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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**ALCON ENTERTAINMENT, LLC,**

**Plaintiff,**

**v.**

**AUTOMOBILES PEUGEOT SA, et al.,**

**Defendants.**

**Case No.: CV 19-00245-CJC(AFMx)**

**ORDER GRANTING DEFENDANTS  
AUTOMOBILES PEUGEOT SA AND  
ISABEL SALAS MENDEZ’S MOTION  
TO DISMISS UNDER RULE 8(a)  
[Dkt. 143] AND DENYING WITHOUT  
PREJUDICE DEFENDANT PUBLICIS  
MEDIA FRANCE SA’S MOTION TO  
DISMISS [Dkt. 144]**

**I. INTRODUCTION**

Plaintiff Alcon Entertainment, LLC (“Alcon”) brings this diversity action against Defendants Automobiles Peugeot SA (“Peugeot”), Peugeot executive Isabel Salas Mendez (“Mendez”), and Publicis Media France SA (“Publicis”). (Dkt. 8 [First

1 Amended Complaint, hereinafter “FAC”).<sup>1</sup> This dispute arises out of an alleged breach  
2 of a product placement and co-promotional agreement for Alcon’s film *Blade Runner*  
3 *2049* (“*BR 2049*”), a sequel to the original *Blade Runner* film. Alcon’s operative First  
4 Amended Complaint (“FAC”) is 159 pages long and an additional 72 pages of exhibits.  
5 It asserts nine causes of action for (1) breach of the contract, (2) breach of implied  
6 covenant of good faith and fair dealing, (3) promissory estoppel, (4) breach of the duty to  
7 negotiate in good faith, (5) fraud, (6) reasonable value of services, (7) quantum meruit,  
8 (8) fraud [against Publicis only], and (9) negligent misrepresentation. Before the Court is  
9 Peugeot and Mendez’s (collectively, “Peugeot Defendants”) motion to dismiss under  
10 Federal Rule of Civil Procedure Rule 8(a) or, in the alternative, to strike certain portions  
11 of the FAC and/or dismiss Alcon’s fraud cause of action for failure to state claim. (Dkt.  
12 143 [hereinafter “Peugeot Mot.”].) Also before the Court is Publicis’s motion to dismiss  
13 for failure to state a claim. (Dkt. 144).

14  
15 For the following reasons, the Peugeot Defendants’ motion is **GRANTED**, and  
16 Publicis’s motion is **DENIED AS MOOT**.<sup>2</sup>

## 17 18 **II. BACKGROUND**

19  
20 Alcon is an American film company that produced *BR 2049*, which was released  
21 worldwide in October 2017. (FAC ¶¶ 27, 33–34.) Peugeot is a carmaker incorporated  
22 and based in France. (*Id.* ¶ 36.) Mendez is a French resident and citizen, and a senior  
23 marketing executive for Peugeot responsible for sponsorships, co-promotional  
24 partnerships, and product placements. (*Id.* ¶ 45.) Publicis is a French advertising and

25  
26 <sup>1</sup> The Casablanca Agency is a subsidiary and/or predecessor in interest to Publicis. For the purpose of  
27 this order, “Publicis” includes the Casablanca Agency. The other named Defendants in the FAC have  
28 been dismissed from this case.

<sup>2</sup> Having read and considered the papers presented by the parties, the Court finds these matters  
appropriate for disposition without hearings. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the  
hearings set for March 9, 2020 at 1:30 p.m. are hereby vacated and off calendar.

1 public relations company that works with American film and television companies. (*Id.*  
2 ¶¶ 48–50.)

3  
4 *BR 2049* prominently features a flying car or “spinner.” (*Id.* ¶ 27.) In January  
5 2016, Alcon started soliciting bids for co-promotional agreements from automotive  
6 companies to put their brand on the spinner. (*Id.* ¶ 95.) According to Alcon, this  
7 opportunity was uniquely valuable to Peugeot who was planning to reintroduce its cars in  
8 the U.S. market after a twenty-four-year hiatus. (*Id.* ¶¶ 42–44.) Peugeot employed  
9 Publicis to negotiate a possible *BR 2049* deal with Alcon. (*Id.* ¶ 115.)

