

1 Court doubts it even complies with the requirement of Rule 8 that a complaint contain “a
2 short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
3 Civ. P. 8(a). Frankly, though, it’s easy enough to address and dismiss Gervais’s complaint
4 on the merits for its failure to state a claim under Rule 12(b)(6).

5 First, there is no private right of action under 15 U.S.C. § 77q, so the securities fraud
6 claims (Counts I and II) Gervais brings under the Gramm-Leach-Bliley Act must be
7 dismissed. *See Mendelsohn v. Capital Underwriters, Inc.*, 490 F.Supp. 1069, 1079–80 (N.D.
8 Cal. 1979); *see also Earle v. Aramark Corp.*, 2005 WL 473675 at *3 (N.D. Tex. Feb. 28,
9 2005). There is also no private right of action under 18 U.S.C. § 371, which is a criminal
10 statute. *Maier v. Phillips*, 205 F.3d 1323, 2000 WL 234453 at *2 (2d Cir. Feb. 1, 2000); *Tel-*
11 *Oren v. Libyan Arab Republic*, 726 F.2d 774, 800 n. 5 (D.C. Cir. 1984). Gervais’s civil
12 conspiracy claim (Count V) must therefore be dismissed. Finally, there is no private right of
13 action under Section 12 of the Exchange Act, 15 U.S.C. § 78l, which deals with registration
14 requirements for securities. Thus, Gervais’s second claim for securities fraud under the
15 Exchange Act (Count IV) must also be dismissed. *See Sheldon v. Vermonty*, 246 F.3d 682,
16 2000 WL 1774038 at *5 (10th Cir. Dec. 4, 2000).

17 This leaves Gervais’s claim under Section 10(b) of the Exchange Act, which prohibits
18 fraud in connection with the purchase or sale of securities and does imply a private right of
19 action. *Desai v. Deutsche Bank Securities Ltd.*, 573 F.3d 931, 938 n. 9 (9th Cir. 2009). In
20 such an action, the plaintiff generally must show: (1) a material misrepresentation or
21 omission of fact; (2) scienter; (3) a connection with the purchase or sale of a security; (4)
22 transaction and loss causation; and (5) economic loss. *Zucco Partners, LLC v. Digimarc*
23 *Corp.*, 552 F.3d 981, 990 (9th Cir. 2009). Here, the factual allegations of Gervais’s
24 complaint can’t possibly support a claim under Section 10(b). She alleges no material
25 misrepresentation or omission of fact that can even get her claim off the ground. It must be
26 dismissed.

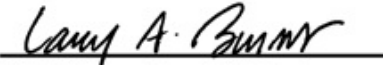
27 Gervais offers no substantive rebuttal, really, to AECB’s motion to dismiss, and
28 instead asks for the Court’s sympathies considering she is a *pro se* plaintiff (Doc. No. 12)

1 and for leave to amend her complaint (Doc. No. 17). The Court is not optimistic about the
2 prospects of an amended complaint that Gervais might file. The inadequacies of the present
3 complaint render it groundless, and indeed, as AECB points out, it is a form pleading that
4 Gervais likely obtained online and failed to adapt to the particulars of her grievance. While
5 the Court liberally construes the pleadings of *pro se* litigants, *Eldridge v. Block*, 832 F.3d
6 1132, 1137 (9th Cir. 1987), the Court doesn't make unreasonable inferences or supply
7 allegations. *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).
8 If Gervais came closer to pleading plausible claims, the Court would have a different attitude.
9 But the factual paucity and core legal defects of Gervais's complaint, the fact that she offers
10 the Court no indication of how she wishes to improve it, and the copycat nature of the
11 pleading, persuade the Court that amendment would be futile. AECB's motion to dismiss
12 is therefore **GRANTED**, and this case is **DISMISSED WITH PREJUDICE**.

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IT IS SO ORDERED.

DATED: November 24, 2010


HONORABLE LARRY ALAN BURNS
United States District Judge