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16
17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 TWENTIETH CENTURY FOX FILM
20 CORPORATION,

21 Plaintiff,

22 v.

23 WARNER BROS. ENTERTAINMENT,
24 INC.; WB STUDIO ENTERPRISES, INC.;
25 WARNER BROS. PICTURES and DOES 1
26 – 10,

27 Defendants.

Case No. CV 08-0889 GAF (AJWx)

[Honorable Gary A. Feess]

**PLAINTIFF TWENTIETH
CENTURY FOX FILM
CORPORATION’S OPPOSITION
TO DEFENDANTS’ MOTION TO
DISMISS THE FIRST AND SECOND
CLAIMS FOR RELIEF**

**[Appendix of Misstatements &
Appendix of Non-Federal Authorities
Filed Concurrently Herewith]**

Date: May 5, 2008
Time: 9:30 a.m.
Courtroom: 740 – Roybal Building

Filing Date: February 8, 2008
Trial Date: TBD
Discovery Cut-off: TBD
Motion Cut-off: TBD

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1 **I. INTRODUCTION**

2 Plaintiff Twentieth Century Fox Film Corporation (“Fox”) brings this
3 action to enforce its unmistakable copyrights in *The Watchmen*, a literary property
4 based on the famous D.C. Comics graphic novel of the same name, and to enjoin
5 defendants Warner Bros. Entertainment, Inc., WB Studio Enterprises, Inc. and Warner
6 Bros. Pictures (“collectively WBP”) from their willful infringement. WBP has
7 engaged in unauthorized use of Fox’s copyright interests by filming a motion picture
8 based on *Watchmen* and threatening to distribute it in Spring 2009, despite actual
9 notice of Fox’s clear rights, and despite Fox’s timely demand that WBP cease and
10 desist from the infringing use. WBP claims to have acquired “all rights” in *Watchmen*
11 in 2006, even though WBP acted with actual knowledge of Fox’s exclusive rights to
12 distribute the work under a 1991 Quitclaim, and despite actual or constructive
13 knowledge of a July 1994 Turnaround Agreement that also reflects Fox’s copyright
14 interests. The Quitclaim and Turnaround demonstrate that WBP never acquired
15 distribution rights in *Watchmen*, and the Complaint details bad faith conduct that
16 precludes WBP from claiming any copyright interests.

17 In response to this misconduct, WBP advances baseless arguments that
18 misstate the facts alleged in the Complaint and misdescribe the controlling documents.
19 WBP ignores virtually all facts alleged by Fox that are inconsistent with WBP’s
20 contrived position and relies on completely inapposite (and in some cases, not even
21 binding or precedential) authority. The motion does nothing to excuse WBP’s
22 violation of Fox’s copyrights and only highlights the infirmities of WBP’s position.¹

23 At the heart of the motion to dismiss are two fundamentally false
24 assertions that we address at the outset: (1) that the Quitclaim reflects a “flat out
25 grant” of copyrights in *Watchmen* to a company called Largo Entertainment (“Largo”)

26
27 ¹ To assist the Court to untangle fact from fiction in WBP’s misleading motion (according to the
28 document, version 16, no less) attached hereto is an Appendix of Misstatements that lists each of the
false assertions discussed in this paper whereby WBP misdescribes the allegations of the Complaint
and the terms and conditions of the relevant contracts.

1 that “divest[ed] [Fox] of any rights under copyright law.” (Motion to Dismiss
2 (“Motion”) at pp. 5:14, 6:1-2); and (2) that the Turnaround Agreement constitutes an
3 “unexercised option” under which Fox “abandoned” its rights in *Watchmen*. (Motion
4 at pp. 7:21-24, 9:1-20.) As detailed more fully below, the motion to dismiss should be
5 denied for at least the following reasons:

6 (1) Contrary to WBP’s false statements, the Quitclaim unequivocally provides
7 that Fox was granted exclusive rights to distribute any motion picture based
8 on *Watchmen*. (Quitclaim at p. 4, ¶5 and Short Form Quitclaim at p. 1, ¶2.)
9 This was a main purpose of the Quitclaim – Fox granted rights to a
10 company called Largo International, N.V. (“LINV”), a Netherlands
11 Antilles corporation, to produce a movie based on *Watchmen*, with Fox
12 retaining the *exclusive rights to distribute* any such movie. The Quitclaim
13 further specifies that all rights granted to LINV were “subject to” these
14 rights (Quitclaim at p. 2, ¶ 2) and that *Watchmen* must be produced and
15 distributed pursuant to the Largo Agreement (Quitclaim at p. 4, ¶5), an
16 agreement which likewise unmistakably grants Fox exclusive distribution
17 rights to the movie. It is hornbook law, of course, that an exclusive right to
18 distribute a work is a copyright interest protected under the Copyright Act.

19 WBP’s misstatement of the Quitclaim (see Appendix of Misstatements
20 Nos. 1-2) is accompanied by other false arguments seeking to erase the grant of
21 distribution rights to Fox. WBP repeatedly claims that the Quitclaim distribution
22 rights are unenforceable because Fox has failed to allege satisfaction of purported
23 contractual conditions under the Largo Agreement. (Motion at pp. 3:5-9, 7:17-18,
24 11:22-24, 12:15-19.) Putting aside that WBP’s argument does nothing to afford WBP
25 any distribution rights in *Watchmen*, WBP’s assertion is just plain wrong. The
26 *Complaint expressly alleges Fox’s performance of any and all contractual conditions*
27 *necessary for the exercise of Fox’s rights, save and except where performance has*
28 *been frustrated or excused by WBP.* (Complaint (“Compl.”) at p. 5:6-9.)

1 WBP further asserts that the integration clause of the 1994 Settlement
2 Agreement between Fox and Lawrence Gordon (“Gordon”) “extinguished” the
3 Quitclaim because the Quitclaim was between Fox and Largo Entertainment
4 (“Largo”), a company purportedly “associated with Gordon”. (Motion at p. 9:22-26.)
5 But the Quitclaim is an agreement between Fox and *LINV*, not Largo. Moreover, the
6 Complaint alleges that Gordon *disassociated* from Largo many months before the
7 1994 Settlement Agreement. (Compl., at p. 5:14-16.) But even if we assume, for
8 purposes of argument, that the Quitclaim *was* “extinguished” by the 1994 Settlement
9 Agreement in favor of the Turnaround Agreement, this does WBP no good, for two
10 fundamental reasons: (1) the Turnaround *specifies that Fox still has rights in*
11 *Watchmen*, and (2) if the Quitclaim was “extinguished”, *then WBP has no rights in*
12 *Watchmen*, because the Quitclaim is the sole source of WBP’s purported rights.²

13 (2) WBP’s second, fundamental misstatement is that Gordon “owned all
14 rights” in *Watchmen* in 1994, and that the Turnaround provides only an
15 “option” for Fox to acquire rights in *Watchmen*. (Motion at p. 13:6-27.)
16 To the exact contrary, the Turnaround reflects that Fox continued to
17 possess rights, and was only willing to *part* with its rights if, and only at
18 such time, that the contracting party (Gordon) paid Fox a Buy Out price.
19 (Turnaround Agreement, p. 1, ¶ 1 and 2.) The Turnaround specifies that
20 Gordon could “acquire” rights to *Watchmen* upon payment of a Buy Out
21 Price. (*Id.*) No such Buy Out price has been paid, and thus Fox continues
22 to retain its copyright interests under the plain language of the Turnaround.
23 The Changed Elements clause of the Turnaround additionally reflects
24

25 ² WBP also disingenuously argues that Fox’s distribution rights under the Quitclaim are a “nullity”
26 because the Quitclaim requires the movie to be distributed under the Largo Agreement, and the
27 Largo Agreement “died.” (Motion at pp. 2:15-19, 6:6-15, 11:1-5.) WBP ignores that WBP’s
28 purported rights in *Watchmen* are based on the exact same Quitclaim (Motion at p. 9:3-11; Compl. at
p. 7:21-28), *which requires that Watchmen be produced under the Largo Agreement*. (Quitclaim at
p. 4, ¶5.) According to WBP, Fox’s rights under the Quitclaim are “dead” while WBP’s production
rights are somehow alive, with WBP free to pick and choose which provisions of the Quitclaim must
be respected.

1 Fox's exclusive right to control uses of *Watchmen* prior to payment of the
2 Buy Out price, representing clear, exclusive copyright interests protected
3 under the Copyright Act.

4 The plain language of the Quitclaim and Turnaround reflect that WBP
5 did not acquire Fox's copyright interests in *Watchmen*. Within days of learning that
6 WBP was about to commence principal photography of *Watchmen* without respecting
7 Fox's rights, Fox demanded that WBP cease and desist. (Compl. at p. 9:15-24.)
8 Moreover, the Complaint squarely alleges WBP's actual and constructive notice of
9 Fox's rights under these agreements, and further specifies WBP's bad faith conduct at
10 the time WBP ignored these rights and purported to declare itself owner of "all
11 rights."

12 WBP's challenge to Fox's state law claim for interference with contract
13 is equally untenable, relying entirely on WBP's assertion, *in complete contradiction to*
14 *the allegations of the Complaint*, that WBP did not have knowledge of Fox's rights
15 under the Quitclaim. Fox's interference claim states every element of the tort, and
16 cannot be evaded by WBP's proclamation in its motion that it did not intend to
17 interfere.

18 Fox has advised WBP that it seeks a hearing on preliminary injunction at
19 the earliest possible time, well in advance of WBP's threatened release of *Watchmen*
20 in Spring 2009. The motion to dismiss raises no serious issue to avoid that day of
21 reckoning, and to the contrary, only highlights WBP's liability for infringing Fox's
22 clear rights. Fox respectfully submits that the motion should be denied in its entirety
23 so that Fox can commence discovery and present its request for preliminary injunction
24 on a full and well-developed record.

25 **II. STATEMENT OF FACTS**

26 WBP's purported statement of facts utterly fails the standard of review
27 for a 12(b)(6) motion. WBP ignores allegations in the Complaint inconsistent with its
28 position, makes factual assertions completely outside the Complaint, and mis-

1 describes the agreements which are incorporated into the Complaint by reference.
2 The result is a false statement of the facts giving rise to this lawsuit. (See Appendix of
3 Misstatements.) The following is a summary of the detailed allegations of the
4 Complaint.

5 **A. Fox's Retains Exclusive Distribution Rights in *Watchmen* under the**
6 **Quitclaim**

7 In the 1980's, Fox at great expense acquired copyrights in the literary
8 work *Watchmen*, comprising a graphic novel by Alan Moore published by D.C.
9 Comics. (Compl. at p. 3:3-7.) Fox thereafter expended substantial sums to develop
10 the property with a screenplay by noted author Sam Hamm and a rewrite by Charles
11 McKeown. Copyrights for all of these works are registered with the Copyright Office,
12 and Fox alleges its continued ownership and control of these rights (collectively
13 referred to in the Complaint as *Watchmen*). (Compl. at p. 3:3-10; Quitclaim at p. 1.)

14 In 1990, Fox entered into an agreement known as the Largo Distribution
15 Agreement ("Largo Agreement") under which Largo Entertainment ("Largo"), a joint
16 venture entity that included noted producer Gordon, would produce certain pictures
17 that would be distributed by Fox.³ (Compl. at pp.4:9-28, 5:1-16.) The essence of the
18 Largo Agreement is that Fox had the right to distribute any movies that were the
19 subject of the agreement. The Largo Agreement painstakingly details Fox's
20 distribution rights in a variety of mediums (film, video cassette, etc) and specifies the
21 term and territories for the distribution activity (referred to in the Complaint as the
22 "Distribution Term"). (Compl. at pp. 4:9-28, 5:1.) Notably, Fox held the *exclusive*
23 rights to distribute for the entire Distribution Term.

24 In June 1991, Fox decided to make *Watchmen* a property that would be
25 available for production and distribution under the Largo Agreement. Fox entered
26

27 ³ The relevant agreements are attached to the Complaint as Exhibits 1 to 5, and also attached to the
28 Declaration of Kevin J. Leichter filed in support of WBP's motion ("Leichter Decl.") as Exhibits A
to C. The Largo Agreement is attached as Exhibit 3 to the Complaint and Exhibit A to the Leichter
Decl.

