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Jude
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

ASHLEY EVANS, an individual,)
)
) *Plaintiff,*)
 vs.)
)
 KRAMBU, INC., a Delaware corporation,)
 TRAVIS JANK, an individual, KENNETH)
 TYLER, a married individual, NEXGEN)
 COMPUTER SERVICES LLC, an Idaho)
 limited liability company;)
)
) *Defendants.*)

Case No. **CV28-22-2723**

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANT
KRAMBU, INC.'S MOTION TO
DISMISS**

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter is before the Court on defendant and counterclaimant Krambu, Inc.'s (Krambu) Motion to Dismiss. Krambu moves the Court to dismiss Ashley Evans' (Evans) claims for "fraud, promissory estoppel, and two Washington State law claims for negligent misrepresentation and wages pursuant to RCW § 49.52, et seq.", Mem. in Supp. of Def. Krambu, Inc.'s Mot. to Dismiss 2, from the action pursuant to I.R.C.P. 12(b)(6), arguing that plaintiff and counter-defendant Evans has not pled fraud with particularity; "the doctrine of promissory estoppel merely applies as a substitute for consideration", *Id.*; and he has provided no basis to bring claims for Washington state claims to this Court, or, in the alternative, the claim for negligent misrepresentation "falls outside the narrow bounds to which it is confined in Idaho". *Id.* A hearing on Krambu's Motion to Dismiss took place on July 20, 2022. At the conclusion of that hearing the Court stated it would deny Krambu's Motion to Dismiss and issue a decision.

Evans is a resident of Kootenai County, Idaho. Krambu is a Delaware corporation with its principal place of business in Kootenai County, Idaho which also performs business in Washington. Compl. ¶ 1.1-1.2; Answer and Counterclaim of Def. Krambu, Inc. (Answer and Counterclaim), Counterclaims ¶ 1. Krambu “is engaged in the business of crypto mining, selling computer services, and selling crypto-mining related products.” Answer and Counterclaim, Counterclaims ¶ 6.

Since the parties do not agree on the facts, the Court will cite the entirety of both parties’ recitations of the facts from their respective pleadings. Evans’ statement of the facts is the following:

In or about March 2020, Defendants Krambu and Jank offered Plaintiff Evans employment as Krambu’s Chief Operations Officer (“COO”), which Evans accepted. Evans began working as COO, with his duties including managing operating [sic], strategic relationships, and sales. At the beginning of Evans’ employment with Krambu, no employment contract was signed. Krambu and Jank represented to Evans that in exchange for his labor, he would get ownership equity shares in Krambu as well as a salary. In approximately May 2020, Jank asked Evans to perform work for another company owned by Jank, Defendant Nexgen. Evans began working on Nexgen customer relationships, including Siemens and Entergy. The Nexgen company phone and email were Evans’ responsibility. Jank knew or should have known Evans would expect to be paid for this work.

Throughout the summer of 2020 Evans discussed with Jank that he wanted a formal employment agreement with Krambu in writing confirming their agreement and that he needed to be compensated for his work at Nexgen. In or about March 2021, Krambu and Jank drafted an employment agreement (the “Agreement”) which was an offer that Evans accepted by signing. Evans continued to perform work with both Krambu and Nexgen, which work was accepted by Krambu and Nexgen. The Agreement provided Evans would get 1 million stock options in Krambu over five years and which would vest annually. The Agreement also provided Evans would be paid an annual salary of \$36,000, with minimum monthly payments of \$1,000. By about August 2021, Jank had been gone and unresponsive to communications for about four months.

Throughout the end of 2021 and beginning of 2022, Evans continued working for both Krambu and Nexgen in reliance on the employment agreement he had signed. In or about March 2022, Evans learned that Jank and Tyler intended to market and sell as “new” computer equipment to customers which in reality was used. The market value for new equipment was much higher than that of used equipment.

On or about March 21, 2022 Evans submitted his resignation to Krambu, Jank, and Tyler because he did not want to be involved in Krambu’s fraud to

customers. During his entire employment with Krambu, Evans was only paid \$21,700. Despite demand, he never received stock options pursuant to the Agreement. Evans was never compensated for his work for Nexgen.

Compl. for Damages ¶¶ 2.1-14 (internal paragraphs and paragraph breaks omitted).

