

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

GEORGE D. DERNIS, as an individual,)	
)	
Plaintiff,)	Case No. 12 cv 2856
)	
v.)	Honorable Gary Feinerman
)	
FEDERAL DEPOSIT INSURANCE)	
CORPORATION, AS RECEIVER FOR)	
PREMIER BANK, DR. ZULFIKAR ESMAIL,)	
SHAMIM ESMAIL, ALIYA HUSSANI,)	
ALIYA HUSSANI 2006 IRREVOCABLE)	
TRUST, KASSIM ESMAIL, KASSIM)	
ESMAIL 2006 IRREVOCABLE TRUST,)	
AMYNA ESMAIL, AMYNA ESMAIL 2006)	
IRREVOCABLE TRUST,)	
)	
Defendants.)	

ESMAILS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Defendants Dr. Zulfikar Esmail and Shamim Esmail move under Federal Rule of Civil Procedure 12(b)(6) to dismiss counts two, three, four, and six filed in this case by plaintiff George Dernis for failure to state a claim upon which relief may be granted.¹

Dernis owned and ran a chain of grocery stores. He financed his operations and acquisitions of these stores through Premier Bank. When his grocery stores failed, and the Bank sought to foreclose on its mortgages, Dernis tried to stop the process by filing this suit alleging fraud claims against the Bank, the Bank's officers (Zulfikar and Shamim Esmail), and his partners in the stores. As each of his causes of action are based on oral statements directly related to credit agreements Dernis entered into with the Bank, his claims are squarely barred by the Illinois Credit Agreements Act. His claims are also deficient because they are barred by the statute of limitations, fail to allege standing, and fail to state any grounds for a claim.

¹ Counts one and five are alleged solely against defendant Premier Bank.

THE ALLEGATIONS OF THE COMPLAINT

The complaint in this case was initially filed in the Chancery Division of the Circuit Court of Cook County, Illinois against: Premier Bank of Wilmette (the “Bank”); Dr. Zulfikar and Shamim Esmail; their children, Aliya Hussani and Kassim and Amyna Esmail; and the children’s trusts, the Aliya Hussani 2006 Irrevocable Trust, the Kassim Esmail 2006 Irrevocable Trust, and the Amyna Esmail 2006 Irrevocable Trust (the “Trusts”). Shortly after the case was filed, the Bank closed and the FDIC-R took over as receiver. The FDIC-R substituted in place of the Bank, and the case was removed to this Court.

The complaint has six counts, all based on Illinois state law. The Bank is named in all six counts. Dr. Esmail is named in Count II (common law fraud) and Count III (negligent misrepresentation). And both Dr. Esmail and Shamim Esmail are named in Count IV (conspiracy to commit fraud), and Count VI (unjust enrichment). Dernis voluntarily dismissed the children and the children’s Trusts as defendants.

A. The fraud allegations against Dr. Esmail

The complaint contains a hodgepodge of allegations regarding different transactions over the course of Dernis’ lending relationship with the Bank. Excepting the Kenosha Store transaction, all the allegations are directly related to credit agreements or the promise to extend credit. Dr. Esmail is alleged to have made misrepresentations regarding five of these transactions.

(1) The Naperville Loan

The complaint alleges that in October or November of 2006, Dernis approached the Bank’s chairman, Dr. Esmail, seeking a \$4.2 – \$4.4 million loan from the Bank to fund the purchase of a grocery store in Naperville, Illinois. (Cplt., ¶49). Dr. Esmail allegedly falsely

represented to Dernis that he could cause the Bank to make a \$4 million loan to Dernis, but only if Dernis agreed to give 50% of his ownership stake in the store to Dr. Esmail's three children and to personally guarantee the loan. (*Id.*, ¶51).

Dernis agreed to these terms, and the Bank made the \$4 million acquisition loan (the "Naperville Loan") to Jenor, LLC. (Cplt., ¶55). Dernis personally guaranteed the loan, and gave 50% of his equity in Jenor, LLC to Dr. Esmail's children's Trusts. (*Id.*, ¶¶55-56). Allegedly, as a further condition of the Naperville Loan, Dr. Esmail required Jenor, LLC to loan \$1.1 million to the Trusts. (*Id.*, ¶58). The loan documents are not attached to the complaint.