10  
11 In July 2016, Publicis won the deal for Peugeot by allegedly offering Alcon a  
12 \$500,000 product placement fee and a co-promotional media spend of at least \$30  
13 million. (*Id.* ¶¶ 153–162.) According to Alcon, this offer was made in bad faith, and  
14 Peugeot never intended to commit to a media spend. (*See id.*) The FAC offers  
15 alternative sets of facts and theories of liability. Under one, Peugeot explained to  
16 Publicis that they were *only* willing to commit to a product placement fee and that they  
17 *would not* commit to a co-promotional media spend. (*Id.* ¶ 146.) Under this set of  
18 allegations, Publicis deliberately ignored Peugeot’s instructions to close the deal. (*Id.*  
19 ¶¶ 146, 152.) Under another factual alternative, Peugeot instructed Publicis to offer the  
20 \$30 million co-promotional agreement but intended to renege this part of the deal. (*Id.*  
21 ¶ 137.) Under a third, Mendez instructed Publicis to make the \$30 million offer, but  
22 concealed this part of the deal from her supervisors at Peugeot. (*Id.* ¶ 136.) Regardless,  
23 after this offer was made Alcon moved forward with Peugeot alone. (*Id.* ¶ 155.)

24  
25 Between July and December 2016, Alcon worked with Peugeot’s designers to  
26 incorporate Peugeot’s trade dress into the film. (*Id.* ¶¶ 160–189.) Peugeot also allegedly  
27 began planning the co-promotion with Alcon. (*Id.* ¶¶ 199–200.) Meanwhile, Publicis  
28 was allegedly exchanging drafts of a long-form contract with Alcon’s lawyers. (*Id.*

1 ¶ 187.) On or about January 18, 2017, Publicis signed a long-form contract as Peugeot’s  
2 agent, but refused to provide a copy signed by a Peugeot executive. (*Id.* ¶¶ 201–204.)  
3

4 In May 2017, four months before the film’s release date, the deal unraveled. First,  
5 Publicis and Peugeot’s relationship deteriorated because of a dispute about Publicis’s  
6 fees.<sup>3</sup> (*Id.* ¶ 220.) Then Peugeot attempted to renegotiate the long-form contract Publicis  
7 had negotiated with Alcon. (*Id.* ¶¶ 220–233.) Eventually, Mendez claimed that Publicis  
8 had never acted with authority to execute a contract on Peugeot’s behalf and denied that  
9 Peugeot had committed to a co-promotional media spend. (*Id.* ¶ 247.) She proposed a  
10 new agreement that gave Peugeot full discretion to dictate the terms of any media spend.  
11 (*Id.* ¶ 248.) These last-minute negotiations broke down, but Alcon allegedly made a  
12 good-faith attempt to satisfy its obligations under the original contract. (*Id.* ¶¶ 249–297.)  
13 The released film depicts the spinner with Peugeot’s branding and trade dress. (*Id.*  
14 ¶ 297.) Peugeot never promoted the film and allegedly refused to pay Alcon anything for  
15 the placement. (*Id.* ¶¶ 303, 315.)  
16

17 In January 2019, Alcon filed the instant suit. (Dkt. 1.) After jurisdictional  
18 discovery and extensive briefing, the Court denied the Peugeot Defendants and Publicis’s  
19 separate motions to dismiss for lack of personal jurisdiction. (Dkt. 133.) Defendants  
20 now attack the form and substance of the FAC under Rules 8(a) and 12(b)(6).  
21

### 22 **III. ANALYSIS**

23

24 The Peugeot Defendants argue that the FAC should be dismissed with leave to  
25 amend because the 160-page FAC does not contain “a short and plain statement” as  
26 required by Rule 8(a). *See* Fed. R. Civ. P. 8(a). The Court agrees and, accordingly, does  
27

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28 <sup>3</sup> Peugeot eventually sued Publicis in Paris Commercial Court in France, alleging that Publicis acted fraudulently in its representation. (*See* Dkt. 68-3.)

1 not reach the Peugeot Defendants’ alternative arguments under Rules 12(b)(6) and 12(f),  
2 nor the merits of Publicis’s motion to dismiss for failure to state a claim.

