

2015 WL 12830442

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United States District Court,  
C.D. California.

MATHEW

v.

The WALT DISNEY COMPANY, et al.

Case No. CV 14-07832-RGK (AGRx)

|  
Signed 04/20/2015

#### Attorneys and Law Firms

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#### Proceedings: (IN CHAMBERS) Order Re: Defendant's Motion to Dismiss Second Amended Complaint (DE 92); Motion to Stay Discovery (DE 87)

The Honorable R. GARY KLAUSNER, U.S. DISTRICT JUDGE

#### I. INTRODUCTION

\*1 On November 19, 2013, Royce Mathew ("Plaintiff") filed an Amended Complaint against The Walt Disney Company, et al. ("Defendants"), alleging the following claims: (1) Federal Copyright Infringement from June 10, 2010 until the present, (2) Federal Copyright Infringement from July 1, 2007 until June 9, 2010, (3) Rescission of Fraudulently Procured Release Agreement, and (4) Federal Copyright Infringement from July 2003 through June 2007. On February 11, 2015, the Court granted Defendants' Motion for Judgment on the Pleadings dismissing the First, Second, and Fourth claims, and dismissing the Third claim for rescission with leave to amend.

On February 18, 2015, Plaintiff filed a Second Amended Complaint ("SAC") alleging the following claims: (1) Rescission of the Fraudulently Procured Release; (2) Federal Copyright Infringement from May 28, 2010 until the present; and (3) Federal Copyright Infringement from July 2003 until the present.

On February 25, 2015, Defendants filed their Motion to Stay Discovery. On February 27, 2015, Defendants filed their Motion to Dismiss pursuant to [Federal Rule of Civil Procedure \("Rule"\) 12\(b\)\(6\)](#). For the following reasons, the Court **GRANTS without leave to amend** Defendants' Motion to Dismiss and **DENIES as moot** Defendants' Motion to Stay.

#### II. FACTUAL BACKGROUND

Plaintiff alleges the following:

In the 1980's and continuing in the 1990's, Plaintiff authored and created an array of original supernatural stories and other original works. Among these works were a Supernatural Pirate Story (1993), a Supernatural Pirate Movie (1993), and a Supernatural Pirate Story within a Supernatural Interactive Video Computer Game (1994). As part of these works, Plaintiff authored and created an array of fictional characters, supernatural elements, storylines, plots, themes, sequence structures, screenplay elements, and other original works. These works are collectively referred to as Pirates of the Carribean Works ("POC Works"). Plaintiff registered his POC Works with the United States Copyright Office.

While Plaintiff was developing and completing the POC Works from 1991 through 1995, Plaintiff also directly provided Defendants with several copies of copyrighted creations from the POC Works. In 2003, Defendants released the first Pirates of the Carribean ("POC") movie in the Movie Franchise. Plaintiff alleges that Defendants' development and creation of the Movie Franchise infringed upon his POC Works. Defendants also publicly credited others, not Plaintiff, for the creation of the Movie Franchise.

The Movie Franchise has since generated billions of dollars in revenue through the unauthorized use and exploitation of the POC Works. Because of Plaintiff's ownership rights in the POC Works, Plaintiff is entitled to the billions of dollars that Defendants have generated,

or have allowed others to generate through the Movie Franchise.

In 2005, Plaintiff commenced a *pro se* copyright infringement lawsuit against Defendants in Florida, but filed a voluntary dismissal, without prejudice. On July 7, 2006, Plaintiff filed another copyright infringement lawsuit against Defendants, this time, in the Central District of California (“Prior Case”). Defendants affirmatively represented to the court and Plaintiff that they had independently created all of the copyrightable elements in the Movie Franchise. Defendants also represented that an artist had created an unpublished (at the time) theme park artwork based on a cursed pirate (“Theme Park Art”) and that artwork had been independently created prior to the time Plaintiff created his POC Works.