1 into a 1991 Quitclaim Agreement (the “Quitclaim”) with a company called LINV
2 (not, as WBP repeatedly misstates, Largo) under which Fox granted rights in
3 *Watchmen* to LINV so that it could be produced as a motion picture pursuant to the
4 Largo Agreement. (Compl. at p. 3:21-26.) (The Quitclaim is attached as Exhibit 2 to
5 the Complaint and as Exhibit A to the Leichter Decl.) WBP now says that the
6 Quitclaim conveyed “flat out” copyrights in *Watchmen* to Largo that “divest[ed] [Fox]
7 of any rights under copyright law.” (Motion at pp. 5:14, 6:1-2.) But instead, the
8 Quitclaim states that the grant of rights to LINV is “*subject to the terms and*
9 *conditions*” of the Quitclaim (Quitclaim at p. 2, ¶2, emphasis added) and the
10 Quitclaim could not possibly be clearer that Fox maintained exclusive rights to
11 distribute any motion picture based on *Watchmen*. Specifically, the Quitclaim
12 provides as follows:

13 “[T]he Picture shall be produced by [LINV] and *shall be*
14 *distributed by Fox* as a Subject Picture pursuant to the terms
15 of the Largo Agreement for the time periods, territories and
16 media set forth in the Largo Agreement”

17 (Quitclaim at p. 4, ¶5.)

18 “[This Quitclaim] *grants to Fox distribution rights* for the
19 first Motion Picture produced based on the Project.”

20 (Quitclaim, Short Form Quitclaim at p. 1, ¶2.)

21 Not only does the Quitclaim grant exclusive distribution rights to Fox for
22 the Distribution Term, it also provides that “the rights of Fox with respect to the
23 Picture and any Derivative Motion Picture shall commence on the date hereof.”
24 (Quitclaim at p. 4, ¶5(c).) Further, the Quitclaim provides that in the event of any
25 conflict between the language of the Quitclaim and the Largo Agreement, the
26 Quitclaim controls. (Quitclaim at p. 9, ¶15.) WBP now describes the grant of
27 distribution rights to Fox as “ancillary.” (Motion at p. 2:17-19.) To the contrary, far
28 from “divesting” Fox of all copyrights, an essential purpose of both the Quitclaim and

1 Largo Agreement is to grant Fox exclusive distribution rights for *Watchmen*.⁴
2 (Appendix of Misstatements, Nos. 1-3.)

3 Four months after the Quitclaim, the Largo Agreement was amended in
4 November 1991 to reflect that *Watchmen* was now a property subject to that
5 agreement. (Compl. at p. 5:2-11.) (The Amendment to the Largo Agreement is
6 attached as Exhibit 4 to the Complaint and Exhibit A to the Leichter Decl.) All
7 distribution rights held by Fox under the Quitclaim remained intact. (*Id.*) The
8 Amendment to the Largo Agreement only underscores the point: the Amendment has
9 almost *two entire pages* of grants language that further detail the distribution rights
10 granted to Fox and its affiliates. (Amendment to Largo Agreement at pp. 4-5.)

11 **B. Fox Alleges Performance of Any Conditions Necessary Under the**
12 **Largo Agreement**

13 WBP points to no agreement where it acquired the distribution rights
14 granted to Fox under the Quitclaim. Instead, WBP argues that Fox's distribution
15 rights under the Quitclaim are defeated by purported "conditions" in the Largo
16 Agreement requiring Fox to pay a production advance before "exercising" or
17 "vesting" the distribution rights. (Motion at pp. 11:24-28, 12:1-14.) In advancing this
18 argument, WBP completely ignores that the production advance language is, at best, a
19 condition *subsequent* to Largo's obligation to tender a budget for any proposed movie.
20 (Largo Agreement at p. 13, ¶6(b)(i).) (Fox agrees to make a production advance
21 "equal to 30% of the Budget of each Subject Picture, *as such Budget is set forth in*
22 *statements provided by Largo to Fox and reasonably validated by Fox*"). Where no
23 budget is tendered, Fox has no obligation (nor any ability) to validate the budget or to
24 even calculate a production advance. Largo never tendered a budget, and neither has
25

26
27 ⁴ The Quitclaim further requires payment of a Buy Out Price as a condition of LINV obtaining any
28 rights in *Watchmen*, and requires payment to Fox of Net Profits based on proceeds of any movie
based on *Watchmen*. (Quitclaim at p. 4, ¶ 6(a) and 6(b); Compl. at pp. 3:18-28, 4:1-2.) No such
conditions have been performed by LINV, Largo or WBP (Compl. at p. 7:10), yet WBP persists in
declaring itself owner of all rights in *Watchmen*.

1 any purported successor of Largo's interest in *Watchmen*. Rather, denying that Fox
2 has any rights, WBP proceeded to principal photography. (Compl. at pp. 9:15-27
3 10:23-26.) As noted, contrary to WBP's false assertion, the Complaint squarely
4 alleges performance by Fox of all conditions necessary under the Largo Agreement,
5 save and except where performance has been frustrated or excused by WBP. (Compl.
6 at p. 5:6-9.) (Appendix of Misstatements, No. 4.)
7

8 WBP also ignores that, in the sentence immediately following the one
9 relied upon by WBP for the production advance language, the Largo Agreement
10 provides that "notwithstanding" the production advance term, until such time it is
11 determined that Fox has an obligation to pay a production advance, Fox is granted
12 distribution rights for activity customarily undertaken before release of the film, such
13 as advertising and trailers. (Largo Agreement at p. 13, ¶6(b)(1).) In other words, Fox
14 has clear distribution rights under the Largo Agreement that require performance of no
15 purported conditions whatsoever. (Appendix of Misstatements, No. 3.)

16 **C. Gordon Withdraws from Largo and Largo Transfers Rights to**
17 **Gordon**

18 In November 1993, Gordon decided to withdraw from Largo, thereby
19 ending his association with the company. (Compl. at p. 5:14-16.) In connection with
20 Gordon's withdrawal, Largo purported to transfer all of its rights in *Watchmen*,
21 including the rights Largo obtained under the Quitclaim, to Golar, Inc., an entity
22 owned and controlled by Gordon (referred to in the Complaint simply as Gordon).
23 (Compl. at p. 5:14-16.) As noted, Largo held no distribution rights, thus Gordon
24 acquired no such distribution rights through this transfer. But the obligation to afford
25 Fox distribution rights was carried forward. The Quitclaim by its plain terms "*binds*
26 *and inures to the benefit of the respective parties hereto, their heirs, executors,*
27 *administrators, successors and assigns, forever.* (Quitclaim at p. 8, ¶9, emphasis
28 added.) Gordon thereby succeeded to obligations under the Quitclaim to afford Fox

1 distribution rights. (Compl. at p. 5:12-16.)⁵

2 WBP's purported rights in *Watchmen* are based on the Quitclaim: WBP
3 purports in 2006 to have acquired Gordon's rights under the Quitclaim. (Compl. at
4 pp. 7:21-28; p. 8:1-3.) Indeed, WBP has *expressly contracted to perform all*
5 *obligations owed to Fox under the Quitclaim.* (Compl. at pp. 7:27-28; 8:1-3; WBP
6 Agreement at p. 6, ¶ 6.) (WBP promises to "carry out and faithfully perform each and
7 all of the terms, covenants, conditions and other provisions relating to the Picture
8 contained in the Underlying Documents [including the Quitclaim] required to be kept
9 and performed")⁶ WBP's contractual promise to honor Fox's copyright interests
10 is the subject of Fox's claim in Count Three against WBP for breach of contract, a
11 claim that WBP concedes is well stated because it is not challenged in the motion to
12 dismiss. WBP admits this contract, yet now asks the Court to rule, as a matter of law,
13 that WBP was free to disregard the grant of distribution rights to Fox.

14 **D. Fox Enters Into the 1994 Turnaround Agreement with Gordon after**
15 **he Withdraws from Largo**

16 A few months after Gordon withdrew from Largo, Fox and Gordon in
17 July 1994 entered into a 1994 Settlement Agreement, which includes a Turnaround
18 Agreement, where they specified their respective rights in *Watchmen*. (Compl. at p.
19 5:17-28, 6:1-28, 7:1-9.) WBP claims the 1994 agreements (the 1994 Settlement and
20 Turnaround Agreement) show that Fox had no rights in *Watchmen* (Motion at p. 13:1-
21 2.). The agreements provide exactly the opposite.

22
23 ⁵ Under the Largo Agreement, Largo was required to identify within ten days of Gordon's
24 withdrawal any movies Largo sought to produce so that Fox could elect *in its discretion* to distribute
25 them pursuant to the terms of the Largo Agreement. (Largo Supplemental Agreement at p. 1, ¶2.)
26 (The "Supplemental Agreement" is dated the same day as the Largo Agreement and commences
27 immediately after the main agreement, included in Exhibit 3 to the Complaint and Exhibit A to the
28 Leichter Decl.) This only underscores that no picture (including *Watchmen*) could be produced
absent Fox's distribution and that Largo did not acquire any distribution rights. Confirmation of the
point is found in the Turnaround which followed a few months after Gordon's withdrawal from
Largo: Gordon agreed that Fox continued to have rights in *Watchmen*.

⁶ The 2006 WBP Option/Agreement ("WBP Agreement") is not attached to the Complaint, but is
attached as Exhibit C to the Leichter Decl. The WBP Agreement confirms the truth of Fox's
allegations. See WBP Agreement at p. 3, ¶¶1.2.20 and p. 6, ¶6.

1 The July 1994 Turnaround Agreement reflects both Fox and Gordon's
2 understanding that *Fox* owned rights in *Watchmen*. (Compl. at pp. 5:17-28; 6:1-2.)
3 (The Turnaround Agreement is attached as Exhibit 5 to the Complaint and Exhibit A
4 to the Liechter Decl. The Turnaround immediately follows the last page of the 1994
5 Settlement and Release Agreement.)⁷ WBP turns the Turnaround Agreement on its
6 head, claiming that it contains an "option" for Fox to obtain copyrights in *Watchmen*
7 from Gordon, who purportedly "owned all rights." (Motion at p. 13:1-5.) It is
8 impossible to reconcile WBP's assertion with the plain language of the agreement,
9 beginning with the very first two paragraphs:

10 "[Y]ou [Gordon] shall have the perpetual right . . . **to**
11 **acquire** all of the right, title and interest of Fox in
12 [*Watchmen*] pursuant to the terms and conditions herein
13 provided."

14 . . .

15 "You shall have the exclusive right during the Turnaround
16 Period **to acquire** all of the right, title and interest of Fox in
17 [*Watchmen*] by reimbursing Fox for all expenses and
18 charges incurred by Fox in connection with [*Watchmen*] . . .
19 referred to as the 'Buy-Out Price'."

20 (Turnaround Agreement at p. 1, ¶¶ 1 and 2, emphasis
21 added.)

22 No such Buy Out price has ever been paid. (Compl. at p.7:14-16.) While
23 WBP asserts that Fox "abandoned" its copyrights under the Turnaround Agreement
24 (Motion at p. 7:19), in fact, Fox has not parted with any copyright interests under the
25 Turnaround Agreement, including any of its distribution rights. (Appendix of
26

27 ⁷ Because an incorrect exhibit was inadvertently attached to the Complaint, the parties stipulated,
28 and this Court ordered, that a correct copy of the 1994 Settlement Agreement and Release, together
with the Turnaround, was substituted for Exhibit 5. See Stipulation Allowing Defendants an
Extension of Time to Respond to Plaintiff's Complaint and Correcting Exhibit 5 to the Complaint.

1 Misstatements, Nos. 6-7, 9.)

2 WBP argues that the integration clause of the 1994 Settlement
3 Agreement, which applies to prior agreements between Fox and Gordon, including
4 “entities associated with Gordon,” “extinguished” the Quitclaim. (Motion at pp. 9:22-
5 26, 10:1-24; 1994 Settlement Agreement at pp. 1, ¶1 and 10, ¶8.) The argument is
6 premised on the assertion that the Quitclaim is an agreement between Fox and Largo
7 and that Gordon was associated with Largo. (*Id.*) While the argument is flawed,⁸ it
8 does nothing to support WBP’s position. Even if we assume, for purposes of
9 argument, that the Quitclaim was “extinguished” by the 1994 Settlement Agreement
10 in favor of the attached Turnaround Agreement, the Turnaround *expressly affirms*
11 *Fox’s rights in Watchmen*. (Turnaround Agreement at p. 1, ¶1.) Moreover, if the
12 Quitclaim was “extinguished”, then WBP has no rights in *Watchmen*, because the
13 Quitclaim is the sole purported source of WBP’s claimed rights. (WPB Agreement, p.
14 3, ¶1.2.20.)

