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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EPITECH, INC., a corporation,

Plaintiff,

vs.

COOPER INDUSTRIES, PLC, a corporation;
and DOES 1 through 30, inclusive,

Defendants.

Case No.: 11-cv-1693-JM-WVG

**ORDER GRANTING MOTION TO
DISMISS AND GRANTING
PLAINTIFF LEAVE TO AMEND**

Docket No. 4

On June 13, 2011, Plaintiff Epitech, Inc. (“Epitech”) filed a complaint against Cooper Industries, PLC (“Cooper”) in San Diego County Superior Court alleging false promise and breach of contract. On July 29, Defendant removed the action to this court, and thereafter filed a motion to dismiss the false promise claim under Fed. R. Civ. Pro. 12(b)(6). For the reasons discussed below, the motion to dismiss is GRANTED, and Plaintiff is granted twenty days’ leave to amend the false promise claim.

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1 **I. BACKGROUND**

2 The complaint alleges that in August 2010, the United States government awarded
3 Epitech a contract to manufacture “a certain cable and wire harness assembly.” ¶ 7. The next
4 month, Epitech obtained a quotation from Cooper for the sale of an electrical connector that
5 Epitech intended to use in fulfilling its government contract. ¶ 8. In the quotation, Cooper stated
6 that there was an International Traffic in Arms Regulation (“ITAR”) prohibiting Cooper from
7 obtaining the connector from certain suppliers. ¶ 8. Under the terms of the quotation, Cooper
8 would sell the connector to Epitech for \$5.45 per unit during the time the ITAR was in effect. ¶
9 8. The quotation also stated that when Cooper was able to obtain the connector from a less
10 expensive supplier, it would sell the connector to Epitech for a lower price. ¶ 8. Epitech
11 accepted the offer through a purchase order issued to Cooper on September 28, 2010. ¶ 9.

12 The complaint further alleges that “Cooper sold connectors to Epitech at a unit price of
13 \$5.45 after the ITAR restriction had been removed, if there ever was an ITAR restriction.” ¶ 10.
14 The complaint consists of one claim for false promise and one for breach of contract. Cooper
15 challenges only the false promise claim.

16 **II. LEGAL STANDARD**

17 False promise is a type of fraud and requires misrepresentation, knowledge of falsity,
18 intent to induce reliance, reasonable reliance, and resulting damages. Engalla v. Permanente
19 Medical Group, 15 Cal. 4th 951, 973-74 (1997).

20 Ninth Circuit law governing the pleading requirements for a fraud claim is based on Fed.
21 R. Civ. Pro. 9(b), which provides that “a party must state with particularity the circumstances
22 constituting fraud or mistake.” A plaintiff alleging fraud must also meet pleading standards
23 under Fed. R. Civ. Pro. 8(a) as explained in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)
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1 and Ashcroft v. Iqbal, 556 U.S. 662 (2009). Cafasso, U.S. ex rel. v. General Dynamics C4
2 Systems, Inc., 637 F.3d 1047, 1055 (9th Cir. 2011).

3 Under Rule 9(b), “a pleading must identify ‘the who, what, when, where, and how of the
4 misconduct charged,’ as well as ‘what is false or misleading about [the purportedly fraudulent]
5 statement, and why it is false.’” Cafasso, 637 F.3d at 1055 (quoting Ebeid ex rel. United States
6 v. Lungwitz, 616 F.3d 993, 998 (9th Cir. 2010). Furthermore, the circumstances alleged by a
7 plaintiff must “be specific enough to give defendants notice of the particular misconduct . . . so
8 that they can defend against the charge and not just deny that they have done anything wrong.”
9 Kearns v. Ford Motor Co., 567 F.3d 1120, 1124 (9th Cir. 2009) (internal quotation marks
10 omitted). The heightened pleading standard also avoids unnecessary reputational harm and
11 excessive costs of litigation. Id. at 1125.