Krambu's statement of the facts is the following:

Krambu, Inc. contracted with Vantage Four, LLC, a Washington limited liability company, to provide various advertising and marketing services on its behalf beginning October 10, 2019. Counter-Defendant was a member of Vantage Four, LLC and provided all services to Krambu, Inc. on behalf of Vantage Four, LLC[.] Counter-Defendant, using his middle name as his last name, signed a confidentiality agreement ("Confidentiality Agreement") with Krambu, Inc. on April 2, 2020 Krambu agreed to hire Counter-Defendant on September 16, 2021 on an at-will basis. Counter-Defendant was initially employed as an exempt, salaried employee. By negotiations, Krambu, Inc. agreed to pay Counter-Defendant an annual salary of \$52,000; to be paid every other week. Travis Jank negotiated with Counter-Defendant to formalize a written employment agreement; however, they were unable to reach mutually agreeable terms. Counter-Defendant was never granted the title of Krambu, Inc.'s Chief Operating officer ("COO"). On March 21, 2022, Counter-Defendant failed to appear for work for Krambu, Inc. and instead submitted a letter of resignation ("Resignation Letter") to Krambu, Inc.

Answer and Counterclaim, Counterclaims ¶¶ 7-14 (internal paragraphs and paragraph breaks omitted).

On May 11, 2022, Evans filed a Complaint for Damages against Krambu, Inc., Travis Jank, Kenneth Tyler, and Nexgen Computer Services, LLC for breach of contract, promissory estoppel, unjust enrichment, fraud, constructive discharge, and claim for wages under I.C. §45-606, as well as Washington state claims for negligent misrepresentation and claim for wages under Washington Revenue Code § 49.52. Evans has requested a trial by jury. On June 8, 2022, Krambu filed its Answer. On June 21, 2022, Travis Jank filed Defendant Travis Jank's Answer to Plaintiff's Complaint for Damages. On June 23, 2022, Kenneth Tyler filed Defendant's Answer and Affirmative Defenses.

On June 8, 2022, Krambu filed its Answer and Counterclaim, asserting claims for

defamation, breach of contract, misappropriation of trade secrets in violation of the Idaho Trade Secrets Act, conversion, unjust enrichment, and tortious interference with economic relationship. On June 29, 2022, Evans filed his Answer to Krambu, Inc.'s Counterclaims.

On June 8, 2022, Krambu filed its Motion to Dismiss Evans' claims for fraud, promissory estoppel, and two Washington state-law claims, along with supporting memorandum. On July 6, 2022, Evans filed Plaintiff's Response to Krambu's Motion to Dismiss. On July 18, 2022, Krambu filed its Reply Brief in Support of Krambu's Motion to Dismiss. Neither party has submitted declarations, affidavits, or exhibits.¹

II. STANDARD OF REVIEW

The court must read a motion to dismiss under Idaho Rule of Civil Procedure 12(b)(6) "in conjunction with Rule 8(a), which sets forth the requirements for pleading a claim and calls for 'a short and plain statement of the claim showing that the pleader is entitled to relief' and a demand for relief." *Harper v. Harper*, 122 Idaho 535, 536, 835 P.2d 1346, 1347 (Ct. App. 1992) (citing I.R.C.P. 8(a)). Additionally, for a claim of fraud to survive a Rule 12(b)(6) motion to dismiss, I.R.C.P. 9(b) requires the plaintiff to "support the existence of each of the elements of the cause of action for fraud by pleading with particularity the factual circumstances constituting fraud." *Jenkins v. Boise Cascade Corp.*, 141 Idaho 231, 239, 108 P.3d 380, 386 (2004) (citing *Estes v. Barry*, 132 Idaho 82, 86, 967 P.2d 284, 288 (1998)). The court looks only at the pleadings to determine whether a claim for relief has been stated when considering a Rule 12(b)(6) motion to dismiss. *Allied Bail Bonds, Inc. v. Cnty. of Kootenai*, 151 Idaho 405, 409, 258 P.3d 340, 344 (2011); *Young v. City of Ketchum*, 137 Idaho 102, 104, 44

¹ Although Krambu attached two exhibits to its Answer and Counterclaim, the Court need not consider these, as they have no bearing on Krambu's Motion to Dismiss.

P.3d 1157, 1159 (2002). Under Rule 12(b)(6), “[a]fter viewing all facts and inferences from the record in favor of the non-moving party, the Court will ask whether a claim for relief has been stated.” *Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 868-69, 406 P.3d 878, 880-81 (2017) (quoting *Losser v. Bradstreet*, 145 Idaho 670, 673, 183 P.3d 758, 761 (2008)). “Dismissal ‘for failure to state a claim should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.’” *Id.* at 869, 406 P.3d at 881 (quoting *Taylor v. Maile*, 142 Idaho 253, 257, 127 P.3d 156, 160 (2005)) (internal quotations omitted).