\*2 The Theme Park Art was published by Disney around November 2006 in a book titled, “Pirates of the Caribbean: From the Magic Kingdom to the Movie” (“Disney Book”). The Disney Book, along with testimony from various Disney writers, was the primary evidence to support Defendants' representation that Disney had independently created the supernatural elements in the Movie Franchise. In reliance upon these representations, and while the Prior Case was still pending, Plaintiff executed a release agreement (the “Release”) in May–June 2007. The Prior Case was then dismissed with prejudice.

Around May 2009, Disney published another book that Plaintiff became aware of on June 1, 2009. In that book, Disney attributed the artwork to a different artist named Collin Campbell (“Campbell Artwork”). The artwork included a modified version of the Theme Park Art. Plaintiff contends that this inconsistent crediting of the artwork to different artists shows that Defendants made fraudulent misrepresentations about the origins of the Theme Park Art in the Prior Case.

On June 1, 2009, Plaintiff sent a letter to Defendants informing them of his discovery of the Campbell Artwork (the “2009 Letter”). In the 2009 Letter, Plaintiff stated that Defendants had fraudulently concealed the Campbell Artwork from him. Thereafter, Plaintiff continued to inform Defendants about their alleged fraud through Disney's alert program (“Alert Line”). According to Plaintiff, to date, Defendants have done nothing to

correct and rectify the fraud. Plaintiff alleges that but for the fraud and his reliance on the false representations, Plaintiff would not have executed the Release and would have continued to pursue his copyright claims against Defendants in the Prior Case.

As a result, Plaintiff filed suit in the Middle District of Florida on May 28, 2013. The Florida court sua sponte dismissed the suit with leave to amend no later than June 21, 2013. Instead of filing an amended complaint with that court, Plaintiff filed the current action on June 10, 2013 in the Southern District of New York. The action was subsequently transferred to this Court on May 5, 2014.

### **III. JUDICIAL STANDARD**

A party may move under [Federal Rule of Civil Procedure \(“Rule”\) 12\(b\)\(6\)](#) to dismiss for failure to state a claim upon which relief can be granted. In deciding a [Rule 12\(b\)\(6\)](#) motion, the court must assume that the allegations in the challenged complaint are true and construe the complaint in the light most favorable to the non-moving party. [Cahill v. Liberty Mut. Ins. Co.](#), 80 F.3d 336, 337–38 (9th Cir. 1996). However, the court need not accept as true conclusory legal allegations; threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. [Ashcroft v. Iqbal](#), 556 U.S. 662, 678 (2009). Dismissal is appropriate where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. [Mendonzo v. Centinela Hosp. Med. Ctr.](#), 521 F.3d 1097, 1104 (9th Cir. 2008).

To withstand a motion to dismiss, a pleading must contain sufficient facts that, accepted as true, state a claim that is plausible on its face. [Iqbal](#), 556 U.S. at 678. A claim is facially plausible when there are sufficient factual allegations to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* A complaint does not need detailed factual allegations, but a plaintiff's obligation to provide the grounds of his entitlement to relief requires that he plead more than labels and conclusions. [Bell Atl. Corp. v. Twombly](#), 550 U.S. 544, 555 (2007).

### **IV. DISCUSSION**

\*3 Defendants argue that Plaintiff's Rescission claim should be dismissed because he fails to properly allege notice of rescission in his SAC. Defendants further argue

that Plaintiff's Second and Third claims fail in light of the Court's February 11 Order and Plaintiff's inability to properly plead rescission. The Court addresses each argument in turn.

#### A. First Claim for Rescission

Defendants argue that Plaintiff's 2009 Letter and all subsequent communications with Defendants via Alert Line do not constitute "notice," as required by [California Civil Code § 1691](#). See [Cal. Civ. Code § 1691\(a\)](#).

