

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LITTLER MENDELSON, P.C., a
California Professional Corporation,

Plaintiff,

vs.

MELISSA MANN, a Florida resident
AND POLSINELLI, P.C., a Missouri
Professional Corporation,

Defendant.

Case No. 1:21-cv-03855-MLB

**PLAINTIFF’S OPPOSITION TO
DEFENDANTS’ OMNIBUS MOTION TO STRIKE,
MOTION FOR MORE DEFINITE STATEMENT
AND PARTIAL MOTION TO DISMISS**

Plaintiff Littler Mendelson, P.C. (“Littler”) submits this Opposition to Defendant Polsinelli, P.C.’s (“Polsinelli”) Omnibus Motion to Strike, Motion for More Definite Statement and Motion to Dismiss Counts VI and X and requests the Court deny Defendant’s motions in their entirety.

Although the allegations in Plaintiff’s Second Amended Complaint (“Complaint”) regarding Defendant Melissa Mann’s (“Ms. Mann”) efforts to remove massive amounts of confidential and proprietary information from Littler’s information technology systems may be uncomfortable for Polsinelli to acknowledge, the allegations are not “immaterial, impertinent or prejudicial.” (Dkt.

77). As expressly alleged in the Complaint, Ms. Mann undertook the actions at issue at the direction of Angelo Spinola (“Mr. Spinola”) and Polsinelli, and specifically for the benefit of Mr. Spinola’s practice at Polsinelli and the development of the Polsinelli Online Solutions for Homecare (“POSH”). (*E.g.* Compl. ¶¶ 2-4).

Additionally, Defendant’s motion for a more definite statement should be denied because the Complaint gives sufficient notice of the trade secrets at issue in Littler’s claim under the Georgia Trade Secret Act (“GTSA”). Littler has specifically identified at least two documents that unquestionably qualify as trade secrets under the GTSA (Compl. ¶ 40, 58, 60), and it has described by category other sources of information that may contain both trade secret and non-trade secret (yet, still confidential, proprietary and valuable) information that is not coextensive (Compl. ¶ 107).

Finally, the Court should deny Defendant’s partial motion to dismiss Count VI (Tortious Interference with Business Relations) and Count X (Unjust Enrichment) because these claims are not preempted by the GTSA to the extent they are not based on Defendant’s misappropriation of “trade secrets.” As more specifically detailed in Plaintiff’s Complaint, Littler alleges that Polsinelli tortiously interfered with its relationships with clients and employees. (Compl. ¶¶ 3, 48-49). Acting in concert with Mr. Spinola and Ms. Mann, Polsinelli actively siphoned

clients away from Littler while knowing Littler was unaware of Mr. Spinola's and Ms. Mann's intent to depart the firm (Compl. ¶¶50-51); and Polsinelli and Mr. Spinola worked together to undermine the Corridor Project for which Littler professionals invested numerous hours based on Mr. Spinola's false representations that "industry clients" had agreed to compensate Littler for its work. (Compl. ¶¶64-69). As a result of these actions, Polsinelli unjustly benefited from the legal work they received from Littler's clients as well as the work of Littler's professionals in connection to the Corridor Project for which Littler was never paid. Neither of these claims depend on Defendant's misappropriation of trade secrets, for which Littler seeks separate and independent relief under the GTSA.

Accordingly, this Court should deny Defendant's omnibus motion in its entirety. In the event the Court grants any part of Defendant's motion, Littler requests leave to amend the Complaint both to correct any deficiencies and to assert additional claims.¹

¹ If permitted leave to amend its complaint, Littler agrees to remove Ms. Mann from the pleading caption as well as remove the specific causes of action asserted only against Ms. Mann (Counts I-IV). However, the underlying allegations for the claims against Ms. Mann which also form the basis of Littler's claims against Polsinelli should not be stricken. To enhance clarity, Littler also agrees to remove the phrase "trade secrets" from Count X (Unjust Enrichment) within paragraphs 133-134 and 136-137.

ARGUMENT AND CITATION OF AUTHORITIES

A. Defendant's Motion to Strike Should Be Denied.

Because Littler's allegations involving Ms. Mann are related to its claims against Polsinelli, Defendant's motion to strike must be denied. Federal Rule of Civil Procedure 12(f) sets forth the standard for filing motions to strike. "Upon motion made by a party before responding to a pleading, . . . the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed.R.Civ.P. 12(f). However, motions to strike are generally viewed with disfavor and "often considered time wasters." *See Tingley Sys. Inc. v. Bay State HMO Mgmt. Inc.*, 833 F.Supp. 882, 884 (M.D.Fla.1993). Unless it is clear that the matters stricken have no possible relationship to the controversy and may prejudice the other party, motions to strike are usually denied. *See Robinson v. Wellstar Health Sys.*, No. 1:19-cv-02244-SDG-RDC, 2021 U.S. Dist. LEXIS 123855, at *6 (N.D. Ga. Apr. 2, 2021) (denying defendant's motion to strike).

