

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:  
LIFE FUND 5.1, LLC, et. al.,

Debtors

JEFF MARWIL, solely as TRUSTEE of LIFE  
FUND 5.1, LLC, et. al.,

Plaintiff,

v.

BRENT ONCALE; RUSSELL MACKERT;  
ADLEY ABDULWAHAB, a/k/a ADLEY  
WAHAB; CHRISTIAN ALLMENDINGER;  
A&O LIFE FUNDS, LP; A&O LIFE FUNDS  
MANAGEMENT, LLC; and SHEPHERD  
CAPITAL MANAGEMENT LLC,

Defendants.

§ Chapter 11  
§  
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§ Debtors  
§ Case No. 09-32672  
§ (Jointly Administered)  
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§ Hon. A. Benjamin Goldgar  
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§ Adversary No.: 10 A 00042  
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**DEFENDANT CHRISTIAN ALLMENDINGER'S MEMORANDUM OF LAW**  
**IN SUPPORT OF HIS MOTION TO DISMISS PLAINTIFF'S FIRST**  
**AMENDED COMPLAINT OR, IN THE ALTERNATIVE, MOTION**  
**FOR A MORE DEFINITE STATEMENT**

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Defendant Christian Allmendinger (“Allmendinger”) respectfully submits this Memorandum of Law in Support of his Motion to Dismiss Plaintiff’s First Amended Complaint or, In The Alternative, Motion For A More Definite Statement, pursuant to Rules 8(a), 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure.

## I. INTRODUCTION

The United States Supreme Court has mandated that fraud-based claims such as those brought by the Plaintiff herein against Allmendinger be pleaded “with particularity” and that the Complaint provide specific factual allegations sufficient enough to make the claims truly plausible. As such, both the Seventh and Fifth Circuits require the Complaint to set forth the specific fraudulent statements, identify the speaker and where the statements were made, and explain why the statements were fraudulent. Here, in certain instances, the Complaint has failed to allege facts specific to Allmendinger; instead, the Complaint attempts to implicate Allmendinger through the actions of others by grouping his actions with those of Defendants Oncale and Wahab as “A&O Principals.” This characterization is not sufficient and the Complaint as to Allmendinger should be dismissed for this reason alone. At the very least, those paragraphs that are not sufficient under Rule 9(b) should be ordered stricken from the Complaint.

Further, despite instruction from the Court to include factual allegations regarding the Debtors’ insolvency, the Complaint still fails to allege sufficient facts indicating that the Debtors were insolvent. Instead, the Complaint is comprised of conclusory allegations of insolvency and includes speculative facts and contingent liabilities which were not properly discounted as required. As such, Allmendinger respectfully requests that this Court dismiss with prejudice all claims involving him which encompass allegations of insolvency.

This Court, in its Order dated June 30, 2010, made it clear that the LP Account was the initial transfer and that any transfers to other Defendants were subsequent transfers, at best.

Accordingly, the Court ruled that the Plaintiff had no cause of action against Allmendinger with respect to Plaintiff's claim under 11 U.S.C. § 550(a)(1), with the possible exception of Paragraph 37 of Plaintiff's Original Complaint. (Order at 6-7). In his First Amended Complaint, Plaintiff still has failed to allege facts indicating that Allmendinger was an initial transferee or that Allmendinger received a direct benefit from the initial transfers. Accordingly, Allmendinger respectfully requests that this Court dismiss with prejudice Plaintiff's claim under 11 U.S.C. § 550(a)(1). Alternatively, Allmendinger requests that this Court require a more definite statement with regard to Count VI so that Allmendinger is put on proper notice as to whether Plaintiff seeks recovery under subsection (a)(1) or (a)(2) of his 11 U.S.C. § 550(a)(1) claim.

Last, in Count XVI Plaintiff alleges that Allmendinger failed to turn over the insurance policies in which he was listed as owner/beneficiary to the Debtors. In Plaintiff's First Amended Complaint, Plaintiffs seek specific performance requiring Allmendinger to transfer these policies to the Debtors. However, as recognized by Plaintiff in withdrawing his motion for a temporary restraining order and preliminary injunction against Allmendinger, Allmendinger has in fact transferred his interest in the policies to the Debtors. Consequently, Plaintiff's claim under Count XVI is now moot and should be dismissed.

