   | : |                   |
|  | : |                   |
| Defendant.   | : | JUNE 3, 2021      |

**REQUEST TO REVISE**

Pursuant to Connecticut Practice Book § 10-35, Defendant Pamela Lynn Ford (“Mrs. Ford”) hereby requests that Plaintiffs revise their Complaint dated April 14, 2021 (Entry No. 100.30, the “Complaint” or “Compl.”). In requesting that Plaintiffs revise their Complaint, Mrs. Ford does not concede that the Complaint or any of the allegations therein state a claim upon which relief may be granted.

**REQUEST NO. 1**

**Portion of the Pleading to Be Revised**

Counts 1-12 of the Complaint

**Requested Revision**

Revise the Complaint to state with particularity which Plaintiffs are asserting which Counts, and plead in separate Courts the causes of action asserted by the Executors and the other Plaintiffs.

### **Reasons for Requested Revision**

A request to revise may be used to obtain “a more complete or particular statement of the allegations of an adverse party’s pleading.” Practice Book § 10-35(1) (2020). “The purpose of a request to revise is to secure a statement of the material facts upon which the adverse party bases his complaint or defense.” *RAB Assocs., LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934S, 2014 WL 4413764, at \*2 (Conn. Super. Ct. July 30, 2014) (internal quotation marks and citation omitted). “Connecticut is a fact pleading state.” *Bridgeport Harbour Place I, LLC v. Ganim*, 303 Conn. 205, 213 n.7 (2011). “If any such pleading does not fully disclose the ground of claim or defense, the judicial authority may order a fuller and more particular statement.” Practice Book § 10-1 (2020). “Rules of pleading are not made for the purpose of tripping up the unknowing or unwary. They are designed to clarify and fix the issues and to confine the judicial inquiry necessary to decide the issues within reasonable and relevant limits.” *Salem Park, Inc. v. Salem*, 149 Conn. 141, 144 (1961).

One of the purposes of a request to revise is to clarify the plaintiff’s allegations and claims so that the defendant can move to strike legally insufficient claims. *See DeCarlo v. Dupuis*, No. NNHCV126032268S, 2014 WL 6461780, at \*2 (Conn. Super. Ct. Oct. 14, 2014) (“One 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.” (internal quotation marks and citation omitted)). Revision is particularly important when multiple distinct claims involving different parties are combined in a single count so that the Court can grant a

motion to strike or for summary judgment as to one of the claims or parties but not as to other claims or parties.<sup>1</sup>

A request to revise is also appropriate to limit the scope of the Complaint and to properly frame the issues before trial. *See Rego v. Conn. Ins. Placement Facility*, 219 Conn. 339, 348 (1991) (“It is well established that the pleadings of the parties frame the issues before the trial court.”); *Rudder v. Mamasasco Lake Park Ass’n*, 93 Conn. App. 759, 768 (2006) (holding that the allegations of the complaint are critical because the “purpose of [the] pleadings is to frame, present, define, and narrow the issues, and to form the foundation of, and to limit, the proof to be submitted” at trial (internal quotation marks and citation omitted)); *RAB Assocs., LLC*, 2014 WL 4413764, at \*2 (“The request is one of several provisions used for the framing of issues for trial.” (internal quotation marks and citation omitted)).

Here, a revision to the Complaint is necessary to make clear which specific claims are being alleged by each Plaintiff in order to narrow and frame the issues for discovery and trial. For most counts, a blanket assertion of the allegations by all Plaintiffs does not make sense and would result in unnecessary confusion and waste of resources if the parties were attempt to take discovery and prove each element of the alleged claims as to each Plaintiff. For example, Count 1 purports to state a claim for breach of fiduciary duty against Mrs. Ford, but no fiduciary relationship between Mrs. Ford and Warrenton LLC, DBF Associates, Inc., and 646 Bellevue Avenue, LLC is alleged. *See, e.g., Sherwood v. Danbury Hosp.*, 278 Conn. 163, 195 (2006) (“It