Pursuant to [California Civil Code § 1691](#), "to effect a rescission a party to the contract must, promptly upon discovering the facts which entitle him to rescind ... (a) Give notice of rescission to the party as to whom he rescinds ...." [Civ. Code § 1691](#). While "[i]t is not necessary that the notice to rescind shall be formal and explicit ... notice shall be given to the other party which clearly shows the intention of the person rescinding to consider the contract at an end." [Wilson v. Lewis](#), 106 Cal. App. 3d 802, 809 (1980) (quoting [Hull v. Ray](#), 211 Cal. 164, 167 (1930)) (internal quotations omitted); see [Zeller v. Milligan](#), 71 Cal. App. 617, 625 (1925) ("The general rule is that the act of rescission by one party to the agreement implies some notice to the other party thereto of an intention and determination to extinguish the contract.").

In the 2009 Letter attached to the SAC, Plaintiff states that Defendants have committed fraud, and that the 2009 Letter is "notification of the advancement of the process of filing formal complaints and charges of conspiracy, fraud, corruption, obstruction of justice, evidence tampering and such against [Defendants] hiding behind the corporate Mickey Mouse logo." (SAC, Ex. 3.) The 2009 Letter further states that "it is pointless to ever seek accountability by way of any logical resolution, fair mediation or by way of the court." (*Id.*) Plaintiff concludes the 2009 Letter by stating that he "await[s] a prompt reply on [Defendants'] plan to proceed forward and its manner with which to continue on with the process of filing complaints and charges." (*Id.*) In subsequent communications, Plaintiff contacts Defendants' reporting service, Alert Line. None of the communications contain any information separate from what Plaintiff sets forth in the 2009 Letter. (See Reynolds Decl., ECF No. 92–2, Exs. A–F.)

For the following reasons, the Court finds that Plaintiff's 2009 Letter and subsequent communications with Alert

Line do not constitute notice of rescission under [section 1691](#).

First, Plaintiff argues that "notification of the advancement of the process of filing formal complaints" constitutes explicit notice of rescission.<sup>1</sup> (*See* Opp'n, 6:5–19.) The Court finds this conclusion untenable. The 2009 Letter states that Plaintiff will file formal complaints. There is no indication in the 2009 Letter that "filing formal complaints" meant that Plaintiff considered the Release rescinded, or even that Plaintiff intended to seek such relief by filing suit against Defendants. In fact, Plaintiff indicates the exact opposite when he states that it is "pointless to ever seek accountability ... by way of the court." (SAC, Ex. 3.) Further, upon sending the 2009 Letter, Plaintiff immediately began contacting Alert Line to lodge complaints, further indicating that Plaintiff's "formal complaints" would be in the form of internal complaints through Alert Line. (*See* Reynolds Decl., ECF No. 92–2, Exs. A–F.) Moreover, after the first three Alert Line complaints, Plaintiff waited almost three years to lodge his next complaint with Alert Line. (*Id.*) During this time, Plaintiff took no other action against Defendants. Plaintiff finally filed the present action almost four years after he sent the 2009 Letter. In light of the foregoing, there is no reasonable inference that Plaintiff provided notice of rescission when stating he would "file formal complaints." Thus, while Plaintiff identified that Defendants had allegedly wronged him in some way, the 2009 Letter does not "*clearly* show [ ] the intention of the person rescinding to consider the contract at an end." [Wilson](#), 106 Cal. App. 3d at 809 (quoting [Hull v. Ray](#), 211 Cal. 164, 167 (1930)) (internal quotations omitted) (emphasis added). Indeed, the 2009 Letter did not refer to the Release, or any copyright infringement even once. Therefore, the Court finds that the 2009 Letter failed to serve as notice of rescission.

\*4 Second, Plaintiff argues that the words "rescind" and "sue" are synonymous given the nature of the Release, and that by threatening to sue for fraud, Plaintiff was also notifying Defendants of his intent to rescind the Release. Again, Plaintiff's argument is unconvincing. [Section 1691](#) requires "*notice of rescission* to the party as to whom he rescinds." See [Civ. Code § 1691\(a\)](#) (emphasis added). Plaintiff cannot now attempt to rewrite the plain language of the 2009 Letter by alleging that "notification of the advancement of the process of filing formal complaints and charges of ... fraud" is actually notice of rescission.