15 The Turnaround Agreement further specifies that, until payment of a
16 Buy-Out Price, Fox has “Changed Elements” rights in *Watchmen*. (Compl. at pp.
17 6:15-28, 7:1-2.) Contrary to WBP’s assertions, these Changed Elements rights
18 embody a copyright owner’s right to control uses of the copyrighted work. Thus, for
19 example, prior to payment of a Buy Out Price, Gordon was required to submit to Fox
20 any Changed Elements, including any “change in the storyline,” and Fox was entitled
21 to “reject such submission” (in which case Gordon could only proceed if he paid the
22 Buy Out Price) or Fox could “proceed with the development and/or production” based
23 on the Changed Elements. These were not hypothetical rights that Fox could only
24 acquire by exercising some “option”: they are rights specified in the Turnaround that
25 belong to Fox from the beginning and could be exercised prior to payment of a Buy
26

27 ⁸ As noted, the Quitclaim is not an agreement between Fox and “Gordon” – it is between Fox and
28 *LINV*. (Quitclaim at p. 1.) Moreover, even if the Quitclaim *was* an agreement with Largo, the
Complaint alleges that Gordon disassociated with Largo in November 1993. (Compl. at p. 5:12-16;
Appendix of Misstatements, No. 16.)

1 Out Price. (Appendix of Misstatements, Nos. 6-7 and 9-10.)
2

3 **E. WBP in Bad Faith Purports to Acquire “All Rights” in *Watchmen***
4

5 WBP’s motion completely ignores Fox’s detailed allegations of WBP’s
6 bad faith conduct in the transaction with Gordon in 2006 whereby WBP purports to
7 have acquired “all rights” in *Watchmen*. (Compl. at pp. 7:21-28, 8:1-28, 9:1-14.)
8 WBP purported to acquire these rights even though WBP had actual knowledge of the
9 Quitclaim – the document is expressly identified in WBP’s chain of title. (Compl. at
10 pp. 7:23-26, 8:12-19; WBP Agreement at p. 3, ¶1.2.20.) Despite actual knowledge of
11 Fox’s distribution rights in *Watchmen*, WBP purported in the WBP Agreement to
12 acquire “all rights” in *Watchmen* from Gordon, thereby seeking to erase Fox’s rights
13 by simply declaring them out of existence. (Compl. at pp. 7:23-26, 8:12-19.) Fox
14 alleges that the purpose and effect of WBP’s conduct was to disrupt Gordon’s
15 performance of his contractual obligations to Fox under the Quitclaim. (Compl. at p.
16 12:1-8.)

17 WBP also ignores Fox’s allegation that WBP’s actual knowledge of the
18 Quitclaim at a minimum gave WBP constructive notice of the Turnaround Agreement
19 (if WBP did not already have actual knowledge). (Compl. at p. 9:3-9.) This is
20 because any reasonable inquiry by WBP into Fox’s Quitclaim rights would have
21 surfaced the Turnaround. (Compl. at pp. 8:20-28, 9:1-14.) But that was not WBP’s
22 plan: it failed to contact Fox and acted with “willful blindness” in an attempt to
23 declare itself owner of *Watchmen*. (Compl. at p. 8:6-12.) Thus, not only did WBP
24 fail to acquire any distribution rights in *Watchmen*, WBP is not a bona fide purchaser
25 of any claimed rights and is instead charged with knowledge of the Turnaround.
26 (Compl. at p. 9:10-14.) The Turnaround, of course, reflects Gordon’s
27 acknowledgement – *the same person from whom WBP purports to have acquired its*
28 *rights in Watchmen* - that Fox, not Gordon, continued to possess copyright interests in
Watchmen, including distribution rights, until payment of a Buy Out Price.

1 (Turnaround Agreement at p. 1, ¶1.)
2

3 Capping off its fantastic misstatement of facts, WBP says that Fox is
4 guilty of a “decade of inaction.” (Motion at 1:21-22.) This, even though Fox acted
5 *immediately* to demand that WBP cease and desist from the infringing conduct after
6 learning in July 2007 that WBP was disclaiming Fox’s rights and had commenced
7 production of *Watchmen*. (Compl. at p. 9:15-26.) (Appendix of Misstatements, No.
8 16.)

9
10 **III. WBP’s MOTION IS AT ODDS WITH THE LEGAL STANDARDS**
11 **GOVERNING THE MOTION TO DISMISS**

12 It is familiar law that the Federal Rules of Civil Procedure, Rule 8
13 pleading standard contains “a powerful presumption against rejecting pleadings for
14 failure to state a claim.” *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir.
15 1997) (citations omitted). “It is axiomatic that [a] motion to dismiss for failure to
16 state a claim is viewed with disfavor and is rarely granted.” *Id.* (citation omitted).
17 Indeed, a complaint may not be dismissed unless it appears beyond doubt that plaintiff
18 can prove no set of facts in support of his claims which would entitle him to relief.
19 See *Hydranautics v. Filmtec Corp.*, 70 F.3d 533, 535-36 (9th Cir. 1995); see also
20 *Buckley v. Los Angeles*, 957 F.2d 652, 654 (9th Cir. 1992). Moreover, in deciding a
21 motion to dismiss, the court should limit its review to the contents of the complaint,
22 take all allegations of material fact as true, and view the facts in the light most
23 favorable to the nonmoving party. *Cooper v. Pickett*, 137 F.3d 616, 622 (9th Cir.
24 1998), superseded by statute on other grounds as stated in *Fischer v. Vantive Corp.*,
25 283 F.3d 1079, 1091 (9th Cir. 2002).

26 WBP’s motion is completely at odds with this legal standard. WBP
27 impermissibly asks the Court to determine at the pleading stage disputed factual issues
28 about WBP’s conduct and intent and asks the Court to ignore those portions of the
Complaint, the Quitclaim and the Turnaround that are flatly inconsistent with WBP’s

1 argument. (See Appendix of Misstatements Nos. 1-15.) This is not the proper function
2 of a motion to dismiss and WBP's motion should be denied for this reason alone. As
3 detailed above, the facts alleged in the Complaint establish that Fox, and not WBP,
4 held distribution rights in *Watchmen*, and that WBP never acquired these rights.

5 **IV. FOX'S EXCLUSIVE DISTRIBUTION RIGHTS UNDER THE**
6 **QUITCLAIM ARE PLAINLY A COPYRIGHT INTEREST**

7 WBP seeks dismissal of Fox's copyright claim in Count One on the
8 asserted ground that the Quitclaim does not convey any copyright interest to Fox.
9 (Motion at p. 6:3-15.) The argument is baseless because the Quitclaim "grants to Fox
10 distribution rights" for the *Watchmen*. (Quitclaim at p. 4, ¶ 5 and Short Form
11 Quitclaim at p. 1. ¶2.) The Quitclaim also requires compliance with the Largo
12 Agreement provisions that *Watchmen* be distributed by Fox for the Distribution Term.
13 (Largo Agreement at p. 15:7; Amendment to Largo Agreement at p. 4, ¶5.)

14 WBP misstates that the Quitclaim contains a "flat out" grant of
15 copyrights to Largo. (Appendix of Misstatements, No. 1.) What the document
16 instead says is that, "*subject to the terms and conditions*" of the Quitclaim, Fox grants
17 rights to LINV. (Quitclaim at p. 2, ¶2, emphasis added.) One of the "terms and
18 conditions" is that Fox possesses all distribution rights, and that any picture based on
19 *Watchmen* be distributed by Fox in accordance with the terms of the Largo
20 Agreement. (Quitclaim at p. 4, ¶5.)

21 It is hornbook law that a right of distribution is a copyright interest
22 protected by the Copyright Act of 1976. Indeed, distribution is one of the specifically
23 enumerated rights for which the Copyright Act affords a right to sue for infringement.
24 Section 106.⁹ Equally fundamental is that "any of the exclusive rights comprised in a
25 copyright, including any subdivision of any of the rights specified in section 106, may
26 be transferred . . . and owned separately." *Gardner v. Nike, Inc.*, 279 F.3d 774, 779
27

28 _____
⁹ All references to "Section" are to the Copyright Act of 1976.

1 (9th Cir. 2001), citing Section 201(d)(2). “The owner of any particular exclusive right
2 is entitled, to the extent of that right, to all of the protection and remedies accorded to
3 the copyright owner.” *Id.* at 780. It is equally settled law that no magic words are
4 necessary to create a distribution right; rather, it is only necessary that the document
5 or agreement evidence the intent of the parties to transfer the copyright interest. 3
6 *Nimmer on Copyright* (2007) Assignments and Licenses, §10.03[A][2], p. 10-43.
7 Here, the Quitclaim and Largo Agreement reflect a manifest intent that Fox possess
8 exclusive distribution rights.

9
10 **A. The Argument that Quitclaim Rights Were “Extinguished” by the**
11 **1994 Settlement Agreement Does Not Support WBP’s Position**

12 WBP argues that Fox’s rights under the Quitclaim were “extinguished”
13 by the integration clause of the 1994 Settlement Agreement and Release. (Motion at
14 p. 9:20-21.) The integration clause states that the agreement supersedes prior
15 agreements between Fox and “Gordon,” the latter defined to include any company
16 “associated with Gordon.” (1994 Settlement Agreement at p. 10, ¶8.) WBP claims
17 the Quitclaim is an agreement between Fox and Largo, and that Largo was “associated
18 with Gordon.” (Motion at pp. 2:6-7, 5:3-13; Appendix of Misstatements, No. 2.) But
19 the Quitclaim is an agreement between Fox and *LINV*, a company for which no facts
20 are alleged, and no argument is even made by WBP, to suggest that it had an
21 association with Gordon at the time of the 1994 Settlement Agreement. Moreover,
22 the Complaint alleges that Gordon *withdrew* from Largo in November 1993 and ended
23 his association, well before the 1994 Settlement Agreement. (Compl. at p. 5:12-16;
24 Motion at p. 7:20-21; Appendix of Misstatements, No. 15.)

25 WBP’s argument that the Quitclaim was “extinguished” is misplaced,
26 however, for another fundamental reason. If the Quitclaim was extinguished by the
27 1994 Settlement Agreement, then WBP has no rights in *Watchmen*. As reflected in
28 the WBP Agreement, the Quitclaim is the *sole source* of WBP’s alleged rights in
Watchmen. (WBP Agreement at p. 3, ¶1.2.20.) WBP purports in 2006 to have

1 acquired Gordon's asserted rights under the Quitclaim. (*Id.*) Moreover, even if the
2 Quitclaim was extinguished in favor of the Turnaround, the Turnaround is clear that
3 Fox still had its rights in *Watchmen*, and that Gordon could only acquire those rights
4 by payment of a Buy Out Price.

5 **B. Fox Alleges Performance of Any Conditions Required to Exercise its**
6 **Distribution Rights**

7 Ignoring completely that Largo never obtained distribution rights, and
8 thus had no such rights to transfer to Gordon, WBP argues that Fox's distribution
9 rights are unenforceable because they were subject to conditions in the Largo
10 Agreement that Fox did not perform, and that Fox has not alleged satisfaction of these
11 conditions. (Motion at pp. 7:17-18, 11:21-28, 12:15-21.) Fox, however, *does* allege
12 performance of all conditions required under the Largo Agreement. Paragraph 12 of
13 the Complaint specifically states, "*Fox has performed all terms and conditions*
14 *necessary under the 1991 Quitclaim and Largo Agreement, as amended, to obtain all*
15 *rights thereunder, except to the extent performance has been excused or prevented by*
16 *Largo or its successors-in-interest.*" (Compl. at p. 5:6-8, emphasis added.)
17 (Appendix of Misstatements, No. 4.) While these unambiguous allegations are alone
18 sufficient to defeat WBP's assertion, there is more.

19 In claiming that Fox has failed to meet the "condition" to pay a
20 Production Advance, WBP also ignores that payment of a Production Advance is, at
21 best, a condition *subsequent* to WBP's obligation to tender a Budget. (Largo
22 Agreement at p. 13, ¶6(b).) (Fox's payment of a production advance contingent on
23 "*Budget . . . statements provided by Largo to Fox and reasonably validated by Fox*".)
24 Rather than tender any Budget, WBP proceeded to film the movie, then denied that
25 Fox had any rights whatsoever. (Compl. at pp. 9:24-27, 10:23-28, 11:1-2.) Any
26 possible obligation of Fox to pay a Production Advance has been excused, indeed
27 rendered impossible, by WBP's actions. Moreover, WBP's interpretation of Fox's
28 distribution rights under the Largo Agreement is inconsistent with the language of the

1 Quitclaim, which provides that “the rights of Fox with respect to the Picture and any
2 Derivative Motion Picture *shall commence on the date hereof.*” (Quitclaim at p. 4, ¶5
3 (c).) As noted, in the event of any conflict between the language of the Quitclaim and
4 the Largo Agreement, the Quitclaim controls. (Quitclaim at p. 9, ¶15.)