## II. ARGUMENT

### A. Motion to dismiss standard under Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure is appropriate to challenge a complaint that fails to "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In 2007, the United States Supreme Court articulated that a plaintiff's obligation under Rule 8(a)(2) requires that a viable complaint include enough factual detail to state a claim for relief that is plausible on its face. Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 555-58 (2007). "A claim has facial plausibility when the pleaded

factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, \_\_\_U.S.\_\_\_, 129 S. Ct. 1937, 1940 (2009). Legal conclusions couched as facts that do no more than raise speculation are insufficient. *Id.* at 1965. As such, allegations phrased as legal conclusions need not be accepted as true, and claims that are merely possible or conceivable are subject to dismissal under Rule 12(b)(6). *Iqbal*, 129 S. Ct. at 1950; *Twombly*, 550 U.S. at 555. Thus, to avoid dismissal, Plaintiff must plead facts sufficient to frame its claims as plausible rather than merely conceivable. *Iqbal*, 120 S. Ct. at 1950-51.

Because the requirements of Rule 9(b), which apply to allegations of fraud, are even more stringent than Rule 8(a), the decisions in *Twombly* and *Iqbal* apply with equal force to allegations of fraud. *See Twombly*, 550 U.S. at 557. The Fifth and Seventh Circuits strictly interpret the “particularity” requirement of Rule 9(b), requiring a plaintiff to specify the fraudulent statements, identify the speaker and where the statements were made, and explain why such statements are fraudulent. *Borsellino v. Goldman Sachs Group, Inc.*, 477 F.3d 502, 508 (7th Cir. 2007); *Herrmann Holdings Ltd. v. Lucent Tech. Inc.*, 302 F.3d 552, 564-65 (5th Cir. 2002). Further, Rule 9(b) is applicable to all claims involving the allegation of fraud, as the mere title of the claim is not dispositive. *See In re Amer. Int’l Refinery*, 402 B.R. 728, 737 (W.D. La. 2008) (applying Rule 9(b) to breach of fiduciary duty and Uniform Fraudulent Transfer Act).

Here, the Complaint does not support a rational inference that Allmendinger is liable for the misconduct alleged, even if its allegations are not subject to the heightened pleading requirements of Rule 9(b). The Complaint fails to make a plausible case that Allmendinger personally participated in any fraudulent transfer or breach of fiduciary duty. The Plaintiff

attempts to gloss over this deficiency by using conclusory labels and bare legal conclusions but, at bottom, the Complaint is doomed by the inability of the alleged facts to raise the Plaintiff's claims beyond the speculative to the truly plausible. *Twombly*, 550 U.S. at 555. The Plaintiff does not allege specifics regarding each individual defendant; rather, he makes sweeping generalizations about the A&O Principals as a group. *See Jepson, Inc. v. Makita Corp.*, 34 F.3d 1321, 1328 (7th Cir. 1994). These generalizations do not comply with the purpose of Rule 9(b), that each individual defendant be given enough specificity to truly understand the nature of the claim against him or her.

Plaintiff's conclusory allegations and sweeping generalizations are still present throughout his First Amended Complaint. For instance, Plaintiff states that "the A&O Principals also directed disbursements of millions of dollars from the LP Account for their own personal benefits." (First Am. Compl. ¶ 36). Paragraph 36 of the Complaint fails to identify specific transfers, the individual transferees and the specific dates these alleged transfers transpired. Similarly, Paragraphs 30 and 31 of Plaintiff's First Amended Complaint make allegations without providing the needed specificity. Specifically, Paragraph 30 alleges that "[u]pon information and belief, A&O Principals used Mackert's letter to solicit investments." (First Am. Compl. ¶ 30). Fair notice requires fact supporting the allegations; allegations founded upon "information and belief" will not suffice unless a statement of fact providing the basis of this belief is included. *Neiman v. Irmes (In re Irmes)*, 379 B.R. 299, 309 (Bankr. N.D. Ill. 2007). Paragraph 30 of the Complaint fails to specify which A&O Principal used the letter, to whom the solicitation was made and the date of such alleged solicitation. Likewise, Paragraph 31 lists numerous alleged misrepresentations by A&O Principals, yet fails to identify the specific speaker, the date and the specific alleged misrepresentations. (First Am. Compl. ¶ 31).