3  
4 Rule 8(a) requires that a pleading contain “a short and plain statement of the claim  
5 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). “Something labeled a  
6 complaint but written more as a press release, prolix in evidentiary detail, yet without  
7 simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails  
8 to perform the essential functions of a complaint.” *McHenry v. Renne*, 84 F.3d 1172,  
9 1180 (9th Cir. 1996). “While the proper length and level of clarity for a pleading cannot  
10 be defined with any great precision, Rule 8(a) has been held to be violated by a pleading  
11 that was needlessly long, or a complaint that was highly repetitious, or confused, or  
12 consisted of incomprehensible rambling.” *Cafasso, U.S. ex rel. v. Gen. Dynamics C4*  
13 *Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011) (quoting 5 Charles A. Wright & Arthur R.  
14 Miller, *Federal Practice & Procedure* § 1217 (3d ed. 2010) (internal quotation marks  
15 omitted)). A complaint that fails to comply with Rule 8(a) may be dismissed with  
16 prejudice pursuant to Rule 41(b) or dismissed with leave to amend. *Nevijel v. N. Coast*  
17 *Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981).

18  
19 Alcon’s 160-page FAC is needlessly repetitive and lengthy, with pages of  
20 unnecessary background and irrelevant details. For example, Alcon explains at length the  
21 cinematic importance of the original *Blade Runner* film, (FAC ¶¶ 62–68), and the  
22 logistics of *BR 2049*’s production, (*id.* ¶¶ 68–96). It also often repeats, verbatim, the  
23 same details multiple times. (*See, e.g.*, FAC ¶¶ 322(a)–(y), 333(a)–(y).) Parts of the  
24 FAC read like a magazine article, as when it delves into irrelevant examples of product  
25 placements and co-promotional agreements involving other films and other automotive  
26 companies. (*Id.* ¶ 101 [“Television advertisements for Audi that include footage of  
27 Daniel Craig as James Bond driving an Audi vehicle are telecast during prime television  
28 programming, such as a popular primetime television series or the telecast of a major

1 sporting event, like a major college or professional football or basketball game.”.) These  
2 details are unnecessary and distracting. The FAC is also verbose and argumentative,  
3 describing a product placement in *BR 2049* as offering a presence in a film with “real  
4 prospects to be an enduring piece of human art that would remain relevant, viewed and  
5 revered for decades.” (*Id.* ¶ 91; *see also id.* ¶ 62 [*“Blade Runner* is widely recognized as  
6 one of the most significant motion pictures ever produced.”].)<sup>4</sup> The Court finds that the  
7 FAC is “written more as a press release, prolix in evidentiary detail,” than a concise  
8 statement of Alcon’s claims. *See McHenry*, 84 F.3d at 1180.

9  
10 More importantly, the FAC is confusing. While a plaintiff is entitled to plead facts  
11 and theories of liability in the alternative, the pleading must set out these alternatives in  
12 clear and concise terms. *See Fed. R. Civ. P. 8*. Alcon fails to accomplish this. Its factual  
13 alternatives are spread across dozens of paragraphs with no organization or structure to  
14 connect them. (*See* FAC ¶¶ 121–122, 134–139, 146–149, 151–152, 157–157, 182–184,  
15 190–192, 196–197.) At certain points, Alcon presents four alternative sets of facts, (*id.*  
16 ¶¶ 134–139), at other times only two, (*see id.* ¶¶ 196–197). The Court and Defendants  
17 are left to speculate how these pairings fit together and how Alcon’s alternative theories  
18 of liability fit its nine causes of action.

19  
20 The length, repetition, and needless detail in the FAC create an undue burden on  
21 the Court and Defendants, and risk prejudice to the parties. As the Ninth Circuit  
22 explained in a similar situation, “[a]s a practical matter, the judge and opposing counsel,  
23 in order to perform their responsibilities, cannot use a complaint such as the one plaintiffs  
24 filed, and must prepare outlines to determine who is being sued for what. Defendants are

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<sup>4</sup> The Peugeot Defendants also take issue with Alcon’s use of colorful language and analogies. (*See, e.g.,* FAC ¶ 288(f) [*“Like Charles Schultz’s Lucy teeing up the football for a placekick to see if Charlie Brown would be gullible enough to let her pull it away from him at the last moment again, Mendez asked . . .”*].) The Court is more concerned with the FAC’s lack of clarity and concision than its rhetorical flair.