The standard for reviewing a dismissal for failure to state a cause of action pursuant to I.R.C.P. 12(b)(6) is the same as the standard for reviewing a grant of summary judgment. See, e.g., *Idaho Schs. for Equal Educ. v. Evans*, 123 Idaho 573, 578, 850 P.2d 724, 728 (1993); *Rim View Trout Co. v. Dep’t. of Water Resources*, 119 Idaho 676, 677, 809 P.2d 1155, 1156 (1991). The appellate court reviews the case *de novo*. *Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 868, 406 P.3d 878, 880 (2017) (citing *Syringa Networks, LLC v. Idaho Dep’t of Admin.*, 159 Idaho 813, 823, 367 P.3d 208, 218 (2016)). Dismissal “for failure to state a claim should not be granted ‘unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.’” *Id.* at 869, 406 P.3d at 881 (citing *Taylor v. Maile*, 142 Idaho 253, 257, 127 P.3d 156, 160 (2005) (internal citations omitted)); *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995) (quoting *Greenfield v. Suzuki Motor Co. Ltd.*, 776 F. Supp. 698, 701 (E.D.N.Y. 1991)).

III. ANALYSIS

Krambu moves for this Court to dismiss three of Evans’ causes of actions in his Complaint. First, Krambu alleges that Evans has not met the pleading standard for his

allegation of fraud. Second, Krambu alleges that Evans may not bring a claim for promissory estoppel because promissory estoppel is not a recognized cause of action. Third, Krambu alleges that Evans has provided no basis for bringing his two Washington state-law claims to this Court. The Court will address each of these in turn below. The Court will look only to the pleadings in determining whether a claim for relief has been stated in this matter. For the reasons stated below, the Court denies Krambu's motion to dismiss.

A. Evans' claim for fraud meets the heightened pleading standards of I.R.C.P. 9(b), and Krambu's motion to dismiss this claim is denied.

Krambu alleges that Evans' Complaint:

. . . only generally plead fraud and do not plead it with particularity. To be particular, Paragraph 3.16 merely states that the Plaintiff was "entitled to receive a salary and stock options," and does not state any details about the salary or stock options to allow Krambu to understand the factual basis of the alleged representation or ascertain its potential damages. Paragraph 3.16 also does not state *when* or *how* the alleged representation occurred. . . . Paragraphs 3.22 presents nothing more than the bare element as whether he "performed work with the opportunity costs of not pursuing different employment," has [sic] nothing to do with whether reliance was *justified*. Since there are no facts presented about what the alleged salary and stock options were (not [sic] clear that this was the same representation mentioned in paragraphs 2.7 and 2.8, or even if the "Agreement" constitutes a representation), it cannot be determined whether the Plaintiff's reliance was justified. Paragraph 3.23 is also nothing more than a bare assertion of damages without description of how the Plaintiff has been injured.

Therefore, Plaintiff has failed to plead fraud with particularity and the cause of action should be dismissed.

Mem. in Supp. of Def. Krambu, Inc.'s Mot. to Dismiss (Mem. in Supp. of Mot. to Dismiss) 5-6 (internal citations omitted).

Evans responds:

Evans properly pled fraud by alleging each and every element of fraud as required [by] I.R.C.P. 9(b). The fraud was pled with particularity. Defendant ignores Paragraph 3.15 of the Complaint, which is the first allegation of the claim for fraud. Paragraph 3.15 specifically re-alleges the facts stated within the Complaint as if fully set forth within the Complaint. Defendant's argument in support of dismissal does not dispute that Evans properly set forth the elements

of fraud, but instead argues there are some facts missing. However, a review of the Complaint confirms the allegations set forth the specific conduct which is alleged to be fraudulent.

Defendant argues paragraph 3.16 is missing specifics of the salary and the stock options to be received by Evans. However, these facts are specifically set forth in the Fact Section of the Complaint in Paragraphs: 2.6; 2.7; 2.8; and 2.13, which were specifically re-alleged as if fully set forth in Evans [sic] fraud claim. Paragraph 2.6 alleges Evans entered into a signed employment agreement, which provided Evans would be compensated with stock options and a salary. Paragraph 2.7 specifically states that Evans was to provide 1-million [sic] dollars in stock options pursuant to his employment agreement. Paragraph 2.8 specifically stats that Evans was to receive a salary of \$36,000 pursuant to the employment agreement.