(2) The Downers Grove Michael's Fresh Market Loan

The complaint alleges that in 2008, Michael's Market, Inc. had an ownership interest in a new Michael's Fresh Market grocery store in Downers Grove, Illinois (Cplt., ¶¶69, 72). Dernis was the sole shareholder of Michael's Market, Inc. (*Id.*, ¶69).

Dernis approached Dr. Esmail seeking a \$1 million loan from the Bank to provide capital to fund the opening of the new Downers Grove store. (Cplt., ¶71). Allegedly, Dr. Esmail falsely represented that the Bank was only willing to extend the loan if Michael's Market, Inc. transferred its ownership interest in the store to Jenor, LLC so that Dr. Esmail's children could share in the profits. (*Id.*, ¶72). Dernis agreed to transfer the interest from Michael's Market, Inc. in order to secure the loan. (*Id.*, ¶74). The loan documents are not attached to the complaint.

(3) The Hemani Group Loan

The complaint alleges that in July or August of 2009, Dr. Esmail approached Dernis to make a personal loan of approximately \$800,000 to another borrower of the Bank known as the Hemani Group. (Cplt., ¶82). Dr. Esmail allegedly falsely represented that the Hemani Group

needed the loan to complete restoration and renovation efforts on two hotels in Florida, and that it would repay the loan within two to three months upon its sale of the hotels. (*Id.*, ¶83-84).

Based on these representations, Dernis agreed to make the loan to the Hemani Group. (Cplt., ¶86). The loan documents are not attached to the complaint. The complaint alleges on information and belief that the Hemani Group loan was not used to complete the construction work, and instead was transferred to an interest reserve account in the Hemani Group's name—allegedly to avoid regulatory scrutiny of the Bank. (*Id.*, ¶87). The loan was repaid in March 2010. (*Id.*, ¶89). Dernis alleges that he suffered damages through the loss of working capital and lost interest income while the loan was outstanding. (*Id.*, ¶88).

(4) The Hyde Park - Country Club Hills Loan

The complaint alleges that in August of 2009, Dernis approached the Bank seeking a \$4 million line of credit to open two new grocery stores located in Hyde Park and Country Club Hills, Illinois. (Cplt., ¶¶90-91). The Bank allegedly represented to Dernis that the line of credit would be available to him. (*Id.*, ¶91).

In October, Dernis called the Bank to confirm the availability of the credit. (Cplt., ¶91). Dr. Esmail allegedly informed Dernis that the Bank would only give him the credit line if the two new stores were transferred to Jenor, LLC so that his children's Trusts could share in the profits. (*Id.*, ¶93). Dernis refused to transfer ownership of the stores to Jenor, LLC. (*Id.*, ¶95). Immediately following Dernis' refusal, the Bank denied Dernis the \$4 million loan. (*Id.*, ¶96).

(5) The Kenosha Store Transaction

The complaint alleges that in August or September of 2006, Dernis approached a Bank officer seeking a \$500,000 loan to finance the start-up of a new out-of-state grocery store in Kenosha, Wisconsin. (Cplt., ¶¶35, 37). The officer referred Dernis to Dr. Esmail. (*Id.*, ¶35).

After Dr. Esmail and Dernis toured the Kenosha site together and discussed his need for a \$500,000 loan to fund build-out plans and provide working capital, they met at the Bank. (*Id.*, ¶¶37-39). At that meeting, Dr. Esmail told Dernis that the Bank would not loan him money for the Kenosha store. (*Id.*, ¶40).

The complaint alleges that at the time Dr. Esmail said the Bank would not make the loan, he had not evaluated Dernis' loan request from the perspective of the Bank. (Cplt., ¶40). In a confusing turn, the complaint next alleges that Dr. Esmail (despite having not considered whether the Bank would be willing to make the loan or not) at the same time did not believe his own representation that the Bank would not make the loan. (*Id.*, ¶40). Allegedly, Dr. Esmail turned down Dernis' loan request in order to personally benefit from the Kenosha store. (*Id.*, ¶41).