See *Larson v. Warner Bros. Entm't Inc.*, No. 04–cv–08400–ODW, 2013 WL 1164434, at \*6 (C.D. Cal. March 20, 2013) (finding that certain letters failed to satisfy section 1691 because they did not clearly and objectively convey the intent to rescind an existing contract).

Third, Plaintiff argues that subsequent communications with Alert Line,<sup>2</sup> which include six phone calls and a few letters<sup>3</sup> starting on June 23, 2009, and continuing periodically until August 2012, constitute notice under section 1691. Again, Plaintiff's argument fails. Upon a review of the phone call records and the letters, the Court finds that the Alert Line letters conveyed the same message as the 2009 Letter—no notice of rescission, and that the phone calls were even more deficient. As such, Plaintiff's subsequent communications to Alert Line do not constitute notice of rescission as required by section 1691.

Finally, Plaintiff argues that even if his 2009 Letter and subsequent communications do not constitute notice of rescission, the Supreme Court's decision in *Petrella v. Metro–Goldwyn–Mayer, Inc.*, 134 S. Ct. 1662 (2014) exempts him from the section 1691 requirement. The Court disagrees. In *Petrella*, the plaintiff, consistent with the three-year statute of limitations, sued MGM only for copyright infringement that occurred from 2006 to 2009, despite having a claim against MGM since 1991. *Petrella*, 134 S. Ct. at 1970–72. Because the plaintiff had owned the rights to the infringed work since 1991, MGM argued that the doctrine of laches barred the plaintiff's claim. *Id.* at 1971–72. The Court held that laches could not be invoked as a complete bar to federal copyright infringement claims. See *id.* at 1973. This holding does not apply to the facts of the present action. Defendants have never maintained that laches is a complete bar to Plaintiff's copyright infringement claims. Defendants argue, and continue to argue that the Release bars Plaintiff's claims, and that if Plaintiff wants to pursue his copyright claims, he must first properly allege a rescission claim. Further, the Court

fails to see how *Petrella's* holding invalidates section 1691 of the California Civil Code. Section 1691 applies to claims for rescission and has no bearing on allegations of copyright infringement. Therefore, the Court finds that section 1691's “notice” requirement applies to Plaintiff.

Based on the discussion above, the Court finds that Plaintiff has not adequately pled a claim for rescission. The facts alleged indicate that Plaintiff cannot plausibly cure this defect. Therefore, the Court dismisses Plaintiff's First claim without leave to amend.

### **B. Plaintiff's Second and Third Claims**

As discussed in the Court's February 11 Order, a viable claim for rescission would have revived Plaintiff's copyright infringement claims from May 28, 2010 until the present.<sup>4</sup> (See February 11, 2015 Order, ECF No. 85, p. 8.) However, because the Court finds that dismissal of Plaintiff's Rescission claim is warranted, the Court declines to address Plaintiff's Second and Third claims in light of the Court's February 11, 2015 Order and the present Order. Plaintiff's Second and Third claims are moot.

### **V. CONCLUSION**

\*5 For the foregoing reasons, the Court **GRANTS without leave to amend** Defendants' Motion to Dismiss, as amendment would be futile. In light of this ruling, Defendants' Motion to Stay Discovery is **DENIED as moot**.

**IT IS SO ORDERED.**

### **All Citations**

Slip Copy, 2015 WL 12830442

### **Footnotes**

- 1 Plaintiff does not point to any other language in the 2009 Letter that would suggest “notice of rescission.” Plaintiff does mention the subsequent communications with Alert Line, and concludes that those communications further constitute “notice.”
- 2 While not attached to the SAC, the Court takes notice of the communications because Plaintiff references them in his SAC, they are central to Plaintiff's Rescission claim, and no party questions the authenticity of the communications. See *United States v. Corinthian Colls.*, 655 F.3d 984, 999 (9th Cir. 2011).

- 3 The letters were in conjunction with some of the phone calls made to Alert Line.
- 4 Plaintiff's Third claim would still be barred by *res judicata* even if the Rescission claim were to survive. (See February 11, 2015 Order, ECF No. 85, p. 4.)

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