Defendant recognizes Paragraphs 2.7 and 2.8 set forth the above facts supporting the fraud claim, as it specifically references these specific paragraphs in its argument. Defendant's [sic] claim it is unsure whether Paragraphs 2.7 and 2.8 apply to the Fraud Claim is disingenuous given paragraph 3.15 specifically states that these paragraphs are re-alleged as if set forth fully within the Fraud Claim. Evans properly pled fraud as required by I.R.C.P. 9(b).

In support of Defendant's argument, it cites *Dengler v. Hazel Blessinger Fam. Tr.*, 141 Idaho 123, 128 (2005). However, this case is not applicable. The trial court dismissed the fraud claim where Dengler had simply recited the bare elements of fraud and simply substituted the Defendant's name. Unlike *Dengler*, Evans pled specific facts identifying the conduct which was fraudulent and incorporated all the facts alleged into the fraud claim. This included allegations as to stock options and wages Defendant argues make the fraud claim deficient.

Defendant specifically recognizes in its argument that Paragraphs 2.7 and 2.8 contain the information Defendant argues was not plead with particularity. This case is more similar to the facts in *Choice Feed, Inc.*

The fraud claim has been pled properly with particularity, and Evans' fraud claim is not subject to dismissal pursuant to I.R.C.P. 12(b)(6). In reality, Defendant's gripe is not one that raises an issue subject to dismissal pursuant to IRCP 12(b)(6). Instead, at best it merely points out information that can be obtained in discovery or could have been addressed by a motion for a more definite statement pursuant to I.R.C.P. 12(e). However, all facts have been set forth with particularity by Evans and Defendant's motion to dismiss should be denied.

Plaintiff's Response to Krambu's Mot. to Dismiss ("Response to Mot. to Dismiss) 2-4
(internal citations omitted).

The Court will begin by reviewing the procedural rules related to pleadings. First, I.R.C.P. 8(a)(2) states "[a] pleading that states a claim for relief must contain...a short and plain statement of the claim showing that the pleader is entitled to relief." I.R.C.P. 8. Next, I.R.C.P. 8(d) states "[e]ach allegation must be simple, concise, and direct. No

technical form is required.” I.R.C.P. 8. Lastly, I.R.C.P. 8(e) states “[p]leadings must be construed so as to do justice.” *Id.*

The Idaho Rules of Civil Procedure add an additional requirement for allegations of fraud, as mentioned above, which the Court will reiterate here for the reader’s convenience.

[F]or a claim of fraud to survive a Rule 12(b)(6) motion to dismiss, I.R.C.P. 9(b) requires the plaintiff to “support the existence of each of the elements of the cause of action for fraud by pleading with particularity the factual circumstances constituting fraud.”

Jenkins v. Boise Cascade Corp., 141 Idaho 231, 239, 108 P.3d 380, 386 (2004) (citing *Estes v. Barry*, 132 Idaho 82, 86, 967 P.2d 284, 288 (1998)).

A party must establish nine elements to prove fraud: “1) a statement or a representation of fact; 2) its falsity; 3) its materiality; 4) the speaker’s knowledge of its falsity; 5) the speaker’s intent that there be reliance; 6) the hearer’s ignorance of the falsity of the statement; 7) reliance by the hearer; 8) justifiable reliance; and 9) resultant injury.”

Glaze v. Deffenbaugh, 144 Idaho 829, 833, 172 P.3d 1104, 1108 (2007) (citing *Mannos v. Moss*, 143 Idaho 927, 931, 155 P.3d 1166, 1170 (2007)). To satisfy the pleading requirements for claims of fraud, the complaint should address “‘who’ made the statement, to ‘whom’ the statement was made, ‘when’ the statement was made, ‘where’ the statement was made, and ‘how’ the statement was made.” *S Panels Holdings, LLC v. Jolly*, 2014 WL 4064108 (2014); *Choice Feed, Inc. v. Montierth*, 168 Idaho 124, 139, 481 P.3d 78, 93 (2021). “The elements of fraud that relate to intent, knowledge, and other conditions of a person’s mind may be alleged generally in a complaint[.]” *Choice*, 168 Idaho at 138, 481 P.3d at 92.

