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

MANUEL LOPES AND MARIANA
LOPES, et al.,

Plaintiffs,

vs.

GEORGE VIEIRA, et al.,

Defendants.

No. CV-F-06-1243 OWW/SMS

MEMORANDUM DECISION AND
ORDER DENYING WITHOUT
PREJUDICE DEFENDANT GENSKE
MULDER, LLP'S AND DEFENDANT
DOWNEY BRAND LLP'S MOTIONS
FOR SUMMARY JUDGMENT AGAINST
PLAINTIFF ALVARO MACHADO ON
FOURTH THROUGH EIGHTH CAUSES
OF ACTION (Docs. 108 & 127)

Defendants Genske Mulder LLP ("Genske Mulder") and Downey
Brand LLP ("Downey Brand") respectively move for summary judgment
or summary adjudication against Plaintiff Alvaro Machado on the
Fourth through Eighth Causes of Action in the Second Amended
Complaint ("SAC").

Genske Mulder seeks summary judgment or adjudication:

A. Fourth Cause of Action for securities
fraud in violation of the Securities Act of
1934 on the ground that Plaintiff Machado did
not purchase Valley Gold LLC's securities or
any other securities;

1 B. Fifth Cause of Action for violation of
2 California securities law on the ground that
3 Plaintiff Machado did not purchase Valley
4 Gold LLC's securities or any other
5 securities;

6 C. Sixth Cause of Action for negligence on
7 the grounds that Plaintiff Machado was not a
8 client of Genske Mulder and Genske Mulder did
9 not owe him a duty of care;

10 D. Seventh Cause of Action for intentional
11 misrepresentation on the grounds that
12 Plaintiff Machado did not receive or rely on,
13 any material misrepresentation or omission
14 made by Genske Mulder;

15 E. Eighth Cause of Action for negligent
16 misrepresentation on the grounds the
17 Plaintiff Machado did not receive or rely on,
18 any material misrepresentation made by Genske
19 Mulder.

20 Downey Brand seeks summary judgment or adjudication as to
21 the Fourth and Fifth Causes of Action on the grounds that
22 Plaintiff Machado did not purchase a security; on the Fourth
23 through Eighth Causes of Action on the grounds that Plaintiff
24 Machado cannot establish that Downey Brand made an affirmative
25 misrepresentation and owed Plaintiff no duty to disclose; and on
26 the Fourth through Eighth Causes of Action on the grounds that
Plaintiff Machado cannot establish reliance or causation.

Plaintiff Machado has not filed an opposition to these
motions for summary judgment. On November 23, 2009 (Doc. 174),
counsel for Plaintiffs filed a "Statement of Fact of Death of
Plaintiff Alvaro Machado," representing that Plaintiff Machado
has died, and requesting the Court "hold in abeyance all matters
pending that would impact the estate of Alvaro Machado" and

1 advising his widow, Mary Machado that a motion to substitute a
2 successor-in-interest in place of Alvaro Machado must be filed
3 within 90 days or the action will be dismissed as to Plaintiff
4 Alvaro Machado.

5 Defendants' motions for summary judgment against Plaintiff
6 Alvaro Machado are DENIED WITHOUT PREJUDICE. If Mary Machado
7 timely substitutes as successor-in-interest in place of Alvaro
8 Machado, Defendants may re-notice their motions for summary
9 judgment for hearing.

10 IT IS SO ORDERED.

11 Dated: February 2, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE