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E-Filed: October 28, 2013

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FARI HOLDINGS, LTD., a Foreign Corporation,

No. C13-02053 HRL

Plaintiff,

v.

INFO-DRIVE SOFTWARE, INC., a California Corporation,

Defendant.

ORDER (1) GRANTING DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S SECOND CLAIM FOR RELIEF AND (2) STRIKING PLAINTIFF’S DEMAND FOR PUNITIVE AND EXEMPLARY DAMAGES

[Re: Docket No. 18]

Plaintiff Fari Holdings, Ltd. (“FHL”) sues defendant Info-Drive Software, Inc. (“Info-Drive”) for breach of contract and negligent misrepresentation for its alleged failure to repay a loan. Defendant moves to dismiss the claim for negligent representation pursuant to Fed. R. Civ. P. 12(b)(6) and Rule 9(b), as well as plaintiff’s demand for punitive and exemplary damages. All parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73. Upon consideration of the moving and responding papers and the arguments of counsel at the hearing, the Court grants the motion to dismiss.

BACKGROUND

FHL’s principal, Arif Rahman, is a 5% shareholder of and frequent consultant for Info-Drive’s parent company, IDS-India. Rahman has a long-standing personal and professional relationship with several executives and board members of Info-Drive and IDS-India who asked him

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For the Northern District of California

1 for a \$1.6 million loan to finance the expansion of Info-Drive’s business in California. It was
2 characterized as a bridge loan to be repaid as soon as possible after Info-Drive secured other
3 financing. Pursuant to this oral agreement, FHL transferred \$1.6 million to Info-Drive in 2008.
4 Sporadic payments were made on the loan, and in April 2012 the agreement was put into a writing
5 which provided that the balance would be paid by May 30, 2012. During discussions leading up to
6 the writing, agents of Info-Drive and IDS-India represented that Info-Drive was able and willing to
7 repay the loan and that it was using the funds for the expansion of its business in California. FHL
8 asserts that Info-Drive had no such intentions and that it has not repaid the loan.

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LEGAL STANDARD

A motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of the claims in the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is appropriate where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory. *Id.* (citing *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)). In such a motion, all material allegations in the complaint must be taken as true and construed in the light most favorable to the claimant. *Id.* However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Moreover, “the court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” This means that the “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). However, only plausible claims for relief will survive a motion to dismiss. *Iqbal*, 129 S. Ct. at 1950. A claim is plausible if its factual content permits the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.*

“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). However, “[m]alice, intent, knowledge, and

1 other conditions of a person’s mind may be alleged generally.” *Id.* “A pleading is sufficient under
2 rule 9(b) if it identifies the circumstances constituting fraud so that a defendant can prepare an
3 adequate answer from the allegations. While statements of the time, place and nature of the alleged
4 fraudulent activities are sufficient, mere conclusory allegations of fraud are insufficient.” *Moore v.*
5 *Kayport Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

6 While leave to amend generally is granted liberally, the court has discretion to dismiss a
7 claim without leave to amend if amendment would be futile. *Rivera v. BAC Home Loans Servicing,*
8 *L.P.*, 756 F. Supp. 2d 1193, 1997 (N.D. Cal. 2010) (citing *Dumas v. Kipp*, 90 F.3d 386, 393 (9th Cir.
9 1996)).

10 DISCUSSION

11 A. Negligent Misrepresentation

12 Info-Drive asserts that the claim for negligent misrepresentation is barred by the economic
13 loss rule. “The economic loss rule generally bars tort claims for contract breaches, thereby limiting
14 contracting parties to contract damages.” *United Guar. Mortg. Indem. Co. v. Countrywide Financial*
15 *Corp.*, 660 F. Supp. 2d 1163, 1180 (C.D. Cal. 2009) (citing *Aas v. Superior Court*, 24 Cal. 4th 627,
16 643 (2000) (“A person may not ordinarily recover in tort for the breach of duties that merely restate
17 contractual obligations.”)).

18 On the other hand, FHL contends that its claim falls within the “special relationship”
19 exception to the economic loss rule. “California’s economic loss rule has a . . . category of
20 exceptions for breach of a noncontractual duty.” *Id.* at 1181. “California courts have found
21 exceptions to the economic loss rule in the noncontractual duty category where the conduct also . . .
22 breaches a duty imposed by some types of ‘special’ or ‘confidential’ relationships . . .” *Id.*
23 However, FHL provides no support for its contention that Rahman’s longstanding personal and
24 professional relationship with directors and executives of Info-Drive and IDS-India constitutes a
25 special relationship giving rise to a noncontractual duty, and the Court is unaware of any. The only
26 authority FHL cites is *United Guar. Mortg. Indem.*, where the court specifically found that an
27 approximately 40-year business relationship between the parties could not create a special
28 relationship as a matter of law. *Id.* at 1187. Likewise, no special relationship exists here.

1 The California Supreme Court has left the door open for new exceptions to the economic
2 loss rule for public policy reasons. *See Robinson Helicopter Co. v. Dana Co.*, 34 Cal. 4th 979, 991-
3 992 (2004). FHL argues that this is such a situation “when the conduct in question is so clear in its
4 deviation from socially useful business practices that the effect of enforcing such tort duties will
5 be...to aid rather than discourage commerce.” *See Erlich v. Menezes*, 21 Cal. 4th 543, 554 (1999).
6 However, the court has also emphasized the rarity of exceptions to the general rule that “a business
7 entity has no duty to prevent financial loss to others with whom it deals directly.” *Quelimane Co. v.*
8 *Steward Title Guar. Co.*, 19 Cal. 4th 26, 59 (1998). Furthermore, in formulating a new exception to
9 the economic loss rule supported by public policy, the court focused on the intentional misconduct
10 of the defendant and the plaintiff’s exposure to personal liability independent of the contract, neither
11 of which are alleged here. *See Robinson Helicopter*, 34 Cal. 4th at 990. Accordingly, the Court
12 does not find that the negligent misrepresentation alleged by FHL was so egregious as to warrant an
13 exception to the economic loss rule based on public policy considerations.


14 FHL’s claim for negligent misrepresentation does not fall within an exception to the
15 economic loss rule and is therefore barred. Accordingly, plaintiff’s claim is dismissed without leave
16 to amend.

17 B. Punitive and Exemplary Damages

18 California Civil Code § 3294 provides for punitive or exemplary damages “[i]n an action for
19 the breach of an obligation *not* arising from contract.” Cal. Civ. Code § 3294(a) (emphasis added).
20 “Punitive damages aren’t available in California for simple breaches of contract, no matter how
21 willful.” *Slottow v. American Cas. Co.*, 10 F.3d 1355.” Plaintiff’s sole remaining claim is for
22 breach of contract, and thus, plaintiff’s demand for punitive and exemplary damages is struck. *See,*
23 *e.g., Hofmayer v. Dean Witter & Co.*, 459 F. Supp. 733 (N.D. Cal. 1978) (striking demand for
24 punitive damages where claim based solely on breach of contract).

25 **IT IS SO ORDERED.**

26 Dated: October 28, 2013

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HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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