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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 ALCON ENTERTAINMENT, LLC,
16
17 Plaintiff,

18 v.

19 AUTOMOBILES PEUGEOT SA, a
France *société anonyme*; ISABEL
SALAS MENDEZ, an individual;
20 PUBLICIS MEDIA FRANCE, S.A., a
France *société anonyme*; HERVE
21 MONTRON, an individual; MAMOU
SISSOKO, an individual; and DOES 1-
22 10, inclusive,

23 Defendant.
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Case No. 2:19-cv-00245 CJC (AFMx)
The Honorable Cormac J. Carney

**NOTICE OF MOTION AND
MOTION TO DISMISS BY
DEFENDANTS AUTOMOBILES
PEUGEOT SA AND ISABEL SALAS
MENDEZ; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: March 2, 2020
Time: 1:30 p.m.
Courtroom 7C

[Proposed Order Filed Concurrently
Herewith]

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that on March 2, 2020, at 1:30 p.m., or as soon as thereafter as the matter may be heard before the Honorable Judge Cormac J. Carney, in Courtroom 7C of the United States District Courthouse for the Central District of California, Western Division, 350 W 1st Street, Los Angeles, California, Defendants Automobiles Peugeot SA (Peugeot) and Isabel Salas Mendez (Mendez) will and hereby do move the Court for an order dismissing in its entirety Plaintiff’s First Amended Complaint (“FAC”) (ECF No. 8) without prejudice under Rule 41 of the Federal Rules of Civil Procedure for failure to plead a “short and plain statement” of the claims for relief and failure to make each allegation “simple, concise, and direct,” as required under Rule 8 of the Federal Rules of Civil Procedure.

Alternatively, Peugeot and Mendez will and hereby do move the Court for an order striking the FAC pursuant to Federal Rule of Civil Procedure 12(f) due to the pleading containing excessive “redundant, immaterial, [or] impertinent” matter.

Alternatively, Peugeot and Mendez will and hereby do move the Court for an order partially dismissing the FAC with prejudice as to Count 5 (Fraud) for failure to state a claim for relief under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the pleadings on file with this Court, and such arguments and authorities as may be presented at or before the hearing.

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This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on December 16, 2019.

Dated: December 23, 2019

HOGAN LOVELLS US LLP



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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Alcon Entertainment LLC (“Alcon”) brings contract and fraud claims against Defendants Automobiles Peugeot SA (“Peugeot”) and Isabel Salas Mendez (“Mendez”) (collectively, the “Peugeot Defendants”), alleging that Peugeot (through Mendez and others) breached a co-promotion agreement for Alcon’s movie *Blade Runner 2049* and that the Peugeot Defendants defrauded Alcon in connection with that alleged agreement.

The parties’ dispute in this matter is relatively straightforward. Indeed, over course of six paragraphs spanning just over one page, the First Amended Complaint (hereinafter, the “FAC”) (EFC No. 8) pleads the basic facts underlying the parties’ dispute. See FAC ¶¶ 27-32. Despite its early, concise description of the dispute, however, the FAC goes on to contain more than 400 individually numbered paragraphs (including some that contain dozens of sub-paragraphs) spanning more than 200 pages. The FAC is replete with irrelevant and repetitive allegations. As such, the FAC violates the requirement in FRCP 8 that a complaint contain only a “short and plain statement” of the claims for relief and make each allegation “simple, concise, and direct.” It is unfair and unreasonable to require the Peugeot Defendants to incur the substantial expense associated with preparing an answer admitting or denying each of the FAC’s 400 paragraphs of allegations. The FAC should be dismissed under FRCP 41 or, alternatively, stricken under FRCP 12(f).

Additionally, the fifth cause of action for fraud against the Peugeot Defendants should be dismissed with prejudice under FRCP 12(b)(6) for failure to state a claim because the fraud alleged by Alcon is nothing more than a restatement of its breach of contract claim and is barred by California’s economic loss rule.

1 **II. FACTUAL BACKGROUND**

2 Alcon is an American film-production company. FAC ¶ 34.¹ Peugeot, a
3 French carmaker, is a *société anonyme* with its principal place of business in Rueil-
4 Malmaison, France. *Id.* ¶ 36. Defendant Mendez is a French-resident Peugeot
5 marketing employee with responsibility for Peugeot’s sponsorships, co-promotional
6 partnerships, and product placements. *Id.* ¶ 45.