Defendant Allmendinger respectfully urges this Court to dismiss Plaintiff's First Amended Complaint, or in the alternative, strike these insufficient paragraphs from the pleadings.

**B. Plaintiff has still failed to allege sufficient facts demonstrating that the Debtors were insolvent.**

**1. Plaintiff's First Amended Complaint is still flawed by its reliance on conclusory allegations.**

In the Court's June 30, 2010 Order granting in part and denying in part Defendants Oncale and Allmendinger's motions to dismiss, the Court dismissed Counts VI and VII of the Plaintiff's Original Complaint because the Plaintiff alleged no facts to support his conclusions that Debtors were insolvent at the time of the transfers or became insolvent as a result of them. (Order at 9); *see, e.g.*, 11 U.S.C. § 548(a)(1)(B)(ii)(I); 740 ILCS 160/6(a) (2008); Tex. Bus. & Com. Code § 24.006(a) (Vernon 2010); ; *Yelverton v. Homes at Potomac Greens Assocs., L.P.* (*In re Yelverton*), Nos. 09-414, 10-10001, 2010 WL 1688403, at \*2-3 (Bankr. D.D.C. Apr. 22, 2010); *Angell v. Burrell (In re Careamerica, Inc.)*, 409 B.R. 759, 767 (Bankr. E.D.N.C. 2009) (stating that a complaint must plead facts sufficient to demonstrate that the entity was insolvent or became insolvent as a result of the transfers). Plaintiff's First Amended Complaint, much like his Original Complaint, is full of conclusory allegations that do not satisfy the standards required under *Ashcroft v. Iqbal*, \_\_\_ U.S. \_\_\_, \_\_\_, 129 S. Ct. 1937, 1949-50 (2009). Therefore, the Court should once again dismiss Counts VI and VII because the Complaint fails to plead facts as required under Rule 8.

**2. Plaintiff's First Amended Complaint does not properly value the Debtors' alleged contingent liabilities.**

A Complaint must include facts indicating that the debtor meets the statutory definition of insolvency. (Order at 9); *In re Careamerica*, 415 B.R. 200, 201 (Bankr. E.D.N.C. 2009); 11

U.S.C. § 101(32)(A) (defining insolvency as when “the sum of such entity’s debts is greater than all of such entity’s property, at a fair valuation”).

In Paragraphs 42 and 43 of the First Amended Complaint, Plaintiff states the following:

42. Upon information and belief, at the time of the LP Transfers the Debtors (a) had failed to pay premiums to Provident Capital and otherwise maintain the enforceability of certain bonds issued by Provident Capital, and (b) were responsible to pay premium obligations for their portfolio of insurance policies on insureds that had, on average, life expectancies of several years in excess of ten (10) years. At the time of the LP Transfers, the Debtors were insolvent because they had liabilities to investors and insurance companies (in the form of premium payment obligations that were or would come due) that exceeded their assets.
43. Upon information and belief, the Debtors were insolvent at the time of the LP Transfers because, as alleged herein, the A&O Principals had used the Debtors to intentionally defraud investors and had diverted assets of the Debtors for their own personal use and gain. Accordingly, at the time of the LP Transfers, each of the more than 700 investors of the Debtors had the right to rescind its investment in the Debtors giving rise to a tort (creditor) claim against the Debtors in an amount equal to each investor’s investment. The Debtors did not have sufficient assets to pay the millions of dollars of tort claims (based on state law rights of rescission) to investors.

(First Am. Compl. ¶¶ 42, 43). In essence, Plaintiff contends that (1) Debtors were insolvent because they failed to pay premiums which resulted in liabilities exceeding their assets, and (2) all 700 plus investors could have sued the debtors at exactly the same time, thus creating insolvent Debtors.

These allegations are flawed for multiple reasons. First, the Complaint fails to give specifics regarding the amount of the total liabilities and assets of the Debtors; rather, the Complaint makes conclusory allegations that these liabilities exceed the Debtors’ assets without alleging facts in support of this contention. The Complaint fails to list any of the Debtors’ assets, their alleged worth or the amount of their alleged liabilities. As such, the Complaint once again

fails to meet the standard of alleging facts sufficient to demonstrate that the sum of the Debtors' debts is greater than all of Debtors' assets, at a fair valuation.

