



12(b)(6), or, in the alternative, a more definite statement of CH&H's allegations under Federal Rule of Civil Procedure 12(e). For the following reasons, Defendants' Motions are **GRANTED IN PART** and **DENIED IN PART**.

### I. BACKGROUND

On August 11, 1970, Ronald and Minna Mintz, Louis and Sheila Chaifetz and Sidney and Leah Jean Haifetz entered into an agreement (the "Partnership Agreement") to create the Partnership for the purpose of "investing in and holding Property."

(Partnership Agreement, CH&H's Compl. Ex. A.) To fulfill the Partnership's objectives, it purchased a parcel of land situated in Horsham, Pennsylvania (the "Partnership Property"). On April 15, 1985, the Partnership Agreement was amended to add CH&H as a partner, and provided it with a seven percent (7%) interest in the Partnership and the Partnership Property.<sup>1</sup> The amendment to the Partnership Agreement specified that "[a]ll Partners other than CH&H shall advance on behalf of CH&H, CH&H's pro rata share of all necessary carrying charges incurred in connection with the operation and management of the Partnership Property . . . ."

(Id.)

Sometime after 1992, Heffernan acquired the remaining 93

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<sup>1</sup> The Partnership Agreement was previously amended on November 17, 1975 and June 23, 1981. However, these amendments are not pertinent to the instant dispute.

percent (93%) ownership interest in the Partnership and, having the majority interest, has since acted as the managing general partner of the Partnership until the present time. Thus, from 1992 to the present, CH&H and Heffernan retain 100 percent (100%) ownership interest in the Partnership between them.

After Heffernan acquired control over the Partnership, CH&H contends that the parties entered into another agreement, apart from the Partnership Agreement, obligating Heffernan to develop or sell the Partnership Property in an economically advantageous manner to the Partnership (the "Agreement").<sup>2</sup> Heffernan does not dispute that the parties entered into the Agreement. Sometime after the parties entered into the Agreement, Heffernan allegedly requested that CH&H pay certain partnership payments, which CH&H refused to pay, and made drawings from Partnership accounts without seeking CH&H's authorization.

On April 16, 2003, CH&H filed a Complaint with the Court alleging violations of Pennsylvania's Uniform Partnership Act ("UPA") and common law, and requesting monetary damages, a declaratory judgment, an accounting and dissolution of the Partnership. Specifically, CH&H contends that Heffernan breached the Agreement and his fiduciary duty to the Partnership by

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<sup>2</sup> We assume that the Agreement was verbally communicated between the parties since its terms are not contained in the Partnership Agreement or in any amendments thereof provided to the Court.

failing to take any affirmative steps either to develop or to sell the Partnership Property in a manner that suited the best interest of the Partnership. Moreover, CH&H argues that Heffernan violated the Partnership Agreement when he demanded that CH&H assist in paying certain costs and expenses generated by the Partnership, despite language in the Partnership Agreement stating that Heffernan must pay all Partnership costs.

## II. DISCUSSION

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants initially argue that CH&H's Complaint must be dismissed on grounds that it fails to set forth sufficient facts supporting its claims. In the alternative, they request an order requiring CH&H to provide a more specific statement of each of its breach of contract and breach of fiduciary duty claims and request for declaratory relief, an accounting and dissolution of the Partnership contained in its Complaint so as to provide Defendants the opportunity to prepare an adequate response to CH&H's claims. We assess each of Defendants' requests for relief, in reverse order, below and, for the following reasons, **DENY** Defendants' motion for a more definite statement as to all claims, and **GRANT IN PART** and **DENY IN PART** Defendants' motion to dismiss.