7 Alcon co-produced the science-fiction film *Blade Runner 2049*. *Id.* ¶ 27.²
8 *Blade Runner 2049*’s main character—K—drives a futuristic flying car known as a
9 “spinner.” *Id.* ¶¶ 27, 89. Alcon sought to monetize K’s spinner by securing a high-
10 end product placement from an auto manufacturer. *Id.* ¶¶ 90, 95.

11 Alcon alleges that Peugeot and Alcon “entered into a valid and enforceable
12 partially written, partially oral contract” (*Id.* ¶ 322) related to “a product placement
13 and co-promotional relationship involving branding K’s spinner as a real-world”
14 Peugeot vehicle (*Id.* ¶ 28).

15 Alcon further alleges that “Peugeot (at least through Publicis [Media France,
16 S.A.] (“Publicis”)) and Alcon” entered into a letter of intent in July 2016 requiring
17 the parties to “negotiate in good faith for a binding contract.” *Id.* ¶ 153. Under this
18 alleged contract, Alcon would display Peugeot branding and trade dress on screen
19 for a specified amount of time in return for Peugeot paying a \$500,000 product-
20 placement fee to Alcon and carrying out a co-promotional campaign. *Id.*

21 Peugeot allegedly continued to coordinate with Alcon regarding the
22 placement and co-promotion (*id.* ¶¶ 176, 188, 190, 191) with Alcon in September
23

24 ¹ For the sole purposes of this motion to dismiss, Peugeot relies upon (and does not
25 challenge) the facts as pleaded in Alcon’s first amended complaint. *Infra* pp. 2-4.
Peugeot does not agree with Alcon’s version of the events.

26 ² The other co-producer was Columbia Pictures Industries, Inc., a subsidiary of
27 Sony Pictures Entertainment Inc. FAC ¶ 73. CTMG—Sony’s “product placement,
28 product placement and co-promotional opportunities.” *Id.* Because CTMG assigned all
Id. at ¶ 74.

1 2016, sending Publicis “an initial draft of a longer, more formal agreement.” Id.
2 ¶ 187. Alcon and Publicis exchanged “multiple drafts, comments and emails about
3 it” over the next few months. Id. Publicis signed a long-form version of the
4 contract in January 2017, asserting that it was acting as Peugeot’s agent. Id. ¶ 201.

5 Publicis, meanwhile, resisted Alcon’s request to have a Peugeot executive
6 sign the draft long-form agreement. Id. ¶ 203. As a workaround, Publicis offered
7 to send to Alcon a “signed confirmation of Publicis’s authority to negotiate and
8 sign [*Blade Runner 2049*] contracts on Peugeot’s behalf.” Id. ¶ 212. Alcon
9 accepted, and Mendez and Publicis sent a “Delegation of Signature Authority.” Id.
10 ¶ 212.

11 Then, Publicis disclosed to Alcon that it had “negotiated a lower placement
12 fee with [Alcon] than the full amount Peugeot had authorized, and were intending
13 to keep the difference as their own.” Id. ¶ 221. Publicis also disclosed that one of
14 its employees had signed the January 2017 draft “without running it by” Publicis
15 lawyers. Id. ¶ 224. Alcon then realized that “there was at least a possibility that”
16 the dispute “meant that Peugeot executives had not seen” the long-form draft. Id.

17 To deal with the fallout, Publicis presented Alcon with a revised draft
18 agreement in April 2017. Id. ¶ 228. Publicis represented that this new draft had
19 been approved by Peugeot. Id. Alcon rejected the revised terms and demanded that
20 Peugeot execute the earlier draft. Id. ¶ 237. Peugeot declined. Id. ¶ 238.

21 In response to the production team’s demand that Peugeot share its plans for
22 the co-promotion, Mendez denied that Peugeot had ever committed to a co-
23 promotion with Alcon. Id. ¶ 245. Mendez also denied that Peugeot had guaranteed
24 a co-promotion and denied that Publicis could bind Peugeot to a co-promotion. Id.
25 ¶¶ 247, 291. In a meeting in Paris, the production team presented rough footage of
26 the Peugeot product placement and encouraged Peugeot to undertake a co-
27 promotional campaign. Id. ¶¶ 267-277. But Mendez subsequently explained that
28 Peugeot had no binding agreement with Alcon at all. Id. ¶ 292. Mendez offered to

1 negotiate a placement deal with no co-promotion element, but no agreement was
2 reached. Id.

3 Based on these allegations, Alcon asserts various claims, principally based on
4 contract and fraud theories, against the Peugeot Defendants.