Here, Polsinelli incorrectly suggests that the allegations involving Melissa Mann, including her violation of applicable Littler policies and agreements, are "immaterial," "not relevant," and "prejudicial" because the claims against Polsinelli have "nothing to do with any claims against Mann." Motion at 5. However,

Polsinelli’s argument intentionally ignores the thrust of Littler’s allegations which are that Ms. Mann undertook each of the actions alleged – including without limitation improperly transferring confidential information from Littler’s IT systems – under the direction and encouragement of Polsinelli and Mr. Spinola and for their express benefit. (*See, e.g.*, Compl. ¶¶ 2-4, 36, 39-30, 48-63, and 69). Accordingly, Defendant’s motion to strike these allegations should be denied.

B. The Motion for More Definite Statement Should Be Denied.

Because Littler’s Complaint adequately gives notice of the specific actions by Polsinelli constituting objectionable conduct under its GTSA claim, Defendant’s motion for more definite statement must be denied. Pursuant to Rule 12(e), a party may move for a more definite statement “[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” Fed.R.Civ.P. 12(e). However, the requirements of pleading under the Federal Rules are “liberal,” and a litigant need not “allege a ‘specific fact’ to cover every element or allege ‘with precision’ each element of a claim.” *See Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 683 (11th Cir. 2001). Additionally, “courts generally disfavor motions for a more definite statement.” *Ip v. 1-800-Flowers*, No. 1:20-cv-2405-SCJ, 2021 U.S. Dist. LEXIS 118472, at *15 (N.D. Ga. Mar. 10, 2021) (internal citations omitted). “A

motion for a more definite statement is intended to provide a remedy for an unintelligible pleading, rather than a vehicle for obtaining greater detail.” *Id.* (internal citations omitted). This is not an unintelligible pleading, Polsinelli is only looking to obtain greater detail.

A pleader need only provide its opponent with “fair notice of what [its] claim is and the grounds upon which it rests.” *Daugherty v. Walgreen Co.*, Civil Action No. 1:21-cv-02032-SDG, 2022 U.S. Dist. LEXIS 128996, at *3 (N.D. Ga. July 20, 2022) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, a plaintiff should include in its pleading some brief factual description of the circumstances surrounding the acts or omissions upon which it bases its claim for relief. *See Williams v. Lear Operations Corp.*, 73 F.Supp.2d 1377, 1381 (N.D.Ga. 1999).

Defendant specifically takes issue with Count VII alleging violations of the GTSA purportedly because the “trade secrets” at issue are “vaguely identified.” Motion at 9. However, Defendant concedes that “three documents are identified with specificity” in the Complaint. *Id.*; *See also* Compl. ¶ 40. These three documents² include:

² Littler offers to submit all three documents for *in camera* inspection should the court determine such is necessary to determine whether Littler has adequately pled misappropriation of a trade secret.

- (1) the “Home Care Toolkit Subscription Database 2.12.21.XLSX” - a comprehensive spreadsheet containing information regarding Toolkit subscribers, including business name, business contact, states of operation, status of paperwork execution, initial fees paid, renewal terms, and internal notes on subscriber status;
- (2) the “Toolkit Subscribers 2.11.21.CSV” - a comprehensive spreadsheet listing more than 4,000 Toolkit subscribers (including without limitation Littler attorneys with subscriber access), the subscribers’ email addresses, length of membership, and dates of last access to the Toolkit; and
- (3) a document entitled “Homecare Practice Group Brochure Draft.docx” which, by its title is a “draft” marketing brochure.

