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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RBC BEARINGS INCORPORATED, a Delaware corporation,	)	Case No. SACV 12-01442 DDP (PLAx)
	)	
Plaintiff,	)	<b>ORDER GRANTING MOTION TO DISMISS FOURTH CLAIM FOR RELIEF</b>
	)	
v.	)	[Dkt. No. 16]
	)	
CALIBER AERO, LLC, a California limited liability company; MARY ALVARADO, an individual; DAVID McCULLOCH, an individual; DAVID RANKINE, an individual; JEFFREY L. RINDSKOPF, an individual; CHARLES SHARP, an individual,	)	
	)	
Defendants.	)	
	)	

Presently before the court is Defendants' Motion to Dismiss Fourth Claim for Relief in First Amended Complaint for Failure to State a Claim.

**I. Background**

On or about September 11, 2006 Plaintiff RBC Bearings, Inc. ("RBC") acquired All Power Manufacturing Co. ("All Power"). (First Amended Complaint ("FAC") ¶ 14.) Defendants Mary Alvarado, David

1 McCulloch, David Rankine, Jeffery Rindskopf, and Charles Sharp were  
2 employees of All Power and became employees of RBC after the  
3 acquisition. (FAC ¶ 14.) As employees of RBC, Defendants were  
4 subject to the terms and conditions set forth in RBC's Employment  
5 Handbook, which acknowledges that employees maintain  
6 confidentiality and that disclosing trade secrets or  
7 confidentiality would result in disciplinary action. (FAC ¶ 16.)  
8 Also, as a condition of their employment with RBC, the Defendants  
9 agreed to RBC's Intellectual Property Agreement, which acknowledges  
10 that employees will not disclose or use proprietary technical or  
11 business information after employment with RBC. (FAC ¶ 17.)

12 At different times after the acquisition, Defendants Alvarado,  
13 McCulloch, Rindskopf, Sharp and Rankine all resigned from RBC.  
14 (FAC ¶ 19.) Rankine resigned after RBC acquired All Power,  
15 Rindskopf resigned in September 2007, Sharp resigned in October  
16 2007, McCulloch resigned in June 2009, and Alvarado resigned in  
17 March 2012. (FAC ¶ 93-97.) Each Defendant participated in an exit  
18 interview, upon their respective resignation, where RBC management  
19 reviewed and discussed each Defendant's confidentiality obligations  
20 to RBC. (FAC ¶ 19.)

21 During their respective exit interviews, Defendants  
22 represented to Plaintiff that they would not disclose or use RBC's  
23 confidential and proprietary information to compete against RBC.  
24 (FAC ¶ 92.) Except for Rindskopf, each signed the Exit Interview  
25 Termination Acknowledgment form, which acknowledges their agreement  
26 not to disclose or use any trade secrets or confidential or  
27 proprietary information of RBC without RBC's consent. (FAC ¶ 24.)

28

1 Plaintiff believes that Defendants have disclosed and used and  
2 continue to disclose and use RBC's confidential and proprietary  
3 information in their employment at Defendant Caliber Aero, LLC  
4 ("Caliber") without Plaintiff's consent. (FAC ¶¶ 101-102.) RBC  
5 did not learn that Defendants' representations were false until  
6 August 15, 2012. (FAC ¶ 105.) Had RBC known that the  
7 representations at the exit interview were false, it would have  
8 immediately terminated Defendants' employment and would have taken  
9 all action available at law or in equity to prevent any disclosure  
10 or use of its confidential information. (FAC ¶ 107.)

## 11 **II. Legal Standard**

12 "A cause of action for fraud [under California law] requires  
13 the plaintiff to prove (a) a knowingly false misrepresentation by  
14 the defendant, (b) made with the intent to deceive or to induce  
15 reliance by the plaintiff, (c) justifiable reliance by the  
16 plaintiff, and (d) resulting damages." Glenn K. Jackson Inc. v.  
17 Roe, 273 F.3d 1192 (9th Cir. 2001) (quoting Wilkins v. Nat'l  
18 Broadcasting Co., Inc., 71 Cal.App.4th 1066, 1081, 84 Cal.Rptr.2d  
19 329 (1999)); see also Cal. Civ. Code § 1572.