1 then put at risk that their outline differs from the judge’s, that plaintiffs will surprise them  
2 with something new at trial which they reasonably did not understand to be in the case at  
3 all, and that res judicata effects of settlement or judgment will be different from what  
4 they reasonably expected.” *McHenry*, 84 F.3d at 1179.

5  
6 Under Rule 9(b), Alcon’s fraud claims must “state with particularity the  
7 circumstances constituting fraud or mistake,” Fed. R. Civ. P. 9(b), and set forth the “who,  
8 what, when, where, and how” of the alleged fraud, *Vess v. Ciba-Geigy Corp. USA*, 317  
9 F.3d 1097, 1106 (9th Cir. 2003). But, “[a] heightened pleading standard is not an  
10 invitation to disregard’s Rule 8’s requirement of simplicity, directness, and clarity.”  
11 *McHenry*, 84 F.3d at 1178. Here, the irrelevant, distracting, and confusing details in the  
12 FAC make it difficult for the Court to apply the Rule 9(b) standard. Moreover, the Court  
13 is concerned that, as currently pled, the FAC suffers from both too much and too little  
14 detail. In their allegations Plaintiffs often fail to clearly allege how any purportedly  
15 fraudulent statement was false. (*See, e.g.*, FAC ¶ 135 [alleging in the alternative that  
16 “Mendez [] did not want to risk her own internal corporate political capital by asking her  
17 superiors for the budget commitment necessary to fulfill the spend, until and unless  
18 Mendez felt the internal corporate tea leaves would lead to a ‘yes’ from her superiors –  
19 she wanted to do the corporate equivalent of putting a very expensive present for her  
20 corporate superiors on reserve, without paying anything for it, until she knew the gift  
21 would make her bosses happy”].) While the Court understands that the contract  
22 negotiation process may have been complex, Alcon bears the burden of providing a short,  
23 concise, and comprehensible statement of its claims.

24  
25 Alcon argues that the elaborate details and background in the FAC were necessary  
26 to establish a *prima facie* basis for personal jurisdiction and remain necessary because it  
27 bears the burden of proving jurisdictional facts moving forward. But the Court is simply  
28 not persuaded that Alcon needs ten pages of background on California’s entertainment



1 industry to establish a *prima facie* basis for personal jurisdiction. Indeed, its order  
2 denying Defendants’ motions to dismiss for lack of personal jurisdiction focused almost  
3 exclusively on the specific facts at hand. (*See* Dkt. 133 at 12.) Regardless, as discussed  
4 above, the Court’s primary concern is that the substantive allegations against  
5 Defendants—and particularly the alternative facts and theories of liability—are presented  
6 in a confusing, rambling manner, without organization or structure.

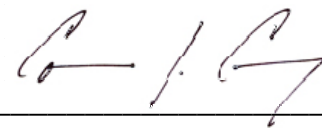
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8 Because the FAC lacks “simplicity, conciseness and clarity as to whom plaintiffs  
9 are suing for what wrongs, [it] fails to perform the essential functions of a complaint.”  
10 *McHenry*, 84 F.3d at 1180. Accordingly, Peugeot Defendants’ motion to dismiss under  
11 Rule 8(a) is **GRANTED**, and the FAC is **DISMISSED WITH FOURTEEN DAYS**  
12 **LEAVE TO AMEND**.

13  
14 **VI. CONCLUSION**

15  
16 For the foregoing reasons, Peugeot Defendants’ motion to dismiss under Rule 8(a)  
17 is **GRANTED**. The First Amended Complaint is **DISMISSED WITH FOURTEEN**  
18 **DAYS LEAVE TO AMEND**.

19  
20 In light of this order, Publicis’s motion to dismiss for failure to state a claim is  
21 **DENIED AS MOOT**.

22  
23  
24 DATED: February 26, 2020



25  
26 **CORMAC J. CARNEY**  
27 **UNITED STATES DISTRICT JUDGE**  
28