#### **A. Motion for a More Definite Statement**

Defendants request that this Court order CH&H to provide a more detailed statement of its claims since they allege that CH&H's Complaint merely avers legal conclusions and vague allegations of misconduct. CH&H responds that since it does not aver claims which must be plead with specificity pursuant to Federal Rule of Civil Procedure 9, its Complaint need only satisfy the general "notice pleading" requirements as set forth in Federal Rule of Civil Procedure 8(a). We find that CH&H's Complaint complies with the liberal pleading requirements set forth in Rule 8(a) and, accordingly, deny Defendants' request for a more definite statement as to all of CH&H's claims.

Pursuant to Rule 8(a), a pleading "shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . . , (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks." Fed. R. Civ. P. 8(a). The liberal notice pleading requirements espoused in Rule 8 serve to "give the defendant fair notice of what [the] claim . . . so that he can make an adequate response." Loftus v. SEPTA, 843 F. Supp. 981, 986 (E.D. Pa. 1994). However, pleadings that fail to provide the opposing party with general knowledge of the claims and facts asserted pursuant to Rule 8(a) are subject to dismissal under Rule 12(b)(6). See Fed. R. Civ. P. 12(b)(6).

To prevent dismissal at this early stage of litigation, courts may allow a plaintiff to submit a more definite statement of the underlying facts and claims pursuant to Federal Rule of Civil Procedure 12(e). See Fed. R. Civ. P. 12(e).

Rule 12(e) provides that: “[i]f a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading.” Fed. R. Civ. P. 12(e). However, Rule 12(e) motions are highly disfavored since “[t]he overall scheme of the federal rules calls for relatively skeletal pleadings and places the burden of unearthing factual details on the discovery process.” Hides v. Certaineed Corp., No. Civ. A. 94-7352, 1995 U.S. Dist. LEXIS 10849, at \*3 (E.D. Pa. July 26, 1995); Synder v. Brownlow, No. Civ. A. 93-5238, 1993 U.S. Dist. LEXIS 17569, at \*3 (E.D. Pa. Dec. 10, 1993). As one court commented:

The class of pleadings that are appropriate subjects for a motion under Rule 12(e) is quite small - the pleading must be sufficiently intelligible for the court to be able to make out one or more potentially viable legal theories on which the claimant might proceed, but it must be so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith or without prejudice to himself.

Hides, 1995 U.S. Dist. LEXIS 10849, at \*2.

To plead a breach of contract claim properly under

Pennsylvania law, the plaintiff must provide general allegations of "the existence of a contract to which the plaintiff and defendant(s) were parties, the essential terms of that contract, a breach of the duty imposed by the contract and damages as a result." Cottman Transmission Systems, Inc. v. Melody, 851 F. Supp. 660, 672 (E.D. Pa. 1994). To satisfy these pleading requirements under Rule 8, CH&H avers that the parties entered into the Agreement that obligated Heffernan to develop or sell the Partnership Property in an economically advantageous manner, and claims that Heffernan breached the Agreement by failing to develop or sell the Partnership Property when he was presented with economically advantageous opportunities. Although CH&H does not disclose when Heffernan breached the Agreement and what economic advantageous opportunities were, its Complaint sufficiently sets forth allegations of each element of this breach of a contract claim so as to provide Defendants with general notice of its claims. "The basis for granting such a motion [under Rule 12(e)] is unintelligibility, not lack of detail. As long as the defendant is able to respond, even if only with a simple denial, in good faith, without prejudice, the complaint is deemed sufficient for purposes of Rule 12(e)." Sun Co. v. Badger Design & Constructors, Inc., 939 F. Supp. 365, 374 (E.D. Pa. 1996) (citations omitted). Under this standard, we find that CH&H's allegations of breach of contract are not so

vague, ambiguous, or unintelligible that Defendants cannot frame a responsive pleading. Accordingly, we deny Defendants' Rule 12(e) motion for a more definite statement as to this claim.