The Idaho Supreme Court frequently affirms lower courts’ dismissals for failure to plead fraud with particularity. See, e.g., *Glaze v. Deffenbaugh*, 144 Idaho 829, 833, 172 P.3d 1104, 1108 (2007) (finding the plaintiffs’ complaint did not meet the

heightened pleading standard because it made generalized statements, such as “the Defendant fraudulently concealed said acts” and because it failed to satisfy the element of false representation); *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 239-40, 108 P.3d 380, 386-87 (2005) (finding fraud was insufficiently pled where complaint “only generally alleged that Boise Cascade was involved in several false accusations and false statements” and did not satisfy the remaining elements of fraud); *Witt v. Jones*, 111 Idaho 165, 168, 722 P.2d 474, 477 (1986) (finding fraud was insufficiently pled where the complaint only made a “conclusory allegation that ‘devious tactics [were] imposed by Defendants to thwart Plaintiff,’” without going into detail about “what these so-called tactics were, what made them devious, or when they were made.”); *Galaxy Outdoor Advertising, Inc. v. Idaho Transp. Dep’t*, 109 Idaho 692, 696, 710 P.2d 602, 606 (1985) (italics in original) (finding fraud was insufficiently pled where complaint did not allege “Idaho Transportation Department, or its employees *knowingly* made false representations of material fact to the advertising companies during the negotiations.”); *Dengler v. Hazel Blessinger Family Trust*, 141 Idaho 123, 127-28, 106 P.3d 449, 453-54 (2005) (finding fraud was insufficiently pled where complaint made “general averments concerning the *prima facie* case of fraud” without alleging any facts that address “representations, falsity, materiality, intent, reliance or injury based on representations”).

In contrast, in *Choice Feed*, the Idaho Supreme Court found that fraud had been sufficiently pled where the complaint:

specified the substance of the representation that was made, when it was made, by whom it was made, to whom it was made, and how it was made. Specifically, Choice Feed pleaded that Ray made false representations that he would complete the agreement once he arranged a 1031 exchange. He made this representation to multiple members of Choice Feed throughout 2014 and 2015.

168 Idaho at 139, 481 P.3d at 93. The Idaho Supreme Court in *Choice Feed* went on to explain that I.R.C.P. 9(b) “clearly exists to put defendants on fair notice of the precise nature of the fraud alleged.” *Id.* The purpose of I.R.C.P. 9 is to provide proper notice to defendants so that they know what they are being accused of and why they are being sued. *Id.* Thus, it follows that I.R.C.P. 9(b) is not meant to be an insurmountable burden on plaintiffs but rather merely requires specific facts that satisfy each element of fraud such to put the defendant on notice of what he or she is being sued for. Krambu knows, with sufficient particularity given in Evans’ Complaint, the circumstances constituting fraud to provide Krambu with adequate notice. 168 Idaho at 139-40, 481 P.3d at 93-94.

For the following reasons, the Court finds that the heightened pleading requirements of I.R.C.P. 9(b) for a fraud claim have been met by Evans.

A statement or a representation of fact

Evans’ Complaint states that “Krambu and Jank represented to Evans that in exchange for his labor, he would get ownership equity shares in Krambu as well as a salary.” Compl. for Damages ¶ 2.3. This makes clear “who” made the statement (Krambu and Jank), “to whom” the statement was made (to Evans), and “what” the statement was (in exchange for his labor, he would get ownership equity shares in Krambu as well as a salary). Evans also states in the same paragraph, albeit indirectly, “when” the statement was made—At the beginning of Evans’ employment. *Id.* Evans’ Complaint specifically also states the salary and stock option amounts the defendants allegedly represented to Evans: “1-million [sic] dollars in stock options” and “a salary of \$36,000 pursuant to the employment agreement.” *Id.* ¶ 3.16. Thus, this element is met for purposes of I.R.C.P. 9(b).

The statement's falsity

Evans' Complaint states that "Such representation was false as Defendants had no intention to compensate Evans with a salary and stock options and in fact did not compensate Evans." *Id.* ¶ 3.17. This element has been met for purposes of I.R.C.P. 9(b) since there are specific facts that address the veracity of the representation beyond a mere general statement.

The statement's materiality

Evans' Complaint states that "Such representation was material to Evans' livelihood as he relied on the representation and performed work with the opportunity costs of not pursuing different employment." *Id.* ¶ 3.18. Clearly, when one accepts employment from an employer, that individual expects to be paid, and he or she would likely not agree to work for free or for less than the amount agreed upon prior to beginning employment. Representations pertaining to salary are material to offers of employment. Thus, this element has been met for purposes of I.R.C.P. 9(b).

The speaker's knowledge of the statement's falsity

Evans' Complaint states that "Defendants knew their representation was false because they had no intention to compensate Evans with a salary and stock options." *Id.* ¶ 3.19. While this statement could be more specific, it is nevertheless not a mere conclusory statement that the defendants had knowledge of the statement's falsity, and may be alleged generally. 168 Idaho at 138, 481 P.3d at 92. Thus, this element is met for purposes of I.R.C.P. 9(b).