5
6 Finally, WBP fails to apprise the Court that the sentence immediately
7 following the Production Advance language provides that “[n]otwithstanding anything
8 to the contrary contained in the preceding sentence,” until it has been “determined
9 hereunder that Fox is obligated to pay the Production Advance” and Fox fails to do so,
10 Fox has “*the right to engage in all distribution activity customarily undertaken by the*
11 *Fox Parties prior to the release of a theatrical motion picture, including . . . creating*
12 *trailers, television spots . . . and all other such customary pre-release distribution*
13 *activity.*” (Amendment to Largo Agreement at p. 5, ¶5, emphasis added.) The
14 purported Production Advance “condition” does not even apply to these forms of
15 Fox’s exclusive distribution rights. Even under WBP’s own theory, Fox has
16 unconditioned distribution rights that are part of the Quitclaim and Largo Agreement,
17 all of which WBP ignored when it purported to acquire “all rights” in *Watchmen* from
18 Gordon in 2006.

19 **C. WBP Inconsistently Argues that Fox’s Distribution Rights “Died”**
20 **Under the Quitclaim that WBP Also Says Was “Extinguished”**

21 WBP’s purported rights in *Watchmen* are based on the Quitclaim.
22 (Compl. at pp. 7:21-28; 8:1-3; WBP Agreement at p. 3, ¶1.2.20.) WBP is thus subject
23 to the Quitclaim requirement that the agreement “shall bind and inure to the benefit of
24 the respective parties . . . [and their] successors and assigns, forever.” (Quitclaim at p.
25 8, ¶9.) One of those terms is that *Watchmen* be distributed by Fox and produced by
26 LINV pursuant to the Largo Agreement. (Quitclaim at p. 4, ¶ 5.) But WBP instead
27 inconsistently argues that the Quitclaim gives WBP production rights that exist
28 independent of the Largo Agreement. (Motion at pp. 6:3-28, 7:1-18.) In the same
breadth, WBP argues that the Quitclaim was “extinguished” and that the Largo

1 Agreement “died,” so that Fox’s distribution rights have not survived. (*Id.*) WBP’s
2 position is that it can selectively choose which terms and conditions of the Quitclaim
3 have survived and are applicable to WBP, as it pleases, and thereby declare itself the
4 owner of all rights in *Watchmen*, including the distribution rights that were granted to
5 Fox. In essence, WBP’s position is that it is free to take the benefit of the alleged
6 production grant, then declare the Quitclaim “extinguished” and the Largo Agreement
7 “dead” and ignore the distribution burden.

8 Basic principles of estoppel preclude WBP’s inconsistent position. It is a
9 fundamental maxim “that one cannot blow both hot and cold. It is based upon the
10 broad equitable principle which courts recognize, that a person, with full knowledge
11 of the facts shall not be permitted to act in a manner inconsistent with his former
12 position or conduct to the injury of another.” *McDaniels v. General Ins. Co. of*
13 *America et al.*, 1 Cal.App.2d 454, 459, 36 P.2d 829 (1934). Moreover, it is axiomatic
14 that “a party to a contract cannot at one and the same time challenge its validity and
15 continue to reap its benefits.” *Medimmune, Inc. v. Genentech, Inc.*, 127 S.Ct. 764 ,
16 166 L.Ed.2d 604 (2007) citing *Commodity Credit Corp. v. Rosenberg Bros. & Co.*,
17 243 F.2d 504, 512 (9th Cir. 1957).

18 As noted, Gordon understood that Fox’s rights had to be respected: after
19 withdrawing from Largo, Gordon entered into the Turnaround, wherein he agreed that
20 he would have to pay Fox a substantial Buy Out Price to *acquire* Fox’s rights in
21 *Watchmen*. Indeed, WBP’s argument is inconsistent with *WBP’s* express covenant to
22 faithfully perform all terms and conditions of the Quitclaim. (Compl. at p. 12:24-27.)
23 The WBP Agreement specifically states, “WBP shall carry out and faithfully perform
24 each and all of the terms, covenants, conditions and other provisions relating to the
25 Picture contained in the Underlying Documents [including the Quitclaim] required to
26 be kept and performed subsequent to the date hereof under and by virtue of the
27 Underlying Documents.” (Compl. at pp. 7:27-28: 8:1-3; WBP Agreement at 6, ¶(6).)
28 WBP should be held to its promise.

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V. **FOX ALSO HAS COPYRIGHT INTERESTS IN WATCHMEN UNDER THE TURNAROUND AGREEMENT**

WBP's failure to overcome Fox's distribution rights under the Quitclaim is alone sufficient to deny the challenge to Fox's copyright claim in Count One. The motion also fails because WBP has no answer to the statement of Fox's rights under the Turnaround Agreement.

A. **The Turnaround is not an "Option" for Fox to Acquire Rights**

WBP contends that "the operative language" of the Turnaround Agreement constitutes an "unexercised option" for Fox to obtain rights in *Watchmen*. (Motion at p. 13:1-6.) WBP has things backwards. (Appendix of Misstatements, Nos. 9-10.) The plain language of the Turnaround Agreement states that Fox *possesses* rights, and that it is Gordon who was presented with an opportunity, never exercised, to *acquire* Fox's rights. Thus, the Turnaround states that "[Gordon] shall have the perpetual right . . . to *acquire* all of the right, title and interest of Fox in the Project pursuant to the terms and conditions herein provided." (Turnaround Agreement at p. 1, ¶1, emphasis added.) To acquire rights, Gordon was obligated to pay a Buy Out Price. (Turnaround Agreement at p.1, ¶2.) The Complaint alleges that "[n]either Gordon nor WBP has paid Fox the Buy-Out Price." (Compl. at p. 7:10-20.) Gordon acquired no rights, and Fox continues to possess copyright interests, including distribution rights, in *Watchmen*.

WBP's "option" argument is thus contradicted by the plain language of the Turnaround. Moreover, the authority WBP cites on this inapposite point is not even binding or precedential authority.¹⁰ And in any event, the cases WBP cites are readily distinguishable. WBP claims that *Cavallo* and *Silberman* stand for the

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¹⁰ WBP relies on *Cavallo, Ruffalo & Fagnoli v. Torrez*, 1988 WL 161313, *1-2 (C.D. Cal. 1988) and *Silberman v. Innovation Luggage, Inc.*, 2003 WL 1787123 (S.D.N.Y. 2003). But as stated in *Herring v. Teradyne, Inc.*, 256 F.Supp.2d 1118, 1127-1128, f.n.2 (S.D.Cal. 2002), a case cited by WBP in its motion, an unpublished decision has no binding or precedential value in this Court. *Cavallo* and *Silberman* are both unpublished.

1 proposition that an option to acquire a copyright is not sufficient to convey rights
 2 under the Copyright Act. (Motion at pp. 13:18-27, 14:1-19.) Yet in *Cavallo*, the
 3 parties *agreed* that plaintiff did not have legal interest in the copyright. *Id.* at *1. The
 4 Court in *Cavallo* concluded that the option language in that case (not even described
 5 in this cryptic opinion) was insufficient to convey a beneficial ownership to plaintiff
 6 under the Copyright Act. Similarly, in *Silberman*, the court found a party did not have
 7 standing to sue for copyright infringement because it merely was the holder of an
 8 unexercised option to reproduce images of a copyright work. *Id.* at *11. Here, by
 9 contrast, Fox is the *exclusive legal owner* of rights in *Watchmen* unless and until
 10 Gordon pays the Buy Out – there is no issue about any “unexercised option.”

11 **B. The Changed Elements Terms Reflect Copyright Interests**

12 Fox has copyright interests in *Watchmen* under the Turnaround
 13 Agreement. (Compl. at pp. 6:15-28, 7:1-2.) Aside from the Turnaround language
 14 noted above that expressly states Fox still possesses its rights in *Watchmen*, the
 15 Changed Elements provision provides, in pertinent part, as follows:

16 “If, prior to your paying Fox the Buy-Out Price within the
 17 Turnaround Period, you introduce any new or alter any
 18 existing elements, e.g., . . . change in the storyline . . .
 19 [Changed Elements and Changed Terms]; . . . you shall
 20 submit to Fox in writing such Changed Elements and
 21 Changed Terms and Fox shall have [the right to] . . . *reject*
 22 *such submission or to elect to proceed with the development*
 23 *and/or production of the Project predicated upon the use,*
 24 *presence or involvement of such Changed Elements and*
 25 *Changed Terms . . .”*

26 (Turnaround Agreement at p. 2, ¶4, emphasis added.)

27 Under the plain language of the Changed Elements clause, Gordon was
 28 required to submit to Fox any Changed Elements, including any “change in the

1 storyline,” and Fox was entitled to “reject such submission” (in which case Gordon
2 could only proceed if he paid the Buy Out Price) or Fox could “proceed with the
3 development and/or production” based on the Changed Elements. This is a copyright
4 interest, embodying the right of a copyright owner to control uses and the right to
5 control the first public distribution of any derivatives. See generally *Stewart v. Abend*,
6 110 S.Ct. 1750, 1755, 495 U.S. 207, 211, 109 L.Ed.2d.184 (1990) and *Harper & Row*
7 *Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 554, 105 S.Ct. 2218, 2227, 85
8 L.Ed.2d 588 (1985) [“the owner of copyright . . . has the exclusive rights to do and to
9 authorize any of the following . . . (2) to prepare derivative works based upon the
10 copyrighted work; . . . (4) in the case of literary, . . . dramatic, . . . motion pictures and
11 other audiovisual works, to perform the copyrighted work publicly; [and] (5) . . . to
12 display the copyrighted work publicly”].

13 Notably, Fox was not obligated to pay any money to Gordon or offer any
14 other consideration in order to exercise its right to control over *Watchmen*; rather,
15 prior to Gordon’s payment of the Buy Out Price, Fox was free to exercise its rights.
16 The rights are granted outright; they are not part of any “option” requiring Fox to first
17 acquire these rights.

18 WBP now argues that the “right of first refusal” language in the Changed
19 Elements clause somehow renders Fox’s copyrights unenforceable. (Motion at pp.
20 13:1-5, 14:20-21.) WBP cites no authority for that proposition. There is none. The
21 right of first refusal language merely reflects that Fox, at its discretion, could exercise
22 the aforementioned Changed Elements rights *each time* Gordon introduced a Changed
23 Element, prior to payment of the Buy Out Price. Moreover, even though there is no
24 allegation or evidence that Fox parted with any copyrights under the Turnaround, as
25 WBP wrongly asserts, the Changed Elements clause would be equally enforceable as
26 a grant of beneficial ownership in future uses of *Watchmen* by Gordon or his
27 successors, because it is equally well settled that a right to supervise and control future
28 uses is protected under the Copyright Act. *Wildlife Internationale, Inc. v. Clements*,

1 591 F.Supp. 1542, 1546 (D.C. Ohio 1984) (artist retained status as a beneficial owner
2 of all copyright rights even after his assignment of certain reproduction rights because
3 all work was to be done under his “direct supervision and control.”)¹¹
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5 For all of these reasons, WBP’s motion to dismiss Count One of the
6 Complaint should be denied. The challenge to the interference claim in Count Two is
7 equally baseless.

8 **VI. THE INTERFERENCE CLAIM IS WELL STATED**

9 To state a claim for intentional interference with contract, a Plaintiff must
10 allege: (1) the existence of a valid contract with a third party; (2) Defendant's
11 knowledge of that contract; (3) Defendant's intentional acts designed to induce a
12 breach or to disrupt the contractual relationship; (4) actual breach or disruption of the
13 contractual relationship; and (5) resulting damage. *Bank of N.Y. v. Fremont General*
14 *Corp.*, 514 F.3d 1008, 1014 (9th Cir.2008).