Likewise, we find that CH&H's Complaint avers sufficient facts to support its breach of fiduciary duty claim under Rule 8. To demonstrate a breach of fiduciary duty claim under Pennsylvania law, a plaintiff must demonstrate that a fiduciary relationship exists between the parties and that the defendant breached its fiduciary duty by failing to act for the benefit of the partnership, and instead, acted in a manner to promote his individual interests. See Haydinger v. Freedman, No. Civ. A. 98-3045, 2000 U.S. Dist. LEXIS 7924, at \*30 (E.D. Pa. June 8, 2000). CH&H avers in its Complaint that both it and Heffernan are partners in the Partnership, and, as such, are accountable as fiduciaries pursuant to Pennsylvania law. See 15 Pa. Cons. Stat. § 8334.<sup>3</sup> CH&H also avers that Heffernan violated his fiduciary duty owed to the Partnership by failing to manage and develop the Partnership Property in the agreed upon economically advantageous

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<sup>3</sup> Section 8334 of the UPA provides:

Every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property.

15 Pa. Cons. Stat. § 8334.

manner, thereby injuring the Partnership and CH&H. Although CH&H does not provide in depth details, CH&H's allegations satisfy the notice pleading requirements as set forth in Rule 8. Since CH&H is not required to provide Defendants with intimate detail of its claims on the face of its Complaint, but need only provide sufficient notice for Defendants to respond in good faith, we stress that discovery is the proper tool for Defendants' request for the specifics of this claim. Therefore, we deny Defendants' motion for a more definite statement as to this claim.

Likewise, we find that CH&H's request for declaratory relief, an accounting and dissolution of the Partnership are plead with adequate notice to Defendants under Rule 8. In its Complaint, CH&H avers that since the Partnership Agreement expressly states that Heffernan, and not CH&H, is responsible for its pro rata share of the Partnership costs if the Partnership Property is neither sold nor refinanced, then CH&H is entitled to a declaration of Heffernan's obligations under the Partnership Agreement. See 28 U.S.C. § 2201.<sup>4</sup> Section 2201 of the Declaratory Judgment Act provides that "[i]n a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested

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<sup>4</sup> CH&H indicates in its Response to Defendants' Motion to Dismiss that it intends to rely on the Declaratory Judgment Act, 28 U.S.C. § 2201.

party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." 28 U.S.C. § 2201(a). Although Defendants contend that CH&H does not provide sufficient detail as to this claim and that a controversy does not exist between the parties, which we discuss below, we find that CH&H satisfies the general Rule 8 pleading requirements by arguing that Heffernan's improper demand for payment, in violation of the Partnership Agreement, constitutes a threat of legal harm warranting declaratory relief.

Furthermore, we find that CH&H sets forth sufficient facts under Rule 8 to support a cognizable claim pursuant to the UPA, 15 Pa. Cons. Stat. §§ 8301-35.<sup>5</sup> Defendants contend that since CH&H fails to provide any detail regarding its allegations that Heffernan made unauthorized drawings from the Partnership accounts, CH&H's Complaint fails to provide sufficient notice of its claim to which Defendants could respond. As set forth in its Complaint, CH&H contends that "Heffernan has paid himself or credited himself and his affiliates with fees, interest, profits and/or other drawings from the Partnership in ways not authorized by the Partnership Agreement" and that, despite its demands,

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<sup>5</sup> Although CH&H does not request specifically an accounting under the UPA in its Complaint, it indicated in its Response to Defendants' Motion to Dismiss that it intended to pursue its request for an accounting under this Act and not common law.