The Plaintiff's Complaint is also defective because it fails to properly discount the contingent liabilities of the Debtors. A contingent liability is "one that depends on a future event that may not even occur[] to fix either its existence or amount." *Freeland v. Enodis Corp.*, 540 F.3d 721, 730 (7th Cir. 2008) (quoting *In re Knight*, 55 F.3d 231, 236 (7th Cir. 1995)). "Because an entity's liability on a contingent debt may never come into being, a contingent liability is not valued at its full amount when assessing the entity's insolvency. Rather, a contingent liability is valued at its face amount multiplied by the probability that it will become due." *Id.* (citing *In re Xonics Photochemical, Inc.*, 841 F.2d 198, 200 (7th Cir. 1988)).

The Complaint, as stated above, alleges that each of the more than 700 investors of the Debtors had the right to rescind their investments and sue the Debtors in the amount equal to each investor's investment. (First Am. Compl. ¶ 43). This allegation is highly speculative and is contingent upon each investor choosing to exercise his or her alleged right to sue at exactly the same time. Not only would each investor have to sue at the same time, but each investor must also win suit at the same time. The chance of such an event occurring is hypothetical at best. As the Seventh Circuit has aptly stated "[t]o disregard the probability that the firm will not be called on to pay is to regard all firms as insolvent all of the time, for all firms face some (remote) contingencies exceeding the value of their assets." *Covey v. Commercial Nat'l Bank of Peoria*, 960 F.2d 657, 659 (7th Cir. 1992). The Seventh Circuit further explained that if a plaintiff were to allege that a firm is insolvent because all of an insurer's policyholders might die in the same year, thus generating obligations exceeding the debtors' assets, such an allegation would be fatally flawed and the firm should be treated as solvent. *Id.* This is because the probability of

such an occurrence is extremely unlikely, and, as such, the firm in reality is solvent. *Id.*; *see also In re Xonics Photochemical, Inc.*, 841 F.2d at 199-200 (stating that every firm that is being sued or may be sued has a contingent liability; however, such liabilities rarely affect a company's solvency and generally are not even included in a company's balance sheet).

The Plaintiff clearly failed to consider the remoteness of any probability that all investors' would seek to recover their investments at the same time when alleging insolvency. As such, the Plaintiff failed to reduce this contingent liability to its present or expected value, as Plaintiff is required to do to properly allege insolvency of Debtors. *In re Xonics Photochemical, Inc.*, 841 F.2d at 200. Instead, the Plaintiff took the threat of a tidal wave of simultaneous lawsuits and calculated each of those coincidental suits at an improbable "best case" value, which if deemed acceptable by this Court, would mean every company is probably insolvent right now, regardless of its assets. Obviously, this is not the case, and, as a result, Plaintiff's claims involving insolvency should once again be dismissed, this time with prejudice.

C. **The Plaintiff has not—and cannot—plead facts demonstrating that Allmendinger was an initial transferee or that he was a person for whose benefit such transfer was made.**

1. **Allmendinger was not an initial transferee.**

An initial transferee is the first entity to have the dominion over the money or other asset. Put another way, an initial transferee is the first entity to have the right to put the money to one's own purposes. *In re Delta Phones, Inc.*, No. 05 A 1205, 2005 WL 3542667, \*3 (N.D. Ill. 2005). Here, this Court has previously acknowledged that the LP Account is the initial transferee. (Order at 6). Indeed, this is not a situation where a bank was merely acting as a holding institution; rather, the money here was alleged to have been deposited into the LP Account without further instruction. *In re Delta Phones, Inc.*, 2005 WL 3542667, at \*4 (stating that because there were no orders instructing one to hand over money to another, the first party is the

initial transferee and not a conduit). The alleged transactions involving the transfers from the Debtors to the LP Account and then to Allmendinger is clearly a two-step transaction. This is apparent because Plaintiff himself alleges that Defendants caused Debtors to make in excess of \$37 million in transfers to the LP Account. (First Am. Compl. ¶ 37). Each of these alleged transfers occurred at different times and from different Debtors and as Plaintiff alleges (upon information and belief), the LP Account was used to pay business expenses as well as some Defendants. (First Am. Compl. ¶ 36). Clearly, by Plaintiff's own allegations, there were no instructions regarding how the money was to be used with the first transaction. *See Potter v. Love Funeral Home*, 386 B.R. 306, 314 (D. Col. 2008) (describing an example of a two step transaction). As this Court has already recognized, any alleged transfers to Allmendinger were not initial transfers.

