

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Case No. 12-cv-02515-JLK

FANG TIAN,

Plaintiff,

v.

NEWMONT INTERNATIONAL SERVICES LIMITED, a Delaware Corporation,

Defendant.

ORDER ON PROMISSORY ESTOPPEL CLAIM

In this action, Plaintiff brings three claims against Defendant for negligent misrepresentation causing financial loss in a business transaction, fraudulent misrepresentation, and promissory estoppel based on Defendant's alleged promise to sponsor Plaintiff's green card. *See* Doc. 40 at 2, 29-30. Plaintiff's two negligence claims were tried to a jury. After the close of the evidence but before the jury returned its verdict, Plaintiff's promissory estoppel claim was tried to the Court and taken under advisement. Doc. 102 at 2. The jury then returned its verdict, awarding Plaintiff \$100,000 in damages on her negligent misrepresentation claim, \$150,000 in damages on her fraudulent misrepresentation claim, and \$500,000 in punitive damages. Doc. 102-3. In light of the jury's award of legal relief, and because any damages on Plaintiff's promissory estoppel claim would be duplicative of those already awarded by the jury on Plaintiff's negligence claims, Plaintiff's promissory estoppel claim is hereby dismissed without prejudice. *See,*

e.g., Eureka Water Co. v. Nestle Waters North America, Inc., 690 F.3d 1139, 1154-55 (10th Cir. 2012); *Whatley v. Crawford & Co.*, 15 Fed.Appx. 625, 635 (10th Cir. 2001) (unpublished); *Sander Geophysics Ltd. v. Newmont Mining Corp.*, No. 03 CV 1435, 2005 WL 2008282, *1 (Colo. Dist. Ct. Jan. 28, 2005). If Defendant chooses to appeal the jury's verdict and if the jury's damage awards are reduced or eliminated as a result of any such appeal, Plaintiff may reinstate her promissory estoppel claim on remand.

Dated: September 8, 2015

s/ John L. Kane
Senior U.S. District Judge