The speaker's intent that there be reliance on the statement

Evans' Complaint states that "Defendants intended that Evans rely on their representations so that he would perform work for Defendants." Complaint for

Damages *Id.* ¶ 3.20. Again, while this statement is not very specific, elements related to intent may be alleged generally. 168 Idaho at 138, 481 P.3d at 92. Thus, this element is met for purposes of I.R.C.P. 9(b).

The hearer's ignorance of the falsity of the statement

Evans' Complaint states that "Evans was ignorant of the fact that Defendants had to [sic] intention of compensating him for his work." Complaint for Damages ¶ 3.21. Presumably, as Krambu pointed out in its memorandum, Evans' use of the word "to" appears to be a typographical error and most likely was supposed to say "no" instead. Again, this element may be pled generally since it pertains to a condition of a person's mind. 168 Idaho at 138, 481 P.3d at 92. Thus, this element is met for purposes of I.R.C.P. 9(b).

Reliance by the hearer on the statement and the reliance was justifiable

Evans appears to combine these two elements into one statement: "Evans justifiably relied on the representations and performed work with the opportunity costs of not pursuing different employment." Complaint for Damages ¶ 3.22. While this statement could be more specific, Evans also alleged that "Throughout the end of 2021 and beginning of 2022, Evans continued working for both Krambu and Nexgen in reliance on the employment agreement he had signed." *Id.* ¶ 2.10. A factfinder could find it reasonable for someone to expect to be paid for their work for an employer in reliance on a signed employment agreement. Further, the Court does not find "the opportunity costs of not pursuing different employment" to be irrelevant to whether reliance was justified. *Id.* ¶ 3.18. A factfinder could find Evans to be justified in staying with his employer and not seeking another employer, depending on what additional facts are presented at trial. As stated above, the primary purpose that the Idaho Supreme Court assigns to I.R.C.P. 9(b) is to put the defendants on notice. It is not

meant to be insurmountable for the plaintiff. Thus, the Court finds that, for purposes of I.R.C.P. 9(b), this element is satisfied.

There was a resultant injury

Evans states: “As a direct and proximate result Defendants’ fraud, Evans suffered damages in an amount to be proven at trial.” *Id.* ¶ 3.23. Evans also states, “During his entire employment with Krambu, Evans was only paid \$21,700. Despite demand, he never received stock options pursuant to the Agreement”, as well as that he was never compensated for his work for Nexgen. *Id.* ¶ 2.13-14. While Evans has not stated an exact amount for his injury, he has stated that he suffered an injury as a result of defendants’ alleged fraud in an amount of at least the difference between the \$21,700 he was paid and the market value of his services or the amount of salary and stock options in the employment agreement, should it be found to be valid. Thus, for purposes of I.R.C.P. 9(b), this element is satisfied.

Accordingly, the Court finds that Evans has properly pled all elements of his claim for fraud. This case is similar to the situation presented to the District Judge in *Choice Feed*, who denied the defendant’s motion to dismiss, which was affirmed by the Idaho Supreme Court. Krambu has been put on fair notice, via Evans’ Complaint, of the precise nature of the fraud alleged. 168 Idaho at 139, 481 P.3d at 93. Krambu knows what it allegedly did and why it is being sued. *Id.* Krambu’s motion to dismiss Evans’ claim of fraud is denied.

B. The Court finds that promissory estoppel, while not a cognizable cause of action in Idaho, may be pled in the alternative if the factfinder determines there was no consideration, and Krambu’s motion to dismiss this claim is therefore denied.

The second issue before the Court is whether promissory estoppel is a cognizable cause of action in Idaho. Krambu argues that promissory estoppel is not a

cause of action because the Idaho Supreme Court has stated that “Promissory estoppel is simply a substitute for consideration, not a substitute for an agreement between parties.” Mem. in Supp. of Mot. to Dismiss 6 (quoting *Lettunich v. Key Bank Nat’l Ass’n*, 141 Idaho 362, 368, 109 P.3d 1104, 1110 (2005)). It argues, “where there is evidence of adequate consideration, the doctrine of promissory estoppel is of no consequence. . . . Therefore, as promissory estoppel simply acts as a substitute for consideration, it is not a stand-alone claim. As it is not a stand-alone claim, it should be dismissed as a cause of action.” *Id.* at 6.

Evans responds:

Oddly, Defendant’s brief states “promissory estoppel is not a legally cognizable cause of action” then proceeds to provide citation to caselaw that recognizes promissory estoppel as a cognizable cause of action. Defendant has not identified any caselaw which supports its claim that “promissory estoppel” is not a stand alone [sic] claim. That’s because it is a claim. It simply has different elements than a breach of contract claim.