Heffernan has refused to provide an accounting of the Partnership. (CH&H's Compl. at 7.) The UPA, as adopted by Pennsylvania, provides that "[e]very partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property." 15 Pa. Cons. Stat. § 8334(a). Any partner, pursuant to the UPA, has the right to a formal accounting of the partnership affairs if: (1) he is wrongfully excluded from the partnership business or possession of its property by his copartners; (2) the right exists under the terms of any agreement; (3) it is provided by section 8334 (relating to partners being accountable as fiduciaries); or (4) whenever other circumstances render it just and reasonable. 15 Pa. Cons. Stat. § 8335. CH&H contends that Heffernan has paid himself and his affiliates by taking money from the Partnership in violation of the Partnership Agreement and his fiduciary duties, thereby warranting a formal accounting of the Partnership finances under the UPA. We find that, pursuant to the notice pleading standards applicable to a claim for an accounting, CH&H provides Defendants with sufficient facts for it to frame an adequate response to CH&H's allegations. Although CH&H does not provide explicit detail relating to the circumstances surrounding Heffernan's

alleged unauthorized withdrawals, we find that discovery is the proper tool for gathering this information.

Finally, we deny Defendants' request for a more definite statement as to CH&H's claim for dissolution of the Partnership. CH&H contends that dissolution of the Partnership is warranted pursuant to Section 8354 of the UPA because the Partnership has been prejudicially affected and frustrated due to Heffernan's ineffective management of and inattention to the Partnership, and continuing breach of the Partnership Agreement.

The UPA provides that dissolution of a partnership may be caused by operation of law or decree of court. 15 Pa. Cons. Stat. §§ 8353-54. Section 8354 provides that:

On application by or for a partner, the court shall decree a dissolution whenever:

- (1) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind.
- (2) A partner becomes in any other way incapable of performing his part of the partnership contract.
- (3) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business.
- (4) A partner willfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him.
- (5) The business of the partnership can only be carried on at a loss.
- (6) Other circumstances render a dissolution equitable

15 Pa. Cons. Stat § 8354(a). CH&H claims that Heffernan's failure to manage the Partnership effectively, refusal to provide for an accounting, and continuing violation of the Agreement is conduct that prejudicially affects the Partnership business and frustrates its purpose, both of which are grounds for dissolution pursuant to Sections 8354(a)(3) and (a)(4). Under such broad language justifying dissolution under the UPA, we find that CH&H satisfies the liberal pleading requirements set forth in Rule 8 by providing Defendants with sufficient notice of this claim for relief, and therefore, **DENY** Defendants' Motion for a More Definite Statement in its entirety.

#### **B. Motion to Dismiss**

Defendants also contend that CH&H's Complaint fails to aver sufficient facts in support of any of its claims and must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). Rule 12 provides that a party may move to dismiss a claim for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept the non-movant's well-plead averments of fact as true and view all inferences in the light most favorable to the non-moving party. Angelastro v. Prudential-Bache Securities, Inc., 764 F.2d 939, 944 (3d Cir. 1985); Society Hill Civic Assoc. v. Harris, 632 F.2d 1045, 1054

(3d Cir. 1980); Abdulaziz v. City of Philadelphia, No. Civ. A. 00-5672, 2001 U.S. Dist. LEXIS 16972, at \*4 (E.D. Pa. Oct. 18, 2001). In reviewing a motion to dismiss, the court must only consider the facts alleged in the pleadings and attachments thereto. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994); Douris v. Schweiker, No. Civ. A. 02-1749, 2002 U.S. Dist. LEXIS 21029, at \*6 (E.D. Pa. Oct. 23, 2002). A motion to dismiss is appropriate only when the movant establishes that he is entitled to judgment as a matter of law and there exists "no set of facts in support of his claims which would entitle him to relief." Ford v. Schering-Plough Corp., 145 F.3d 601, 604 (3d Cir. 1998); Schrob v. Catterson, 948 F.2d 1402, 1405 (3d Cir. 1991).