12 Several Ninth Circuit securities fraud cases have closely examined the requirements of
13 pleading the actual falsity of the claims made and the defendant’s knowledge of that falsity. The
14 court in In re GlenFed, Inc. Securities Litigation, 42 F.3d 1541 (9th Cir. 1994), noted that “our
15 cases have consistently required that circumstances indicating falseness be set forth” and that it is
16 “insufficient to set forth conclusory allegations of fraud . . . punctuated by a handful of neutral
17 facts.” Id. at 1547-48 (citation omitted). Similarly, Yourish v. California Amplifier, 191 F.3d
18 983 (9th Cir. 1999) dismissed a securities fraud action because plaintiffs merely alleged the
19 existence of material, non-public information without any other details about existence of that
20 information. The court noted that “if such unsupported general claims were sufficient . . .
21 [plaintiffs] could merely identify a given statement by the defendant and then simply allege that
22 the substance of the statement was contradicted by contemporaneous information contained in
23 internal reports.” Id. at 994.
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1 **III. DISCUSSION**

2 Although Plaintiff’s complaint sufficiently alleges the existence of its contract with
3 Cooper, reliance on certain representations, and damages, the false promise claim fails to meet
4 the 9(b) standard for pleading fraud. Instead, the claim consists of conclusory statements that
5 either of two scenarios transpired: (1) the ITAR never existed and Cooper lied about its
6 existence, or (2) the ITAR was rescinded and Cooper neither notified Plaintiff nor lowered the
7 price. Missing are allegations supporting either theory. These alternative theories implicate
8 different states of knowledge and scienter.¹ Once again, the Ninth Circuit has articulated that the
9 complaint must set forth the “time, place, and specific content of the false representations as well
10 as the identities of the parties to the misrepresentation.” Edwards v. Marin Park, Inc., 356 F.3d
11 1058, 1066 (9th Cir. 2004). While Epitech may argue it has specifically stated that the price
12 quotation contained the misrepresentation, it has not identified “the specific content of the false
13 representation[.]” as it does not purport to know whether the falsehood was the quotation’s
14 statement of the existence of an ITAR or its statement that the price would be reduced when the
15 ITAR was rescinded. Rather than pleading the circumstances surrounding the false promise, the
16 present form of the false promise claim could indeed be described as a “handful of neutral facts”
17 accompanied by conclusory allegations of fraud. GlenFed, 42 F.3d at 1548.

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19 GlenFed and Yourish can be distinguished factually because they involved securities
20 fraud while this case contains a simpler false promise claim, but that does not alter the
21 disposition. In Yourish, the alleged false statements at issue (positive statements about the
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24 ¹ In its opposition to the motion to dismiss, Epitech points out that “in paragraph 14 [of the complaint], Epitech
25 alleges it stopped purchasing connectors from Cooper Defendants after Epitech discovered Cooper Defendants’
concealment of the removal of the ITAR restriction.” Though the complaint and the opposition brief both refer to
this discovery of concealment, neither provides any clarity on how the discovery of concealment was made or the
content of that discovery.

1 company made to analysts and the market) were supposedly contradicted by internal information
2 possessed by the company. Id. The Ninth Circuit found that 9(b)'s requirements were not met
3 because plaintiffs did not identify the type of information at issue or how the defendants came
4 across it. Presumably, such a lack of information was problematic partially because it put the
5 defendants in the position of defending against unspecified allegations of misconduct. While in
6 this case Cooper has a better idea of the charges against it, the false promise cause of action is
7 still vague enough that Cooper would be forced to simply deny the wrongdoing alleged.

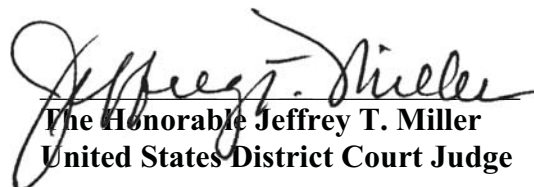
8 Allowing the complaint to stand as-is would violate Kearns' requirement that pleadings inform
9 defendants of the exact misconduct that is alleged to have occurred. Kearns v. Ford Motor Co.,
10 567 F.3d 1120, 1124 (9th Cir. 2009).

11 **IV. CONCLUSION**

12 Rule 9(b) exists in part to protect defendants from being harmed by baseless charges and
13 to protect society and the courts from the social and economic costs of litigating fraud issues
14 lacking serious foundation. See Kearns, 567 F.3d at 1125. Because the false promise claim falls
15 short of the 9(b) standard, the motion to dismiss is hereby GRANTED. Epitech is granted
16 twenty days to amend its false promise cause of action.

17 **IT IS SO ORDERED.**

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19 DATED: October 28, 2011

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22 The Honorable Jeffrey T. Miller
23 United States District Court Judge
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