This claim was pled in the alternative to there being a valid employment agreement found to exist between the parties. . . . As a result of this rule [Rule 8(e)(2)], a party may plead claims in the alternative and inconsistent facts and remedies without being barred by the election of remedies doctrine. Evans has pled the parties’ [sic] entered into a valid employment agreement, but Evans’ promissory estoppel claim is pled in the alternative to a valid employment agreement between the parties being found in this action. Evans has the right to plead promissory estoppel as an alternative claim and is not subject to dismissal by construing this claim in the context of a valid employment agreement existing.

. . . . Looking at the Complaint, Evans has properly stated a claim for promissory estoppel, and it cannot be said that there is no set of facts supporting Evans’ claim in the alternative. Therefore, Defendant’s motion to dismiss pursuant to I.R.C.P. 12(b)(6) should be denied.

Response 4-5 (italics in original) (citations omitted).

“[T]he doctrine of promissory estoppel is intended as a substitute for consideration, and not as a substitute for an agreement between the parties. Where the parties to [an agreement have] exchanged mutual promises, there [is] no failure of consideration such that promissory estoppel should be applied . . .” *Zollinger v. Carrol*,

137 Idaho 397, 400, 49 P.3d 402, 405 (2002) (citation omitted). “The elements for a claim for breach of contract are: (a) the existence of the contract, (b) the breach of the contract, (c) the breach caused damages, and (d) the amount of those damages.” *Mosell Equities, LLC v. Berryhill & Co.*, 154 Idaho 269, 278, 297 P.3d 232, 241 (2013) (citing *O’Dell v. Basabe*, 119 Idaho 796, 813, 810 P.2d 1082, 1099 (1991)).

“Consideration is a necessary element to forming a valid contract.” *CDA Dairy Queen, Inc. v. State Ins. Fund*, 154 Idaho 379, 390, 299 P.3d 186, 197 (2012) (citing *Sirius LC v. Erickson*, 150 Idaho 80, 85, 244 P.3d 224, 229 (2010)). Idaho Rule of Civil Procedure 8 “governs the content of pleadings. Rule 8(e)(2) specifically allows a party to assert as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds or both.” *Murr v. Odmark*, 112 Idaho 606, 608, 733 P.2d 827, 829 (Ct. App. 1987).

The Court finds it plain that promissory estoppel is not a standalone claim in Idaho, as it is merely a substitute for consideration, which is not a claim but rather an element necessary for contract formation. Nevertheless, the Court finds it premature to dismiss this claim since the parties have offered no arguments regarding the validity of the employment agreement in question. Evans asserts that he “has pled the parties entered into a valid employment agreement, but Evans’ promissory estoppel claim is pled in the alternative to a valid employment agreement between the parties being found in this action.” Response 4. The Court finds that, since the formation of a valid employment agreement is necessary for Evans to pursue his breach of contract claim, it is possible that the factfinder may determine that there was no consideration, thus rendering the employment agreement invalid. In such an instance, application of the doctrine of promissory estoppel may substitute for absence of consideration, thereby

making the contract valid and enforceable. Thus, while not a cause of action on its own, Evans may plead the doctrine of promissory estoppel in the alternative, in the case of a finding of lack of consideration. Accordingly, Krambu's motion to dismiss Evans' claim for promissory estoppel is denied.

C. It is premature for the Court to apply a conflicts of law analysis to Evans' Washington state-law claims, and Krambu's motion to dismiss these claims is denied.

The final issue before the Court is whether Evans has a basis to bring his Washington state claims before an Idaho court, and, in the alternative, whether Evans has sufficiently stated a claim for negligent misrepresentation under Idaho law. Krambu argues, first:

Plaintiff asserts two Washington State law causes of action: negligent misrepresentation and a wage claim under RCW 49.52, et seq. Plaintiff's *Complaint* contains nothing which provides a basis for this Court to hear Washington causes of action. Normally, in order for a state court to proceed under the law of another state, it is because at issue is a contract with a choice of law provision which states the law of the other state governs [sic]. This is absent from the pleadings.

The only mentions of Washington in the *Complaint* are found in paragraphs 1.2, 3.48, and the Section III(B) header. Paragraph 1.2 merely states, in relevant part, "Krambu also performed business in the State of Washington." That may be relevant to haul Krambu into a Washington court, but that is not the case. Paragraph 3.48 is just a statement averring that Plaintiff is entitled to damages and provides no basis to assert Washington law in this Court.

Therefore, there is no basis plead [sic] to allow the Court to maintain causes of action under violation of RCW 49.52, et seq. [sic] should be dismissed with prejudice.