15 Fox has properly alleged each of the required elements of the tort.
16 (Compl. at pp. 11:21-28, 12:1-15.) Fox alleges WBP’s knowledge of the Quitclaim
17 and intent to disrupt Gordon’s performance of the obligations he owed to Fox as the
18 purported successor. (Compl. at pp. 3:11-28, 4:1-2, 11:28. 12:1-8.) WBP
19 accomplished that result by inducing Gordon to transfer his obligations to WBP, so
20 that WBP could then take the position that rights owed to Fox under the Quitclaim
21 were non-existent. (*Id.*) Thus, Gordon’s obligation to satisfy Fox’s rights under the

22
23 ¹¹ WBP argues that Fox has not alleged WBP’s knowledge of the Turnaround. (Motion at p. 3:13-
24 14.) The argument is incorrect (see Compl. at 8:6-9), but WBP does not argue, for good reason, that
25 any such lack of knowledge would defeat Fox’s copyright interests in *Watchmen*. Moreover, WBP
26 ignores that a subsequent transferee has a duty to make reasonable inquiry of facts where a prudent
27 person would do so, and is charged with all knowledge that would have been uncovered. Section
28 205(d) (subsequent transferee must take his interest (a) in good faith and (b) without notice of the
prior transferee’s interest); *Peer Intern. Corp. v. Latin American Music Corp.*, 161 F.Supp.2d 38, 48
(D. Puerto Rico, 2001); *Latin America Music Co. v. The Archdiocese of San Juan of the Roman*
Catholic & Apostolic Church (1st Cir. 2007) 499 F.3d 32; see also 3 *Nimmer on Copyright* (2007)
Assignment and Licenses §10.07[A][2], p. 10-56.18. Fox alleges that WBP acquired its purported
interest in *Watchmen* in (a) bad faith and (b) with actual knowledge of the Quitclaim and actual or
constructive notice of the Turnaround Agreement - two prior transfers reflecting Fox’s clear
copyright interests. (Compl. at pp. 8:6-28, 9:1-14.)

1 Quitclaim was breached, and performance rendered impossible by WBP's bad faith
2 conduct. (*Id.*) These allegations meet every test of an interference claim: knowledge
3 of the contract, acts intended to interfere with the contract, resulting in disruption and
4 damages. *Bank of N.Y.*, 514 F.3d at 1014.

5 **A. Contrary to WBP's argument, the Complaint alleges WBP's Intent**
6 **Disrupt Fox's Rights under the Quitclaim**

7 WBP's chief argument on the interference claim is that Fox has
8 "admitted" that WBP was unaware of the obligations owed to Fox under the
9 Quitclaim at the time WBP purported to acquire "all rights." (Motion at pp. 3:27-28,
10 4:1-8, 15:25-28, 16:1-23; Appendix of Misstatements, Nos. 12-13.) To that end, WBP
11 asserts that Fox's Complaint contains allegations that WBP "incorrectly believed" Fox
12 had no rights. (*Id.* at p. 4:2-8.) Once again, WBP misstates the pleading. (Appendix
13 of Misstatements at No. 11.)

14 The Complaint contains no allegation that WBP "believed" that Fox had
15 quitclaimed all of its rights under the Quitclaim; rather, the Complaint instead
16 observes that WBP "incorrectly states" in the WBP Agreement that the Quitclaim
17 conveys "all rights". (Compl. at p. 8:12-19.) The Complaint alleges that WBP did so
18 in bad faith. (Compl. at pp. 7:23-26; 8:6-12, 20-22.) Specifically, "WBP took
19 purported title to *The Watchmen* . . . with *actual notice* of a . . . reservation to Fox in
20 the 1991 Quitclaim of the same rights that WBP claims to have acquired." Further,
21 "[a]t the time [WBP] entered into the WBP Agreement, WBP had *actual knowledge* of
22 the 1991 Quitclaim . . . [and] chose to be either *willfully ignorant* of . . . Fox's interest
23 . . . or acted . . . without good faith in that regard." (*Id.* at p. 8:19-22.) WBP's
24 knowledge and intent to disrupt Fox's rights is more than adequately pled. (Compl. at
25 pp. 7:23-26, 8:6-12, 20-22, emphasis added.)

26 WBP cites cases for the proposition that Fox must "plead and prove
27 intentional acts" which were "designed to disrupt the contractual relationship"
28 (Motion at p. 16:24-26) then devotes more than two pages of argument that selectively

1 quote, characterize, and interpret language in the Quitclaim and related agreements in
2 order to argue that Fox has not stated a claim. (Motion at pp. 16:24-26, 17:1-27, 18:1-
3 24.) Each of these cases concern an appeal from a judgment based on evidence taken,
4 rather than pleading challenges. See, for example, *Seaman's Direct Buying Service,*
5 *Inc. v. Standard Oil Co.*, 36 Cal. 3d 752, 206 Cal.Rptr. 354 (1984) (appeal from
6 judgment entered by court); *Avedis Kasparian v. County of Los Angeles*, 38 Cal. App.
7 4th 242, 45 Cal.Rptr.2d. 90 (1995) (appeal from judgment); *Summit Machine Tool*
8 *Manufacturing v. Victor CNC Systems, Inc.*, 7 F.3d 1434, 30 U.S.P.Q.2d 1302 (9th
9 Cir. 1993) (appeal from judgment). WBP's authority does nothing to dispel Fox's
10 clear allegations of intentional interference.

11 **B. There Is No Interference Immunity For Parties Who Assume Rights**
12 **to Disrupted Contracts**

13 WBP's final argument is that no interference claim lies where a party has
14 assumed obligations under the contract that was disrupted. (Motion at p. 18:7-22.)
15 WBP notes that it assumed obligations owed to Fox under the Quitclaim (a point that
16 only further evidences WBP's liability to Fox). WBP relies on the California Supreme
17 Court case *Applied Equip. Corp. v. Litton Saudi Arabia, Ltd.*, 7 Cal.4th 503, 28
18 Cal.Rptr. 2d 475 (1994), which stands for the inapposite proposition that a claim for
19 interference with contract does not lie against *a party to the contract*, a proposition
20 with which Fox agrees. (Motion at 17:24-28; 18:1-11.) The problem with WBP's
21 argument is that WBP was *not* a contracting party to the Quitclaim, or the agreement
22 by which Gordon purported to acquire rights under the Quitclaim. (Appendix of
23 Misstatements, No. 14.) Of course, there is no authority insulating a party from
24 interference liability because they purport to assume rights under a contract whose
25 performance they have disrupted. Indeed, any such rule would *encourage* parties to
26 disrupt obligations owed by third-parties under a contract, then attempt to insulate
27 themselves from tort liability by purporting to assume the rights of the breaching
28 party, all while continuing to deny that obligations were ever owed under the

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

1 TWENTIETH CENTURY FOX FILM CORPORATION,

2 Plaintiff,

3 v.

4 WARNER BROS. ENTERTAINMENT,
 5 INC.; WB STUDIO ENTERPRISES, INC.;
 6 WARNER BROS. PICTURES and DOES 1
 7 – 10,

8 Defendants.

Case No. CV 08-0889 GAF (AJWx)

[Honorable Gary A. Feess]

APPENDIX OF MISSTATEMENTS

**[Filed concurrently with Plaintiff
 Twentieth Century Fox Film
 Corporation's Opposition to
 Defendants' Motion to Dismiss]**

Date: May 5, 2008

Time: 9:30 a.m.

Courtroom: 740 – Roybal Building

Filing Date: February 8, 2008

Trial Date: TBD

Discovery Cut-off: TBD

Motion Cut-off: TBD

1 Plaintiff Twentieth Century Fox Film Corporation (“Fox”) submits the
 2 following appendix to list each of the statements in defendant Warner Bros.
 3 Entertainment Inc., WB Studio Enterprises Inc. and Warner Bros. Pictures’
 4 (collectively “WBP’s”) Motion to Dismiss (“Motion”), reviewed in Fox’s Opposition
 5 to the Motion, that either: (1) misstate the relevant agreements attached to Fox’s
 6 pleading; or (2) misstate the allegations of Fox’s Complaint; or (3) include purported
 7 information beyond the four corners of the Complaint.

| NO. | MISSTATEMENT | ACCURATE STATEMENT |
|--|---|--|
| 1. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 | <p data-bbox="326 835 862 1016">“In 1991, Plaintiff Fox . . . quitclaimed away all of its rights in the underlying work” which “operated to completely divest Plaintiff of any rights [in the <i>Watchmen</i> project] under copyright law.”</p> <p data-bbox="326 1052 786 1087">(Motion at pp. 1: 9-10, 5:14, 6:1-2.)</p> | <p data-bbox="901 835 1468 1087">The grant of rights to LINV under the Quitclaim is “subject to the terms and conditions” of the Quitclaim. (Quitclaim at p. 2, ¶2.) The terms of the Quitclaim expressly grant to Fox copyright interests consisting of exclusive distribution rights in <i>Watchmen</i>. The Quitclaim provides:</p> <p data-bbox="901 1123 1468 1375">(a) “the Picture shall be produced by [LINV] and <i>shall be distributed</i> by Fox as a Subject Picture pursuant to the terms of the Largo Agreement for the time periods, territories and media set forth in the Largo Agreement” (Quitclaim at p. 4, ¶5, emphasis added.)</p> <p data-bbox="901 1411 1468 1591">(b) “[this Quitclaim] <i>grants to Fox distribution rights</i> for the first Motion Picture produced based on the Project.” (Short Form Quitclaim at p.1, ¶2, emphasis added.)</p> <p data-bbox="901 1627 1468 1808">(c) The referenced Largo Agreement likewise requires that <i>Watchmen</i> be distributed by Fox for the Distribution Term. (Largo Agreement at p. 15, ¶7; Amendment to Largo Agreement at p. 4, ¶5.)</p> <p data-bbox="901 1843 1256 1879">(See Compl. at p. 3: 11-16.)</p> |

| NO. | MISSTATEMENT | ACCURATE STATEMENT |
|-----|--|---|
| 2. | The 1991 Quitclaim was between “Plaintiff and Largo. . . .” (Motion at p. 2:15-16.) | The Quitclaim is an agreement between Fox and Largo International, N.V., a Netherlands Antilles corporation (“LINV”). (Quitclaim at p. 1; see also Compl. at p. 3: 11-16.) |
| 3. | Fox’s distribution rights under the Largo Agreement “would only become effective or vest upon Plaintiff’s payment of a Production Advance.” (Motion at pp. 6:19-20, 11:24-28, 12:1-13). | (a) The Quitclaim provides that Fox’s rights “commence on the date hereof”, and that any conflict between the Quitclaim and Largo Agreement is controlled by the Quitclaim. (Quitclaim at pp. 4, ¶5(c), and 9, ¶15.) (b) The production advance language is, at best, a condition <i>subsequent</i> to Largo’s obligation to tender a budget. The Largo Agreement provides that Fox agrees to make a production advance “equal to 30% of the Budget for each Subject Picture, <i>as such Budget is set forth in statements provided by Largo to Fox and reasonably validated by Fox.</i> ” (No such Budget was ever tendered – WBP proceeded to principal photography and denies that Fox has any rights.) (Largo Agreement at pp. 13, ¶ 6(b)(i) (emphasis added), 12, ¶¶5, 6(a), and 16, ¶7.) (c) In the sentence immediately following the production advance language, the Largo Agreement provides that “ <i>notwithstanding anything to the contrary contained in the preceding sentence</i> ”, Fox “shall have the right to engage in all distribution activity customarily undertaken . . . prior to the release of a theatrical motion picture, including . . . creating trailers, television spots . . . and all other such customary pre-release distribution activity.” (Amendment to Largo Agreement at p. 5, ¶5 (emphasis added).) |
| 4. | “Plaintiff’s own Complaint . . . fails to even attempt to allege the existence or satisfaction of any of the express conditions precedent contained in the prior agreements between Fox and Largo with respect to <i>Watchmen</i> .” (Motion at pp. 3:5-9, 7:12-18, 11:21-28, 12:15-19.) | Fox specifically alleges: “Fox has performed all terms and conditions necessary under the 1991 Quitclaim and Largo Amendment, as amended, to obtain all rights thereunder, except to the extent performance has been excused or prevented by Largo or its successors-in-interest.” (Compl. at p. 5:6-9.) |