**2. Allmendinger was not an entity for whose benefit such transfers were made.**

An entity for whose benefit such transfer was made is a person who receives a benefit *from the initial transfer*. *Bonded Fin. Servs. Inc. v. European Am. Bank*, 838 F.2d 890, 896 (7th Cir. 1988) (emphasis added). As this Court stated, because the alleged transfers to Allmendinger were subsequent transfers, no recovery is possible under 11 U.S.C. § 550(a)(1) on the theory that they were made for the benefit of Allmendinger (with the possible exception of the allegations set forth in paragraph 37 of the Original Complaint). (Order at 6-7). Plaintiff has pleaded no additional facts in his First Amended Complaint that would render the conclusion reached by this Court inapposite.

Further, a subsequent transferee cannot be the entity for whose benefit the initial transfer was made. *Bonded Fin. Servs. Inc.*, 838 F.2d at 895. The classic example of an entity who receives the benefit of a transfer is a guarantor. *Id.* In this example, when a loan is paid off, the

lender receives the benefit of the money; however, the guarantor receives a benefit of no longer being liable on the note. *Id.* Such is not the case here. Allmendinger received no benefit as a result of the initial transfer from the Debtors; rather, any benefit he did receive, if any, was a result of an alleged subsequent transfer. *See Danning v. Miller (In re Bullion Reserve of N. Amer.)*, 922 F.2d 544, 547-48 (9th Cir. 1991) (criticizing the policy of allowing one who benefits from a subsequent transfer to be classified as a subsection (a)(1) transferee).

Moreover, based upon the Plaintiff's First Amended Complaint, it appears as though the Plaintiff is not pursuing a claim under 11 U.S.C. § 550(a)(2), but rather is pursuing a claim under 11 U.S.C. § 550(a)(1). For instance, Paragraph 37 states that the LP transfers were made primarily to or for the benefit of the Defendants and then the paragraph discusses in detail transactions in which Debtors' money were transferred into the LP Account. (First. Am. Compl. ¶ 37). Plaintiff's own words indicate that these alleged transactions are in violation of 11 U.S.C. § 550(a)(1) because the language clearly implies that the Defendants allegedly were the initial transferees or were the entities that benefited from the initial transfer (although, as described above, Allmendinger is neither). Accordingly, Plaintiff has failed to allege a violation under 11 U.S.C. § 550(a)(2) and, additionally, Plaintiff cannot recover using 11 U.S.C. § 550(a)(1) for the reasons discussed above. Therefore, Allmendinger respectfully requests this Court to dismiss Plaintiff's claim under 11 U.S.C. § 550(a)(1) and 11 U.S.C. § 550(a)(2). Alternatively, Allmendinger requests this Court to instruct Plaintiff that he may only proceed under his 11 U.S.C. § 550(a) claim by claiming a violation under 11 U.S.C. § 550(a)(2) and re-pleading to allege sufficient facts to support a cause of action under that statute.

**3. Plaintiff's Complaint is unclear as to whether it is pursuing under action 11 § U.S.C. 550(a)(1) or 11 § U.S.C. 550(a)(2).**

Count VI of Plaintiff's First Amended Complaint seeks recovery under 11 U.S.C. § 550(a); however, the Complaint fails to allege whether it is seeking recovery under 11 U.S.C. § 550(a)(1) or 11 U.S.C. § 550(a)(2). (First Am. Compl. ¶¶ 105-112). As stated earlier, a defendant can only be held liable under subsection (a)(1) or subsection (a)(2), but not both. *Bonded Fin. Servs. Inc.*, 838 F.2d at 895. Accordingly, Allmendinger requests that this Court instruct Plaintiff for a more definite statement as to whether Plaintiff intends to proceed under subsection (a)(1) or (a)(2) of his 550(a) claim so Allmendinger can properly respond in kind.