None of these three documents were transferred to Polsinelli by Littler as part of a “client file,” nor were any of these documents publicly available (including the *draft* marketing brochure). Rather, as specifically alleged in Paragraph 40 of the Complaint, Mr. Spinola and Ms. Mann covertly transferred these documents to Polsinelli on or before February 12, 2020 – prior to either of them giving Littler notice of their intent to leave the firm. Without question, the detailed subscriber spreadsheets which include confidential pricing data³ are trade secrets within the meaning of the GTSA, and adequately satisfy the pleading requirements for Littler’s

³ Defendant’s contention that Mr. Spinola provided these spreadsheets to Polsinelli – in native format and without any effort to redact the subscription pricing, status and renewal details - merely in an effort to “clear client conflicts” is meritless.

trade secret claim. *See* O.C.G.A. § 10-1-761(4) (“‘Trade secret’ means information, without regard to form, including, but not limited to . . . financial data . . . or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information: (A) [d]erives economic value . . . and (B) [i]s the subject of efforts . . . to maintain its secrecy.”).

Otherwise, Defendant argues that Littler’s trade secret claim should be more definitely pled because it alleges Polsinelli misappropriated “confidential and proprietary information, including, but not limited to client files, Toolkit templates, client contact lists and other unique information to be used for legitimate Littler business purposes only.” Motion at 9. Having identified specifically at least two documents that unquestionably constitute trade secrets under the GTSA, Littler is not required to further itemize every other potential trade secret at issue on a document-by-document basis at the pleadings stage. *Holdt v. A 1 Tool Corp.*, No. 04 C 4123, 2005 U.S. Dist. LEXIS 64515, at *12–13 (N.D. Ill. June 1, 2005) (“There is no rule in the Federal Rules of Civil Procedure governing a plaintiff’s identification of trade secrets with particularity. At the complaint stage, a plaintiff is not expected to plead its trade secrets in detail.”); *Scripps Research Inst. v. Illumina, Inc.*, No. 16-cv-661 JLS (BGS), 2016 U.S. Dist. LEXIS 161279, at *18 (S.D. Cal.

Nov. 21, 2016) (rejecting the defendant’s argument that a plaintiff must identify all of a defendant’s allegedly infringing products at such an early stage).

This is especially true in cases like this one where Littler does not know everything Polsinelli has in its possession due to the intentionally surreptitious actions of Mr. Spinola and Ms. Mann. Accordingly, Littler has provided general descriptions of the categories of confidential and proprietary documents at issue that may constitute trade secrets including “client files” and the Toolkit templates developed and routinely updated by Littler’s internal Knowledge Management (“KM”) team. *See* O.C.G.A. § 10-1-761(4).

Polsinelli specifically attacks the concept of client files containing trade secrets based on at least three faulty assumptions. First, it wrongly assumes the client files at issue are only ones that Littler transferred pursuant to a properly authorized client request upon Mr. Spinola’s departure from the firm. However, Littler specifically alleges that Mr. Spinola and Ms. Mann began transferring “client files” to Polsinelli while both were still employed at Littler and while the clients at issue remained Littler clients. Compl. ¶ 49. Second, Polsinelli wrongly assumes, without any factual showing, that all client files at issue are subject to Georgia common law regarding ownership and use of attorney work product. Choice of law determinations regarding specific client file material simply cannot be made without

benefit of discovery regarding the specific clients (which may or may not be located in Georgia) and the attorneys involved in the development of the specific work product (who may or may not be located in Georgia). Third, Polsinelli wrongly assumes that *any* state’s common law will govern and that there are no contractual agreements (including engagement letters, terms of representation, or licensing agreements) expressly addressing ownership and use of work product created by Littler for specific clients or offered by Littler to its Toolkit subscribers. As specifically alleged in Paragraphs 19 and 20 of Complaint, Littler has undertaken several steps to protect its confidential and proprietary information (including, but not limited to, trade secret information) and the considerable economic investment it has made in said information.⁴

Because the Complaint provides adequate information to notify Defendant of the trade secrets that are or may be at issue, the motion for more definite statement should be denied.

⁴ Specifically in the case of Toolkit subscribers, these steps include a written End User Licensing Agreement (“EULA”) and an electronic clickwrap requiring subscribers to accept the terms of the EULA upon accessing the Toolkit. Among other provisions, the Toolkit EULA expressly provides that subscribers may not “transfer, distribute, publish, assign, lend, or sublicense the Toolkit to any third party, including without limitation . . . external legal advisors . . . [or] exploit the Toolkit or any of its parts commercially”

C. Defendant's Partial⁵ Motion to Dismiss Should Be Denied Because the GTSA Does Not Preempt Littler's Intentional Interference or Unjust Enrichment Claims.