According to Dernis' allegations, Dr. Esmail then offered to invest 25% of the necessary capital expenditures, \$500,000, in exchange for a 25% interest in the Kenosha store. (Cplt., ¶¶38, 42). Dernis accepted, and ceded 25% of his equity to Dr. Esmail in exchange for the \$500,000 investment. (*Id.*, ¶44). Dernis claims that he was damaged by Dr. Esmail's representation that the Bank would not make the loan because he would not have had to sell his 25% equity if the Bank had agreed to loan him the money. (*Id.*, ¶46).

B. The conspiracy and unjust enrichment allegations against Dr. Esmail and Shamim Esmail

The conspiracy and unjust enrichment counts contain only conclusory allegations. The conspiracy count alleges that "based upon a pattern of conduct," which the complaint does not specify, Premier, Dr. Esmail and Shamim "knowingly and intentionally agreed not to disclose to Mr. Dernis information about the scheme against him, including any and all of the fraud alleged in Count III (*sic*) above." (Cplt., ¶145).

Likewise, without describing any of their conduct specifically, the unjust enrichment count alleges generally that “[d]efendants perpetrated, or benefitted from, a scheme that includes fraud, coercion, unfair and inequitable conduct in order to enrich themselves at Mr. Dernis’ detriment and economic disadvantage.” (Cplt., ¶154). And that this scheme “included their forcing him to provide the defendant Esmail family members and/or the defendant trusts with an equity interest in one of his companies, Jenor LLC, at a time when that company was very profitable.” (*Id.*, ¶155).

ARGUMENT

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint. A plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Complaint must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . .” *Id.* at 555. The court need not accept legal conclusions as true, and the factual allegations “must be enough to raise a right to relief above the speculative level.” *Id.*

Here, the complaint is deficient on its face.

I. The Illinois Credit Agreements Act bars Dernis’ claims against the Esmails.

Dernis’ claims against the Esmails are based on alleged misrepresentations Dr. Esmail made regarding the conditions to loans Dernis entered into with the Bank (except with regard to the Kenosha Store transaction). However, the Illinois Credit Agreements Act, 815 ILCS 160/1 *et seq.* (the “ICAA”) bars causes of action related to creating, extending, or modifying credit agreements that fail to contain all the relevant credit terms, or which are not made in writing and signed by the debtor and creditor. Section 2 of the ICAA provides:

A debtor may not maintain an action *on or in any way related to* a credit agreement unless the credit agreement is in writing, expresses an agreement or commitment to lend money or extend credit or delay or forbear repayment of money, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor. 815 ILCS 160/2. (emphasis added)

This provision proscribes “all actions which depend for their existence upon an oral credit agreement,” whether based in tort or contract. *Whirlpool Fin. Corp. v. Sevaux*, 96 F.3d 216, 225 (7th Cir. 1996); *see also McAloon v. Northwest Bancorp, Inc.*, 274 Ill.App.3d 758, 762 (1995).

Courts interpret the ICAA broadly. *Davis v. Merrill Lynch Bus. Fin. Servs., Inc.*, 2004 WL 406810, at *2 (N.D. Ill.). Thus, for example, in *Daimlerchrysler Servs. North Am., LLC v. North Chicago Mktg., Inc.*, 2004 WL 741740 (N.D. Ill.), a debtor-guarantor argued that he was fraudulently induced to sign a promissory note based upon representations that his business partner would provide a personal guaranty. It was undisputed that the business partner never guaranteed the loan but the court found that the debtor-guarantor’s counterclaim for fraudulent inducement based on oral representations was nevertheless barred by the ICAA. *Id.* at *3. The court held that in enacting the ICAA, the legislature had determined that “justice was best served by putting all parties to covered transactions on notice that the [credit] agreement will be enforced as written.” *Id.*