5 **III. LEGAL STANDARDS**

6 **A. Rule 8 Requires Simple, Concise, Direct Allegations and a Short and Plain Statement of Claims.**

7 FRCP 8 directs that a complaint “must contain ... a short and plain statement
8 of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
9 It also directs that “[e]ach allegation must be simple, concise, and direct” Fed.
10 R. Civ. P. 8(d). A complaint which fails to comply with Rule 8 “may be dismissed
11 with prejudice pursuant to [R]ule 41(b).” Nevijel v. North Coast Life Ins. Co., 651
12 F.2d 671 (9th Cir. 1981) (dismissing complaint that was 23 pages long with 24
13 pages of addenda). The rule requiring each averment to be simple, concise, and
14 direct applies equally to good claims as well as bad. McHenry v. Renne, 84 F.3d
15 1172 at 1179-80 (9th Cir. 1996) (“The propriety of dismissal for failure to comply
16 with Rule 8 does not depend on whether the complaint is wholly without merit.”).
17 “Even if the factual elements of the cause of action are present, but are scattered
18 throughout the complaint and are not organized into a ‘short and plain statement of
19 the claim,’ dismissal for failure to satisfy Rule 8(a)(2) is proper.” Karabajakyan v.
20 Schwarzenegger, No. CV 06-0541-ODW, 2007 WL 9706273, at *2 (C.D. Cal. June
21 1, 2007) (dismissing 139 page complaint); see also Mann v. Boatright, 477 F.3d
22 1140 (10th Cir. 2007) (“In its sheer length, [plaintiff] has made her complaint
23 unintelligible by scattering and concealing in a morass of irrelevancies the few
24 allegations that matter.”).

25 **B. Rule 12(f) Allows the Court to Strike from a Pleading Any 26 Redundant, Immaterial, Impertinent, or Scandalous Matter.**

27 Under FRCP 12(f), “the court may order stricken from any pleading any
28 insufficient defense or any redundant, immaterial, impertinent, or scandalous

1 matter.” Fed. R. Civ. P. 12(f). “The function of a 12(f) motion to strike is to avoid
2 the expenditure of time and money that must arise from litigating spurious issues by
3 dispensing with those issues prior to trial....” Sidney–Vinstein v. A.H. Robins Co.,
4 697 F.2d 880, 885 (9th Cir. 1983). “‘Immaterial’ matter is that which has no
5 essential or important relationship to the claim for relief or the defenses being
6 pleaded.” Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure §
7 1382, at 706–07 (1990). “‘Impertinent’ matter consists of statements that do not
8 pertain, and are not necessary, to the issues in question.” Id. at 711. “Ultimately,
9 whether to grant a motion to strike lies within the sound discretion of the district
10 court.” Neilson v. Union Bank of Cal., N.A., 290 F. Supp. 2d 1101, 1152 (C.D.
11 Cal. 2003).

12 **C. Rule 12(b)(6) Requires Dismissal For Failure to State a Claim.**

13 To survive a FRCP 12(b)(6) motion to dismiss, a complaint must plead
14 “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp.
15 v. Twombly, 550 U.S. 544, 570 (2007). “Labels and conclusions ... will not do.”
16 Id. at 555. Nor will “‘naked assertion[s]’ devoid of further factual enhancement.”
17 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 557).
18 Rather, factual allegations must be enough to “raise a right to relief above the
19 speculative level,” id., and courts “are not bound to accept as true a legal conclusion
20 couched as a factual allegation.” Twombly, 550 U.S. at 555; Starr v. Baca, 652
21 F.3d 1202, 1216 (9th Cir. 2011). “Together, Iqbal and Twombly represent a two-
22 step process for evaluation of motions to dismiss. The court first identifies the non-
23 conclusory factual allegations, and the court then determines whether these
24 allegations, taken as true and construed in the light most favorable to the plaintiff,
25 plausibly give rise to an entitlement to relief.” Oracle Corp. v. Druglogic, Inc., 807
26 F. Supp. 2d 885, 895 (N.D. Cal. 2011).

27 Dismissal under FRCP 12(b)(6) may be based on either: (1) lack of a
28 cognizable legal theory, or (2) insufficient facts under a cognizable legal theory.