| NO. | MISSTATEMENT | ACCURATE STATEMENT |
|-----|--|---|
| 5. | <p>Amendment 1 to the Largo Agreement “expressly recited that ‘Largo <i>shall own and control the exclusive copyright</i> on all Subject Pictures, including Future Subject Pictures.’”</p> <p>(Motion, p. 7:12-17.)</p> | <p>WBP ignores all language in Amendment 1 that unambiguously grants Fox exclusive distribution rights. Specifically:</p> <p>(a) The Amendment provides that “Largo hereby licenses to [Fox] . . . <i>all theatrical and non-theatrical distribution rights</i> in all Future Subject Pictures.” (Amendment to Largo Agreement at p. 4, ¶5.)</p> <p>(b) The Amendment contains further and extensive grants language that licenses to Fox distribution rights in a wide variety of mediums. (Amendment to Largo Agreement at p. 4, ¶5.)</p> |
| 6. | <p>“[A]ccording to the Complaint itself, the 1994 Settlement Agreement superseded all agreements with Gordon, Golar and Largo and stood as the sole expression of their contractual duties.”</p> <p>(Motion at pp. 9:22-26, 10:22-24.)</p> | <p>There is no such statement in the Complaint. The Complaint instead alleges:</p> <p>Under the July 1994 Turnaround Agreement, Fox afforded Gordon the right to acquire Fox’s interests by payment of a Buy Out Price, but neither Gordon nor WBP paid the Buy Out. (Compl. at pp. 5:17-28; 6:1-2.)</p> |
| 7. | <p>“In 1994, Plaintiff severed its entire relationship with the project’s producer, Lawrence Gordon . . . who by that point owned all of the rights to the project.”</p> <p>(Motion at p. 1:11-12.)</p> | <p>There is no allegation in the Complaint and no language in the Turnaround supporting any assertion that Fox “severed” its relationship with Gordon or that Gordon “owned all of the rights” in <i>Watchmen</i>. To the contrary:</p> <p>(a) The Turnaround states that Gordon was granted the right “<i>to acquire</i> all of the right, title and interest of Fox in the Project pursuant to the terms and conditions herein provided.” (Turnaround Agreement at p. 1, ¶¶ 1 and 2.)</p> <p>[continued to next page]</p> |

| NO. | MISSTATEMENT | ACCURATE STATEMENT |
|-----|---|---|
| | | <p>(b) Prior to the payment of the Buy Out Price, Fox had Changed Elements rights that included the right to reject any changes in the story line of <i>Watchmen</i> by Gordon or any studio with whom he sought to produce the work, and the right to control production and publication of uses based on Changed Elements, as provided under the Turnaround. (Turnaround Agreement, at p. 1-2, ¶2.)</p> |
| 8. | <p>The 1994 Turnaround Notice “is not alleged to have been known to Defendants.”</p> <p>(Motion at p. 3:13-14.)</p> | <p>The Complaint alleges WBP had actual and/or constructive knowledge of the Turnaround. Fox alleges:</p> <p>(a) “WBP [was] . . . on inquiry notice as to Fox’s rights in <i>The Watchmen</i>” under the Turnaround; (Compl. at p.8:25-27) and</p> <p>(b) “Had WBP acted in good faith and made reasonably inquiry into Fox’s rights in <i>The Watchmen</i>, WBP would have discovered, <i>if it did not already know</i>, that Fox had . . . rights as described in the Turnaround Agreement . . .” (Compl. at p. 9:3-9.)</p> |
| 9. | <p>The 1994 Turnaround Notice “nowhere refers to distribution rights, and does not grant to Plaintiff the sort of exclusive right that gives rise to a protectable copyright interest – in fact, it contains no rights – granting language at all.”</p> <p>(Motion at pp. 3:14-17, 13:1-2.)</p> | <p>(a) At the time of the Turnaround, Fox continued to own exclusive distribution rights in <i>Watchmen</i>. See Fox’s response to Misstatement No. 1.</p> <p>(b) The Turnaround Agreement expressly acknowledges Fox’s continued rights in <i>Watchmen</i>, requiring Gordon to pay a Buy Out Price “<i>to acquire</i> all of the right, title and interest of Fox in the Project pursuant to the terms and conditions herein provided.” (Turnaround Agreement at p. 1, ¶¶ 1 and 2, emphasis added.)</p> <p>[continued to next page]</p> |

| NO. | MISSTATEMENT | ACCURATE STATEMENT |
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| | | <p>(c) The Turnaround Agreement also reflects Fox’s exclusive copyright interests under the Changed Elements language. Prior to payment by Gordon of the Buy Out Price, Gordon was required to submit to Fox any “change in the storyline” and Fox was entitled to “reject such submission” (in which case Gordon could only proceed if he paid the Buy Out Price) or Fox could “proceed with the development and/or production” based on the Changed Elements, as provided under the Turnaround. (The right to control changes to a work and the right to control production and publication of the work based on such changes are copyright interests specifically protected by Section 106 of the Copyright Act.)</p> <p>(Turnaround Agreement, at p. 2, ¶4.)</p> |
| 10. | <p>“[T]he Changed Elements provision does not grant to Plaintiff an exclusive copyright interest recognized under the Copyright Act” rather the provision is “an optional right of first refusal.”</p> <p>(Motion at pp. 12:26-28, 13:6-10.)</p> | <p>(a) The “right of first refusal” language in the Changed Elements clause does not reflect any “option” that Fox had to exercise in order to obtain rights. Rather, the first refusal language provides that Fox could exercise Changed Elements rights <i>each time Gordon made any changes to the work.</i> (Turnaround Agreement at p.2, ¶4, emphasis added.)</p> <p>[continued to next page]</p> |

| NO. | MISSTATEMENT | ACCURATE STATEMENT |
|-----|---|---|
| | | <p>(b) Prior to payment by Gordon of the Buy Out Price, Gordon was required to submit to Fox any “change in the storyline” and Fox was entitled to “reject such submission” (in which case Gordon could only proceed if he paid the Buy Out Price) or Fox could “proceed with the development and/or production” based on the Changed Elements, as provided under the Turnaround. (The right to control changes to a work and the right to control production and publication of the work based on such changes are copyright interests specifically protected by Section 106 of the Copyright Act.) (Turnaround Agreement, at p. 2, ¶ 4.)</p> <p>(c) Even if Fox had parted with its copyrights under the Turnaround Agreement (though the agreement is to the contrary), the Changed Elements rights would be protected under Section 106 as a beneficial ownership of a copyright interest, because they reflect Fox’s rights to supervise and control future uses in <i>Watchmen</i>.</p> |
| 11. | <p>“Plaintiff expressly <i>admits</i> in the Complaint that Defendants did not have knowledge of Golar’s alleged obligations to Plaintiff under the 1991 Quitclaim. . . . The Complaint alleges that Defendants “incorrectly” believed that Plaintiff had quitclaimed all of its right, title, and interest to <i>Watchmen</i> under the 1991 Quitclaim.”</p> <p>(Motion, pp. 3:28, 4:1-4.)</p> | <p>There is no such admission in the Complaint. Fox alleges:</p> <p>(a) “WBP took purported title to <i>The Watchmen</i> . . . with <i>actual notice</i> of a . . . reservation to Fox in the 1991 Quitclaim of the same rights that WBP claims to have acquired.” Further, “[a]t the time [WBP] entered into the WBP Agreement, WBP had <i>actual knowledge</i> of the 1991 Quitclaim . . . WBP chose to be either <i>willfully ignorant</i> of . . . Fox’s interest . . . or acted . . . without <i>good faith in that regard</i>.” (Compl. at pp. 7:23-26; 8:6-12, 20-22, emphasis added.)</p> <p>[continued to next page]</p> |

| NO. | MISSTATEMENT | ACCURATE STATEMENT |
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| | | (b) The Complaint contains no allegation that WBP “believed” that plaintiff had quitclaimed all of its rights under the Quitclaim; the Complaint instead observes that WBP “incorrectly states” in the WBP Agreement that the Quitclaim conveys such rights. The Complaint alleges that WBP did so in bad faith. (Compl. at pp. 7:23-26; 8:6-12, 20-22.) |
| 12. | <p>WBP states that Fox’s allegation that WBP had knowledge of the Quitclaim is “refuted by (1) by Plaintiff’s own specific allegations, which admit that Defendants were not aware that Golar owed the now claimed obligations under the 1991 Quitclaim”</p> <p>(Motion at pp. 4:2-8, 15:15-24.)</p> | <p>The Complaint contains no allegation or admission (“specific” or otherwise) that WBP was not aware that Golar/Gordon owed obligations under the Quitclaim. See response to Misstatement No. 11.</p> |
| 13. | <p>“[L]ack of awareness of Plaintiff’s current construction of the 1991 Quitclaim appears on the fact of the very document that is alleged to be the act of interference: The WBP Agreement expressly recites the <i>absence</i> of the rights that plaintiff now claims.”</p> <p>(Motion at pp. 4:6-8, 17:18-21.)</p> | <p>WBP’s failure to acknowledge Fox’s rights under the Quitclaim in the WBP Agreement does not mean WBP was unaware of them. The Complaint alleges WBP had knowledge. See response to Misstatement No. 11 and 12.</p> |
| 14. | <p>“Plaintiff alleges that Defendants have assumed the 1991 Quitclaim, and thus have become parties to it.”</p> <p>(Motion at p. 18:7-9)</p> | <p>There is no allegation in Fox’s Complaint that WBP has “assumed the 1991 Quitclaim” and “thus become parties to it.” Rather, Fox alleges that WBP has contracted to perform all obligations owed to Fox under the Quitclaim (Compl. at pp. 7:27-28, 8:1-5) and that the Quitclaim terms bind all successors and assigns. (Compl. at p. 4:4-7.)</p> |

| NO. | MISSTATEMENT | ACCURATE STATEMENT |
|-----|--|---|
| 15. | The 1994 Settlement Agreement “extinguished” the Quitclaim because the Quitclaim is an agreement between Fox and Largo, and Fox “admits” that Largo was a company “associated with Gordon.” (Motion at p. 9:22-26.) | (a) The 1994 Settlement Agreement is between Fox and LINV, not Fox and Largo. (Quitclaim, p. 1.) (b) Fox does not admit that Gordon was associated with Largo; Fox instead alleges that Gordon “withdrew” from Largo in November 1993, several months before the 1994 Settlement Agreement. (Compl. at p. 5:14-16.) |
| 16. | “After more than a decade of inaction, Plaintiff has suddenly emerged to claim the sole right to distribute and exhibit the picture worldwide” (Motion at p. 1:21-22.) | Fox alleges that it acted promptly when it learned that WBP was purporting to produce <i>Watchmen</i> and was intending to commence principal photography. Fox specifically alleges that “[u]pon learning of WBP’s actions, Fox took <i>prompt steps</i> to notify WBP that its actions violated Fox’s rights under the 1991 Quitclaim and the Turnaround.” (Compl. at p. 9:15-22.) |
| 17. | “In the ensuing years, the project was presented to numerous Hollywood studios, large and small, was in active development at two major studios, and was even ‘greenlit’ for production, with Plaintiff’s full knowledge, at a third major studio.” (Motion at p. 1:13-16.) | No such purported facts appear anywhere in the four corners of the Complaint. Instead: Fox alleges that it learned in July 2007 that WBP was proceeding to principal photography and denying Fox’s rights, and Fox acted immediately to demand that WBP cease and desist. (Compl. at p. 9:15-27.) |
| 18. | “Largo dissolved” when Gordon withdrew. (Motion at p. 7:20-27.) | No such purported facts appear anywhere in the four corners of the Complaint. |

DATED: April 21, 2008

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16 TWENTIETH CENTURY FOX FILM
17 CORPORATION,

18 Plaintiff,

19 v.

20 WARNER BROS.
21 ENTERTAINMENT, INC.; WB
22 STUDIO ENTERPRISES, INC.;
23 WARNER BROS. PICTURES and
24 DOES 1-10,

25 Defendants.

Case No. CV 08-0889 GAF (AJWx)

**REPLY MEMORANDUM IN
SUPPORT OF MOTION BY
DEFENDANTS TO DISMISS
PLAINTIFF'S FIRST AND SECOND
CLAIMS FOR RELIEF**

[FRCP 12(b)(6)]

[Honorable Gary A. Feess]
[Complaint filed: 2/8/08]

Date: May 5, 2008
Time: 9:30 a.m.
Courtroom: 740 – Roybal Building

[Appendix of Non-Federal and
Unpublished Authorities filed
concurrently herewith]

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1 **I. INTRODUCTION**

2 Fox has concocted a host of purported factual inconsistencies in an effort to
3 avoid dismissal of its copyright and interference claims as a matter of law. But clever
4 rhetoric cannot obscure the fundamental contradictions between Fox’s lawsuit and the
5 documents upon which it purports to rely, or the core truth of WBP's position that if
6 Fox has any claim at all (which WBP vigorously disputes), it is purely contractual in
7 nature.