**D. Allmendinger has relinquished any ownership interest he may have possessed in the insurance policies to the Debtors, thus rendering the claim moot.**

Count XVI of Plaintiff's First Amended Complaint alleges that the A&O Principals (which includes Allmendinger) failed to sign over their beneficial and/or ownership interests to the Debtors. (First Am. Compl. ¶ 172). As such, Plaintiff seeks specific performance, instructing the A&O Principals to transfer their interests to the Debtors.

On or about July 29, 2010, Plaintiff filed a Motion for a Temporary Restraining Order, For an Expedited Hearing Regarding a Preliminary Injunction, and for Preliminary Injunction. In this Motion, Plaintiff sought to require the Defendants (including Allmendinger) to (1) direct all written communications concerning insurance policies to Trustee's attention; (2) provide the Trustee with the current premium payment schedule on the policies; (3) not to distribute the proceeds of the policies to anyone until the Court makes a final adjudication regarding ownership of these policies; (4) be enjoined from lapsing, terminating, or cancelling the policies; and/or (5) be enjoined from exercising control over the policies and/or taking any action to reduce the value of the policies. (Motion ¶ 7).

Shortly thereafter, Allmendinger relinquished all ownership possession he was alleged to have in these policies over to the Debtors, as requested by Plaintiff in Count XVI of his First Amended Complaint. Plaintiff recognized Allmendinger's transference of ownership by withdrawing its Motion as to Allmendinger. That withdrawal was formalized by this Court's August 13, 2010 Order Withdrawing Motion for Temporary Injunction as to Certain Defendants. In particular, the August 13 Order states that "[t]he Motion is withdrawn with respect to Defendants American General Life Insurance Company, **Chris Allmendinger**, Brent Oncale and the R.C. Irrevocable Trust." (Doc. 27 ¶ 1) (emphasis added). Accordingly, because Allmendinger has already performed the acts requested in Plaintiff's First Amended Complaint, Count XVI of Plaintiff's First Amended Complaint should be dismissed as moot.

In a situation similar to this case, the Northern District of Texas heard a case in which it granted defendant's motion to dismiss because the controversy no longer existed. *Dearmore v. City of Garland*, No. Civ. A. 305CV1231L, 2005 WL 3276384 (N.D. Tex. Nov. 30, 2005), *aff'd*, 519 F.3d 517 (5th Cir. 2008) ; *see also Artoe v. Belmont Nat'l Bank*, No. 91 C 4701, 1992 WL 120422 (N.D. Ill. May 19, 1992) (granting dismissal of defendant's 12(b)(6) motion as moot because the relief requested was no longer possible). There, the court had awarded a preliminary injunction against the City of Garland prohibiting the city from enforcing a new ordinance because it violated a property owner's Fourth Amendment right to be free from unreasonable search and seizure. *Dearmore*, 519 F.3d at 519. Following the issuance of the preliminary injunction, the City amended its ordinance to address the ruling of the district court. *Id.* at 520. After amending the ordinance, the City notified the court that the ordinance had been amended to properly address the Fourth Amendment concerns the court had and filed a motion to dismiss plaintiff's action as moot, which Plaintiff did not oppose. *Id.* As a result, the court granted the

defendant's motion to dismiss and entered final judgment dismissing the case as moot and with prejudice. *Id.*

Similar to *Dearmore*, Allmendinger's conduct subsequent to the filing of the motion for a temporary restraining order, much like the City of Garland's post-injunction actions, effectively rendered the claim moot because the controversy no longer exists. Thus, this Court should grant Allmendinger's Motion to Dismiss and dismiss the claim asserted in Count XVI by Plaintiff as moot and with prejudice, just as was the case in *Dearmore*.

### III. CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Motion To Dismiss Plaintiff's First Amended Complaint or, in the alternative, Motion for a More Definite Statement should be granted and that the Complaint should be dismissed with prejudice.

Dated: August 18, 2010

**CHRISTIAN ALLMENDINGER**

By: /s/ Deborah M. Gutfeld  
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**CERTIFICATE OF SERVICE**

I, Deborah M. Gutfeld, hereby certify that on the 18th day of August, 2010, I caused true and correct copies of the foregoing ***DEFENDANT CHRISTIAN ALLMENDINGER'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR A MORE DEFINITE STATEMENT*** to be served: (a) by Electronic Case Filing upon counsel of record who are filing users of the Court's Electronic Case Filing System, and (b) upon the following individuals via First Class United States Mail:

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