



1 Rule 8(a)(2): “A short and plain statement of the claim showing that the pleader is entitled to  
2 relief.” Here, the Motion for Judgment on the Pleadings primarily tests the sufficiency of the  
3 defenses, which are generally governed by the standard of F.R.Civ.P. Rule 8(b)(1)(A): “State in  
4 short and plain terms its defenses to each claim asserted against it.”

5 The Court cannot find any material distinction between the requirement that a  
6 plaintiff must provide “a short and plain statement of the claim,” and the requirement for a  
7 defendant to “state in short and plain terms its defenses to each claim asserted against it.”

8 Consequently if conclusory allegations that fail to contain “enough facts to state a claim to  
9 relief that is plausible on its face” fail to satisfy the former standard, then conclusory denials  
10 that fail to contain “enough facts to state a [defense] that is plausible on its face” must fail to  
11 satisfy the latter standard.

12 It is also true, as the Supreme Court and the Seventh Circuit have said, that these  
13 determinations must be “context-specific,” must be “relative to the circumstances,” and require  
14 “the reviewing court to draw on its judicial experience and common sense.” Here, all of those  
15 additional factors weigh in favor of granting judgment on the pleadings. Given the  
16 sophistication of the parties and their counsel and the substantial length of time this dispute has  
17 been brewing and extensively analyzed, that context, circumstances, judicial experience and  
18 common sense all indicate that if there were any facts that could raise a triable issue of fact as  
19 to the nature of the agency to which the RevOp Investors agreed, they would have referenced  
20 them either in their answer or in response to the Motion for Judgment on the Pleadings. In this  
21 specific context, this failure to suggest any plausible factual dispute makes judgment on the  
22 pleadings appropriate. This also means there would be no reason to grant leave to amend  
23 because there is no curable defect of the pleadings, only a lack of facts to plead that would raise  
24 a triable issue of fact.

25 DATED AND SIGNED ABOVE

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1 Copy of the foregoing emailed  
2 this 27<sup>th</sup> day of July, 2010, to:

3 Cathy L. Reece, Esq.  
4 Fennemore Craig  
5 [creece@fclaw.com](mailto:creece@fclaw.com)  
6 Attorneys for Plaintiff

7 Bryce A. Suzuki, Esq.  
8 Bryan Cave LLP  
9 [bryce.suzuki@bryancave.com](mailto:bryce.suzuki@bryancave.com)  
10 Attorneys for Defendants

11 /s/ Pat Denk  
12 \_\_\_\_\_  
13 Judicial Assistant

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