Here, in each of the transactions, Dr. Esmail’s alleged misrepresentations related to the conditions of a loan, the terms of a loan, or the extension of credit. For example, in the Naperville Loan and the Downers Grove Loan transactions, Dernis alleges that Dr. Esmail falsely represented that the Bank would only make the loans if Dernis agreed to transfer part of the ownership interest in the stores being acquired to his children. In the Hemani Group Loan, he alleges that Dr. Esmail falsely represented the uses for the loan and the time it would take to repay it. In the Hyde Park-Country Club Loan, he alleges that the Bank represented to Dernis

that a line of credit would be available to him, and then denied him that credit when he refused to transfer a portion of the ownership in the Hyde Park-Country Club stores to Dr. Esmail's children. Each of these claims are based on alleged oral misrepresentations, which Dernis has not alleged or demonstrated are contained in the credit agreements relating to each transaction. Simply put, "[t]here is no justifiable reliance on an oral credit agreement as a matter of law in Illinois." *First Nat'l Bank in Staunton v. McBride Chevrolet, Inc.*, 267 Ill.App.3d 367, 373 (1994).

This prohibition is broad. "There is no limitation as to the type of actions by a debtor which are barred by the [ICAA], so long as the action is in any way related to a credit agreement." *First Nat'l Bank in Staunton*, 267 Ill.App.3d at 372; *see also Nordstrom v. Wauconda Nat'l Bank*, 282 Ill.App.3d 142, 145 (1996) (finding the bank's oral agreement to procure insurance barred by the ICAA). Thus, the ICAA bars any common law fraud, negligent misrepresentation, conspiracy, and unjust enrichment claims premised on extra-contractual oral statements that Dr. Esmail allegedly made with respect to financing any of the transactions at issue. *See, e.g., Westinghouse Electric Corp. v. McLean*, 938 F.Supp. 487 (N.D. Ill. 1996) (fraud and economic duress claims barred by the ICAA); *General Electric Bus. Fin. Servs., Inc. v. Silverman*, 2010 WL 529446 (N.D. Ill.) (ICAA barred defenses to a guaranty based on fraud in the inducement, duress, equitable estoppel, and unclean hands); *R & B Kapital Development, LLC v. North Shore Comty. Bank & Trust Co.*, 358 Ill.App.3d 912, 916-19 (2005) (ICAA barred claims based on negligent misrepresentation and breach of fiduciary duty because they were based on oral statements related to a credit agreement). Therefore, Dernis' claims related to the

Naperville Loan, the Downers Grove Michael's Fresh Market Loan, the Hemani Group Loan, and the Hyde Park - Country Club Hills Loan must be dismissed.²

II. Dernis' claims relating to the Kenosha Store Transaction and the Naperville Loan are barred by the statute of limitations.

Under Illinois law, a cause of action for fraud, negligent misrepresentation, conspiracy, or unjust enrichment must be brought within five years. 735 ILCS 5/13-205. Here, Dernis filed his complaint on March 14, 2012. However, the alleged fraud related to the Kenosha Store Transaction and the Naperville Loan occurred in 2006, over five years earlier.

In August or September of 2006, Dernis approached the Bank for a \$500,000 loan to finance the start-up of a grocery store in Kenosha Washington. Dernis alleges that two days later Dr. Esmail falsely represented to him that the Bank would not make the loan, in order to invest in the store himself. Dr. Esmail then offered to purchase 25% of Dernis' equity in the Kenosha store for \$500,000 in place of the loan. Dernis accepted, in reliance on Dr. Esmail's representation that the Bank would not loan him the money. He claims to have been damaged because he would not have had to sell the 25% equity "had the Premier Bank agreed to loaned (sic) him the money instead of Dr. Esmail." (Cplt., ¶46). Thus the five-year statute of limitations for the Kenosha Store Transaction expired in September of 2011, over five months before the complaint was filed.

Likewise, in regards to the Naperville Loan, the complaint alleges that in October or November of 2006, Dr. Esmail falsely represented to Dernis that the Bank would only make him a \$4 million acquisition loan for a grocery store if he agreed to give 50% of his ownership interest in the store to Dr. Esmail's children and if Dernis personally guaranteed the loan. Based

² Dernis has also asserted claims against the Bank for alleged misrepresentations. Each of these claims is likewise related to a credit agreement and must be dismissed.

on this representation, Dernis agreed, and the Bank made the acquisition loan to Jenor, LLC. The five-year statute of limitations for this alleged fraud expired in November of 2011, over three months before the complaint was filed. Thus, all claims based on the Naperville Loan and the Kenosha Store transaction are barred by the statute of limitations.