1 Chubb Custom Ins. Co. v. Space Sys./Loral, Inc., 710 F.3d 946, 956 (9th Cir.
2 2013).

3 **IV. ARGUMENT**

4 **A. The FAC Is So Prolix That The Peugeot Defendants Cannot Fairly
5 Be Required To Respond, And It Should Be Dismissed.**

6 “Something labeled a complaint but written more as a press release, prolix in
7 evidentiary detail, yet without simplicity, conciseness and clarity as to whom
8 plaintiffs are suing for what wrongs, fails to perform the essential functions of a
9 complaint.” McHenry, 84 F.3d at 1180; see also Cafasso, U.S. ex rel. v. General
10 Dynamics C4 Sys., Inc., 637 F.3d 1047 (9th Cir. 2011) (“Our district courts are busy
11 enough without having to penetrate a tome approaching the magnitude of *War and*
12 *Peace* to discern a plaintiff’s claims and allegations”); Hatch v. Reliance Ins. Co.,
13 758 F.2d 409, 415 (9th Cir. 1985) (upholding a Rule 8(a) dismissal of a complaint
14 that “exceeded 70 pages in length, [and was] confusing and conclusory”); Whitsitt v.
15 Industrial Empl. Dist. Ass’n, No. C 13-00396 SBA, 2014 WL 3615352, at *5 (N.D.
16 Cal. July 22, 2014) (finding that plaintiff’s 37 page complaint “is precisely the type
17 of prolix, argumentative, unintelligible and redundant pleading which the Ninth
18 Circuit has held is subject to dismissal under Rule 8”); Mendez v. Draham, 182 F.
19 Supp. 2d 430, 433 (D.N.J. 2002) (“Only through superhuman patience, effort, and
20 insight, could any attorney review the allegations of the Complaint and make
21 paragraph-by-paragraph responses.”).

22 The FAC violates the mandate in FRCP 8 that a complaint “must contain ... a
23 short and plain statement of the claim showing that the pleader is entitled to relief.”
24 Fed. R. Civ. P. 8(a)(2). In particular, the FAC impermissibly contains numerous
25 examples of irrelevant and repetitive allegations.

26 The FAC contains numerous irrelevant allegations that the Peugeot
27 Defendants should not be required to admit or deny (assuming it would even be
28 possible to admit or deny certain of such allegations). While it would be difficult to
compile a list each of the FAC’s irrelevant factual allegations, some low-hanging

1 examples include the following:

- 2 • the allegation that “*Blade Runner* is widely recognized as one of the
- 3 most significant motion pictures ever produced.” (FAC ¶ 62);
- 4 • the allegation that “*Blade Runner* has been in continuous distribution
- 5 worldwide through various distribution channels since 1982.” (FAC ¶
- 6 65);
- 7 • the allegation that as “much or more than any other film, product
- 8 placements are an integral part of the *Blade Runner* property and
- 9 milieu. This means that product placements are an artistically organic
- 10 aspect of the *Blade Runner* world.” (FAC ¶ 67);
- 11 • the literally pages of allegations about the “logistics of film production,
- 12 product placement and co-promotions.” (FAC ¶¶ 75-86);
- 13 • the allegations related to the use of Audi and Jeep vehicles in the *James*
- 14 *Bond* and *Point Break* films, respectively. (FAC ¶ 101);
- 15 • the allegation that “a millennial consumer in the market for an
- 16 automobile might never even see a television advertisement that runs
- 17 on a broadcast television network ... because the millennial consumer
- 18 might very well never watch any broadcast network television at
- 19 all....” (FAC ¶ 104);
- 20 • the allegation that “[t]he best co-promotional campaigns *might* also
- 21 include event marketing....” (FAC ¶ 106) (emphasis added);
- 22 • the allegations that the “*Blade Runner* fan base is a fervent one, and it
- 23 was desperately hungry in the months and even years prior to
- 24 BR2049’s release for any and all information about BR2049 and what
- 25 surprises it might hold.” (FAC ¶ 109);
- 26 • the paragraph of the FAC where the entirety of the paragraph alleges
- 27 that “MENDEZ was cornered.” (FAC ¶ 244);
- 28 • the allegation that “[I]ike Charles Schultz’s Lucy teeing up the football

1 for a placekick to see if Charlie Brown would be gullible enough to let
2 her pull it away from him at the last moment again....” (FAC ¶
3 288(f)); and

4 • the paragraph of the FAC where the entirety of the paragraph – which
5 follows 315 preceding paragraphs – alleges that “ALCON thus now
6 seeks relief from this Court.” (FAC ¶ 316).

