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5
 6 UNITED STATES DISTRICT COURT
 7 EASTERN DISTRICT OF CALIFORNIA
 8 FRESNO DIVISION
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 11 MANUEL LOPES and MARIANA
 LOPES, dba LOPES DAIRY;
 12 RAYMOND LOPES; JOSEPH
 LOPES and MICHAEL LOPES,
 13 individually and dba WESTSIDE
 HOLSTEIN; ALVARO
 14 MACHADO and TONY ESTEVAM,

15 Plaintiffs,

16 vs.

17 GEORGE VIEIRA; MARY
 VIEIRA; CALIFORNIA MILK
 18 MARKET, a California Corporation;
 VALLEY GOLD, LLC, a California
 19 Limited Liability Company; GENSKE-
 MULDER, LLP a California Limited
 20 Liability Partnership; ANTHONY
 CARY; DOWNEY BRAND LLP, a
 21 California Limited Liability
 Partnership; CENTRAL VALLEY
 22 DAIRYMEN, INC. a California Food
 and Agricultural Nonprofit
 23 Cooperative Association, and DOES
 1 through 25, inclusive,

24 Defendants

CASE NO. 1:06-CV-01243-OWW-SMS

**ORDER GRANTING MOTION FOR
 SUMMARY JUDGMENT BY DEFENDANT
 DOWNEY BRAND LLP AGAINST
 PLAINTIFF MARIA MACHADO AS
 TRUSTEE OF THE MACHADO FAMILY
 TRUST**

Judge Oliver W. Wanger

25 _____ /
 26 Defendant Downey Brand LLP (Downey Brand or the firm) has moved for
 27 summary judgment on all causes of action asserted against the firm by Plaintiff
 28 Maria Machado as trustee for the Machado Family Trust (the Trustee).

1 The Trustee asserts claims against Downey Brand on behalf of Alvaro
2 Machado, deceased (Machado), for alleged violations of 15 U.S.C. §78j(b) and
3 Securities and Exchange Commission Rule 10b-5 (Fourth Cause of Action) and
4 California Corporations Code Section 54000(d) (Fifth Cause of Action) as well as
5 common law claims for negligence, intentional misrepresentation and negligent
6 misrepresentation (Sixth through Eighth Causes of Action). Second Amended
7 Complaint at 30: 2 - 43: 12. Downey Brand’s motion is granted on all causes of
8 action for the following reasons:

9 The Court finds it is undisputed that Machado did not purchase a security.
10 Downey Brand’s Undisputed Fact (DBUF) 2. Because Machado did not purchase
11 a security, the Trustee cannot establish his federal or state securities fraud claims.
12 *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 735-736 (1975);
13 *Kamen v. Lindly*, 94 Cal.App.4th 197, 206 (2001).

14 As to the Trustee’s common law claims, the Court finds she has failed to
15 create triable issues and the following facts are undisputed: Downey Brand never
16 represented Central Valley Dairymen, Inc. (CVD), the cooperative to which
17 Machado belonged, DBUF 1; Machado did not read any of the documents
18 associated with the Valley Gold offering to investors or those prepared by Valley
19 Gold’s accountants, DBUF 3; and he never retained Downey Brand to represent
20 him nor has he ever spoken to, or heard anything said by, a Downey Brand
21 attorney, DBUF 4.

22 The Trustee submits no evidence Downey Brand intended, or had reason to
23 expect, that any misrepresentation concerning Valley Gold would be repeated and
24 acted upon by a person who did not invest in Valley Gold. Nor does she present
25 evidence that Machado’s friends upon whom he may have relied were acting as
26 his agents. Assuming the Trustee has placed in issue an “indirect representation”
27 cause of action, she submits no evidence to establish the necessary elements of
28 such a claim. *See Lovejoy v. AT&T Corp.*, 92 Cal.App. 4th 85, 94 (2001).

1 Downey Brand did not have an attorney-client relationship with Machado
2 giving rise to a duty to disclose facts nor did the firm represent CVD. See
3 generally *Fox v. Pollack*, 181 Cal.App. 3d 954, 960-61(1986). Downey Brand's
4 representation of Valley Gold, an entity, did not create an attorney-client
5 relationship between Downey Brand and Machado giving rise to a duty to
6 disclose. See, e.g., *La Jolla Cove Motel and Hotel Apartments, Inc. v. Superior*
7 *Court*, 121 Cal.App.4th 773, 784 (2004); Cal. R. Professional Conduct 3-600(E).

8 Therefore, for the reasons set forth in more particular in the Court's
9 September 27, 2010 Memorandum of Decision IT IS HEREBY ORDERED THAT:

10 Downey Brand's motion for summary judgment against Plaintiff Maria
11 Machado as trustee for the Machado Family Trust on the Second Amended
12 Complaint is GRANTED.

13
14 SO ORDERED.

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16 Dated: October 12, 2010

/s/ OLIVER W. WANGER
United States District Judge