Mem. in Supp. of Mot. to Dismiss 7 (*italics in original*).

Next, Krambu argues:

To the extent Plaintiff's claim for Negligent Misrepresentation under Washington law may be construed as a claim under Idaho law, it fails to state a cause of action.

The tort of negligent misrepresentation in Idaho is narrowly limited to the confines of a professional relationship involving an account.

Plaintiff has not alleged any facts which would fall within the narrow limits allowed by *Duffin* [*v. Idaho Crop Imp. Ass'n*, 126 Idaho 1002, 1010 (1995)].

Therefore, Plaintiff has failed to allege an Idaho cause of action for negligent misrepresentation.

Mem. in Supp. of Mot. to Dismiss 7-8.

Evans responds:

Defendant asks this Court to dismiss Evans' wage claims and claim for negligent misrepresentation asserted under Washington law. The facts show Evans performed work in both Idaho and Washington for Defendant, and taking the facts as true, Evans would be entitled to assert claims in both Idaho and Washington for the work performed. Defendant's argument attempts to limit Evans' wage claim to the parties' employment agreement. Defendant cannot contract away its obligations to pay employees [sic] wages owed in Idaho and in Washington. Further, at issue before the Court is whether Evans' [sic] has stated a claim for relief under the Complaint in this action. Defendant's argument for dismissal seeks to get into the merits of Evans' wage claims and limit the claims, which is not the purpose of a Rule 12(b)(6) motion.

. . . To determine a conflict of law, the trial court applies the most significant relationship test to determine what state most significantly is related to a particular issue and applies the law best suited to resolve the issue. Further, I.R.C.P. 44(c) provides the process where a party intends the Court to take judicial notice of foreign law. Under I.R.C.P. 44(c) that will occur at a later stage. The analysis necessary to determine whether Washington law applies under the facts of this Complaint is not before the Court on Defendant's motion to dismiss. To address the issue of the application of Washington law as pled by Evans, discovery must be conducted, and the merits of the allegations and claims must be addressed by the Court.

Taking the allegations in Evans' complaint as true, viewing the facts and evidence in the light most favorable to Evans and taking all reasonable inferences therefrom, it cannot be said there are no facts supporting Evans' claims asserted under Washington law. Therefore, Defendant's motion to dismiss should be denied.

Response 5-6 (citations omitted).

The Court agrees with Evans' recitation of the relevant law pertaining to foreign law. The Idaho Supreme Court details the process for determining which law should apply when confronted with activities that occurred in more than one state. *Seubert Excavators, Inc. v. Anderson Logging Co.*, 126 Idaho 648, 651-53, 889 P.2d 82, 85-87 (1995). This is an extensive discussion, which requires evidence beyond the pleadings.

Since the Court is not permitted to review anything outside of the pleadings when evaluating a Rule 12(b)(6) motion to dismiss, the Court finds it premature to determine

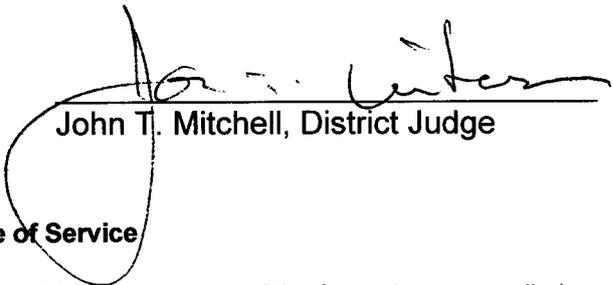
whether the Washington state-law claims should be dismissed. It seems highly likely, given that Evans performed work for Krambu in both Idaho and Washington, that the Court will need to apply the “significant relationship” test to determine which state’s law applies to each cause of action. Therefore, the Court denies Krambu’s motion to dismiss the Washington state-law claims at this stage.

V. CONCLUSION AND ORDER

Krambu has not proven “beyond doubt that the plaintiff [Evans] can prove no set of facts in support of his claim that would entitle him to relief.” *Paslay*, 162 Idaho 866, 869, 406 P.3d 878, 881. Due to this failure on Krambu’s part, Krambu’s Motion to Dismiss is denied.

IT IS HEREBY ORDERED that defendant Krambu’s Motion to Dismiss is DENIED.

Entered this 20th day of July, 2022.



John T. Mitchell, District Judge

Certificate of Service

I certify that on the 20th day of July, 2022, a true copy of the foregoing was mailed postage prepaid or was sent by email, interoffice mail or facsimile to each of the following:

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Jeanne Clausen, Deputy Clerk