8 The record facts, based on Fox’s complaint and the documents it attaches, are
9 simple:

- 10 • As of 1991, Fox owned rights to certain literary material – a graphic
11 novel and a screenplay based on it.
- 12 • As of 1991, Largo (consisting of several related entities, all controlled by
13 Gordon) had a financing/distribution arrangement with Fox pursuant to
14 which Largo would produce motion pictures, which would be financed
15 and distributed by Fox.
- 16 • In 1991, Fox quitclaimed to Largo all of its rights to the underlying
17 material, receiving in exchange a conditional promise that the movie, if
18 produced by Largo, would fall under the distribution/financing
19 arrangement in place at the time.
- 20 • In 1993, Largo dissolved, and Largo transferred its rights to Golar, a
21 Gordon entity.
- 22 • In 1994, Fox and Gordon (on behalf of himself and every entity
23 associated with him) entered into a settlement agreement, in which they
24 agreed to substitute the 1994 Turnaround Notice in place of any and all
25 other agreements, thereby extinguishing all executory obligations
26 between them, including the conditional promise of distribution
27 contained in the 1991 Quitclaim, which had become meaningless due to
28 the death of Largo and the overall distribution/financing arrangement.

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WBP’s argument, reduced to its essence, is equally simple:

- The 1991 Quitclaim cannot be the basis of a copyright claim because all that document gave was a conditional promise to give Fox distribution rights “if” Largo produced the picture and “pursuant to” the then-existing financing/distribution arrangement. As a matter of contract law, no rights could vest until the conditions were satisfied – but before they ever were, this conditional promise was superseded in writing after the parties abandoned their financing/distribution arrangement, as expressly stated in the 1994 Settlement Agreement.
- The 1994 Turnaround Notice, which replaced the distribution promise, cannot be the basis of a copyright claim because the document grants no rights to Fox, other than an option not cognizable as a copyright ownership interest under the Copyright Act.
- WBP’s act of assuming Gordon’s rights to the underlying material for the project was not tortious interference because WBP is alleged to be a party to the 1991 Quitclaim and because WBP did nothing more than assume the contract and agree to perform its extant terms and conditions.

Instead of refuting these arguments, Fox offers 25 pages of carefully crafted but ultimately irrelevant arguments, including an aptly named “Appendix of Misstatements,”¹ none of which suffices, once the rhetoric and sleight of hand is penetrated, to evade the simple truth of this case: Fox is opportunistically trying to grab rights in another studio’s movie based on dead and buried documents from a distribution deal it long ago abandoned.

The Motion should be granted.

¹ Fox’s purported list of misstatements is not only a violation of the page limits on briefs under Local Rule 7, it is more importantly a transparent attempt to confuse the Court into finding disputed issues of fact where there are none. While discovery on Fox’s breach of contract claim will quickly reveal the fallacies in Fox’s list, there is no point in refuting it now, as it is.

1 **A. Fox Wrongly Asserts That It Obtained Distribution Rights Under**
2 **The 1991 Quitclaim.**

3 **1. The Distribution Promise Was Subject to Conditions**
4 **Precedent And Thus Was Executory.**

5 All of the arguments advanced by Fox are based on the fundamental
6 mischaracterization of the 1991 Quitclaim as transferring to Fox a distribution "right"
7 under copyright law. As explained below, however, Fox's alleged distribution rights
8 under the 1991 Quitclaim never arose because the conditions precedent² to Fox
9 obtaining such rights were never satisfied.

10 Such conditions included that Largo International would elect to produce
11 *Watchmen* and that such rights were bestowed on Fox pursuant to the terms of the
12 Largo Domestic Agreement and Largo Foreign Agreement. Neither took place. In
13 particular, Section 5 of the 1991 Quitclaim begins with the term, "If" (which means
14 "in the event that" or "on the condition that"), language that could hardly be more
15 conditional:

16 *If* Purchaser [Largo International] elects to proceed to production, the
17 Picture shall be produced by Purchaser and shall be distributed by Fox as
18 a Subject Picture *pursuant* to the terms of the Largo Agreement [defined
19 as including the Largo Domestic Agreement and Largo Foreign
20 Agreement]...

21 (1991 Quitclaim, § 5, emphasis added.)

22 Fox does not and cannot allege that Largo International proceeded to produce
23 *Watchmen*. This had to occur for any rights to vest.

24 ² "A condition precedent is either an act of a party that must be performed or an
25 uncertain event that must happen before the contractual right accrues or the
26 contractual duty arises." *Orlando v. Carolina Casualty Ins. Co.*, 2007 U.S. Dist.
27 LEXIS 22672, *13 (E.D. Cal. March 13, 2007) (citations omitted). See also Cal. Civ.
28 Code, § 1436 ("A condition precedent is one which is to be performed before some
right dependent thereon accrues, or some act dependent thereon is performed").

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Similarly, Fox never paid the Production Advance or Advance Rental. This, too, had to occur before any rights could vest.³

As a result of these extant conditions, the 1991 Quitclaim was not an *executed* transfer of distribution rights in *Watchmen*. Rather, Fox merely received an *executory* promise to obtain such distribution rights in the future "if" Largo produced *Watchmen* and the terms of the Largo Agreement regarding Fox receiving distribution rights were fulfilled (*i.e.*, Fox paid the Production Advance and the Advance Rental). It is elemental that an *executory* promise to convey an interest is not complete at the time the parties enter into the agreement but contemplates that a further act of either party must be done before such conveyance takes place while an *executed* promise is one that is completed at the time of agreement. See 2 Witkin, Summary of California Law, Contracts, §101.

Thus, Fox is wrong in asserting that the 1991 Quitclaim conveyed a copyright interest upon signing. As a result, as discussed in the next section, the promise of distribution rights remained executory and is thus subject to modification or release by the parties – which is exactly what the parties did.

B. The 1994 Settlement Agreement, Upon Which Fox Relies, Expressly Extinguishes and Supersedes Any and All Pre-Existing Executory Obligations Between Fox and the Gordon Parties.

1. The Subject Provision In The 1994 Settlement Agreement Is A Fully Binding Integration Clause.

Fox’s offhand dismissal of the subject provision in the 1994 Settlement

³ The relevant language in the Largo Domestic Agreement and the Largo Foreign Agreement could not more clearly express that the payment of the Production Advance and Advance Rental are conditions precedent: "Notwithstanding any other provision . . . the grant to Fox of the rights to distribute a Subject Picture pursuant to the terms of this . . . Agreement shall only become effective upon, and Fox's rights shall only vest upon," payment by Fox of the Production Advance/Advance Rental. (Largo Domestic Agreement, §7; Amendment No. 1, §7; Largo Foreign Agreement, §5) (Emphasis added).

1 Agreement as "merely" an integration clause does not make it any less binding on the
2 parties. The 1994 Settlement Agreement expressly states that it (as well as the 1994
3 Turnaround Notice which is a part thereof) embodies the "*entire agreement*" between
4 Fox and Gordon and all entities "affiliated" or "associated" with Gordon with respect
5 to *Watchmen*, that it "*expressly supersedes*" all previous agreements and
6 understandings with respect to the property, including the 1991 Quitclaim, and that
7 "neither party has *any* other rights or obligations to the other."⁴

8 Such a recital is *conclusively* binding on Fox. See Cal. Evid. Code § 622
9 (recitals in a written agreement are conclusively presumed to be true as between the
10 parties). Tellingly, the Complaint does *not* allege to the contrary.

11 **2. There is No Inconsistency Between Fox's Grant of All Right,**
12 **Title and Interest in *Watchmen* to Largo Entertainment in**
13 **1991 and The 1994 Settlement Agreement's Abrogation of All**
14 **Prior Executory Obligations Between Fox and Largo,**
15 **Including the Conditional Grant of Distribution Rights.**

16 In what is perhaps its grossest act of obfuscation, Fox says that it is inconsistent
17 for WBP to claim that the grant of rights *from* Fox survived the extinction of the
18

19 ⁴ In particular, Section 8 of the 1994 Settlement Agreement states as follows:
20 This Agreement, together with . . . Exhibit "C," the Turnaround Notice
21 for "WATCHMEN" embodies the entire agreement . . . between Fox and
22 Gordon as to the subject matter hereof, and supersedes all previous or
23 contemporaneous agreements, understandings, communications,
24 warranties or representations as between Fox and Gordon, either oral or
25 written, which may have been made between Fox and Gordon regarding
26 the subject matter hereof. . . . In connection with the foregoing, Fox and
27 Gordon hereby acknowledge that neither party has any rights or
28 obligations to the other with respect to the subject matter hereof except
as set forth in (a) the Settlement Agreement, [several documents
pertaining to other motion picture properties] and (e) *Watchmen*
Turnaround Notice, as the same may be amended, modified,
supplemented, superseded or restated.

(1994 Settlement Agreement, § 8).

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1 Largo Agreement, while the distribution promise *to* Fox did not. Contrary to Fox,
 2 these positions are completely consistent. Fox's argument is based on a fundamental
 3 misapprehension of basic contract law and the nature of the 1991 Quitclaim.

4 The 1991 Quitclaim *unequivocally granted* to Largo all of Fox's right, title and
 5 interest in and to certain underlying literary works. This grant operated as a
 6 completed *executed* transfer of a property interest. WBP succeeded to these rights by
 7 reason of the WBP Agreement with Golar, which got them from Largo. (Complaint,
 8 ¶¶ 13, 32). *Each of these assignments was a fully completed transfer of a property*
 9 *interest under copyright law.*

10 As discussed above, the promise of distribution rights that was made to Fox in
 11 the 1991 Quitclaim was just a conditional *executory* promise. And it was expressly
 12 extinguished by the 1994 Settlement Agreement, when Gordon (and every entity
 13 associated with him) agreed with Fox that the deal they were signing was the
 14 complete expression of all understandings between them and expressly recited that
 15 there were no other agreements between them.

16 The following hypothetical illustrates the fallacy of Fox's contention. A sells
 17 Blackacre to B, and B promises to lease Blackacre to A for a year upon the
 18 occurrence of certain conditions – say, if B builds a house on it. Later, before the
 19 condition is satisfied, A and B enter into a mutual release. The obvious effect of that
 20 release is to extinguish B's promise. But indubitably, the release would not operate to
 21 undo the executed transfer of title to Blackacre, which still resides in B.

22 There is no inconsistency in WBP's argument.

23 **C. Fox's Disingenuous Attempt to Distance the Gordon Parties From**
 24 **the 1991 Quitclaim is Unavailing.**

25 In trying to escape the superseding nature of the 1994 Settlement Agreement,
 26 Fox claims that Largo International and Largo Entertainment were not parties to the
 27
 28

1 1991 Quitclaim⁵ – despite the fact that the 1994 Settlement Agreement includes as
2 parties "all corporations or entities owned or controlled by Gordon or affiliated or
3 associated with himself."

4 Fox's argument contradicts its own allegations which expressly state the
5 contrary, and if Fox were correct, its claim to distribution rights would be doomed in
6 any event.

7 **1. Fox's "Name Game" Doesn't Work Because It Contradicts**
8 **Fox's Allegation That Rights Were Transferred From Both**
9 **Largo International and Largo Entertainment to Golar.**

10 The Complaint alleges that both Largo Entertainment *and* Largo International
11 assigned to Golar their rights in *Watchmen* under the 1991 Quitclaim. Specifically,
12 Paragraph 13 of the Complaint alleges that Largo Entertainment assigned, transferred
13 and conveyed to Golar all rights in *Watchmen*; Paragraph 32 of the Complaint states
14 that "Golar is the purported contractual successor and assignee of certain rights in *The*
15 *Watchmen* under the 1991 Quitclaim [, and that,] as such, Golar owed Fox all of the
16 contractual obligations owed by *Largo International* under the 1991 Quitclaim,
17 which provides that its terms bind and inure to the benefit of the respective parties'
18 successors and assigns." (Complaint, ¶ 32, emphasis added).

19 Indeed, the entire Complaint, in the final analysis, is premised on the notion
20 that the rights to the underlying material upon which the picture is to be based flowed
21 from Fox to Largo to Gordon to WBP. To argue that Largo International is somehow
22 entirely separate from this chain is contrary to Fox's own lawsuit.

23 As a result, Fox's effort to refute the superseding nature of the 1994 Settlement
24 Agreement by claiming that the parties were different is a failure. When Fox was
25 dealing with Gordon and "all corporations or entities owned or controlled by or

26 _____
27 ⁵ Indeed, Fox goes so far as to claim that Largo International is "a company for which
28 no facts are alleged." But, as noted below, Paragraph 32 of the Complaint expressly
alleges "Golar owed Fox all of the contractual obligations owed by Largo
International under the 1991 Quitclaim."