III. Dernis does not have standing to bring claims related to the Downers Grove Michael's Fresh Market.

Dernis claims that Dr. Esmail defrauded him by misrepresenting that the Bank would not make a \$1 million loan to provide capital for the Downers Grove Michael's Fresh Market store unless Dernis transferred ownership interest in the store to Jenor, LLC (in which Dr. Esmail's children's Trusts had an interest). However, Dernis admits in the complaint that the ownership interest in the Downers Grove grocery store actually belonged to a corporation, Michael's Market, Inc., not to Dernis personally. (Cplt., ¶72). According to the complaint, Dernis was Michael's Market, Inc.'s sole shareholder, but not the direct owner of any interest in the Downers Grove store. And it was Michael's Market, Inc., not Dernis individually, that Dr. Esmail allegedly required to transfer the ownership interest in the store to Jenor, LLC.

Taking Dernis' allegations as true, it was Michael's Market, Inc. that allegedly suffered a loss and was defrauded. Any claim arising out of this transaction therefore belongs to the corporation, not to its shareholder (who has only suffered a derivative loss). *See Small v. Sussman*, 306 Ill.App.3d 639, 643 (1999) (a shareholder seeking relief for an injury to the corporation, rather than a direct injury to the shareholder himself, must bring his suit derivatively on behalf of the corporation). The complaint does not allege any basis for Dernis to bring the corporation's claims on his own behalf.

The impropriety of this claim is all the greater because Michael's Market, Inc. is currently in bankruptcy. (Case No. 11-52013, N.D. Ill. Bankr., Eastern Division).³ Thus, its creditors have a greater claim to any loss to the corporation than its shareholder. Additionally, as the corporation is under the supervision of the court, Dernis cannot make unilateral decisions granting himself potential property of the estate without leave of the bankruptcy court. Thus, the allegations in paragraphs 69 to 74 should be stricken and any claims related to them dismissed.

IV. Count IV must be dismissed because Dernis has failed to allege a conspiracy.

Although the heading of Count IV is “conspiracy to commit fraud,” such a conspiracy is not alleged anywhere in the complaint. To plead a conspiracy, one of the necessary elements the complaint must allege is the existence of an agreement to commit a wrong. *Redelmann v. Claire Sprayway, Inc.*, 375 Ill.App.3d 912, 923 (2007). Here, Dernis does not allege that Premier and the Esmails ever agreed to defraud him. Rather, he alleges that they agreed “not to disclose to Mr. Dernis information about a scheme against him”—essentially, that the conspiracy itself was an agreement not to disclose a conspiracy.

The conclusory allegation that the defendants had an agreement is not enough. Simply alleging that all of the defendants acted in concert without alleging how they acted in concert is insufficient to survive a motion to dismiss. *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill.2d 12, 23-24 (1998). Illinois courts have made it clear that the “mere characterization of a combination of acts as a conspiracy is insufficient to withstand a motion to dismiss.” *Redelmann*, 375 Ill.App.3d at 923. Here, at best, Dernis has alleged only that the Esmails knew of Premier's

³ “In ruling on a 12(b)(6) motion, a district court may take judicial notice of matters of public record without converting the 12(b)(6) motion into a motion for summary judgment.” *Anderson v. Simon*, 217 F.3d 472, 474-75 (7th Cir. 2000). Specifically, the court may properly consider “public court documents.” *Henson v. CSC Credit Services*, 29 F.3d 280, 284 (7th Cir. 1994).

conduct, but the “knowledge of the fraudulent or illegal actions of another is not enough to show a conspiracy.” *Id.* at 924.

Further, a conspiracy requires two or more persons. The Bank and its agents—the Esmails, both officers of the Bank—comprise a single legal entity, and are thus incapable of conspiracy. *See Buckner*, 182 Ill.2d at 24 (“because the acts of an agent are considered in law to be the acts of the principal, there can be no conspiracy between a principal and an agent.”).