Littler's Complaint alleges facts sufficient to support each of its claims against Defendant, and none of Plaintiff's claims including Counts VI and X are preempted by the GTSA. Rule 8 of the Federal Rules of Civil Procedure identifies the criteria for assessing the sufficiency of a pleading before discovery. Specifically, Rule 8(a)(2) provides that a complaint "that states a claim for relief must contain ... a short and plain statement of the claim showing that the pleader is entitled to relief." A claim satisfies the requirement of Rule 8(a)—and avoids dismissal under Rule 12(b)(6)—if the complaint alleges facts sufficient to establish that the claim is "plausible on its face." *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007).

When considering a motion to dismiss, a court must accept as true all factual allegations contained in the complaint and construe them in the light most favorable to the plaintiff. *Fuller v. Enter. Leasing Co. of Ga., LLC*, No. 1:21-CV-5013-TWT, 2022 U.S. Dist. LEXIS 120079, at *2-3 (N.D. Ga. July 7, 2022) (citing *Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp.*, 711 F.2d 989, 994-95 (11th Cir. 1983)). "[T]he threshold of sufficiency that a complaint must meet to

⁵ Significantly, Polsinelli has not challenged Plaintiff's claims for tortious interference with contractual relations (Count V), civil conspiracy (Count VIII) or aiding and abetting breach of fiduciary duty and duty of loyalty (Count IX).

survive a motion to dismiss for failure to state a claim is exceedingly low.” *Quality Foods de Centro Am.*, at 995.

Accordingly, in reviewing Defendant’s motion, the Court must accept as true Littler’s allegations that:

- Polsinelli encouraged its co-conspirators to take Littler’s documents and information;
- the information consisted of both trade secret (such as customer/subscriber lists/templates) and non-trade secret confidential information (like internal marketing information);
- Littler has a proprietary interest in the information taken by Polsinelli and its co-conspirators;
- Polsinelli knew that taking this information was in violation of the co-conspirators’ duties and obligations to Littler;
- Polsinelli encouraged and gave support to its co-conspirators in poaching clients from Littler with whom Littler had both on-going and/or prospective business interests;
- Polsinelli used Littler’s confidential, proprietary and trade secret documents and information to develop and launch a product that directly competes with the Toolkit to Littler’s economic detriment; and
- Polsinelli used that information – among other actions - to interfere with Littler’s on-going business and employee relations to Littler’s economic detriment.

Despite accepting as true each of these incriminatory acts, Polsinelli now argues that no matter how egregious its and its co-conspirators’ conduct was in committing these offenses, it should face ***no repercussions*** for its misappropriation of any information that does not rise to the statutory-definition of trade secrets. As this very Court recently held in a similar case:

If [Polsinelli is] right about GTSA's preemptive force, the misappropriation of non-trade-secret information is no longer actionable in Georgia (outside of contract law). It does not matter how egregious the misappropriation is or how significant the information might be. No remedy exists.

Angel Oak Mortg. Sols. LLC v. Mastronardi, No. 1:20-cv-4583-MLB, 2022 U.S. Dist. LEXIS 53476, at *10 (N.D. Ga. Mar. 23, 2022)(Hon. Michael L. Brown) (motion to dismiss based on GTSA preemption granted in part and denied in part).⁶ As in *Angel Oak*, the Court should find here that the GTSA's preemption provision does not accomplish such a "dramatic development." *Id.*

i. The GTSA Only Preempts "Lesser and Alternate" Theories of Restitution Based on the Same Facts as a GTSA Claim

The GTSA's preemption provision explicitly states that it "shall supersede *conflicting* tort, restitutionary, and other laws of [Georgia] providing civil remedies for misappropriation of a trade secret." O.C.G.A § 10-1-767(a) (emphasis added). But the GTSA "shall not affect . . . [o]ther civil remedies that are *not based upon misappropriation of a trade secret . . .*" O.C.G.A § 10-1-767(b) (emphasis added). Both this Court and the Georgia Supreme Court have weighed in on how these provisions should be interpreted with claims involving the theft of information, some

⁶ Polsinelli's motion completely ignores the Court's ruling in *Angel Oak*.

of which may qualify as a trade secrets and some of which may not rise to the level of trade secrets but is nonetheless entitled to legal protection because it is confidential, proprietary and has significant economic value. *See Robbins v. Supermarket Equip. Sales, LLC*, 290 Ga. 462, 465, 722 S.E.2d 55, 58 (2012); *Angel Oak Mortg.*, 2022 U.S. Dist. LEXIS 53476.