Based on our analysis above and, viewing all facts in a light most favorable to the non-movant, we find that CH&H presents sufficient facts to support its breach of contract and fiduciary duty claims,<sup>6</sup> and its requests for an accounting and

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<sup>6</sup> We reject as premature Defendants' additional contentions that the economic loss and gist of the action doctrines preclude CH&H from bringing a breach of fiduciary duty claim in conjunction with a breach of contract claim. The economic loss doctrine "prohibits plaintiffs from recovering in tort economic losses to which their entitlement flows only from a contract." Duquesne Light Co. v. Westinghouse Elec. Corp., 66 F.3d 604, 618 (3d Cir. 1995). The gist of the action doctrine bars claims for allegedly tortious conduct where the "gist of the conduct alleged sounds in contract rather than tort." Polymer Dynamics, Inc. v. Bayer Corp., No. Civ. A. 99-4040, 2000 U.S. Dist. LEXIS 11493, at \*18-19 (E.D. Pa. Aug. 14, 2000).

Although the facts supporting CH&H's breach of fiduciary

dissolution of the Partnership to survive dismissal pursuant to Rule 12(b)(6). Although Defendants dispute that Heffernan has breached his obligations under either the Agreement or the Partnership Agreement, or that he has violated his fiduciary duty as the general managing partner of the Partnership, we must credit CH&H's averments that Heffernan has failed to take advantage of economically favorable offers to the Partnership for purposes of a Rule 12(b)(6) motion, and, at this juncture, find that CH&H presents claims that survive dismissal.

However, we agree with Defendants that CH&H fails to set forth a basis supporting its request for a declaration that: (1) CH&H is not obligated to contribute any share of the Partnership's costs and expenses unless the Partnership Property is sold or refinanced, and (2) Heffernan shall advance CH&H's pro

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duty claim are similar to those it relies upon in its breach of contract averments, we cannot conclude, at this juncture, that CH&H will be unable to prove facts demonstrating damages beyond those contemplated by the Agreement to warrant dismissal of its breach of fiduciary duty claim under the economic loss doctrine. Nor can we determine from the pleadings that CH&H could not show that Heffernan's actions were in violation of his fiduciary duties, and not only in breach of the obligations imposed by the Partnership Agreement, to trigger the gist of the action doctrine. See Haymond v. Lundy, Nos. Civ. A. 99-5015, 99-5048, 2000 U.S. Dist. LEXIS 8585, at \*24 (E.D. Pa. June 22, 2000) (stating that, in the context of the gist of the action doctrine, "[c]aution must be exercised in dismissing a tort action on a motion to dismiss because whether tort and contract claims are separate and distinct can be a factually intensive inquiry"). Without a factually intensive inquiry, we decline to apply these doctrines at this time.

rata share of these Partnership costs. The Declaratory Judgment Act permits a court to "declare the rights and other relations of any interested party seeking such declaration," 28 U.S.C. § 2201(a), and affords the court considerable discretion to determine what circumstances are appropriate for declaratory relief. Step-Saver Data Systems v. Wyse Technology, 912 F.2d 643, 646 (3d Cir. 1990). In order "to avoid accrual of avoidable damages to one not certain of his rights and to afford him an early adjudication without waiting until his adversary should see fit to begin suit, after damage had accrued," Travelers Insurance Co. v. Davis, 490 F.2d 536, 543 (3d Cir. 1974) (citations omitted), federal courts have generally interpreted the Declaratory Judgment Act liberally. Exxon Corp. v. FTC, 588 F.2d 895, 900 (3d Cir. 1978). However, "[t]he discretionary power to determine the rights of parties before injury has actually happened cannot be exercised unless there is a legitimate dispute between the parties." Step-Saver, 912 F.2d at 647. Thus, the Court may only exercise its declaratory relief power provided: (1) the action presents a case or controversy and (2) the action is ripe for disposition. See Travelers Insurance Co. v. Obusek, 72 F.3d 1148, 1153-54 (3d Cir. 1995).

To satisfy the controversy requirement, the action must present: "(1) a legal controversy that is real and not hypothetical, (2) a legal controversy that affects an individual

in a concrete manner so as to provide the factual predicate for reasoned adjudication, and (3) a legal controversy so as to sharpen the issues for judicial resolution." Id. at 1154. To determine whether the action is ripe for adjudication, the courts "examine the adversity of the interest between the parties to the action, the conclusiveness of the declaratory judgment and the practical help, or utility of the declaratory judgment." Id. (internal quotations omitted). "Basically, the question . . . is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Maryland Cas. Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273 (1941).