Finally, the conspiracy claim fails because it is not based upon a valid underlying tort. It is well settled that where a plaintiff fails to state an independent cause of action underlying conspiracy allegations, the claim for conspiracy also fails. *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill.App.3d 759, 772 (2007) (dismissal of conspiracy to defraud claim where plaintiff failed to adequately allege underlying claim of common law fraud). Here, the underlying fraud claims are barred by the Illinois Credit Agreements Act, the statute of limitations, and Dernis’ lack of standing. Because the fraud claims fail to state a cause of action, the conspiracy claim fails with them. Accordingly, the conspiracy claim must be dismissed.

V. Dernis has failed to state a claim for unjust enrichment.

Dernis’ claim of unjust enrichment likewise fails because he does not adequately allege an underlying basis for recovery. Unjust enrichment is not a separate cause of action that may be brought alone, but rather is a condition brought about by other unlawful action such as fraud, duress, or undue influence. *Martis v. Grinnell Mut. Reinsurance Co.*, 388 Ill.App.3d 1017, 1024-25 (2009). When an underlying claim of fraud, duress or undue influence is deficient, the unjust enrichment claim falls with the underlying claim. *Id.*; *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 518 (7th Cir. 2011). Because, as discussed above, the plaintiff does not properly allege fraud against the defendants, his claim of unjust enrichment must also be dismissed.

VI. The complaint fails to state any claim against Shamim Esmail.

Shamim Esmail appears by name only in the description of the parties and in one count in the complaint. (Cplt., ¶¶15-18, 145). In paragraphs 15-18, Dernis describes her as the Executive Vice President and Chief Counsel of Premier Bank, the mother of Aliya, Kassim, and Amyna, and Dr. Esmail's wife. And in paragraph 145, he alleges that "based upon a pattern of conduct," Shamim "knowingly and intentionally agreed not to disclose to Mr. Dernis information about the scheme against him, including any and all of the fraud alleged in Count III (*sic*) above."

Without describing Shamim's conduct specifically, Dernis also alleges generally that "[d]efendants perpetrated, or benefitted from, a scheme that includes fraud, coercion, unfair and inequitable conduct in order to enrich themselves at Mr. Dernis' detriment and economic disadvantage." (Cplt., ¶154). And that this scheme "included their forcing him to provide the defendant Esmail family members and/or the defendant trusts with an equity interest in one of his companies, Jenor, LLC, at a time when that company was very profitable." (*Id.*, ¶155).

Shamim Esmail is not alleged to have made any misrepresentations to Dernis or to have taken any affirmative action. In fact, Dernis does not specifically allege any actions on her part. Dernis apparently believes that a wife is liable merely by virtue of being married. The law requires more. *See Fishman v. Meinen*, 2003 WL 444223, at *5-7 (N.D. Ill.) (holding general allegations regarding defendants as a single group do not satisfy the particularity required by Rule 9(b); the "who, what, where, when and how" of the alleged fraud must be alleged for each defendant). As Dernis' conspiracy and unjust enrichment claims are rooted in fraud, he is required to plead his claims with specificity under Rule 9(b) of the Federal Rules of Civil Procedure. ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). The conclusory allegation that Shamim agreed at some

unspecified time not to disclose unspecified information about unspecified fraud is simply not enough to meet this requirement of particularity. Likewise, the conclusory allegation that Shamim forced Dervis to provide her family members with a benefit, unsupported by any factual allegations, is not enough to state a cause of action for unjust enrichment. As Dervis does not have any facts to allege against Shamim Esmail (except the damning evidence of the ring on her finger), his claims against her should be dismissed.

WHEREFORE, Dr. Zulfikar Esmail and Shamim Esmail respectfully request that the Court grant their motion to dismiss, enter an order dismissing Dervis' complaint with prejudice, and grant such other relief as the court deems just and appropriate.

Dated: June 7, 2013

Respectfully submitted,

/s/ Robert F. Coleman

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CERTIFICATE OF FILING AND SERVICE

I, Zachary Mulcrone, an attorney, do hereby certify that on June 7, 2013, I electronically filed the foregoing ESMails' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS with the Clerk of the United States District Court, Northern District of Illinois, using the CM/ECF filing system, which will send notification of such filing to all counsel of record having appeared in this case.

/s/ Zachary Mulcrone