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<sup>1</sup> *See, e.g., Gramercy Advisors, LLC v. BDO USA, LLP*, No. FSTCV136020625S, 2016 WL 1099587, at \*3 (Conn. Super. Ct. Feb. 22, 2016) (discussing split of authority in the Superior Courts over whether a motion to strike may be granted if it “targets distinct and separable causes of action pleaded within the same count”); *Wahba v. J & J Blasting Corp.*, No. FSTCV146020764S, 2014 WL 6996849, at \*4 (Conn. Super. Ct. Nov. 4, 2014) (describing similar split over whether a party can obtain summary judgment on a part of a count, rather than on an entire count).

is axiomatic that a party cannot breach a fiduciary duty to another party unless a fiduciary relationship exists between them. [A] fiduciary or confidential relationship is characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other.” (alteration in original; quotation marks omitted)). Similarly, Warrenton LLC, DBF Associates, Inc., and 646 Bellevue Avenue, LLC do not appear to have any ownership interest in Oldfield Farm and thus would not appear to have any basis to assert the quiet title claim purportedly pleaded in Count 5. Similar inconsistencies exist for all other Counts if all Plaintiffs are asserting all Counts.

It is well settled that a Request to Revise properly seeks “separation of causes of action which may be united in one complaint when they are improperly combined in one count,” Conn. Practice Book Sec. 10-35(3), and courts routinely order revision of complaints to clarify the parties implicated in each count. *Davenport v. Quinn*, 53 Conn. App. 282, 291(1999) (“The proper method for the defendants . . . to challenge the failure to plead separate counts was by way of a request to revise . . .”).<sup>2</sup> Plaintiffs should clarify which Plaintiffs are asserting which counts, and if Warrenton LLC, DBF Associates, Inc., and 646 Bellevue Avenue, LLC wish to assert claims for breach of fiduciary duty (Count I) or to quiet title

### **Response**

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<sup>2</sup> See also, e.g., *DeCarlo v. Dupuis*, No. NNHCV126032268S, 2014 WL 6461780, at \*2 (Conn. Super. Ct. Oct. 14, 2014) (“When a single count of a complaint combines separate causes of action against multiple defendants, the proper way to cure any confusion in that regard is to file a [request] to revise . . .” (alteration in original; quotation marks omitted)); *Rowe v. Godou*, 209 Conn. 273, 279 (1988) (finding request to revise is proper way to cure confusion created by combining claims against individual defendant and municipality in a single count); *Burns v. Koellmer*, 11 Conn. App. 375, 387 (1987) (approving use of request to revise for separation of claims against each defendant); *Scribner v. AIU Ins. Co.*, No. 52 76 59, 1993 WL 499118, at \*1 (Conn. Super. Ct. Nov. 29, 1993) (overruling objections to request to revise and holding that “defendant is entitled to have the theories of liability against each defendant separated into separate counts”).

## **REQUEST NO. 2**

### **Portion of the Pleading to Be Revised**

Count 1, Paragraph 22 of the Complaint.

### **Requested Revision**

Revise the Complaint to state the factual basis for Plaintiffs' statement that Pamela Ford "owed a fiduciary duty to the Decedent to use the Power of Attorney only in his best interest." (Compl. ¶ 22.) Specifically, the revision should clarify whether Plaintiffs are alleging that the Power of Attorney contained in Exhibit 1 to the Complaint was duly executed and acknowledged and thus is valid and enforceable. The Complaint should further plead facts showing why the Gift Rider with the same date and containing the same signature of David B. Ford, Sr., and the same acknowledgment by the same notary, is nevertheless not duly executed.

### **Reasons for Requested Revision**

Mrs. Ford incorporates the case law and analysis discussed in Request No. 1 as if fully set forth herein. Here, the Plaintiffs have made contradictory allegations in their complaint that should be clarified by the requested revision. Plaintiffs allege that the Power of Attorney created a fiduciary duty on the part of Mrs. Ford to act in her husband's best interest. Such an assertion implies that the Plaintiff's concede the validity of the Power of Attorney, but such facts are not expressly stated in the Complaint and it therefore must be revised to make this position clear. Furthermore, the allegations in Count 1, if assumed to be true for the purposes of evaluating the sufficiency of the Complaint, contradict those made in Count 7 regarding the validity of the Gift Letters. The Plaintiffs allege no facts supporting the contradictory assertion the Gift Rider was "not properly executed" (Compl. ¶¶ 42(b), 46(b)) while the Power of Attorney, executed on the same day by the same person before the same notary public was properly executed, created a

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