In *Robbins*, the Georgia Supreme Court held that the GTSA preempts “a lesser and alternate theory of restitution” based on the same facts as the GTSA claim. *Robbins*, 299 Ga. at 465-66. *Robbins* explains that “the key inquiry is whether the same factual allegations of misappropriation [of trade secrets] are being used to obtain relief outside the GTSA.” *Id.* at 466-67. Polsinelli contends that this ruling grants them the ability to take ***with impunity*** (and apparently build an entire business model on) any information that does not qualify as a trade secret.

In *Angel Oak*, however, this Court found the GTSA does not preempt theft of non-trade secret information or claims based on allegations beyond the misappropriation of trade secrets. Rather, the GTSA preempts claims that seek “to avoid the GTSA's exclusivity in remedying the misappropriation of trade secrets by alleging these counts as ‘lesser and alternative theories’ of recovery in case the items are determined not to constitute trade secrets.” *Angel Oak Mortg.*, 2022 U.S. Dist. LEXIS 53476, at *7. Where, as here however, claims involve the misappropriation

of *both* trade secrets and non-trade secrets that are not coextensive, the “GTSA does not preempt these claims because they do not involve trade secrets or the same information as Plaintiff’s GTSA claim.” *Id.* at 8.

In other words, even where a tort claim arises out of the same nucleus of operative facts as a GTSA claim, it is not preempted to the extent it seeks to remedy the misappropriation of non-trade secret information or other acts. *See id.* at 9-12.⁷ This is the case with Littler’s intentional interference and unjust enrichment claims.

ii. The Intentional Interference Claim Requires Proof of Facts Different from the GTSA Claim

Tellingly, Polsinelli’s “analysis” of Littler’s intentional interference claim is short on citations to Littler’s operative complaint and long on rhetorical citation to a procedurally-distinct case. *See* Motion at 15-16. As an initial matter, the principal case upon which *Polsinelli* relies, *Diamond Power Int’l, Inc. v. Davidson*, 540 F. Supp. 2d 1322, 1326 (N.D. Ga. 2007), is a summary judgment case that was submitted after the parties had the opportunity to take discovery and marshal the

⁷ As this Court acknowledged in *Angel Oak*, other courts have addressed this issue and come to a different conclusion. *E.g.*, *PHA Lighting Design, Inc. v. Kosheluk*, 2010 U.S. Dist. LEXIS 30752 (N.D. Ga. Mar. 30, 2010) (The GTSA preempts all state law claims based upon misappropriation of intangible property). Littler submits that these cases are unpersuasive for the same reasons explained in *Angel Oak*. *Angel Oak Mortg.*, 2022 U.S. Dist. LEXIS 53476 at *9-12.

relevant evidence. In any event, *Diamond Power* still does not support dismissing Littler's claim.

The entirety of the *Diamond Power* plaintiff's evidence and argument in support of its intentional interference claim was "that, by acquiring [plaintiff's] proprietary information, [defendant] was more competitive in the market." *Diamond Power*, 540 F.Supp.2d at 1347. In distinct contrast to that barebones theory, Littler's Complaint lays out a pattern of egregious conduct undertaken by Polsinelli and its co-conspirators to use their positions of trust within Littler to not only surreptitiously steal confidential and proprietary information, but also to poach clients and induce Littler employees to violate their duties and obligations to the firm. *E.g.*, Second Amended Complaint ¶ 51. In fact, while this is just a *motion to dismiss* as opposed to the motion for summary judgment in *Diamond Power*, Littler has specifically identified eleven (11) companies that Polsinelli and its co-conspirators siphoned from Littler by successfully soliciting their business while Littler was in the dark about Mr. Spinola's plan to leave the firm. *Compare* Second Amended Compl. at ¶ 51 *with Diamond Power*, 540 F.Supp.2d at 1347 (noting that an examination of the *evidence* at summary judgment did not reveal that a single customer had actually been poached). These poaching efforts are separate and apart from Polsinelli and its co-conspirators' theft of trade secrets.

Moreover, there is an entire section of the Complaint dedicated to Polsinelli's efforts to dupe Littler into doing work to court Corridor Group Inc. only for Polsinelli to reap the fruits of Littler's efforts. *See* Compl. ¶¶ 64-71. The inducement by Polsinelli's co-conspirator to have Littler employees create work for Polsinelli's benefit does not sound in trade secret misappropriation. To the contrary, it speaks to Polsinelli's bad faith business tactics interfering with Littler's economic expectancy. Likewise, the Complaint details, and seeks remedies for, Polsinelli's interference with Littler's contractual relations with its employees. *E.g.*, Second Amended Complaint at ¶ 95. And, of course, Littler has not yet had an opportunity to take full discovery of what other egregious acts Polsinelli undertook that are similar to the Corridor project or its interference with Littler clients and employees.

Because discovery has yet to commence on the claims against Polsinelli, Littler has not yet been able to determine the full extent of the damage its tortious conduct has caused, but Littler has unquestionably sufficiently pled harms stemming from the loss of Toolkit subscribers and revenue, lost clients and lost employees. For the present motion, the key inquiry is whether Littler's intentional interference claim is based on "the same factual allegations" as Littler's GTSA claim. As demonstrated above, the answer is that it is not. *See NCR Corp. v. Pendum, LLC*, 2018 U.S. Dist. LEXIS 244111 (N.D. Ga. Aug. 8, 2018) (tortious interference claim

preempted by GTSA only “to the extent” it “relies on allegations of the use of [] trade secrets” but not “in other ways”); *Tronitec, Inc. v. Shealy*, 547 S.E.2d 749, 755 (Ga. Ct. App. 2001) (conversion claim preempted by GTSA to the extent it was “limited to trade secrets” but not to the extent “personal property not a trade secret” was involved).

iii. Littler’s Unjust Enrichment Claim Seeks to Disgorge Polsinelli’s Ill-Gotten Gains From Use of Non-Trade Secret Information

Like its tortious interference claim, Littler’s unjust enrichment claim is explicitly based on conduct beyond Polsinelli’s use of Littler’s stolen trade secrets. For example, in paragraph 135 of the Complaint, Littler explains that the Unjust Enrichment is also based on “the value attributable to the services that Former Littler Employees have provided to Polsinelli” (e.g. with regard to the Corridor Project) and “profits from services or work performed by Polsinelli for any clients solicited.” The GTSA does not preempt Littler’s unjust enrichment claim based on these wrongful acts, which do not sound in trade secret. *See id.*

D. Plaintiff Requests Leave to Amend if Defendant’s Omnibus Motion is Granted.

If the Court concludes that any of Littler’s claims are insufficiently pled, the proper remedy is to provide Plaintiff an opportunity to amend, not dismiss the

Complaint. *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (“A district court’s discretion to dismiss a complaint without leave to amend is ‘severely restricted’ by Fed. R. Civ. P. 15(a), which directs that leave to amend ‘shall be freely given when justice so requires.’”); *Wilson v. Gowaiter Franchise Holdings, LLC*, No. 1:13-cv-01054-JEC, 2014 U.S. Dist. LEXIS 34837, at *6 (N.D. Ga. Mar. 18, 2014) (granting plaintiff’s motion to amend); *Davidson v. Litton Loan Servicing Lp*, No. 1:09-CV-1681-RWS/AJB, 2010 U.S. Dist. LEXIS 162630, at *7 (N.D. Ga. Sep. 7, 2010) (same). Therefore, if the Court grants Defendant’s omnibus motion, in whole or part, Littler respectfully requests leave to amend its Complaint both to address any deficiencies and to add any new claims.⁸

⁸ Littler notifies the court (as it did with Defendant *prior* to the filing of its omnibus motion) that it intends to seek leave to amend its complaint to allege new claims against Polsinelli that have come to light following Littler’s limited inspection of POSH on June 15, 2022. In the interest of efficiency, Littler offered to extend Polsinelli’s response deadline to the current Complaint, which could be futile if the Court granted Littler’s anticipated motion. Polsinelli declined that offer preferring instead to proceed with the instant omnibus motion. Again in the interest of efficiency, Littler requests that any leave to amend to address pleading deficiencies here also grant it latitude to include new claims. *Jackson v. Fulton Cnty.*, No. 1:12-CV-0518-ODE-ECS, 2013 U.S. Dist. LEXIS 207229, at *46 (N.D. Ga. Nov. 6, 2013) (granting leave to amend to cure deficiencies, add new claims, and new defendants)

CONCLUSION

For the foregoing reasons Littler requests this Court to deny Defendant's omnibus motion in its entirety. Failing that, Littler requests the Court grant it full leave to amend its complaint for all purposes.

Dated: July 27, 2022

/s/ Dara D. Mann

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned certifies that the brief has been prepared with one of the fonts and point selections approved by the Court in L.R. 5.1 (B).

/s/ Dara D. Mann

Dara D. Mann

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' OMNIBUS MOTION TO STRIKE, MOTION FOR MORE DEFINITE STATEMENT AND PARTIAL MOTION TO DISMISS** to all counsel of record via the Court's CM/ECF system.

This 27th day of July, 2022.

/s/ Dara D. Mann

Dara D. Mann