Defendants argue that CH&H's declaratory judgment request does not satisfy the requirements of the Declaratory Judgment Act because there is no controversy between the parties regarding whether CH&H would be liable to Defendants for Partnership costs at this time. Although Heffernan does not seem to dispute that he had once requested CH&H to pay its share of the Partnership costs, he claims that he has not taken legal action to collect any Partnership costs from CH&H or engaged in any other activity to trigger a controversy between the parties. Although Heffernan has not taken any further steps to collect payments from CH&H, CH&H argues that Heffernan's improper demand for payment

threatens its ability to participate in the Partnership and creates a likelihood that it would be sued by Defendants for an alleged breach of the Partnership Agreement. CH&H argues that these threats are sufficient to satisfy the controversy requirement under the Declaratory Judgment Act.

While CH&H is correct in stating that a litigant can seek a declaratory judgment where the harm is threatened in the future, it must also demonstrate that the probability of that future event occurring is real and substantial, and "of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Presbytery of the Orthodox Presbyterian Church v. Florio, 40 F.3d 1454, 1466 (3d Cir. 1994); Mountbatten Surety Co. v. Brunswick Insurance Agency, No. Civ. A. 00-1255, 2000 U.S. Dist. LEXIS 10611, at \*10 (E.D. Pa. July 27, 2000); Obusek, 72 F.3d at 1154. CH&H states that Heffernan has threatened legal action when it once requested from CH&H its pro rata share of Partnership costs. CH&H does not allege that Heffernan commenced suit against it, threatened legal action, repeatedly demanded payment from CH&H, attempted settlement, or engaged in any other action that would lead CH&H to believe that litigation was a real and immediate threat. See IMS Health, Inc. v. Vality Technology Inc., 59 F. Supp. 2d 454, 461-62 (E.D. Pa. 1999) (finding declaratory relief warranted when plaintiff received threats of litigation). Viewing the facts in a light most favorable to

CH&H, we conclude that even if Heffernan once requested payment from CH&H, this averment alone does not demonstrate a threat of real or immediate harm to qualify as a justiciable controversy ripe for declaratory relief. Accordingly, we find the threat of real or immediate harm is lacking, and **GRANT** Defendants' Motion to Dismiss CH&H's claim for declaratory relief pursuant to the Declaratory Judgment Act. All other claims averred in CH&H's Complaint remain before the Court.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CH&H PENNSYLVANIA PROPERTIES,	:	CIVIL ACTION
INCORPORATED,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JOSEPH E. HEFFERNAN, III and	:	
KEITH VALLEY PARTNERSHIP,	:	
Defendants.	:	No. 03-CV-2349

O R D E R

**AND NOW**, this                    day of August 2003, in consideration of the Motion to Dismiss, or In the Alternative, a Motion for a More Definite Statement filed by Defendants Joseph E. Heffernan, III and Keith Valley Partnership (collectively, the "Defendants") (Doc. No. 2), the Response of Plaintiff CH&H Pennsylvania

Properties, Incorporated ("CH&H") (Doc. No. 3) and Defendants' Reply thereto (Doc. No. 4), it is **ORDERED** that Defendants' Motions are **GRANTED IN PART and DENIED IN PART** to the extent that:

1. Defendants' Motion to Dismiss is **GRANTED** as to CH&H's request for a declaratory judgment under the Declaratory Relief Act, 28 U.S.C. § 2201.
2. The remainder of Defendants' Motion to Dismiss is **DENIED** and CH&H's other claims remain before this Court.
3. Defendants' Motion for a More Definite Statement is **DENIED** in its entirety.

BY THE COURT:

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JAMES MCGIRR KELLY, J.