7 While in many cases, the Peugeot Defendants may be able to deny knowledge
8 or information of allegations in the FAC, it will arguably be required to conduct an
9 inquiry related to all such allegations or risk a ruling that the allegations are deemed
10 admitted. See, e.g., Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial Ch. 8-D, ¶
11 8:952 (“the court may find the failure to make a reasonable inquiry before denying
12 an allegation on information and belief constitutes an admission of the allegation”);
13 Sibley v. Choice Hotels Int’l, Inc. 304 FRD 125, 134 (ED NY 2015). It is
14 unreasonable to require the Peugeot Defendants to parse through hundreds of
15 individual paragraphs – some of which include more than 20 sub-paragraphs and
16 many of which contain hyperbole and irrelevant content – to prepare an answer to
17 the FAC.

18 Finally, the FAC contains numerous instances where – despite its repeated
19 insistence that it “incorporates ... by reference each and every allegation set forth in
20 the foregoing paragraphs” (see, e.g., FAC ¶ 320) – Alcon repeats (often verbatim)
21 the same factual allegations. For example, Alcon repeats the terms of the parties’
22 alleged contractual relationship numerous times and in voluminous detail. See, e.g.,
23 FAC ¶¶ 153(a)-(k) (11 sub-paragraphs); 322(a)-(y) (25 sub-paragraphs); and 333(a)-
24 (y) (25 sub-paragraphs).

25 The FAC is “written more as a press release, prolix in evidentiary detail, yet
26 without simplicity, conciseness and clarity as to whom plaintiff [is] suing for what
27 wrongs, [and] fails to perform the essential functions of a complaint.” McHenry, 84
28 F.3d at 1180. It should be dismissed and Alcon should be directed to file a

1 complaint that complies with FRCP 8.

2 **B. In the Alternative, the Court Should Strike the FAC.**

3 “The court may strike from a pleading ... any redundant, immaterial,
4 impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). For the reasons
5 enumerated in the previous section, the FAC should be stricken. In particular, the
6 often dramatic allegations about the “organic” nature of the “Blade Runner world”
7 or the habits of Charles Schultz’s cartoon characters and the prolix, repetitive
8 allegations related to the parties’ alleged relationship identified in Section IV.A.,
9 supra, should be stricken from the FAC.

10 **C. The Fifth Count For Fraud Based On An Alleged Contractual
11 Duty Is Barred As A Matter Of Law.**

12 Under the economic loss rule, the California Supreme Court has held that
13 contract and tort are different and, therefore, breaches in a contractual setting do not
14 give rise to tort claims absent a violation of an independent duty arising from the
15 principles of tort law. See Cates Constr., Inc. v. Talbot Partners, 21 Cal. 4th 28, 58-
16 59 (1999); Erlich v. Menezes, 21 Cal. 4th 543, 550-551 (1999); Freeman & Mills,
17 Inc. v. Belcher Oil Co., 11 Cal. 4th 85, 87-88, 90-103 (1995); Applied Equip. Corp.
18 v. Litton Saudi Arabia Ltd., 7 Cal. 4th 503, 514-18 (1994). “Otherwise, every
19 intentional breach of a contract could potentially give rise to a claim in tort,
20 collapsing the distinction between contract and tort law.” Audigier Brand Mgmt. v.
21 Perez, 2012 WL 5470888, *5 (C.D. Cal. Nov. 5. 2012) (emphasis in original;
22 internal quotations and citations omitted). Thus, “many courts have applied the
23 economic loss rule to bar recovery in tort where the damages a plaintiff seeks are
24 the same economic losses arising from the alleged breach of contract.” Id. (internal
25 citations omitted.)

26 The FAC alleges – at its essence – that the parties entered into a contract
27 related to “a product placement and co-promotional relationship involving branding
28 K’s spinner as a real-world” Peugeot vehicle (FAC ¶ 28) and that the defendants

1 did not perform the obligations of that contract. Alcon takes the same essential
2 allegations that the defendants failed to perform under the parties' contract and
3 asserts a fraud claim. That fraud claim, however, "seeks ... the same economic
4 losses arising from the alleged breach of contract" and, thus, fails as a matter of
5 law. The Fifth Count for Fraud against the Peugeot Defendants should be
6 dismissed with prejudice.

7 **V. CONCLUSION**

8 For the foregoing reasons, the Peugeot Defendants respectfully request that
9 the Court dismiss the FAC without prejudice under FRCP 41, or alternatively,
10 strike the FAC under FRCP 12(f). Additionally, the Peugeot Defendants request
11 that the Court dismiss the Fifth Count for Fraud with prejudice.

12
13 Dated: December 23, 2019

HOGAN LOVELLS US LLP

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16 Colm A. Moran
17 Samaa Haridi
18 Alyssa Saviss
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