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1 affiliated or associated with himself," Fox was dealing with every entity under the
2 Largo banner, and with Golar, whom Fox itself asserts in this very case was the
3 holder of the rights under the 1991 Quitclaim. Accordingly, when Fox executed the
4 1994 Settlement Agreement, and recited the absence of any other agreements or
5 understandings, Fox was abrogating the 1991 Quitclaim.⁶

6 **2. Fox's "Name Game" Doesn't Work Because If It Did not**
7 **Assign Its Rights in *Watchmen* to Golar, Fox's Claim to**
8 **Distribution Rights Under the 1991 Quitclaim Fails.**

9 Even if it were not contrary to Fox's pleading, Fox's claim that Largo
10 International was not Golar's predecessor is a classic example of an argument that
11 proves too much, for it means that there was no successor to the 1991 Quitclaim.

12 The result of that conclusion is that Largo International itself must produce
13 *Watchmen* before Fox can have any claim, since this is an express condition precedent
14 to Fox receiving such rights pursuant to the express terms of the 1991 Quitclaim.

15 Fox never alleged (nor can it allege) that Largo International proceeded to
16 produce *Watchmen*. So, accepting Fox's argument that Largo International is
17 completely separate from Largo Entertainment, and hence Gordon and WBP, results
18 in the conclusion that the entire lawsuit must be dismissed.

19 **D. Fox's Complaint Fails To Specifically Plead Existence and**
20 **Satisfaction of Conditions Precedent.**

21 Pleading satisfaction of conditions precedent is required: "Where contractual
22 liability depends upon the satisfaction or performance of one or more conditions
23 precedent, the allegation of such satisfaction or performance is an essential part of the
24 cause of action. The failure to allege the satisfaction, waiver or excuse of a condition

25 ⁶ Of course, this result – Fox giving up its conditional distribution promise under the
26 1991 Quitclaim – makes perfect sense, because by that point (as Fox alleges) the
27 Largo financing/distribution arrangement was over, and there was thus no Largo
28 Agreement "pursuant to" which the picture would be distributed (if ever made).
There is nothing unfair about holding Fox to its Agreement, and in fact the unfairness
here would be to allow Fox to resurrect distribution rights more than fifteen years
after giving them up.

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1 precedent amounts to a failure to state a claim for relief." See Orlando, 2007 U.S.
2 Dist. LEXIS 22672, *14-15.

3 Fox argues that its conclusory allegation in Paragraph 12 of the Complaint that
4 "Fox has performed all terms and conditions" of the 1991 Quitclaim and Largo
5 Agreement" contained is legally sufficient. Fox's argument is incorrect for several
6 reasons.

7 First, this conclusory allegation does not go far enough: Fox fails to allege, for
8 example, that "all" conditions precedent were satisfied or excused *before the parties*
9 *entered into the 1994 Settlement Agreement*, for it was at that point that the
10 conditional promise evaporated as a result of the parties' 1994 Settlement Agreement.
11 Moreover, the allegation does not go far enough because it only references *Fox's*
12 performance. As the agreements attached to Fox's Complaint make clear, there are
13 external conditions whose existence and satisfaction Fox fails to allege. Of course, as
14 set forth in detail above, there were indeed external conditions that indisputably were
15 never satisfied.

16 Second, the Complaint alleges that WBP, not Largo International, is producing
17 the picture, an allegation that is not consistent with Fox's conclusory general
18 allegation, to the extent that Fox argues (as it does) that the Court should keep the
19 lawsuit alive notwithstanding the non-satisfaction of clear conditions precedent
20 discussed above.

21 In Orlando, the court held that conclusory allegations remarkably similar to
22 those which Fox alleges here – were insufficient as a matter of law. Orlando, 2007
23 U.S. Dist. LEXIS 22672, *10. In that case, the plaintiff brought a cause of action for
24 breach of contract of a Settlement Agreement which contained two conditions
25 precedent that had to be fulfilled by third parties. Id. at *10-11. The plaintiff alleged
26 that she had "performed all *her* duties and obligations pursuant to the subject
27 settlement agreement, except for those terms and conditions that she ha[d] been
28 prevented from performing due to the conduct of [defendants] and a third party...."

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1 Id. at *11. The court held that plaintiff failed to state a claim for breach of contract
2 because plaintiff's allegations did not allege that the external conditions precedent in
3 the Settlement Agreement were performed, waived or excused. Id. at *19.

4 Significantly, the Orlando court ordered that "[a]ny amended complaint should
5 allege how the conditions precedent were excused or waived." Id. at *19, fn. 7. This
6 result is consistent with the dictates of Rule 9(c), which requires that, "when denying
7 that a condition precedent has occurred, a party must do so with particularity." Fed.
8 R. Civ. P. 9(c). But here, it is plain that any amendment would be futile, unless Fox is
9 willing to represent to the Court that *Watchmen* was produced between 1991 and
10 1994 by Largo Entertainment, and that a Production Advance and Advance Rental
11 was paid by Fox during that time period.

12 As in Orlando, Fox's conclusory allegation of performance, excuse or waiver,
13 fails as a matter of law because Fox has not alleged performance of external
14 conditions precedent.

15 **II. THE 1994 TURNAROUND NOTICE IS NOT A COPYRIGHT**
16 **INTEREST.**

17 **A. Under The Only Relevant Authority, The Changed Elements**
18 **Provision Is Not a Copyright Interest.**

19 Fox cites no authority for its position that the Changed Elements provision is a
20 copyright interest. This omission is not surprising, as there is none. Fox also asserts
21 that the Court should disregard Cavallo, Ruffalo & Fargnoli v. Torres, 1988 WL
22 161313 (C.D. Cal. Dec. 12, 1988), and Silberman v. Innovation Luggage, Inc., 2003
23 U.S. Dist. LEXIS 5420, 67 U.S.P.Q.2d (BNA) 1489 (S.D.N.Y. March 31, 2003),
24 which ruled that the holders of unexercised options in copyrighted works do not have
25 standing to sue for copyright infringement,⁷ because Cavallo and Silberman have no
26 binding or precedential value in the Court, and both decisions are distinguishable.

27
28 ⁷ Fox ignores the third decision cited by WBP, Hearn v. Meyer, 664 F.Supp. 832,
625153v6 840-44 (S.D.N.Y. 1987), which stands for the same proposition.

1 Fox is wrong on both counts.

2 The unpublished decisions of courts other than the Ninth Circuit, including the
3 decisions of district courts within the Ninth Circuit, may certainly be considered as
4 "persuasive authority" by this Court. See Herring v. Teradyne, Inc., 256 F.Supp. 2d
5 1118, 1128, fn. 2 (S.D. Cal. 2002), aff'd in part, rev'd in part on other, unrelated
6 grounds, Herring v. Teradyne, Inc., 2007 U.S. App. LEXIS 17175 (9th Cir. 2003).

7 Fox's assertion that Cavallo and Silberman are inapposite because Fox is the
8 exclusive legal owner of copyrights in *Watchmen* is but a desperate effort to save its
9 fatal copyright claim. As discussed above, Fox is *not* the holder of a copyright
10 interest under the 1991 Quitclaim because it expressly transferred all of its right, title
11 and interest in *Watchmen* to Largo, and the conditional promise of future distribution
12 rights was expressly superseded by the 1994 Settlement Agreement. Fox's assertion
13 also is contradicted by the express terms of the Largo Domestic Agreement, as
14 amended, and the Largo Foreign Agreement which expressly state that Largo would
15 own and control the exclusive copyright in *Watchmen*. (Largo Domestic Agreement,
16 § 7; Largo Foreign Agreement, § 5).

17 Thus, the decisions in Cavallo and Silberman, which involved the holders of
18 unexercised options to purchase copyright interests, just like Fox in this case, are
19 directly on point, and should be deemed "persuasive authority" by this Court

20 **B. Fox's Argument That It Obtained A Copyright Interest Because The**
21 **Right To Supervise And Control Future Uses Of Copyrighted Works**
22 **Is Protected Under The Copyright Act Is A Red Herring.**

23 Fox also attempts to argue that the 1994 Turnaround Notice gives it the right to
24 supervise and control future uses of copyrighted works and thus, because a copyright
25 owner can control uses of the copyrighted work, the Changed Elements provision
26 "reflects" copyright interests.

27 The primary flaw in this argument is that the 1994 Turnaround Notice does not
28 give Fox the exclusive right to control uses. Under the 1994 Turnaround Notice,

1 Gordon has the unfettered right to do whatever he wants with the project – in the
 2 parlance of that document, to "change elements" at will. All Fox gets is the option,
 3 upon presentation by Gordon, to "elect" to proceed to production. Nothing in the
 4 1994 Turnaround Notice gives Fox the right to tell Gordon what he can do with the
 5 project, and all Fox points to is the same option language that case law defines as
 6 falling outside copyright.

7 This is a materially different situation from that which obtained in the only case
 8 Fox cites in support of this argument, Wildlife Internationale, Inc. v. Clements, 591
 9 F.Supp. 1542 (D. Ohio 1984). That case involved an express contractual provision
 10 that stated that the artist granted a license that expressly stated that all of the licensee's
 11 work would be done under his "direct supervision and control." Under those
 12 circumstances, the court held, the artist was the true owner of the copyright.

13 **III. FOX'S OPPOSITION DOES NOT AND CANNOT SALVAGE ITS**
 14 **DEFECTIVE INTERFERENCE WITH CONTRACT CLAIM.**

15 **A. Fox Cannot Turn WBP's Alleged Breach of Contract Into a Tort**
 16 **Because WBP Could Not Have Interfered With a Contract Whose**
 17 **Obligations It Assumed.**

18 Fox has sued WBP for breach of contract on the premise that WBP is a party to
 19 the 1991 Quitclaim. (Complaint, ¶ 38). Fox cannot sue WBP for breach of contract
 20 on this basis, and then claim that WBP tortiously interfered with that very same
 21 contract. It is well settled that a claim for interference with contract does not lie against
 22 a party to the contract. Kasparian v. County of Los Angeles, 38 Cal. App. 4th 242, 262,
 23 45 Cal. Rptr. 2d. 90 (1995) ("It is obvious that if an action is brought for interference
 24 with contractual relationship by one party to a contract against another who is also a
 25 party to that same contract, the grievance of the plaintiff is, in essence, breach of
 26 contract; and, in such a case, plaintiff is entitled to recover all damages flowing from
 27 the breach").

28 Because Fox has expressly alleged that WBP assumed the contractual

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1 obligations in the 1991 Quitclaim, and therefore became a party to that contract, the
2 conduct alleged by Fox amounts to nothing more than a breach of contract claim and
3 WBP may not be held liable in tort. "Conduct amounting to a breach of contract
4 becomes tortious only when it also violates an independent duty arising from
5 principles of tort law." Applied Equip. Corp. v. Litton Saudi Arabia, Ltd., 7 Cal. 4th
6 503, 515, 28 Cal. Rptr. 475 (1994); see also Freeman & Mills, Inc. v. Belcher Oil Co.,
7 11 Cal. 4th 85, 44 Cal. Rptr. 2d 420 (1995) (holding that tort recovery for
8 noninsurance contract breach is precluded in the absence of a violation of an
9 independent duty arising from principles of tort law). Thus, Fox's interference claim
10 is fatally defective.

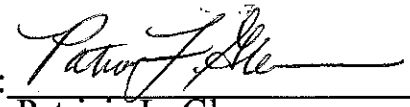

11 Faced with these defects, all Fox can argue is that it has faithfully parroted the
12 elements of an interference claim. But given the specific allegations that belie those
13 elements, Fox's argument is to no avail.

14 **IV. CONCLUSION.**

15 For the foregoing reasons, WBP respectfully requests that the Court grant the
16 instant Motion and dismiss the First and Second Claims for Relief in Fox's Complaint
17 without leave to amend.

18 Dated: April 28, 2008

Patricia L. Glaser
Kevin J. Leichter
Alisa Morgenthaler Lever
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21
22 By:  / 
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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Boulevard, Nineteenth Floor, Los Angeles, California 90067.

On April 28, 2008, I served the foregoing document(s) described as: **REPLY MEMORANDUM IN SUPPORT OF MOTION BY DEFENDANTS TO DISMISS PLAINTIFF'S FIRST AND SECOND CLAIMS FOR RELIEF** on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

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(BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

(BY E-MAIL) I caused such documents to be delivered via electronic transmission to the offices of the addressee(s) at the e-mail addresses listed.

Executed this on April 28, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Lisa M. Zepeda