20 "To survive a motion to dismiss for failure to state a claim  
21 under Rule 12(b)(6), a complaint generally must satisfy only the  
22 minimal notice pleading requirements of [Federal] Rule [of Civil  
23 Procedure] 8(a)(2)." Porter v. Jones, 319 F.3d 483, 494 (9th Cir.  
24 2003). However, where a complaint includes allegations of fraud,  
25 Federal Rule of Civil Procedure 9(b) requires more specificity  
26 including an account of the "time, place, and specific content of  
27 the false representations as well as the identities of the parties  
28 to the misrepresentations." Edwards v. Marin Park, Inc., 356 F.3d

1 1058, 1066 (9th Cir. 2004) (citation omitted). "To comply with Rule  
2 9(b), allegations of fraud must be specific enough to give  
3 defendants notice of the particular misconduct which is alleged to  
4 constitute the fraud charged so that they can defend against the  
5 charge and not just deny that they have done anything wrong."  
6 Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001)  
7 (citation and quotation marks omitted). Swartz v. KPMG LLP, 476  
8 F.3d 756, 764 (9th Cir. 2007)

### 9 **III. Analysis**

10 Defendants argue that Plaintiff has failed to state a claim in  
11 its fraud cause of action because it fails to establish the  
12 reliance prong with particularity. Defendants focus exclusively on  
13 the misrepresentations at the time of the exit interview and then  
14 argue that Plaintiff could not have acted in reliance on them  
15 because Defendants were already leaving its employ. "Each alleged  
16 misrepresentation as to the future use of confidential information  
17 was made by a defendant former employee upon their departure from  
18 RBC. As such, the FAC does not allege any conduct or decision that  
19 was caused or influenced by these purportedly fraudulent  
20 misrepresentations." (Mot. at 5.) According to Defendants, the  
21 only act Plaintiff could have taken had it not relied on the  
22 misrepresentations would have been to terminate Defendants'  
23 employment, but "defendants had already quit at the time of the  
24 misrepresentations." (Mot. at 6.) Thus, according to Defendants,  
25 Plaintiff has failed to allege plausible reliance on the purported  
26 misrepresentations.

27 The court agrees with Defendants that Plaintiff could not have  
28 terminated Defendants after they had already voluntarily left

1 Plaintiff's employ. However, the court also finds that Plaintiff's  
2 claims conceivably stem not only from the Exit Interview but from  
3 prior representations by Defendants. Plaintiff alleges in its  
4 Fourth Claim for Relief that Defendants "represented to Plaintiff  
5 that they would not disclose or use RBC's confidential and  
6 proprietary information to compete against RBC." (FAC ¶ 92.) "Had  
7 RBC known the true facts, it would have immediately terminated  
8 Defendants' employment with RBC and sought to take all action  
9 available to it at law or in equity to prevent any disclosure or  
10 use of its confidential information to any of its competitors."  
11 (FAC ¶ 107.) The representations upon which Plaintiff allegedly  
12 relied were not only the misrepresentations during the Exit  
13 Interview (FAC ¶¶ 24, 86), but also representations connected to  
14 Defendants' consent to the Intellectual Property Agreement with  
15 Plaintiff (FAC ¶ 66) and the terms of the Employee Handbook (FAC ¶¶  
16 15-18, 73-74).

17       The court agrees with Defendants that this claim does not meet  
18 the heightened pleading standard required in cases of fraud, since  
19 it does not state with particularity the "time, place, and specific  
20 content of the false representations" with respect to any alleged  
21 misrepresentations that are not connected with the Exit Interview.  
22 The court is not convinced that the claim is subject to amendment,  
23 primarily because of the requirement to plead with particularity.  
24 Nonetheless, the court grants Plaintiff leave to amend.

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For these reasons, the court GRANTS the Motion to Dismiss the Fourth Claim for Relief in First Amended Complaint with leave to amend. Any amendment shall be made within ten days of this order.

IT IS SO ORDERED.

Dated: November 30, 2012



DEAN D. PREGERSON

United States District Judge